Town of Orford

Docket No.: 21473-05RA

REASSESSMENT ORDER

In a September 22, 2005 Order, a hearing was scheduled by the board of tax and land appeals ("BTLA") for October 17, 2005 to receive testimony from: 1) the Orford Selectboard as to its intentions of proceeding with the 2005 reassessment performed by Avitar Associates of New England, Inc. ("Avitar"); and 2) Avitar as to its "assessing methodology, market analysis and documentation" involved in the 2005 reassessment.

Present at the October 17, 2005 hearing were: three (3) members of the Orford Selectboard, David Bischoff, Chairman, Ann Green, and Paul Carreiro; Gary J. Roberge, President of Avitar; Edward Tinker of Avitar; Robert Boley, Property Tax Advisor of the department of revenue administration ("DRA"); Representative Betsey Patten; and numerous Orford taxpayers and members of the public. The BTLA received extensive testimony from all three (3) Orford Selectboard members, Avitar representatives, Robert Boley, Representative Betsey Patten, and several Orford taxpayers.

The Orford Selectboard presented differing opinions as to whether the 2005 reassessment performed by Avitar should be implemented for this tax year or whether the old assessments based on a 1997 reassessment, performed by DRA, should be utilized. Generally, Selectboard members Bischoff and Carreiro argued they could not accept the new Avitar values for a number

of reasons, including: 1) the magnitude and variability of the view factors applied to 129 properties; 2) the significant change in the view factors as a result of the informal reviews held by Avitar; 3) the gross listing errors of certain properties; 4) the potential litigation exposure of accepting the new assessments; and 5) the financial tax impact of the view factors on certain taxpayers. They argued the reassessment should be put off until the legislature and the New Hampshire Assessing Standards Board ("ASB") (see RSA 21-J:14-a-k) have had an opportunity to further review the issue of view factors as a component in assessing property for tax purposes. Selectboard member Green was less adamant in her concern with the Avitar assessments, having abstained in the selectboard's September 21, 2005 vote not to implement the Avitar recommended assessed values. She stated, in her opinion, the 2005 assessed values provided better proportionality than the existing ones based on the 1997 reassessment.

Avitar representatives stated sales that occurred within Orford from October 2003 to July 2005 were analyzed and formed the basis for the assessments, including the view factors applied to properties in Orford. Avitar submitted the appraisal manual, assessment-record cards, and photographs in support of its contention that the assessed values, after the revisions from the informal reviews, were reasonable and accurate and should be utilized for the 2005 tax billing. Avitar stated any listing errors that were brought to their attention have been corrected and the assessments revised during the informal review process and, thus, were no longer an issue.

Robert Boley testified DRA had monitored the 2005 reassessment pursuant to RSA 21-J:11, II, and, while the final report had not yet been filed, the earlier reports indicated there were no significant problems with the reassessment performed by Avitar. Mr. Boley also stated the level of attendance at the informal reviews and the number of changes as a result of the informal reviews were similar to those in other reassessments in the state. He also noted the

2004 equalization survey indicated the level of assessment for land only sales was only 33% of market value versus a level of 52% town wide, further evidence of the significant disproportionality in the 1997 assessments.

Representative Betsey Patten, Chair of the House Municipal and County Government Committee and of the ASB, testified House Bill 235, which related to studying the influence of views on assessments, had been retained in a study committee which has asked the ASB to look at the issue and give recommendations to the study committee prior to February 20, 2006 for possible incorporation in legislation during the 2006 session.

Several Orford taxpayers presented testimony as to the adequacy of the 2005 assessed values, the 1997 assessed values, the fairness of the informal review process, and some examples of gross errors made in the initial Avitar assessments.

BTLA's Rulings

I. Use of 2005 Values

As noted in the BTLA's September 22, 2005 Order, RSA 71-B:16 authorizes the BTLA to order a reassessment when it determines that assessments have been "fraudulently, improperly, unequally, or illegally assessed."[1] During the October 17 hearing, a majority of the

[1] RSA 71-B:16 in part provides:

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:

. . .

II. When it comes to the attention of the board from any source, except as provided in paragraph I, that a particular parcel of real estate or item of personal property has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed; or

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; or

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less; or

V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.

Orford Selectboard stated the new 2005 assessed values should not be implemented. The BTLA rules the decision not to implement the 2005 values would be contrary to the New Hampshire Constitution and statutes and would, thus, result in "improper" and "unequal" assessments being utilized by the "Town." Consequently, the BTLA orders the Town to use the new assessments for 2005 for the following reasons.

Foremost, Part II, Article 6 of the New Hampshire Constitution requires the valuation of taxable real estate be "taken anew once in every five years, at least…." This constitutional provision was addressed and reinforced in Sirrell v. State, 146 N.H. 364, 383 (2001), where the court concluded "that the State must implement appropriate enforcement measures to ensure that each municipality assesses property within its borders every five years, as required by Part II, Article 6." Examples of "appropriate enforcement measures" include RSA 75:8-a, requiring reassessment every fifth year, RSA 21-J:11-a, DRA's review and reporting of compliance by municipalities with assessing statutes and rules and RSA 21-J:11, II, DRA's authority to monitor private firms performing municipal assessing to ensure accuracy and compliance "with all applicable statutes and rules," as well as with the terms of their contracts with municipalities.

Further ongoing enforcement measures are contained in RSA 21-J:3, XXV giving DRA the authority to petition the BTLA when it appears property values may be disproportionate in any municipality and for the BTLA, in RSA 71-B:16 II, III, IV, and V, to be able to order reassessments when petitioned by DRA or fifty (50) or more taxpayers, or "when it comes to the attention of the board from any source." While the BTLA would presume DRA would have petitioned Orford to the BTLA based on the Selectboard's vote, the BTLA, on its own, initiated the investigation in this matter under its broad authority provided in RSA 71-B:16 and the case authorities. See Appeal of Wood Flour, Inc., 121 N.H. 991, 994 (1981) and Hill v. Marvin,

98 N.H. 519 (1954) (the board and its predecessors have been given broad authority to correct improper or illegal assessments).

At the October 17 hearing, the testimony indicated the last time the Town had a full reassessment was in 1997. Thus, the eight (8) years elapsed makes the Town not compliant with constitutional, statutory, and case law requirements. The Town presented no compelling reasons for not complying with these important requirements. To allow the continued use of the 1997 assessments would perpetuate disproportionate assessments within the Town and potentially within the county and in the assessment of the RSA 76:3 statewide enhanced education tax. Notwithstanding the concerns, addressed later in this order, as to Avitar's minimal documentation in the sales analysis of the 2005 reassessment, and the resulting inordinately low coefficient of dispersion ("COD"), the assessment equity shown in Avitar's sales analysis of an overall median level of assessment of 0.9962 and the COD of 0.0378, indicate the Avitar assessed values are significantly more proportional than the old 1997 assessments.[2] The DRA in its 2004 equalization process calculated a median ratio of 0.522 and a COD of 0.319, indicating properties of similar value had an equal chance of being either under-assessed or over-assessed by nearly 32%. This level of disparity is striking and far exceeds the recommendations of the ASB (adopted December 19, 2003) and the performance standards set out by the International Association of Assessing Officers ("IAAO") at Table 7 of the Standard on Ratio Studies (July 1999). In determining whether to order a reassessment, the BTLA must consider the criteria

[2] In reviewing the evidence as part of its deliberations, the BTLA noted what appeared to be an error regarding the median ratio ("1.8094") reported for the sample of forty-eight sales analyzed by Avitar and contained in Avitar Exhibit 1. This anomaly was investigated further by the BTLA's review appraisers who contacted Avitar and established an inadvertent error in time trending to April 1, 2001 rather than April 1, 2005 had occurred, resulting in this computation; the corrected statistics for this sample is an overall median ratio of 0.9962 and a COD of 0.0378. The BTLA review appraisers prepared and distributed an October 21, 2005 memo to the Town and other parties regarding the corrected median ratio.

contained in RSA 71-B:16-a, one of which is the "ratio of sales prices to assessed valuation … and the dispersion thereof." Those contained in the DRA 2004 equalization survey indicate the assessment equity of the 1997 assessed values was exceedingly poor and supports the BTLA's order to use the 2005 assessments.

Further complicating any practical use of the 1997 values, at this late date in 2005, is the fact the Town did not assess any of the new construction for 2005 on the old 1997 tax base in anticipation of having a new reassessment; thus, in order for the Town to utilize the 1997 assessments, it would have to spend additional funds and significant time to determine the value of those properties that have changed since April 1, 2004. (See RSA 75:8 – during the annual inventory of taxable property, selectmen are required to review and adjust the values of properties that have changed from the prior year inventory).

The BTLA finds the assertion that acceptance of the 2005 assessments exposes the Town to increased litigation is unfounded. In fact, the inverse might be more likely given the lack of compliance with the constitutional, statutory, and case law requirements outlined above. Challenges to assessments through the abatement and appeal process are a reality regardless of which set of assessments are utilized. However, determination of whether to grant an abatement is easier and more certain utilizing the 2005 assessments which are based on current market conditions, as opposed to assessments based on eight (8) year old market data. Further, while certainly not addressing any possible associated attorney expenses, paragraph 6 of the Town's "Revaluation Agreement"[3] with Avitar requires Avitar to defend any appeals arising from the 2005 assessments before the BTLA or the superior court. Routinely, municipalities during the

[3] At the request of the BTLA during the hearing on October 17, 2005, Avitar submitted a copy of the Revaluation Agreement with Orford and examples of the preliminary notice to taxpayers of assessed values and the follow-up letter to taxpayers after the informal reviews.

reassessment rely on their contract assessor to defend assessments in appeals before the BTLA rather than retaining an attorney to do so.

Robert Boley stated to date the DRA had noted no problems with the reassessment in the RSA 21-J:11, II (d) monitoring reports filed with the selectboard. While examples of listing errors were presented during the hearing, it appears those that were incorrect have been corrected and reflected by lower revised assessments. Neither the representation of the contents of the DRA reports nor any other evidence received at the hearing support a conclusion that there exists significant widespread systemic listing errors that either were not already corrected or cannot be addressed through the abatement process. While the monitoring reports were not submitted at the hearing, the BTLA would encourage DRA in the future to include, as part of its RSA 21-J:11, II monitoring functions, a review of the extent and quality of the sales analysis documentation and a field review of the consistency of the application of the assessment models throughout the taxing jurisdiction including neighborhood delineation, land and building base rates and grades, and significant and reoccurring adjustments such as view factors, waterfront factors, undeveloped factors, building depreciations, etc.

Concerns were raised during the hearing that there had not been adequate time provided by Avitar to receive inquiries from taxpayers and to address their concerns. However, based on the requirements of the Revaluation Agreement and Avitar's initial and follow-up letters during the informal review, the BTLA concludes that Avitar has provided adequate informal review opportunities as required by the Revaluation Agreement and the DRA 600 Rules, and any remaining grievances by taxpayers can be addressed through the due process provided by the statutory abatement and appeal provisions.

At the October 17 hearing, selectboard member Carreiro and others argued implementing the view factors in the new assessments would create significant financial hardships for certain Orford taxpayers and the selectboard was justified in not implementing the new assessments until the legislature had further time to study and review this issue. This concern of the financial impact of the view factors on certain taxpayers has much more to do with the nature of the tax being administered than the nature of the administration of the tax itself and is not a reason for other Orford taxpayers to continue to shoulder the disproportionality embodied in the old 1997 assessments. Relief from taxation for financial reasons has been provided by the legislature, to date, in a limited and controlled fashion. Whether as an exemption (Elderly Exemption – RSA 72:39-a), a deferral (Tax Deferral for Elderly and Disabled – RSA 72:38-a), a refund (Low and Moderate Income Homeowners Property Tax Relief – RSA 198:57) or an outright abatement ("good cause" abatement for poverty and inability to pay – RSA 76:16), such relief is coupled with age or disability criteria and income/asset and residency requirements. In the case of RSA 72:38-a and RSA 76:16, a showing of undue hardship, loss of property and exhaustion of other forms of relief is required before a deferral or abatement will be granted. Ansara v. City of Nashua, 118 N.H. 879 (1978). There currently is no statutory basis through exemption, abatement or deferral to relieve the tax burden that views or any other market related factor may impose upon certain taxpayers.

The New Hampshire General Court has determined the property (real estate) tax to be the primary source of revenue for municipalities to fund their public responsibilities and the basis for determining each taxpayer's share of that tax burden as provided in Part I, Article 12 of the New Hampshire Constitution. The legislature has stated all real estate is taxable, unless otherwise provided, (see RSA 72:6 and RSA 72:7) and such real estate, unless otherwise provided, shall be

assessed at market value (see RSA 75:1). RSA 21:21[4] defines real estate to include all tangible and intangible rights associated with real property. While they vary from property to property, these ownership rights are often viewed as a "bundle of rights." Ownership rights include the right to use real estate, to sell it, to lease it, to enter it, to exclude others, to give it away, or to choose to exercise all or none of these rights. The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest. IAAO, Appraisal of Real Estate, at 7 (11th ed. 1996). In valuing the bundle of rights for each property, all relevant factors must be considered that have an effect on value. Paras v. City of Portsmouth, 115 N.H. 63, 67–68 (1975).

One of the more significant factors affecting the property's value is its location. A view is a locational attribute. While certainly the feature that creates the view, a water body or a mountain range (or, in a negative manner, a junkyard) is in most instances located physically outside the property being valued, the view is a part of the transmissible bundle of rights of the property being valued. Views may not be as easily quantified as other locational attributes, such as road or water frontage, a corner signalized lot in a commercial area or a well defined neighborhood such as the "Ridge" in Orford. However, to the extent the market indicates the locational attributes, including views, contribute to value, they must be considered and consistently assessed.

It is here where the BTLA perceives the problem with view factors has arisen. The 2005 sales analysis in Orford, as in many other municipalities, is lacking adequate and clear documentation of how the sales support the assignment of view factors and a discussion as to

---

[4] "I. The words 'land,' 'lands' or 'real estate' shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.
II. Manufactured housing as defined by RSA 674:31 shall be included in the term 'real estate.'"

how, if inadequate sales exist within a community, those factors were arrived at from other market data of communities with similar demographics and market conditions. This lack of adequate documentation and the BTLA's remedy for it in Orford is addressed in the next section of this order. However, this lack of documentation does not warrant delaying the implementation of assessments, because, as discussed earlier, to do so would be contrary to constitutional, statutory, and case law requirements.

Consequently, the BTLA orders the Town to proceed with implementation of the 2005 assessments and schedule a meeting with the DRA to set its 2005 tax rate. If the Town fails to comply with the BTLA's order, the BTLA will certify the ordered reassessment to the DRA as provided in RSA 71-B:17 to ensure that it is implemented for the 2005 tax year.

Requiring use of the 2005 values does not prejudice any taxpayers in their filing of an abatement or appeal if they can establish they are disproportionately assessed.

II. Sales Analysis and Documentation

The "Revaluation Manual" (Avitar Exhibit 1) contains more analysis than earlier revaluation manuals and sales analyses submitted by Avitar in other towns. However, it is still far from adequate to meet DRA rules, the Revaluation Agreement with Orford, industry standards, and the documentation necessary to provide an understandable and transparent extraction and discussion of the base rates utilized during the reassessment. In the Revaluation Manual, Avitar has provided a few sales as examples to demonstrate the derivation of its base rate and view factor adjustments. However, those analyses are brief in nature, involving only a few of the sales that occurred and they provide no discussion as to their correlation and application to the base rates and adjustments used in the assessments.

The BTLA has written extensively, in other reassessment orders, on the need for proper documentation, including reassessments performed by Avitar. For example, in the August 24, 2004 order relating to the reassessment performed by Avitar in the Town of Columbia (Docket No.: 18361-00RA), the BTLA noted at pages 4 and 5:

> Additional concerns relate to Avitar's revaluation manual and sales analysis lacking an analysis that is compliant with the DRA's Rev 600 rules, the contract between the Town and Avitar ("Contract") and generally accepted appraisal standards. Rev 603.15(e)(5)c requires that '[t]he analysis portion of the sales survey shall show the sale price and support adjustments made;' and (f) requires that '[t]he completed sales survey shall: . . . [s]how the sales and analysis used to indicate unit values.' The Contract at paragraphs 3.4.2 and 3.4.6 contains similar requirements that the sales analysis be conducted 'using accepted appraisal methods in order to determine land values . . .' and that any adjustments made in the analysis shall be noted. In addition to the general requirements in the Rev 600 rules and the Contract, the board notes that the Uniform Standards of Professional Appraisal Practice, Standard 6: Mass Appraisal, Development and Reporting at rule 6-7 contains some general applicable requirements which in part state: '[e]ach written report of a mass appraisal must: . . . (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; . . . (k) describe and justify the model specification(s) considered, data requirements, and the model(s) chosen; . . . (m) describe calibration methods considered and chosen, including the mathematical form of the final model(s) ….'

Despite some improvement compared to the Columbia manual, the above observations are equally applicable to Orford.

Also applicable to Orford are the findings the BTLA made in its January 7, 2005 order in the Town of Winchester (Docket No.: 18412-00RA) at page 13:

> The use of reiterative sales ratio studies as the primary tool to calibrate assessment models on the front end can lead to continual modification (selective appraisal) of the various assessment factors of the sold properties (land base rates, neighborhood delineations, land adjustment factors, building base rates, building grade and

> condition designations, etc.) that may result in low CODs for the analyzed sample, but not necessarily the population as a whole. Rather, the assessment models should be extracted and constructed from market data (land base rates and major land adjustments from land sales, building replacement costs from national and local construction costs, depreciation rates schedules drawn or checked from local sales of improved property, etc.), applied consistently with good appraisal judgment and then tested by sales ratio studies. 'The final step in the mass appraisal process is a sales ratio study designed to measure the overall quality of appraisals. Values generated by mass appraisal models are compared with a representative sample of sales, preferably including some sales not used in calibration.' [International Association of Assessing Officers, Mass Appraisal of Real Property, p. 21 (1999).]

A well presented extraction analysis, that forms the foundation for the assessment models, assists assessors and taxpayers in understanding, administering and accepting the results of a reassessment. Public confidence and credibility are increased when such an analysis is available. As noted in Uniform Standards of Professional Appraisal Practice, Rule 6-7(k), Comment: "The user and affected parties must have confidence that the process and procedures used conform to accepted methods and result in credible value estimates. In the case of mass appraisal for ad valorem taxation, stability and accuracy are important to the credibility of value opinions."

So the parties have a better understanding as to what the BTLA envisions as an extraction analysis that would be compliant with DRA rules, the Revaluation Agreement and industry standards, the BTLA directed its RSA 71-B:14 review appraisers to construct examples of such extraction calculations based on the information submitted at the hearing. Attached at Addendum A are spreadsheets utilizing vacant land sales to extract and estimate a primary site value first and then using that estimate to isolate and estimate a rear land value and view factors and all other major adjustments. The BTLA emphasizes these are meant to be illustrative of an

extraction analysis that should take place as the initial step of the market analysis in all reassessments and that they are based solely on the assumptions and information supplied in the Revaluation Manual, sales analyses, and assessment-record cards. These examples incorporated factors utilized in the assessment-record cards including those that were unexplained, such as the condition factor applied to rear land. A similar analysis of sales of improved properties could be done and would serve as a check on the base rate determined by land only sales and a check of building unit costs and building grade and depreciation assignments. Due to the lack of evidence submitted, no examples were prepared of the other major model factors including the excess front foot component, the undeveloped factors of 20 and 30 percent, and the waterfront values for Connecticut River and Upper Baker Pond properties. These examples also stop short of a discussion of the correlation of the indicated values to the base rates or factors utilized during the reassessment, the basis of the application of the neighborhood codes and their delineations and by what method the adjustment factors are consistently applied.

The BTLA was hopeful that through its various orders over the past several years, reassessment firms acting under contract with municipalities, on their own, or through enforcement of assessment contracts by municipalities, would improve the documentation consistent with those earlier reassessment orders. However, the BTLA has seen only marginal documentation improvement. Thus, the BTLA offers the spreadsheets in Addendum A as examples of how an extraction analysis can document, from the market, the base rates that are entered into the computer models in the mass appraisal process. As can be seen from these examples, the results do not always produce consistent indications of value; however, that is where appraisal judgment comes in and takes the indicated values, in conjunction with other

available market data from other similar communities, and correlates them into the assessment models.

The BTLA envisions an argument that such market extraction analysis will add to the cost of reassessments for municipalities. While indeed there may be some additional up-front development costs, we do not believe the net increase in cost will be significant for several reasons. Just as there were, and continue to be, software program development costs associated with all computer assisted mass appraisal ("CAMA") systems that were standardized and amortized over time and use by more municipalities, so will any additional costs for extraction spreadsheets also be amortized. Any additional costs will likely be offset by savings achieved through the increased understanding and transparency that such analyses will provide the assessing firms and towns in explaining and defending the assessments and reducing appeals. Without improved and more transparent documentation, the current level of the abatement requests, appeals and reassessment hearings, such as the one involved in Orford, will continue and cause increased expenditures by not only municipalities but also by the state for the BTLA and the court system. We would urge that any cost benefit review of improved documentation include a consideration of the benefits of better taxpayer understanding of the basis for their assessments, increased confidence in the tax system, increased longevity of a revaluation's assessment equity and moderated appeal levels.

Also, some might question whether the extraction analysis documentation, suggested in Addendum A, is outdated. We strongly disagree. It is all the more needed today with the nearly universal use of computers (CAMA systems) in assessing which, to date, have not provided extensive documentation or explanation of the derivation of the assessment models from market data that, when applied, result in each taxpayer's assessment. It has been the BTLA's experience

that most CAMA systems used in New Hampshire rely largely on reiterative ratio study analyses to calibrate the assessment models rather than building them directly from sales through a well displayed extraction process. One must ask, if these CAMA systems are so state-of-the-art, why has the taxpayer outcry heard by the BTLA in recent years increased in countless reassessment and individual appeals? The taxpayers have complained the assessment methodology and results cannot be explained to them by either the assessors or assessing firms in a clear analytical fashion. The authority to assess property has been delegated by the legislature to selectmen/assessors. This delegation entrusts this important function to a select few. Regardless of whether those elected or appointed officials perform the function or it is contracted to the private sector, those who carry out this function should document their analysis so that those who shoulder the burden, the taxpayers, can understand it. Such clear documentation is necessary to open the "black box" of any CAMA system so that taxpayers can follow the road map of how their assessments are linked to the market data analyzed by municipalities or its contract assessing firms. Mere statements, as contained in the Revaluation Manual, that the analysis was performed are not adequate; that analysis must be shown.

Further, some might question whether the BTLA is meddling in assessing functions reserved for municipalities by the legislature. Both municipalities and the BTLA are creations of the state through the general court, and both can only act to the extent they are given authority to do so. The assessing statutes clearly grant municipalities the initial responsibility to assess property. However, the state has reserved the oversight responsibility of local assessing actions to both the DRA in its RSA 21-J authority and the BTLA through its RSA 71-B:16 authority to ensure municipalities comply with the statutory provisions of assessing. Sirrell v. State, 146 N.H. 364 (2001). A careful review of the BTLA's history in ordering reassessments would

indicate the BTLA only intercedes in municipal assessing functions as provided by RSA 71-B:16 when the municipality has not or is unwilling to fulfill its responsibility to assess property proportionally. As the New Hampshire Tax Commission noted in its First Annual Report (December 15, 1911) at page 28, discussing the creation of the tax commission:

> The two hundred and thirty-five taxing bodies, however, have not been abolished, nor have their powers been diminished, nor can they be interfered with by the tax commission if they comply with the law. One thing only will awake the activities of the tax commission, i.e., failure in performance of duty on the part of local assessors.

Consequently, the BTLA rules the documentation of the 2005 reassessment provided Orford needs to be improved. The BTLA orders the Town to obtain from Avitar, with a copy submitted to the BTLA within sixty (60) days of the date of this order, a revision of the Revaluation Manual including extraction analyses similar to the examples provided in Addendum A for its primary land base rate, rear land value base rate, view factors, undeveloped factors, excess frontage value, waterfront base rates, and also include an analysis of improved sales as a check for the building unit costs, grades and depreciation of the buildings. Further, as noted on page 13 of this Reassessment Order, the documentation should include a discussion of the correlation of the base values, whether through extraction from available sales or, if sales are unavailable, a discussion of the rationale for the adjustment such as neighborhood delineations and any other factor used on a recurring basis. While such documentation may not allay all concerns about the new assessments, it should address those expressed by the selectboard of accepting the values without a better understanding and documentation of their origin.

Concern was also expressed by the Orford Selectboard as to the lack of consistency of application of the view factors by Avitar. The Orford Selectboard submitted a number of

photographs (Municipality Exhibit A) in support of their contention. The BTLA reviewed the photographs but was unable to conclude from that evidence the view factors were inconsistently applied because the photographs lacked any locational identification and the corresponding assessment-record cards. Nonetheless, given the importance of consistent application of such a major value influencing factor, the BTLA requests the DRA, as it has done in the Town of Winchester (Docket No.: 18412-00RA; see February 16, 2005 Order) and in the Town of Bethlehem (Docket No.: 20636-05RA), perform a review of the application of the view factors and file a report with the BTLA, copying Orford, within sixty (60) days of the date of this order.

Further, the BTLA is concerned the indicated COD of 0.0377, contained in Avitar's revised analysis summaries, may not be truly representative of the actual dispersion of assessments for unsold properties. Such slight variability in the assessments seems unlikely given the small number of sales (48) analyzed by Avitar and the heterogeneous rural market in Orford. Also, it is doubtful this market acts with such strict precision and consistency and that appraisers can truly replicate the market with such accuracy in the mass appraisal process. Consequently, in addition to Avitar providing increased documentation, as discussed in the previous paragraphs, the BTLA will retain jurisdiction of the ordered 2005 reassessment for a period of time (hopefully by spring of 2006) until adequate subsequent sales have occurred (see TAX 208.06(a)) to allow a subsequent assessment-to-sale ratio study to test the true validity of the assessment model created during the 2005 reassessment. If adequate sales have not occurred, the BTLA's review appraisers will perform other assessment analyses to attempt to determine whether the assessment indices indicated in the Avitar sales analysis are truly indicative of the level of assessment and dispersion of assessments for the unsold properties.

Having ordered the Town to implement the 2005 assessments for this year, the BTLA recognizes the Avitar assessment documentation, the DRA field review, and the BTLA's review appraisers' assessment studies will be subsequent to 2005, and, thus any further remedial action the BTLA may order would apply, at the earliest, to tax year 2006. On the other hand, given the late date this action came to the BTLA's attention, delaying implementation of the 2005 values could potentially cause cash flow problems for the Town and uncertainty among taxpayers as to their taxable liability. Consequently, the BTLA finds the best remedy is to implement the 2005 reassessment, to retain jurisdiction as outlined above and review in 2006 all reports that have been submitted to determine if the 2005 reassessment was done satisfactorily (RSA 71-B:17) or if further remedial action is necessary. After the BTLA receives the various reports, with the appropriate parties having been copied, the BTLA will determine whether a future hearing is necessary to determine what, if any, remedial action is necessary.

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 Reassessment Order has this date been mailed, postage prepaid, to: Chairman, Board of Selectmen, Town of Orford, Post Office Box F, Orford, New Hampshire 03777; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, New Hampshire 03258; Guy Petell, State of New Hampshire Department of Revenue Administration, Bureau of Assessments, Post Office Box 457, Concord, New Hampshire 03301-0457; and Tom Fahey, New Hampshire Union Leader, State House – Room 116, North Main Street, Concord, New Hampshire 03301, interested party.

Date: November 3, 2005

_____
Anne M. Stelmach, Clerk