

Town of New London

Docket No. 0135-89

ORDER RE PETITION FOR REASSESSMENT

On April 6, 1990, the Board of Tax and Land Appeals (hereafter Board) convened a public hearing as scheduled in accordance with the Board's Notice of Public Hearing in re Petition for Reassessment dated March 1, 1990. Due to the length and detail of the testimony, the Board not only reconvened the hearing on May 7, 1990, for an unprecedented second day of testimony but also allowed both parties to submit offers of proof and memoranda of law by May 17, 1990. The purpose of the hearing was to determine if the Board should issue an order for reassessment pursuant to RSA 71-B:16.

The Board heard testimony and accepted evidence on behalf of the Petitioners from Tom McCormick of the Committee for Tax Equity, Inc., and the Petitioners' attorney, K. William Clauson. The Town was represented by John F. Teague, Esq., and various town officials and employees of M.M.C., Inc.

Mr. Clauson argued, as summarized in the Petitioners' Memorandum, that:

"The Petitioners have requested a reassessment of the Town of New London pursuant to RSA 71-B:16(IV) on the basis that the land valuation formula and the resulting land valuation assessments done by the Town of New London as of April 1, 1988 followed improper procedures, produced wrong land assessments in general and produced an excessive dispersion of assessment values.

"Under the criteria established by RSA 71-B:16-a, a reassessment should be ordered because:

"The reassessment failed to satisfy the need of the Town for periodic reassessment because of the improper procedures and errors.

"The co-efficient of dispersion in comparing the assessments to subsequent sales is excessive in general and is excessive in particular as to land valuation.

"The Town has proposed no program for correcting the improper procedures and errors in the April 1, 1988 assessment and has presented no further plans for any additional reassessment."

In particular, Mr. Clauson argued the land-valuation formula used in the revaluation was deeply flawed due to improper analysis of sales, double time appreciation of sales, understated building-cost estimates resulting in higher incorrect land residual values, inconsistent lot development values, unsupported base values and insufficient individual adjustments.

Mr. McCormick submitted various analyses of 1988 and 1989 sales in New London which, through several groupings (such as excluding condominiums and commercial sales, or raw land sales only, or a calculated land residual companions), showed various coefficients of dispersion (hereafter C.O.D.) ranging from 20.44 to 82.37.

Mr. Clauson raised an objection to the Town's offer of proof of the letter from representatives of M.M.C., Inc., to Mr. Teague dated December 18, 1989, as it was not supplied to the Petitioners prior to the hearing, thus making it extremely unfair to the Petitioners.

The Town argued that the Petitioners' claim for the need of a reassessment "is dependant upon this Board's accepting as the law of the State that a taxpayer or group of taxpayers seeking to overturn an assessment need only pick one type of property, in this case land, and may ignore the

assessment as a whole or property valuations as a whole. . . .Petitioners have attempted to steer this Board away from a complete look at the Town's appraisal for their argument falls apart if total property values are looked at in reality. Only by this artificial, myopic look at 'land values' can petitioners with a straight face maintain that the appraisal of lake-front property in New London has been unfair as to them."

Mr. Bolton submitted an analysis of 1988 and 1989 sales in New London in which the upper and lower 5 percent of the array and all commercial sales were excluded. Mr. Bolton argued that the resulting median ratio of 93 percent and C.O.D. of 12.6 percent indicated that the overall equity of the revaluation was good. He further argued that a similar analysis of water-influenced sales showing median ratio of 79 percent and a C.O.D. of 14.38 percent indicated that the waterfront property was underassessed slightly in relation to the Town property as a whole.

The Town stated that "should a reassessment be ordered, it is petitioners who will end up paying the higher taxes. For its part, the Town does not wish this result. The benefits to the rest of the taxpayers in the Town from the receipt of higher taxes from lake front owners are not of such magnitude as to offset the costs and disruption a reassessment would generate."

First, as to the Petitioners' objection to the Town's offer of proof, the Board overrules the objection as the Board has no requirement that parties necessarily notify each other prior to the hearing of any evidence (other than comparable properties) to be presented as proof at the hearing. Even if there were such a requirement, the Petitioners are at no disadvantage as both

parties were to simultaneously submit offers of proof to the Board and the vast majority of the import of the letter the Petitioners are objecting to was brought in by direct examination of Mr. Bolton by the Petitioners' attorney.

The Board rules that it shall order a reassessment or a new assessment only if it determines a need therefor utilizing the criteria set forth in RSA 71-B:16-a (supp) and New Hampshire Code of Administrative Rules Part Tax 210.03, Document 2943.

In summary, the five criteria are:

- (1) The need for periodic reassessment to maintain current equity.
- (2) The time elapsed since the last complete reassessment in the taxing district.
- (3) The ratio of sales prices to assessed valuation in the taxing district and the dispersion thereof.
- (4) The quality of the taxing district's program for maintenance of assessment equity.
- (5) The taxing district's plans for reassessment.

The Board finds that the Town did cause a reassessment to be done for April 1, 1989. With that having been done, Criteria 1, 2, and 5 have essentially been addressed.

What remains for the Board to determine is whether the revaluation resulted in reasonable overall tax equity and whether the Town has the capabilities and intentions of responsibly addressing individual appeals and the assessment of new properties.

The Petitioners would have the Board order a revaluation (or even as they concede, a "recalculation") of the land portion of the assessments due to

the disparity they perceive between the land value indicated by the sales and the land-value component of the assessment and due to the Town's formulation of the land values. The Petitioners, through nearly two days of detailed and protracted testimony, focused the Board's attention on the land portion of the valuation and attempted to discredit the entire valuation due to inconsistencies in the land-valuation formula. The Board finds, based on the evidence, that the appraisal firm contracted by the Town was less than thorough and accurate in their analysis of some sales during the revaluation.

However, in spite of these errors, the Board rules the overall equity of all types of property is acceptable. This ruling is supported by the Department of Revenue Administration's and the Board's investigation analyses of 1988 and 1989 sales which generally showed town-wide C.O.D.'s of 13.9 percent and 17.08 percent, respectively. As the Town correctly points out in its memorandum of law, the New Hampshire Supreme Court has held that in determining equitable assessment, the entire taxable estate must be considered, not just a portion thereof, even to the extent that no rectification is warranted if the overassessment of one portion of the estate is neutralized by underassessment of another portion. (See Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200 (1899); Bemis v. Claremont, 98 N.H. 446 (1954); Appeal of Town of Sunapee, 126 N.H. 214 (1985)). The Board therefore rules that there is no need for an entire revaluation based on the sales ratio and C.O.D. as determined from the sales of all types of property.

The Board is well aware that as one stratifies or groups sales with common characteristics, the median ratio and C.O.D.'s will vary from the town-wide norm. This magnification of the analysis in no way invalidates the

entire evaluation but can serve as a useful tool in improving or maintaining equity. This leads to the fourth and final criteria to be considered; namely, that of the quality of the Town's program for maintenance of assessment equity. The Board finds that the Town has the capability with the computerized format it acquired with the revaluation to periodically review the relative equity of different types of property and judiciously with thorough review of several years' data make adjustments short of a complete revaluation to maintain better equity. Further, the Board finds that the several town officials and employees that have testified before this Board have the background and organizational skills, if coupled with some appraisal expertise, to very adequately maintain the tax assessments equitably.

In conclusion, the Board finds that equity would best be served by any inconsistencies' being handled on an individual basis pursuant to RSA 76:16-a and 71-B:16 I rather than ordering a town-wide revaluation.

Therefore, the Board declines to order a reassessment pursuant to RSA 71-B:16 IV.

The Board rules on the Petitioners' request for findings of fact as follows:

1. Granted.
2. Neither granted nor denied.
3. Neither granted nor denied.
4. Neither granted nor denied.
5. Neither granted nor denied.
6. Neither granted nor denied.
7. Neither granted nor denied.
8. Granted.
9. Granted.
10. Neither granted nor denied.
11. Neither granted nor denied.
12. Neither granted nor denied.
13. Granted.

14. Neither granted nor denied.

15. Neither granted nor denied.
16. Neither granted nor denied.
17. Neither granted nor denied.
18. Neither granted nor denied.
19. Neither granted nor denied.
20. Neither granted nor denied.
21. Neither granted nor denied.
22. Neither granted nor denied.
23. Neither granted nor denied.
24. Neither granted nor denied.
25. Neither granted nor denied.
26. Denied.
27. Denied.
28. Denied.
29. Neither granted nor denied.
30. Neither granted nor denied.
31. Denied.
32. Denied.
33. Granted.
34. Denied.

The Board rules on the Town's requests for findings of fact and rulings of law as follows:

Findings of Fact

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Neither granted nor denied.
6. Granted.
7. Granted.
8. Granted.
9. Neither granted nor denied.
10. Granted.
11. Neither granted nor denied.
12. Granted.
13. Granted.
14. Granted.
15. Granted.
16. Granted.
17. Granted.

Rulings of Law.

1. Granted.
2. Granted.
3. Denied.

4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Neither granted nor denied.
10. Granted.
11. Granted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to K. William Clauson, Esq., representing the Petitioners, and to John F. Teague, Esq., representing the Town of New London.

Michele E. LeBrun, Clerk