

**Town of Sanbornton**

**Docket No.: 19517-03RA**

**ORDER**

On July 28, 2003 a petition (“Petition”) by 50 or more taxpayers (“Petitioners”) of the Town of Sanbornton (“Town”) was filed with the board pursuant to RSA 71-B:16, IV. The Petition requested the board to “. . . order the revaluation now being conducted in the Town of Sanbornton to be effective April 1, 2003, as voted by the March 2003 town meeting (*Article 8, 2003 Warrant*).” (Emphasis and italics in original). Given the time sensitive nature of the issues raised in the Petition, the board waived its Tax 208.05 procedural rules in an order dated August 12, 2003, and noticed a show cause hearing for September 2, 2003 on the Petition. At the request of the Town, the hearing was then rescheduled for September 22, 2003. At the hearing, the Petitioners were represented by Attorney Edward Philpot, Jr. and the Town was represented by Attorney Thomas Closson. The board received testimony from current and former town officials and from a number of the 40 plus taxpayers present at the hearing.

**Arguments**

While the board received considerable evidence, the arguments supporting each position can be summarized as follows.

The Petitioners argued that the town meeting vote was specific as to the effective date (tax year 2003) for the reassessment, the selectmen had no authority to delay implementation of

the reassessment until tax year 2004 contrary to the legislative body's specific vote and doing so would perpetuate the inequities that exist in the current tax base for another year.

The Town argued the reassessment should be performed effective April 1, 2004 because implementing it for tax year 2003 would result in additional borrowing by the Town to meet its cash flow demand during the last quarter of 2003 and because the tax bills could not be issued until some time in January, 2004, resulting in taxpayers not being able to deduct their 2003 property taxes on their 2003 federal income tax returns. Further, the Town argued that during the warrant article discussion at the 2003 town meeting, one selectman indicated the reassessment would begin in 2003 but did not necessarily state it would be effective for the issuance of the 2003 tax bills. On May 23, 2003, the selectmen took a vote to "push the effective date (once it is clarified that it can be done) of this re-eval forward to 4/1/04." (Petitioners' Exhibit 13 – Minutes of the selectmen's May 23 meeting.) Based on a legal opinion provided by Attorney Peter V. Millham on May 28, 2003 as to the selectmen's authority to modify the effective reassessment date, the selectmen determined they did have the authority and decided to make the reassessment effective for tax year 2004 rather than tax year 2003.

### **Board Rulings**

For the reasons that follow, the board grants the Petition and orders the reassessment to be completed for tax year 2003 and to be implemented in the 2003 tax bills.

While no one present at the hearing challenged the necessity for a town-wide reassessment, to fully understand the board's decision to order a reassessment for 2003, it is

important to review both the board's authority for ordering reassessments and the quality of the existing assessments in the Town.

In determining whether to order a reassessment, RSA 71-B:16-a requires the board to consider five criteria. In part, RSA 71-B:16-a reads:

“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.”

The board will collectively address these criteria because many of the facts relate to more than one of them.

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. New Hampshire Constitution Pt. I, Art. 12 and Pt. II, Art. 5 and 6. “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). Further, as addressed at length in Sirrell v. State of New Hampshire, 146 N.H. 364, 382 (2001), Pt. II, Art. 6 requires “... that property be assessed at market value at least every five years.”

The last time the Town performed a complete assessment to value its property was in 1993. Petitioners' Exhibit 3 is a summary of the Department of Revenue Administration's

(DRA) calculation of the Town's 2000, 2001 and 2002 assessment to sale ratios, coefficient-of-dispersions ("COD's") and price related differentials ("PRD's"). This summary indicates that assessments during that time have continued to fall away from market value (81.9%, 78.8% and 68%, respectively for 2000 to 2002).<sup>1</sup> The COD's reached 22.9% in 2002 from just below and above 20% in the prior two years. The PRD's during this period steadily increased (1.06, 1.11 and 1.14 for 2000, 2001 and 2002, respectively) indicating deterioration of the vertical equity between assessments of lower value and higher value properties. Further, a review of the levels of assessment and the assessment equity indices (COD and PRD) of various property strata indicate there is significant disparity in the assessments of different classes or types of property.<sup>2</sup> All of these factors indicate there is a dire need for a reassessment in the Town.

The board finds the Town did implement a plan (see RSA 71-B:16-a, V) to address the assessment inequities outlined in the previous paragraph. The issue in dispute, however, is whether the plan can and should be applied for tax year 2003 or should be delayed for one year. Prior to the 2003 annual town meeting, the Town sent out Request for Proposals ("RFP") for a

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<sup>1</sup> The board notes the DRA summary contained in Petitioners' Exhibit 3 indicates a ratio of 68% for 2002 which was the median ratio determined by the DRA. However, in reviewing the actual analysis performed by DRA, the board notes that the weighted mean ratio, the ratio most commonly utilized by DRA in 2002, indicates an even lower level of assessment of 64%.

<sup>2</sup> Compare the statistics for residential land and waterfront properties in Petitioners' Exhibits 1 and 3, for example. The board further notes the Town increased the assessment of some waterfront properties in 1999 to try to lessen the inequity between waterfront properties and all other properties. The Town is currently appealing to the supreme court the Belknap County Superior Court's finding that the assessment increase was "not implemented on a good faith basis, nor was it the product of sound methodology." (Final Order Porter v. Sanbornton and Roy v. Sanbornton, Docket Nos.: 00-E-163 and 01-E-197). If the superior court decision is upheld, the subsequent 2000 to 2002 DRA assessment statistics would not be accurate and, if recalculated utilizing the previous lower waterfront assessments, would indicate worse overall assessment equity.

reassessment to be conducted for tax year 2003. (See Petitioners' Exhibit 18 – Attachment B of Vision contract.) The selectmen placed Article 8 on the 2003 warrant to “to fund a complete revaluation of property, effective April 1, 2003.” Based on the board's review of the minutes of the annual town meeting (Petitioners' Exhibit 12) and the tape of the discussion at the town meeting relative to Article 8 (Petitioners' Exhibit 11), the board finds it is unequivocally clear that the legislative body voted to have the reassessment performed for the 2003 tax year.

After Article 8 was read and explained to the voters, a written amendment was offered to increase the amount of the appropriation for the revaluation slightly (from \$170,000 to \$179,800), without changing any other wording of the warrant. In speaking in favor of this amendment, Selectman Peter Dascoulias did make an oral remark that the reassessment would be “effective or begin April 1, 2003.” The board cannot give this statement operative weight, however, or presume the voters were confused or relied upon it, because the town moderator has a policy requiring all warrants and amendments to be in writing and neither contains the alternate (“or begin”) language the Town now emphasizes.<sup>3</sup> Further Greg Heyn, the Town's assessor, in speaking in support of Article 8 after Selectman Dascoulias, indicated it had been a joint decision of the selectmen and himself to have the reassessment done and effective for tax year 2003 recognizing both the Town's need for one and the impending RSA 21-J:11-a certification

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<sup>3</sup> See also Plaintiff's Exhibit 15, a letter from the Town's attorney dated May 28, 2003 in response to a question from the Selectmen. In this opinion letter, the attorney, Peter V. Milham, Esq., notes the Town's vote regarding the effective date “. . . is very specific. If the year had not been placed in there [the warrant and amendment], the Selectmen could have chosen the year to apply without any question. . . . I am not comfortable in saying that the Selectmen have the power to change the date . . . . Since the monies are already appropriated, the Town could hold a Special Town Meeting to change the purpose of the vote at the March meeting from the 2003 date to a 2004 date.” The Selectmen have not convened a special meeting of the Town's voters to resolve this issue.

process about to be implemented by DRA. In fact, the RFP drafted and sent to interested assessment firms prior to the town meeting identifies a start date of April 1, 2003 for the reassessment (see page 6 of 23 of Attachment B to Petitioners' Exhibit 18) and is replete with references that the reassessment is to be implemented for the 2003 tax year.

Following the vote at the town meeting, the selectmen entered into an April, 2003 contract with Vision Appraisal Technology ("Vision") to have the reassessment begin no later than April 1, 2003 and to be completed and turned over to the Town no later than December 17, 2003. The board finds there is no ambiguity based on either the recorded town meeting vote, discussion at town meeting, or the Vision contract that the Town intended to move as quickly as possible to perform a reassessment to address the inequities that existed in the current tax base. Consequently, the board finds that the Town has a clearly enunciated, funded and a contract-supported plan for a tax year 2003 reassessment.

Given the time elapsed since the last reassessment in 1993, Pt. II, Art. 6 requirements for a valuation every five years, the poor assessment equity as indicated by the Town's ratios, COD's and PRD's and the Town's plan for a 2003 reassessment, the board finds no compelling reason to delay its implementation.

The board has considered the concerns raised by the Town and a number of taxpayers as to the undesirable effects of implementing the reassessment for tax year 2003. We find those consequences could have been avoided by better management, some can still be avoided and some pale in contrast to having the existing inequitable tax base utilized for another year. For instance, the potential late issuance of tax bills was predictable based on the RFP's designated

completion date. The Town could have requested an earlier completion date; even one just several weeks earlier would have facilitated the issuance of tax bills before the end of the calendar year. The selectmen, as the governing body, could also have authorized the issuance of semi-annual tax bills (see RSA 76:15-a and 15-b). The implementation of semi-annual tax billing, while increasing the tax billing and collection costs, would have addressed many of the cash flow and income tax filing issues raised by the taxpayers and the Town. Further, the notice of arrearage that tax collector, Jane Goss, stated would need to be included with the tax bills can be delayed and sent in a separate billing within 90 days of the due date of the final tax bill. RSA 76:11-b.

While the board does not concur with all the dire predictions of individual and town-wide IRS audits resulting from late tax billing, the board does recognize the potential difficulties that this reassessment schedule places upon the Town's cash-flow situation and office management<sup>4</sup> and on taxpayers if the bills are issued after the end of the calendar year. However, none of these difficulties come close to overriding the constitutional and statutory requirements that

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<sup>4</sup> The Town argued delaying implementation to tax year 2004 would also provide additional time for the Town to integrate and be trained on its new computer assisted mass-appraisal system. However, the Town has contracted with Vision to ensure that such integration occurs in a diligent fashion with the Town's existing financial "BMSI" system. Based on the board's experience, these two systems are commonly used together in New Hampshire and thus, their integration is not unique.

assessments be proportional.<sup>5</sup> The board would have to turn its back on the constitutional requirements that valuation should be taken anew every five years, the fact the Town had in place an expedited plan to ameliorate the assessment inequities the DRA's ratio summary highlighted and the assessment maintenance problems the Porter and Roy litigation addressed. (See footnote 2, supra.) We find the late timing of the completion of the reassessment does present some difficulties but, as stated, those pale in comparison to the constitutional and equity implications if it is not carried out for tax year 2003.

The board also has concerns that delaying the reassessment to tax year 2004 could result in the Town incurring additional costs in updating property and market data. Despite some testimony that a delay of one year would not add additional costs, the board notes that there is nothing in the existing contract that requires Vision to perform the construction pick-ups for tax year 2004 at no additional charge. It is also possible that the land and building schedules and models would not only have to be changed to reflect a later year market value, but that such models would have to be reconfigured if market data so indicates.

To minimize the impact of the issuance of late tax bills for tax year 2003, the board would strongly encourage the selectmen to meet with DRA representatives and ensure that all

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<sup>5</sup> Attorney Closson, on behalf of the Town, argued that the board had in other cases taken into account municipality plans to perform a reassessment for a later year as opposed to ordering an earlier year reassessment. While indeed there are instances where the board has so ruled (e.g., reassessment order City of Portsmouth, Docket No.: 18486-01RA), the board has also ordered municipalities to do an earlier partial reassessment to address significant property type inequities (see City of Claremont order for reassessment, Docket No.: 18398-00RA and Town of New London order for reassessment, Docket No.: 18488-01RA) and the board has determined the contracted reassessment date should be complied with despite the selectmen's desire to delay the effective date of the reassessment for a year (see Town of Northumberland order for reassessment, Docket No.: 18358-00RA). The decision to delay or enforce the effective year of the reassessment is very fact specific. In this case, the board finds the time elapsed since the last reassessment, the documented assessment inequity and the Town voters' approval funding of a tax year 2003 reassessment, mitigate against delay.

documentation necessary for setting the tax rates, short of the final assessments, are complete and reviewed prior to the completion of Vision's work. The board also encourages the selectmen to work closely with the tax collector in providing her adequate assistance to expedite the review of the RSA 76:10 warrant and the mailing of the tax bills before the end of the tax year so as to allow taxpayers to pay property taxes in calendar year 2003 to benefit their 2003 federal income tax returns.<sup>6</sup> The board is well aware that December is a busy month in municipal affairs; however, the issuance of tax bills is an important function and the board believes it can be achieved in a timely fashion if everybody diligently works towards that goal.

In summary, the important right of proportional assessment is one guaranteed by the New Hampshire Constitution. The board finds the assessment inequities contained in recent year ratio studies performed by DRA support the Town's plan put forth by the selectmen and approved by town meeting to have a reassessment completed and effective for tax year 2003. The board believes that with the selectmen, DRA, and the tax collector working closely together, the tax bills can be issued prior to the conclusion of the 2003 calendar year and thus, minimize the Town's cash flow concern and address the other issues raised by many taxpayers.

To ensure the Town complies with this Order, the board directs its RSA 71-B:14 tax review appraiser to periodically contact the Town officials and Vision employees as to the progress of the reassessment and the issuance of tax bills and report back to the board.

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<sup>6</sup> There is also, of course, nothing to prevent taxpayers from making an estimated payment of their tax liability before the end of 2003, even if tax bills are not yet received, in order to qualify for a deduction for property taxes paid on their federal income tax returns.

The board responds to the parties' requests for findings of facts and rulings of law in addendum A and B.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing Order has been mailed this date, postage prepaid, to: Thomas Closson, Esq., P.O. Box 439, Exeter, NH 03833, counsel for the Town of Sanbornton; Edward D. Philpot, Jr., Esq., 67 Water Street, Suite 110, Laconia, NH 03246, counsel for the Petitioners; Tom Salatiello, 81 Hermit Woods Road, Sanbornton, New Hampshire 03269, Lead Petitioner; Frances M. Belcher, Post Office Box 202, Sanbornton, New Hampshire 03269, Lead Petitioner; Chairman, Board of Selectmen, Town of Sanbornton, 573 Sanborn Road, Sanbornton, NH 03269; and Guy Petell, Manager, Bureau of Assessments, Department of Revenue Administration, 57 Regional Drive, Concord, New Hampshire 03301.

Dated: October 2, 2003

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Anne M. Bourque, Deputy Clerk

**Addendum A**

**Responses to Requests for Findings of Fact and Rulings of Law  
by the Petitioners**

**Docket No.: 19517-03RA**

The “Requests” received from the Petitioners are replicated below, in the form submitted and without any typographical corrections or other changes. The board’s responses are in bold face. With respect to the Requests, “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.

REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

I. FINDINGS OF FACT:

1. On March 12, 2003, Sanbornton residents voted to raise and appropriate the sum of \$179,800 to fund a complete revaluation of property, effective April 1, 2003. Although there was discussion at the meeting about commencing the evaluation on that date, that language was not voted on.

**Neither granted nor denied.**

2. There is a need for reassessment to maintain equity between and among property taxpayers in Sanbornton.

**Granted.**

3. The last complete revaluation of the Town was effective April 1, 1993.

**Granted.**

4. On April 9, 2003, the Town of Sanbornton entered into a contract with Vision Appraisals to perform a complete revaluation effective April 1, 2003.

**Granted.**

5. During the Sanbornton Selectmen=s meeting of May 21, 2003, the selectmen voted to move the effective date of the revaluation to 2004, conditioned on clarification from town counsel that Ait could be done@ legally.

**Granted.**

6. The Opinion shared with the public by Town Counsel on the question of whether the Selectmen could legally change the effective date of the Revaluation to April 1, 2004 is the Opinion expressed in Wescott, Millham and Dyer letter dated May 28, 2003, signed by Peter V. Millham.

**Granted.**

7. That Town Counsel=s Opinion was that counsel could not say definitively that the Selectmen AYhave the power to change the date@ and suggested that the Town Acould hold a Special Town Meeting to change the purpose of the vote at the March meeting from the 2003 date to a 2004 date,@or, alternatively, AYgo forward and have the appraisals done as quickly as possible.@"

**Neither granted nor denied.**

8. Town Counsel=s Opinion does not support the Town=s or Mr. Dascoulias= representation to this Board contained in the Town=s July 31, 2003 AResponse@ that AYthe Selectmen are not violating the spirit or intent of the Warrant ArticleY@"

**Neither granted nor denied.**

9. Town Counsel=s Opinion does not support the Town=s or Mr. Dascoulias= representation to this Board, contained in July 31, 2003 AResponse@ that Athere is nothing in the law that would preclude the Selectmen, if they think it is in the best interest of the Town from moving the effective date of the Revaluation forward to April 1, 2004.

**Neither granted nor denied.**

10. The Selectmen did not obtain any other legal opinion that supports the position that they had the authority to change the effective date of the Revaluation without a vote of the legislative body.

**Neither granted nor denied.**

11. In fact, the Town=s current plan calls for the revaluation to be completed effective April 1, 2003, and the current Vision contract requires that the revaluation be completed in that time frame.

**Granted.**

12. The effective date of the Town=s revaluation is April 1, 2003, as the Selectmen did not have the authority to change the effective date of the revaluation, the Vision contract has never been amended and, even if the Selectmen could change the date, the condition precedent, which the Selectmen set (that they get an opinion that says they can legally change the date) has never been met.

**Neither granted nor denied.**

13. The Town is capable of completing the revaluation, effective April 1, 2003.

**Granted.**

14. The quality of the Town=s plan to complete the revaluation effective April 1, 2003, as stipulated in its contract with Vision Appraisal Technologies is adequate, and Vision Appraisals continues to represent to property owners that the revaluation will be effective April 1, 2003.

**Granted.**

15. Current property assessments in the Town of Sanbornton are inequitable.

**Granted.**

16. In light of the Town=s position in *Porter v. Town of Sanbornton* and the current inequities in the Town=s valuation, the Selectmen must complete the revaluation effective April 1, 2003 to comply with RSA 75:8 and the oath that they must sign pursuant to NHRSA 75:7.

**Neither granted nor denied.**

17. The Department of Revenue Administration has determined the 2002 sales assessment ratio for the Town of Sanbornton to be 64%, and the coefficient of dispersion for 2002 to be 22.9%.

**Granted. "Assessment to sale" in place of sales assessment.**

18. That the Department of Revenue has determined for certification purposes that highest acceptable COD is 19%.

**Neither granted nor denied.**

**Addendum B**

**Responses to Requests for Findings of Fact and Rulings of Law  
by the Town of Sanbornton**

**Docket No.: 19517-03RA**

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- 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.

REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

I. FINDINGS OF FACT:

1. Sanbornton is currently engaged in a full revaluation of its taxable property.

**Granted.**

2. Sanbornton contracted with Vision Appraisal Technology “Vision”) in April 2003 to complete this full revaluation.

**Granted.**

3. Vision has contractually committed to complete its full revaluation on December 17, 2003.

**Granted.**

4. The petitioners are property taxpayers in Sanbornton.

**Granted.**

5. Pursuant to the provisions of NH RSA 71-B:16, IV, the petitioners have asked this Board to intervene and order Sanbornton to use the new values set by Vision in Sanbornton's 2003 property tax bills.

**Granted.**

6. Sanbornton currently intends to use the new values set by Vision for the first time in its 2004 property tax bills.

**Granted.**

7. In order to meet its financial obligations, Sanbornton must send out property tax bills in calendar year 2003.

**Neither granted nor denied.**

8. If Vision does not complete the revaluation until December 17, 2003, it is not reasonable, and perhaps not even possible, to require Sanbornton to include these values in its 2003 property tax bills.

**Denied.**

9. Pursuant to the provisions of NH RSA 71-B:16-a, the Board should only intervene to compel a reassessment if it determines a need therefore utilizing certain criteria.

**Neither granted nor denied.**

10. One of the criteria the Board is obliged to consider is "the taxing district's plan for reassessment." NH RSA 71-B:16-a, V.

**Granted.**

11. Where, as here, Sanbornton is already in the midst of a full revaluation, there is no need for (or basis for) the Board to take any further action, other than to insure that the revaluation is conducted properly, and is completed as soon as reasonably possible.

**Denied.**