

Town of Wilmot

Docket No.: 19503-03RA

ORDER

In a show cause order dated July 30, 2003 (“Order”), the board scheduled a hearing for October 8, 2003 to receive testimony and evidence as to whether the 2001 reassessment the “Town” had contracted with Nyberg Purvis and Associates, Inc. (“Nyberg Purvis”) was appropriately performed. The show cause order directed Mr. Leonard Nyberg, Jr. of Nyberg Purvis to be present and to produce certain documents at the hearing to support the values established during the reassessment in order for the board to understand the methodology employed. The board also requested a representative of the board of selectmen attend the hearing to testify as to any future reassessment plans the Town may have. In attendance at the October 3, 2003 hearing were Mr. Nyberg and his attorney, Mr. John McKinnon; Ms. Mary Kay Huntoon and Mr. Richard Lee, selectmen for the Town; Mr. Joseph Lessard, current contract assessor for the Town; and Donald and Patricia Novak, taxpayers in the Town.

Mr. Nyberg presented an assessment-to-sale ratio study (part of Nyberg Exhibit 1) of a sample of sales occurring from October 2000 to September 2001 many of which, he argued, were not available during the reassessment. He argued these sales, mostly subsequent to the reassessment, did not indicate as low a median ratio or as large a coefficient of dispersion

(“COD”) as the department of revenue administration’s (“DRA”) 2001 equalization ratio study indicates. He also argued that certain sales included in the DRA’s ratio study should have been excluded and identified those sales on the second page of Nyberg Exhibit 1. As part of this exhibit, Mr. Nyberg presented a copy of the assessment manual prepared for the town’s 2001 reassessment. Attached to the assessment manual are copies, as the board had requested in its show cause order, of the assessment-record cards of the sale properties utilized by Nyberg Purvis during the 2001 reassessment.

The Town selectmen and Mr. Nyberg testified the Town hired Municipal Resources, Inc. (“MRI”) (specifically Mr. Joseph Lessard) to review the 2001 reassessment and do the subsequent annual “pick ups.” Based on concerns with the system the Town received from Nyberg Purvis and the subsequently higher COD as calculated by the DRA, the Town stated its plan to solicit bids for a complete reassessment to culminate in 2005 after implementation of new appraisal software and a two-year (2004 and 2005) inspection of all the property in the Town.

Board’s Rulings

The board’s authority to order reassessments (and the criteria to be considered) are contained in RSA 71-B:16 and RSA 71-B:16-a. Mindful of the statutory requirements and criteria, the board finds the Town has initiated an appropriate plan to have new assessing software installed and a new reassessment completed by tax year 2005, the same year as the Town’s RSA 21-J:11-a and b assessment review by the DRA. The Town is to be commended for recognizing the need to undertake a new reassessment. Based on the assessment ratio studies submitted by Nyberg Purvis, the DRA’s 2001 and 2002 equalization ratio studies and the shortcomings the board finds occurred in the Nyberg Purvis 2001 reassessment, it is likely the board would have asserted its RSA 71-B:16 jurisdiction and ordered a reassessment, for a similar

timeframe if the Town had not committed to such action on its own. Because the Town has initiated a reasonable plan and has engaged MRI to assist it in carrying it out, the board's involvement pursuant to RSA 71-B:16 is moot. However, to understand the board's concerns regarding the 2001 reassessment, and to the extent such detail assists the Town in receiving the necessary reassessment approval and appropriation at town meeting, the board provides the following observations and findings.

The issues discussed below are not intended to be an exhaustive review of the 2001 reassessment process, but rather are findings relative to those areas in which evidence was submitted that the reassessment did not comply with the DRA's 600 rules and with generally-accepted mass appraisal techniques.

The board's initial concerns arose in the appeal of Donald and Patricia Novak v. Town of Wilmot, (Docket No.: 19286-01PT). At the hearing on the appeal, Nyberg Purvis presented a summary of an assessment-to-sale ratio study performed during the 2001 reassessment that indicated a COD of 4.7% and a median ratio of 101%. The DRA's 2001 equalization ratio study (utilizing many of the same sales as the Nyberg Purvis study) indicated a COD of 14.5% and a median ratio of 98% and the DRA's 2002 equalization ratio study indicated a COD of 24.3% and a median ratio of 80.4%. These discrepancies raised a concern as to whether the sales survey for the 2001 reassessment was properly performed by Nyberg Purvis.

After receiving additional testimony and evidence at the October 8, 2003 hearing, the board has spent extensive time reviewing all the documents, especially those contained in Nyberg Exhibit 1, to determine if a proper analysis of market data to create an assessment manual and sales survey was done in accordance with the DRA's 600 rules, the Town's contract with Nyberg Purvis ("Contract") and generally-accepted mass appraisal techniques.

The DRA's 600 rules relative to mass appraisal, and in particular REV. 603.15 ("Sales Surveys"), contain general criteria as to how a sales survey should be conducted during a reassessment. Without enumerating the entire rule, REV. 603.15(b) and (e) require that sales two years preceding the effective date of the appraisal be collected and analyzed to derive indicated base land unit values to be utilized during the reassessment and to document all the adjustments made to the sales in the analysis and how those adjustments are to be applied in assessing similar unsold properties. Section 3.4.6-8 of the Contract similarly requires "[t]he analysis . . . show the sale price, adjustments made and final value . . ." of each property analyzed and the indicated land unit values and further requires the submission of the analysis and its conclusion to the selectmen "at the completion of the revaluation."

In this case, the board finds no sales survey as required by REV. 603.15 or the Contract was performed by Nyberg Purvis. The prior ratio studies (overall and stratified) contained in the assessment manual and the subsequent ratio study, all part of Nyberg Exhibit 1, are calibrations or subsequent sale ratio studies and not an up-front analysis of sales necessary to establish the reassessment models. Such ratio studies are appropriate tools to test the effectiveness of the base rates and adjustments derived from the sales analysis, but they are not, in and of themselves, a replacement for a thorough and well-documented sales survey. In other words, a proper sales survey is a tool for establishing the pricing components of the valuation model to be used and applied in a consistent manner during the reassessment process, not an after-the-fact construct used to justify the values presented. In this way, it is qualitatively different from a ratio study.

To try to understand the land base rates and adjustments employed during the 2001 reassessment, the board reviewed every assessment-record card for the sale properties submitted in Nyberg Exhibit 1. A review of these cards show: a) 13 different primary land base rates

ranging from \$8,000 per acre to \$65,000 per acre for the various neighborhoods enumerated on pages 7 through 8 of the assessment manual (also part of Nyberg Exhibit 1); b) seven different base rates for rear land; c) four different view factors; and d) at least five different and varying septic, well and site work values. Further, the assessment-record cards show the use: in some cases, of a singular “primary” house site; in other instances, two “primary” sites with full value or half value second “primary” sites; and, in still other instances, “secondary” sites of varying valuation base rates. None of the derivations of these primary, secondary or rear land base rates, site improvements or other adjustments are discussed or documented in the assessment manual despite the requirements stated in REV. 603.15 and the Contract. The assessment manual does contain descriptions and examples as to how a land residual analysis of improved sales and an analysis of land-only sales should occur, but no actual analyses are done.

Additionally, on page 97 of the assessment manual, Nyberg Purvis states that “[s]ales, along with current listings, were . . . used as a method by which computer calibration was based and served as a basis for cost and depreciation tables and support the validity and reliability of those tables.” Again, no discussion, analysis (other than the ratio studies), or documentation of any sales or current listings of properties for sale was contained in the assessment manual.

Also, while there is a reasonable discussion of the generation of the building valuation cost data (see pgs. 15 – 21 of assessment manual), no discussion or analysis is contained in the assessment manual as to how the sales were utilized “as a basis for cost and depreciation tables.”

As noted earlier, an assessment-to-sale ratio study is no substitute for a proper sales survey. A sales survey is a documented front-end analysis of sales that determines appropriate base rates and adjustments and then is utilized as a “roadmap” in assessing all other properties that have not sold. No town official, taxpayer or subsequent assessor can determine with

certainty what actual adjustments should be applied to established land base rates (either part of a computerized or manual system) if such a “roadmap” is not documented in the assessment manual and analyzed in the required sales survey. The use of computer assessing software to assist mass appraisals should make the assessment process more transparent and understandable, rather than obfuscate the process and its details.

An example of the resulting assessment inconsistency and inaccuracy arose in the Novak case where Mr. Nyberg argued that the subsequent assessment of \$298,200 of Map 15, Lot 68 that sold in December 2001 for \$299,000 supports the accuracy of the land base rates and adjustments established by his firm. However, the Novaks submitted evidence that Nyberg Purvis, in assessing this sale property, had initially assessed a secondary site value of \$25,000 which was abated once they presented evidence to Nyberg Purvis that subdivision covenants restricted any further subdivision of that property. The resulting abated assessment of \$274,500 was then appreciably lower than market value and illustrates that, whatever analysis had occurred for that subdivision or neighborhood, it had missed its mark on establishing the appropriate market-based land unit values. Also, as the board’s review of the assessment-record cards of sales and the assessment manual indicates, there is no documented discussion as to when only a singular “primary” site is utilized or when a second “primary” site or a “secondary” site should be assessed. While a discussion occurs on pages 80 and 81 of the assessment manual as to “primary” and “secondary” sites and their improvements, there is no documented analysis or definitive discussion as to when a “secondary” or a second “primary” site is to be utilized.

With no detailed enumeration of this and all the other factors contained in the land valuation component of the assessment,¹ the board is inclined to conclude that the low COD of 4.7% of the Nyberg Purvis assessment-to-sale ratio study is the result of trying to have the assessments of sold properties come as close to the sales prices as possible, as opposed to analyzing and interpreting the market (multiple sales) in a proper sales survey, documenting the base unit values and adjustments from those sales and creating assessment models that would then apply to all the properties to reflect the market. The board also finds that a COD of 4.7% in a relatively heterogeneous rural community such as the Town is unlikely to be reflective of the market, as studies have shown such a market will have a far greater variation than 5%. See International Association of Assessing Officers, Standards on Ratio Studies Table 7 (1999) (CODs not exceeding 15 to 20% are acceptable for heterogeneous and rural areas).

The DRA's 2001 and 2002 equalization ratio studies also indicate the assessment models are not as reflective of the market as they could have been. Mr. Nyberg argued that if certain sales were excluded from the DRA's study, the COD would be 7.93%, more similar to the 4.7% COD of the 2001 reassessment. However, the board is not persuaded that Nyberg Purvis' exclusion of certain sales was based on any in-depth knowledge and review of the sales that would justify their exclusion.

Finally at the hearing, Mr. Nyberg asserted that a sales analysis of unimproved and improved sales had been performed; however, no such document was submitted despite the board's Order at page 2 requiring Nyberg Purvis to submit ". . . all supporting sales analyses and documentation . . ." related to the 2001 assessment.

¹ The only documented statement of land adjustments contained in the assessment manual applies to back land on pages 9 and 10. All other references to land valuation analysis are intended to be illustrative of the methodology that was employed but, as the board has found, not documented or submitted at either the hearing or to the Town.

In summary, the DRA's rules and the Contract require there be a documented analysis of sales and their adjustments to arrive at indicated units of value. This analysis is separate and distinct from any assessment-to-sale ratios which have their place in calibrating and testing the adequacy of the resulting valuation models. The solitary use of assessment-to-sale ratio studies in lieu of appropriate sales' surveys and analyses does not provide the thorough and necessary documentation of how the assessment models were established and that they are reflective of the general market dynamics so as to then be used to assess all properties in a mass appraisal process. We believe, based on the evidence submitted in this reassessment file and in the Novak appeal, Nyberg Purvis did not perform an appropriate sales survey as required by Rev. 603.15 and the Contract to establish proper land assessment models. This lack of a proper sales survey results in there being no understandable documented analysis available for taxpayers and Town assessing officials to understand how the market data relied upon during the reassessment was analyzed and equated to assessment models to produce proportional assessments and assist in maintaining their proportionality. Such shortcomings exhibit themselves in the DRA's 2001 and 2002 ratio studies which show a much higher variation in assessments (COD) than the Nyberg Purvis 2001 reassessment ratio study.

Had the Town not initiated an appropriate plan to perform a town-wide reassessment for 2005, it is likely the board would have ordered a similar reassessment program based on the above findings. As noted earlier, because the Town has embarked on an appropriate reassessment program, the board declines to assert its RSA 71-B:16 authority at this time and closes this reassessment investigation and file.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been faxed and mailed, postage prepaid, to: Chairman, Board of Selectmen, Town of Wilmot, Town Office, Wilmot, New Hampshire 03287, Fax # (603) 526-2523; Leonard J. Nyberg, Jr., Nyberg Purvis & Associates, Inc., 125 Savageville Road, Lisbon, New Hampshire, 03585, Fax # (603) 838-5272, Town's contract assessor; John R. McKinnon, Esq., Samaha & Russell. P.A., 125 Main Street, Post Office Box 70, Littleton, New Hampshire 03561, Fax # (603) 444-2552, counsel for Mr. Nyberg; and Donald and Patricia Novak, 20 Clarke Road, Wilmot, New Hampshire 03287, Fax # (603) 526-4135, Interested Parties.

Date: January 23, 2004

Anne M. Stelmach, Deputy Clerk