

North Country Environmental Services, Inc.

v.

Town of Bethlehem

Docket Nos.: 19709-02PT/20384-03PT/21064-04PT

ORDER AND HEARING NOTICE

After a three-day hearing, held on December 5-7, 2006, the record in these appeals was closed. However, for the following reasons, the board believes it is necessary to reopen the record (see RSA 71-B:7; Tax 201.27(1)) to receive further testimony on certain documents in Taxpayer Exhibit No. 3 (“Exhibit 3”) that were not discussed during the three-day hearing, relative to the determination of the “Property’s” market value.

Both parties agreed the Property’s market value was best estimated by the income approach and both parties’ appraisers, while utilizing different income approach techniques, had as one of the basic value underpinnings estimates of the remaining landfill capacity as of April 1 of each tax year. Exhibit 3 (which is subject to the board’s December 5, 2006 Protective Order) includes a number of financial documents (Tabs 1, 2 and 6), Landfill Airspace/Compaction Reports (Tab 3), letters between the parties (Tab 5) and an Amended and Restated Non-compete Agreement (Tab 11) (collectively, the “source documents”).

During its deliberations, the board identified and derived from the source documents certain figures and calculations that appear to conflict or be inconsistent with certain assumptions and calculations made by the parties' appraisers. Since any competent income approach valuation starts with accurate assumptions and ascertainable facts, the board determines it is appropriate to reopen the record to receive further testimony explaining the source documents, including estimates of the remaining landfill capacity and income/expense ratios that can be derived from them.

Consequently, the board schedules an evidentiary hearing on these limited issues for **Monday, February 5, 2007 at 9:00 a.m.** at the board's offices located in Johnson Hall, 107 Pleasant Street, Third Floor, Concord, New Hampshire. In preparation for the hearing, the parties' attorneys and witnesses should familiarize themselves with the source documents as they relate to their expert witnesses' valuation calculations and be able to respond to questions about the source documents the board may have. No other evidence relative to the applicable level of assessment for each of the three years under appeal or the applicability of the RSA 72:12-a exemption, will be accepted.

The board recognizes this procedure is somewhat unconventional, but given the fact that no testimony was received on Exhibit 3 and an accurate value estimate can better be determined with further inquiry, this additional limited hearing is appropriate.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert S. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Order and Hearing Notice has this date been mailed, postage prepaid, to: Bryan K. Gould, Esq. and Philip R. Braley, Esq., Brown, Olson & Gould, P.C., 2 Delta Drive - Suite 301, Concord, NH 03301, counsel for the Taxpayer; Edmund J. Boutin, Esq., Brenda E. Keith, Esq. and Steven A. Clark, Esq., Boutin & Altieri, P.L.L.C., PO Box 1107, Londonderry, NH 03053, counsel for the Town; Brett S. Purvis, Brett S. Purvis & Associates, Inc., 3 High Street, 2A - PO Box 767, Sanbornville, NH 03872, contracted assessing firm for the Town; and Chairman, Board of Selectmen, Town of Bethlehem, PO Box 189, Bethlehem, NH 03574.

Dated: 1/12/07

Anne M. Stelmach, Clerk