

**Town of New London**

**Docket No.: 18488-01RA**

**ORDER FOR REASSESSMENT**

On May 18, 2001, a petition was filed by April D. Whittaker (ALead Petitioner@) and other taxpayers pursuant to RSA 71-B:16, IV, requesting the board order a reassessment in the Town of New London (ATown@). On August 7, 2001, a public hearing was held in accordance with the board=s July 2, 2001 show cause order to receive testimony and evidence from the Petitioners, the Town and any other taxpayers in the Town as to whether the board should order a reassessment pursuant to its authority in RSA 71-B:16, III.

The Lead Petitioner argued that, while the coefficients of dispersion were less than 20% in recent years, lower-priced properties were generally bearing a higher tax burden than other property as reflected in the price-related differentials being higher than accepted standards. She also argued that 13 years have elapsed since the last full reassessment, with the Town doing only annual Apick-ups@ from building permits. The board of selectmen have generally been supportive of a reassessment, but at the last town meeting voters did not give their approval to proceed. Funding is not a major deterrent for carrying out the reassessment as an expendable capital reserve fund contains nearly enough money to complete a full reassessment.

The Town stated that while it is true it has almost enough funds available to perform a complete reassessment, it has not proceeded because it has not received the support of the >legislative body= (at town meeting). The Town conceded that a total reassessment was necessary but the timing of when to do it was what was really in dispute. It argued the sentiment at the town meeting was to wait until the state had better defined the standards for reassessments in the aftermath of the Sirrell v. State of New Hampshire, & a. decision. Further, with over half the seasonal properties being owned by people from out of town, the Town argued it would need the summer of 2002 to properly list and measure seasonal property and the balance of 2003 to complete the full reassessment. The Town asserted that assessment updates of different classes of properties, such as the adjustments it had done to condominiums since the last revaluation, are no substitute for a complete reassessment where all properties are reviewed and valued anew.

A number of New London taxpayers testified and expressed concerns with the timing of a reassessment, its fairness and its possible impact on the Town=s relative share of the state-wide property tax burden.

### **Right to Equitable Assessment**

The right to equitable assessment and taxation is guaranteed not only by statute (see RSA ch. 75) but, even more importantly, by the New Hampshire Constitution. N.H. CONST. Pt. 1, Art. 12th and Pt. 2, Art. 5th and 6th. "In this State probably no constitutional principle is better understood than that the taxation of property requires a proportional valuation and a uniform rate." Opinion of the Justices, 81 N.H. 552, 558 (1923). Note is made of the following pertinent supreme court decisions, among others: Sirrell v. State of New Hampshire & a., No. 2001-003,

\_\_N.H.\_\_, <http://www.state.nh.us/courts/supreme/opinions/0105/sirre087.htm> (May 3, 2001); Opinion of the Justices, (Reformed Public School Financing), No. 00-179, \_\_N.H.\_\_, <http://www.state.nh.us/courts/supreme/opinions/00012/ojschool.htm> (December 7, 2000); Claremont School District v. Governor, 142 N.H. 462, 471 (1997); Opinion of the Justices, 106 N.H. 202 (1965); Opinion of the Justices, 101 N.H. 549 (1958); Rollins v. City of Dover, 93 N.H. 448 (1945); Trustees of Phillips Exeter Academy v. Exeter, 92 N.H. 473 (1943); Town of Bow v. Farrand, 77 N.H. 451 (1915); Amoskeag Mfg. Co. v. Manchester, 70 N.H. 336 (1900); Winnepiseogee Lake Cotton & Woolen Mfg. Co. v. Town of Gilford, 67 N.H. 517 (1896); State v. United States & Canada Express Company, 60 N.H. 219 (1880); Edes v. Boardman, 58 N.H. 580 (1879); Morrison v. City of Manchester, 58 N.H. 538 (1879); and Opinion of the Justices, 4 N.H. 565 (1829).

### **Board=s Rulings**

RSA 71-B:16 provides:

**Order for Reassessment.** The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state: . . .

III. When in the judgment of the board, determined in accordance with RSA 71-B:16-a, any or all of the property in a taxing district should be reassessed or newly assessed: . . .

RSA 71-B:16-a provides:

**Criteria for Ordering Reassessment.** Prior to making any determination to order a reassessment or a new assessment under RSA 71-B:16, III, the board shall give notice to the selectmen or assessors of the taxing district and, if requested, hold a hearing on the matter at which the selectmen or assessors shall have the

opportunity to be heard. The board shall not order any such reassessment or new

assessment unless it determines a need therefor utilizing the following criteria:

- I. The need for periodic reassessment to maintain current equity.
- II. The time elapsed since the last complete reassessment in the taxing district.
- III. The ratio of sales prices to assessed valuation in the taxing district and the dispersion thereof.
- IV. The quality of the taxing district=s program for maintenance of assessment equity.
- V. The taxing district=s plans for reassessment.

Based on its authority and the facts presented, the board orders an assessment update of waterfront-related properties be performed effective for tax year 2002 and a complete reassessment be performed effective for tax year 2003. The board will address each of these steps below.

#### 2002 Update of Waterfront-Related Properties

While the board agrees with the Town that the best long-term solution is a complete reassessment, the evidence is clear that waterfront-related properties are currently significantly underassessed relative to market value and the Town=s overall level of assessment and have been underassessed for at least several years. Thus, an interim update of waterfront property to improve equity is warranted and, in fact, required under the New Hampshire Constitution and statutes.

The department of revenue administration=s (ADRA@) equalization summaries for 1999 and 2000 indicate significantly different levels of assessment for waterfront property and all other property within the Town. In 1999, the town-wide median assessment-to-sales ratio was

.97 while improved waterfront sales had a median ratio of .46 and unimproved waterfront sales a median ratio of .58. In 2000, the town-wide median ratio was .96, while improved waterfront sales had a median ratio of .50 and unimproved waterfront sales had a median ratio of .66.

While the waterfront sales comprise only six to seven percent of the total sales in the community, the significantly lower level of assessment is consistent between the two years and, thus, this provides a fairly reliable indication that waterfront properties have appreciated at a significantly faster rate than non-waterfront properties and, thus, are currently significantly underassessed.

Further supporting this conclusion is the report filed by Mr. Robert Camp, a supervisor with the DRA, that assessments in New London have developed into a multi-modal or a four-tiered system . . . [with] the biggest problem . . . in the waterfront, which is only assessed at 46% of its market value.@ (Exhibit C of petition.)

For the board to ignore the significant disparity between the waterfront and non-waterfront assessments and not order an assessment update would be to ignore the New Hampshire Constitution, statutes and case law that require assessments be proportional. As cited earlier, no constitutional principle is better understood than that the taxation of property requires a proportional valuation and a uniform rate.@ Opinion of the Justices, 81 N.H. 552, 588 (1923). AIt is impermissible to maintain a class of real estate that is assessed at a higher level than other real estate, whether that class consists of one parcel or half the town . . . widespread disproportionality is no defense.@ Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). In Sunapee, the remedy to overassessment was an order for abatement pursuant to RSA 76:16-a or 17. Here, conversely, the remedy for class-wide underassessment is an order for reassessment of

Any or all of the property in a taxing jurisdiction . . .@ RSA 71-B:16, III, (emphasis added).

Further, there is also no practical reason why such an update cannot be done. Mr. Lessard, the Town's contract assessor, indicated that despite the Town's current manual property-record card system, the waterfront-related properties can be readily identified and an assessment update can be performed. The assessment levels of other strata or classes of property identified in Mr. Camp's report and highlighted in the 1999 and 2000 DRA equalization summaries (attached in Appendix 1) are not so divergent from the overall level of assessment as to require an immediate update but are best addressed in the 2003 complete reassessment. It should also be noted that if waterfront property had been updated to the town-wide level of assessment, the town-wide median ratios in both years would have likely been higher; therefore, the condominium class, which is above the town-wide median ratio, would have been closer to the overall recalculated Town-wide level of assessment.

In summary, the board orders the Town to perform an assessment update of waterfront property for tax year 2002. In performing this study, the Town will need to: 1) review all sales within the Town within a recent period of time in order to estimate the target level of assessment for all properties throughout the Town in 2002; and 2) conduct a stratified ratio study of waterfront properties during the same time period to determine what interim adjustments for 2002 are appropriate. After determining the magnitude and nature of the adjustments to waterfront property, the Town shall notify the taxpayers owning such property of the assessment changes and provide an opportunity for informal reviews for correction and revisions.

2003 Complete Reassessment

The 13 years that have elapsed since the last complete reassessment and the Town=s recent delays in performing a new one make it imperative that the Town comply with the provisions of the New Hampshire Constitution, Pt. II, Art. 6, that requires Aa valuation of the estates within the state taken anew once in every five years . . .@ Ideally, a complete reassessment might be completed in 2002; however, the board agrees it could cause the preparations and the execution of the reassessment to be rushed and lessen the overall quality of the reassessment. In the meantime, the assessment update of waterfront property will improve the Town=s assessment equity for 2002.

The argument that the Town should wait until the legislature and the DRA have fully decided what standards will apply to reassessments before proceeding is without merit. The constitutional provisions in Pt. II, Articles 5 and 6, which require proportionality of assessments and a valuation every five years, have been in place for over two centuries, and RSA 75:1, which requires property be appraised at market value to be proportional, has been in the same substantative form since 1872. These are the standards that reassessments must meet. The provisions enacted in this past legislative session in Chapter 158 and Chapter 297 establish procedures for improving assessing standards and additional enforcement procedures; however, they do not change the basic constitutional and statutory provisions of assessing equity that have long been in place.

The Town=s plan to acquire a computer-assisted mass appraisal (ACAMA@) system as part of the reassessment is appropriate. It will allow the Town to perform periodic updates in the future with greater ease than in the past to maintain better assessment equity and help the Town

comply with the five-year assessment certification process outlined in Chapter 158. In conjunction with the complete reassessment, the Town should also review its current-use records to ensure their accuracy with regard to the categories requested for current use and the land that is retained out of current use. If the records are less than accurate, the Town should take this opportunity to improve those records in accordance with the current-use board's administrative rules.

The reassessment must comply with the applicable statutes and regulations, including Part 600 of the DRA's rules on reassessment. Further, the board is requesting Mr. Hamilton to review, on an ongoing basis, the procedures and analysis that will be employed during the 2002 update and the 2003 reassessment. The involvement of Mr. Hamilton is not intended to supplant the selectmen's assessment responsibilities or to be duplicative of the DRA's responsibility to monitor appraisals pursuant to RSA 21-J:11, II. Rather, based on its experience with other ordered reassessments, the board believes an active participation by its tax review appraiser during the process will be beneficial to the Town and is preferable to waiting until the reassessment is complete to perform any review and analysis. In short, the board wants to ensure the Town receives the highest quality reassessment for the funds expended.

The Town shall notify the board, in writing, starting January 1, 2002 and every three months thereafter, as to its progress in carrying out the 2002 assessment update and the 2003 reassessment. The Town shall also forward a copy of any executed contract approved by the DRA in carrying out this order. Upon receipt of this order, the Town shall post copies of this

order in two public places within the Town.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to: April D. Whittaker, Lead Petitioner; John F. Teague, Esq., counsel for the Town of New London; Chairman, Board of Selectmen, Town of New London; and Guy Petell, Director of Property Appraisal, DRA.

Date: September 4, 2001

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Lisa M. Moquin, Clerk

## **APPENDIX 1**