

Department of Revenue Administration

v.

Town of New Durham

Docket No.: 18755-01RA

ORDER FOR REASSESSMENT

On September 19, 2001, a petition was filed with the board by the department of revenue administration (“DRA”) pursuant to RSA 21-J:3, XXV, requesting the board order a reassessment in the Town of New Durham (“Town”). On September 23, 2002, a public hearing was held in accordance with the board’s August 19, 2002 show cause order to “receive evidence from the DRA, town officials and any taxpayer from the Town as to the need for a general reassessment of all property and whether the board should order a reassessment of all taxable property in the Town pursuant to RSA 71-B:16, III.” The hearing was attended by representatives of the DRA: Kathleen Sher, Assistant Revenue Counsel and Guy Petell, Assessment Bureau and the Town: William Herman, Town Administrator and Robert A. Estey, Assessor. In addition to the testimony and evidence submitted by the DRA and the Town, the July 24, 2002 “Investigation and Analysis of Assessment Equity” report (“Report”) filed by the board’s tax review appraiser, Ms. Cynthia Brown, is part of the record pursuant to RSA 541-

A:31, VI (h).

Issues Presented

The DRA argued a reassessment should be ordered for tax year 2003 because:

- 1) Fourteen years have elapsed since the last complete reassessment;
- 2) high coefficients of dispersion (“CODs”) and price-related differentials (“PRDs”) indicate varied and regressive assessment equity in the Town; and
- 3) the Town is currently in a financial position to perform a reassessment having appropriated in excess of \$100,000.

In response to concerns raised by the Town at the hearing, the DRA argued the Town’s date for certification in 2005 should not be changed to coincide with the year of the ordered reassessment because of the various factors the DRA considered in initially establishing the certification schedule and “the impact that [such] deviations would have in other municipalities.”¹

The Town agreed that a complete reassessment was necessary but that it had been proceeding with a plan to perform a reassessment in 2005 to coincide with the DRA’s certification review pursuant to RSA 21-J:11-a (2002 Supp.). The Town stated the DRA’s petition to have the reassessment performed sooner came as a surprise, inasmuch as the Town

¹ Letter dated October 1, 2002 from the DRA’s Assistant Revenue Counsel (discussing the DRA’s authority to establish a certification schedule).

had been setting aside funds since 1999 to perform a reassessment and had transitioned its manual assessment system to a computerized system in preparation for the full reassessment. The Town further argued that to require it to do the reassessment earlier than the slated certification date would likely cause the Town to incur additional expenses in performing a subsequent update to meet the 2005 certification. Because of the high number of seasonal waterfront properties, the Town also argued a reassessment process that incorporated two summers in the listing and valuation phase would be preferable to allow the greatest access to and data collection of the seasonal properties.

Board's Rulings

The board's statutory authority in these proceedings is contained in RSA 71-B:16:

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.

As the parties agreed, the Town is in need of a complete reassessment. The time elapsed since the last reassessment, the high CODs and regressive assessment equity as indicated by the high PRDs are all indicative of the need for a complete reassessment as soon as possible. Consequently, the board orders a complete reassessment be performed for tax year 2004.

The board finds 2004 is the first year that such a reassessment could be practically completed and still accommodate the thorough data collection of the seasonal properties and a proper market analysis and valuation of all properties. The Town has acquired the software of its reassessment firm, Vision Appraisal Technologies ("Vision"), and currently has a contract for a reassessment to be completed for tax year 2005. According to the Town, Vision has indicated the reassessment could be moved up one year to 2004 but, due to other commitments, could not be completed for 2003. Given the Town's several years' planning and conversion of data and assessments to the Vision software, it would not be reasonable or financially prudent to order the Town to do a 2003 reassessment.

At the hearing, the board heard arguments from the parties and kept the record open for further submissions regarding the reasonableness of the DRA's certification date of 2005 for the Town being different than the board's ordered reassessment date. Based on our review of the statutes and the parties' submissions, the board concludes the DRA was provided the authority in

RSA 21-J:11-b to adopt a schedule to implement the new certification process without any requirement to enact rules on the process other than to notice the municipality of when the initial certification will occur.² At this time, the board declines to rule on the appropriateness of the DRA not adjusting the certification schedule to comply with a board-ordered reassessment during the initial certification phase. The board notes that if, during the certification process, the DRA determines that a Town is not compliant with the requirements of RSA 75:1 and the administrative rules enacted by either the DRA (RSA 21-J:11-a, II) or the assessing standards board (RSA 21-J:14-a), the DRA may petition the board to order compliance with such statutes and rules (RSA 21-J:11-a, II (b)). In short, this issue is not ripe until and if the Town disagrees with any corrective order that may occur in 2005, pursuant to RSA 21-J:11-a, II .

The board would further note, however, that the supreme court has emphasized the New Hampshire constitutional requirement in Pt. 2, Art. 6 that property be valued anew every five years and that the state must “implement appropriate enforcement measures . . .” to that end.

² **21-J:11-b Implementation of Certification.**

I. The commissioner of revenue administration shall adopt a schedule so that each city, town, and unincorporated place has its assessments reviewed within 5 years of April 1, 2002, and shall notify each city, town, and unincorporated place, within 60 days of passage of this act, of the property tax year for which their initial certification review shall occur.

Sirrell v. State of New Hampshire, 146 N.H. 364, 383 (2001). The DRA's amended authority to petition the board to order reassessments in RSA 21-J:3, XXV (the statute under which this case arose) and its certification of assessments in RSA 21-J:11-a were 2001 legislative enactments intended to address the assessment equity concerns raised in Sirrell. The board would encourage the DRA to coordinate its execution of those new statutory authorities in such a fashion so that the result is logical and not disjointed. In carrying out any statutory purpose (such as improved assessment equity in this case), the entire statutory framework needs to be considered so that the execution and outcome of the legislative scheme is consistent and logical. See, e.g., Powell v. Catholic Medical Center, 145 N.H. 7, 17 (2000); Simonsen v. Derry, 145 N.H. 382, 386-87 (2000); Gilmore v. Bradgate Associates, 135 N.H. 234, 239 (1992); and Neville v. Highfields Farms, 144 N.H. 419, 423 (1999), quoting Ehrenberg v. City of Concord, 120 N.H. 656, 661 (1980).

As an additional issue, the board would encourage the DRA, in the future, to be more accurate in its petitions regarding its knowledge of a municipality's assessment maintenance and plan for reassessment and the DRA's proposed remedy, (i.e., the proposed date of reassessment, full or partial). In the petition filed in this proceeding, the DRA stated "no specific plans for reassessment are known" and that the Town's programs for maintenance of assessment equity was insufficient and a manual card system was utilized. As testified to at the hearing and also stated in the Report filed by the board's staff review appraiser, however, the Town had indeed made plans for a full reassessment and progress towards it by acquiring computer software, transitioning the assessments onto the computer and raising and appropriating significant funds

over several years for a complete reassessment.

The board has a difficulty understanding the divergence between the DRA's representations in its petition and the actual facts pertaining to the Town's intentions and steps to fund and complete a reassessment. Under the applicable statutes, the DRA has an ongoing responsibility to monitor and communicate with the municipality regarding its assessment plans and practices. For example, RSA 21-J:3, VI (2002 Supp.) obligates the commissioner to "[c]onfer with, advise, and give the necessary instructions and directions to local assessing officers throughout the state as to their duties." (Emphasis added.) The errors in the petition reflect both an absence of any meaningful conferences and no knowledge of what the Town may have been doing to prepare for a revaluation, even though this could have been ascertained from a simple inquiry or from available public records at the Town level.³ At least some of these records are routinely provided by each town to the DRA for tax rate setting purposes, such as warrant articles and town meeting minute votes.

RSA 21-J:3, VI precedes, both logically and chronologically, the new certification responsibilities given to the (DRA) commissioner in RSA 21-J:3, XXVI (2002 Supp). The statutes further direct the commissioner to "consider any information . . . in determining whether

³ Cf. Sirrell, supra at 383-84:

"[T]he State must implement appropriate enforcement measures . . . Because the present statewide property tax is scheduled to expire in 2003, the State should have at least until then to develop effective enforcement measures. The people of this State should be able to rely upon the good faith and common sense of the executive and legislative branches to take the necessary action, not just because by doing so the State may avoid future successful legal challenges, but because it is the essence of our constitutional form of government." (Emphasis added)

to petition the [board] to issue an order for reassessment.” RSA 21-J:9-b (2002 Supp.) In addition, the Legislature in 2001 added a Division of Community Services, charged with the “responsib[ility] for providing technical support and assistance to municipalities.” RSA 21-J:10-a (2002 Supp.)

In summary, the board would encourage the DRA to carefully coordinate its oversight, certification and petition authorities contained in RSA Chapter 21-J, and communicate them in a clear and timely fashion with the Town and other municipalities to lessen the frustration and conflict resulting from implementation of the DRA’s multi-faceted authorities.

This ordered reassessment for tax year 2004 must comply with all applicable statutes and regulations including PART 600 of the DRA’s rules on reassessments. Further, the board is requesting its tax review appraisers to review, on an ongoing basis, the procedures and analysis that will be employed during the 2004 reassessment. The involvement of the board’s tax review appraisers is not intended to supplant the selectmen’s assessment responsibilities or to be duplicative of the DRA’s responsibilities to monitor appraisals pursuant to 21-J:11, II. Rather, based on its experience with other ordered reassessments, the board believes an active participation by its tax review appraisers will be beneficial to the Town and is preferable to waiting until the reassessment is complete to perform any review or analysis.

The Town shall notify the board in writing, starting January 1, 2003, and every three months thereafter of the status and progress of the reassessment. (See attached notification schedule). The Town shall also forward a copy of the revised contract approved by the DRA to carry out this order for tax year 2004. (N.H. RSA 21-J:11 (Chapter 249) effective May 17,

2002). Upon receipt of this order the Town shall post copies of this order in two public places in the Town.

Findings of Fact and Rulings of Law

The board responds to the DRA's Request for Findings of Fact and Rulings of Law as follows. In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the request was irrelevant; or
- e. the request is specifically addressed in the decision.

Findings of Fact

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.

6. Granted.

7. Granted.

8. Granted.

9. Granted.

10. Granted.

11. Granted.

12. Granted.

13. Granted.

14. Granted.

15. Granted.

Rulings of Law

1. Granted.

2. Granted.

3. Granted.

4. Granted.

5. Granted.

6. Granted.

7. Granted.

8. Neither granted nor denied.

9. Denied.

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 that a copy of the foregoing order has been mailed this date, postage prepaid, to: Chairman, Selectmen of New Durham; Mark J. Bennett, Esq., counsel for the DRA; and Guy Petell, Bureau of Assessment, DRA.

Date: November 18, 2002

Anne M. Bourque, Deputy Clerk

Addendum A

**Department of Revenue Administration v. Town of New Durham
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Schedule for Periodic Updates

Full Reassessment has been ordered to be completed by: 2004

First update due by: January 1, 2003

2003 3-Month Update Schedule

Next update due by: April 1, 2003

Next update due by: July 1, 2003

Next update due by: October 1, 2003

2004 3-Month Update Schedule

Next update due by: January 1, 2004

Next update due by: April 1, 2004

Next update due by: June 1, 2004

Next update due by: October 1, 2004

**Please be sure to include the docket number and
due date of the update in your submissions.**