

## **New London Reassessment**

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

### **ORDER**

#### **I. Introduction**

This order responds to a “Motion for Compliance Hearing . . .” (“Compliance Motion”) filed on behalf of certain New London taxpayers (the “Movants”) on June 25, 2003. The Compliance Motion challenged the legal sufficiency of the 2002 reassessment update ordered by the board in its September 4, 2001 order for reassessment (“Reassessment Order”).

After holding a telephone conference and receiving memoranda of law and supporting documents from the Movants and the “Town,” the board determined a hearing was necessary to resolve the issues raised in the Compliance Motion. The noticed hearing was held on October 27, 2003 and the board heard testimony from: Fritz Giddings of The Stanhope Group; John Michael Tarello of Vision Appraisal Technology; Jessie Levine, Town Administrator; and David Irwin of Tax Choice Services. Also in attendance were the three Town selectmen and a number of taxpayers who did not choose to testify.

As directed by the board, the hearing focused on: 1) allegations set forth in Mr. Giddings’ August 13, 2003 report (the “Giddings Report”) submitted on behalf of the Movants concerning whether the Town’s 2002 update was deficient and failed to comply with the Reassessment Order; and 2) if so, what remedy is appropriate. The board has also reviewed the Movants’ and

the Town's memoranda stating their respective positions on the quality of the reassessment and related issues.

The remedy the Movants seek evolved substantially in the course of these proceedings. In the Compliance Motion, the Movants sought a ruling by the board that “. . . the updated assessment of waterfront-related properties . . . as of April 1, 2002, is illegal, unjust and disproportionate, and that said properties should be newly assessed . . . in conjunction with the reassessment of all of the taxable real estate or taxable property in the Town of New London as of April 1, 2003, . . . .” In the Movants' September 12, 2003 memorandum, they stated “[t]he compliance motion seeks review as to whether the board's order has been followed to date . . . [and] it is critical that the board conduct an examination of compliance with, and status of, the reassessment to ensure that the specifics of the board order will be followed.” At the close of the hearing, their attorney (Donald E. Gartrell), requested that the board cause a ‘reexamination’ of the 2002 update and determine if and how the methodologies employed affect the 2003 reassessment.

The Town objects to the Compliance Motion. The Town notes that while there are about 700 waterfront properties, only a minority may be in support of it (“approximately 50 taxpayers have joined in the [Compliance Motion],” Town's “Objection,” ¶ 11). The Town argues that adequate, alternative statutory remedies exist if any issues remain regarding the 2002 update: these include the abatement process for individual properties, first at the municipal level and then, if necessary, by appeal to the board or the superior court. See RSA 76:16, 76:16-a and 76:17. As stated at pages 7-8 of the Town's memorandum of law: “[t]he abatement process will provide a more expeditious resolution of the issues presented by the individual petitioners. Both the Board and the Superior Court are well acquainted with the abatement proceedings and can process the requests in an orderly and timely fashion, whereas yet another revaluation of

waterfront-related properties, which was to be completed in 2002, may extend forward for years, and well after the 2003 revaluation is implemented.”

The Town’s response to the Compliance Motion also includes an objection based on an alleged “lack [of] standing” and an argument the moving parties are not entitled to relief in this proceeding. The board will briefly address the first objection before considering the substance of the Compliance Motion in more detail.

## **II. Standing**

The “standing” objection refers to the board’s prior rulings, including the board’s Order dated October 25, 2001 denying a motion to intervene and for rehearing with respect to the Reassessment Order. The Town states that because “Members of the present group [making the Compliance Motion] . . . were also members of those who sought to intervene . . .,” they should be precluded from being heard now.

The board disagrees. The board has a statutory responsibility to determine if the Town is in compliance with the Reassessment Order and can consider information pertaining to this issue from any source. Cf. RSA 71-B:16. Therefore, a claim by the Movants that the tax year 2002 update was not performed in compliance with the Reassessment Order clearly merits attention and analysis by the board; this perspective makes the Town’s “standing” objection less than compelling as a basis for denying the Compliance Motion.

## **III. Merits of Compliance Motion**

To determine whether the Town’s performance of the ordered 2002 update was deficient, a review of the board’s findings and directives in the Reassessment Order is warranted. As the board summarized on page 4 of the Reassessment Order, “. . . 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 Reassessment Order at page 5 notes Town-wide median ratios of .97 and .96 in 1999 and 2000, respectively, while the improved and unimproved waterfront sales ratios for the two years ranged from .46 to .66. The Reassessment Order went on to find that these statistics provide “. . . a fairly reliable indication that waterfront properties have appreciated at a significantly faster rate than non-waterfront properties and, thus, are currently significantly underassessed.”

Based on these findings, the board ordered “. . . the Town to perform an assessment update of waterfront properties 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.” Id. at p. 6.

For the reasons that follow, the board finds the Town has satisfactorily complied with the directives of the 2002 update portion of the Reassessment Order.<sup>1</sup> Just as the board is required to consider the five criteria in RSA 71-B:16-a in determining the need for a reassessment, so does the board now look to those criteria and, in particular, RSA 71-B:16-a, III (“[t]he ratio of sales prices to assessed valuation . . .”), in determining whether the board’s Reassessment Order has been complied with. The board has reviewed the department of revenue administration’s (“DRA”) 2002 equalization summary submitted as Municipality Exhibit A1. The summary indicates that the town-wide 2002 median ratio, based on 129 valid sales, was 80.9% while the stratified ratios of waterfront, water access and waterfront influenced properties ranged from

---

<sup>1</sup> To the extent the Town performed physical inspections of waterfront properties in connection with the 2002 update, the Town went beyond the requirements of the Reassessment Order. See discussion infra.

82% to 83.8% based on a total of 20 valid sales for the three strata. The uniformity of the level of assessments between non-waterfront and waterfront-related properties is the best evidence that the 2002 update undertaken by the Town, via its contract with Vision, resulted in significantly improved assessment equity as the Reassessment Order envisioned. The comparison of the 1999 and 2000 ratio studies with the 2002 ratio study provides by far the best insight as to the systemic improvements in assessment equity resulting from the update.

The board will now address the three categorical issues raised in the Giddings Report. While Mr. Giddings makes what appear to be a number of serious allegations, the board, after reviewing both his own expertise and credibility<sup>2</sup> and the substance of his charges against the Town and Vision, its contract appraiser, finds the charges he has made pertaining to lack of compliance with the Reassessment Order to be without merit. Moreover, the board finds the Giddings Report relied largely on interwoven, anecdotal, and largely individual concerns with no supporting data or substantive analysis indicating systemic problems with the 2002 update.

The first specific issue (labeled “Inspection and Qualifications”) involves the allegation Vision did not gain sufficient access to the waterfront improvements to properly and consistently list and value the improvements. The board notes the Reassessment Order made no requirement of new interior inspections as part of the 2002 ordered update. Nonetheless, the Town decided

---

<sup>2</sup> Upon cross-examination, Mr. Giddings readily admitted he is licensed as a certified residential appraiser of individual properties and as a real estate broker, but has no training or experience in mass appraisal methodologies which are generally employed in town-wide reassessments, such as the CAMA (Computer Assisted Mass Appraisal) system employed by Vision. His criticisms and opinions regarding the Town’s mass appraisal techniques must therefore be given far less weight than if he were a duly qualified expert in this field. See, e.g., Cook v. Sullivan, \_\_\_ N.H. \_\_\_, 829 A.2d 1059, 1065-66 (2003) (expert testimony can be accepted or rejected, in whole or in part, and rests on discretion of tribunal; weight given depends upon credibility of witness and any conflicts in the evidence), citing Tennessee Gas Pipeline Co. v. Town of Hudson, 145 N.H. 598, 602 (2000) (concerning expert in tax abatement case) and other authorities. In addition, Mr. Giddings testified that he offered to help Vision, provided he was financially compensated for this help; testimony that Vision decided not to offer him compensation casts a potential cloud on Mr. Giddings’ objectivity. See also fn. 3, infra.

on its own to improve the waterfront property data by remeasuring and listing those improvements during the update.

The testimony is undisputed that, while interior inspections were not always gained during the first and second visits to properties, Vision did follow up such initial visits by leaving a door tag or sending a letter to the owners. Obviously there are practical and logistical problems in obtaining access to seasonal waterfront properties when the owners are absent. However, it is apparent through the testimony that Vision was reasonably diligent in trying to initially obtain an interior inspection and later through the informal review process and the formal abatement process continued to improve its interior inspection rate. To the extent there are individual listing errors or inaccurate grade or depreciation estimates, the abatement and appeal process is the appropriate venue to resolve those property-specific questions. Consequently, the board finds the Giddings Report's assertion that inadequate access resulted in systemic inconsistent and inaccurate listings is without merit.

Mr. Giddings also questioned the "knowledge and experience level" of the "measurers" employed by Vision. His assertions that they lacked proper qualifications and that their actions were "irresponsible" lack substance. By his own admission, he did not inspect the records of the DRA to substantiate his allegations, but only checked the "BTLA records for the 2002 revaluation undertaken by Vision." It is the DRA, not the board, that is charged with responsibility in this area. Moreover, his disagreements with the Town's findings on several properties regarding grade and so forth are judgmental in nature and fail to prove non-compliance with the Reassessment Order.

The second set of allegations (labeled "Methodology") is that the Town's use of a market adjustment factor on the building portion of the assessment is neither appropriate nor has a basis in any appraisal standard or rule. The Town presented extensive testimony and evidence on the

market adjustment factor and was questioned at length by the board relative to the Town's methodology of applying this factor to the higher quality waterfront dwellings during the update. On balance, the board finds the Town's methodology, while perhaps not the most conventional approach, did result in the assessments being far more equitable than prior to the update and the application of such market adjustments, as indicated by the DRA's 2002 equalization survey.

The board understands the difficulty in executing the 2002 update portion of its Reassessment Order where non-waterfront property assessments were intended to remain static (barring normal adjustments for improvements and renovations) and adjusting, in some fashion, the waterfront properties to bring them proportional to market value and the town-wide level of assessment. The methodology employed by Vision was to extract from the market, utilizing a comparison of the land-only sales and the improved sales, a factor necessary to adjust the building values of certain higher-valued properties to arrive at total assessed values that were more proportional than those before that produced 1999 and 2000 assessment levels at approximately half of the non-waterfront properties.

The board finds such analysis is consistent with the requirements of Pt. II, Art. 5 of the New Hampshire Constitution (that assessments be proportional), RSA 75:1 (that assessments be based on market value) and Appeal of Sunapee, 126 N.H. 214, 217 (1985) (that the aggregate value of all of an individual taxpayer's real estate must be considered in determining proportionality). The Town's methodology did improve proportionality, was market based and, when the aggregate value of the land and buildings of the waterfront properties are considered, results in assessments that are significantly more proportional than before the 2002 update.

RSA 71-B:16, 16-a and 17 authorizes the board to determine if there is a general need for a reassessment and, if ordered, whether it has been satisfactorily complied with as ordered. These statutes do not, however, envision the board micromanaging the municipality's

methodology in carrying out such order. The Movants' closely examined Mr. Tarello regarding Vision's compliance with the DRA's REV 600 rules and the terms of its written contract with the Town. Mr. Tarello testified the 2002 update was a unique process, different from most reassessment assignments, and was made more difficult because the improvements on the waterfront properties had to be adjusted in such a fashion so as to leave the base rates of non-waterfront property improvements unaffected. The Town noted the 2002 update portion of the Reassessment Order does not mention compliance with the DRA's 600 rules as a requirement. In addition, Mr. Tarello testified that any modifications from the written contract were approved by the Town and that both the Town and the DRA representatives monitoring Vision's work had full knowledge of its practices. In doing so, pursuant to its RSA 21-J:11 responsibilities, the DRA was aware of and reviewed the methodology being utilized by Vision to carry out the 2002 update portion of the Reassessment Order and expressed no reservations as to the propriety of Vision's methodology or any lack of compliance with the DRA's REV 600 rules.

The third issue (labeled "Neighborhood and Site Value Identification") involves a claim that the Town's neighborhood delineations and the base valuations for those neighborhoods and various water bodies in the Town were not properly analyzed and are at odds with historical neighborhood markets. Again, the board finds the Giddings Report's comments anecdotal and not supported with any in-depth analysis to verify its claim for different valuation and neighborhood delineations.<sup>3</sup> At the hearing, Vision presented an overview of its sales analysis, particularly related to Lake Sunapee, and its general conclusions as to the waterfront base rates and adjustments made to reflect the more congested areas or cove locations. Without ruling on the propriety of such base rates or adjustments relative to individual properties, the board finds

---

<sup>3</sup> During cross-examination by the Town, Mr. Giddings admitted that when asked for such information by the Town during the informal review and abatement process, Mr. Giddings was unwilling to supply such information unless he was paid by Vision or the Town for such information.

nothing in the Town's methodology that is unreasonable or inconsistent with the available market data. Vision also indicated it consulted with local realtors in trying to understand the waterfront market in conjunction with the analysis of the waterfront sales available during the two-year period prior to April 1, 2002.<sup>4</sup>

#### **IV Summary**

In summary, while the Compliance Motion, memoranda of law and documents and testimony presented at the October 27, 2003 hearing provided a venue for the board to examine the sufficiency of the Town's compliance with the 2002 update portion of the Reassessment Order, the board finds it has been reasonably complied with; pursuant to RSA 71-B:17, the board's order relative to the 2002 assessment update is removed because the update is satisfactory to the board.

The board also finds the 2002 update was a discrete process and independent from the 2003 Town-wide reassessment because all new land and building assessment models were generated for the 2003 reassessment. The board's review of the Town's compliance with the 2003 portion of the Reassessment Order is still pending and, in all likelihood, will, after sufficient subsequent sales have occurred, follow the procedures outlined in its rules.<sup>5</sup>

---

<sup>4</sup> The board finds the Town properly provided Vision with all sales for two years prior to the assessment date of April 1, 2002 and, in fact, Vision was aware of sales prior to that period when determining its base rates and adjustments. The board's Reassessment Order did not specify the exact time frame for the sales review, but only stated that the Town shall review all sales and waterfront properties within a "recent period of time" to perform the update. The board finds, given the quickly escalating market in the 1999 to 2002 time period, Vision is not to be faulted for choosing only a two-year window of sales to analyze.

<sup>5</sup> See TAX 208.06(a)(2): "Once the reassessment has been completed and there have been sufficient sales not relied upon in setting the assessments, the Board shall perform a comparative study of recent sales and assessments and determine various indications of central tendency and coefficient of dispersion or variation of the sales prices to the assessments to determine whether a statistically acceptable reassessment was performed."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Michele E. LeBrun, Member

---

Douglas S. Ricard, Member

---

Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Order has been mailed this date, postage prepaid, to: Donald E. Gartrell, Esq., Gallagher, Callahan & Gartrell, Post Office Box 1415, Concord, New Hampshire 03302-1415, counsel for the property owners; Barton L. Mayer, Esq., Upton & Hatfield, Post Office Box 1090, Concord, New Hampshire 03302-1090, counsel for the Town; Chairman, Board of Selectmen, Town of New London, Post Office Box 240, New London, New Hampshire 03257; April D. Whittaker, 992 County Road, New London, New Hampshire 03257, Lead Petitioner; Guy Petell, Department of Revenue Administration, 45 Chenell Drive, Concord, New Hampshire 03301; Mark J. Bennett, Esq., Department of Revenue, 25 Capitol Street, Room 202A, Concord, New Hampshire 03301, and Catherine A. Feeney, Esq., Feeney Law offices, Post Office Box 389, Newport, New Hampshire 03773; Interested Parties.

Date: November 17, 2003

---

Anne M. Stelmach, Deputy Clerk