

**Town of Fitzwilliam**

**Docket No.: 21509-06RA**

**ORDER**

On January 12, 2006, a petition was filed with the board by Mr. Ashley W. Fletcher and Ms. Margaret Wittenborg (“Lead Petitioners”) pursuant to RSA 71:B-16, IV. In keeping with TAX 208.05(a)(3), Ms. Joan C. Gootee, the board’s senior review appraiser, performed an investigation of the quality of the assessments and the assessing practices that occurred during the 2005 assessment update and filed a report (“Report”) on April 6, 2006. As noticed, a hearing was held on June 23, 2006 to receive testimony and evidence from the petitioners, “Town” officials, the Town’s assessing contractor, Vision Appraisal Technology (“Vision”) and taxpayers as to the need for a reassessment or any other remedial action.

After the Lead Petitioners had presented their case, the Town requested a continuance of the hearing to allow Vision representatives time to assimilate and respond to the statistical information submitted by the Lead Petitioners. The board granted the request and the hearing was recessed until July 10, 2006 when it resumed and then concluded.

In attendance at the hearings were the Town's selectmen and administrator, represented by co-counsel James E. Morris and James P. Bassett, and Mr. David Arnold project manager of Vision, the Lead Petitioners, representatives from the department of revenue administration ("DRA"), a number of taxpayers and other petitioners.

The Lead Petitioners submitted substantial testimony and evidence addressing the concerns they testified to at hearing and summarized in the petition. While too lengthy to fully enumerate, the concerns can be summarized as follows:

- 1) the preliminary assessment-record cards and assessment manual were not available to taxpayers at the time of the informal hearings, in violation of RSA ch. 91-A, and the information contained on the Vision website was insufficient to provide an understanding as to how the assessments were calculated;
- 2) the "antique appeal" factor applied to many older homes was not documented from the market, it was inconsistently applied and its criteria unexplained;
- 3) without the benefit of access to assessment-record cards that generated the preliminary values, the adjustments and reductions that occurred as a result of the informal hearings were difficult to understand and accept as proportional;
- 4) newer substantial homes are significantly underassessed relative to older homes assessed with an "antique appeal" factor; and
- 5) the reassessment's market analysis documentation for base land rates and various major land and building adjustments was not available.

Mr. Arnold, Vision's project manager for the 2005 assessment update, testified the update was based on sales that occurred one year prior to the April 1, 2005 assessment date. The assessment update included a review of the physical data of

approximately one-third of the Town's properties focusing largely on the residences constructed prior to 1900. In the ensuing two years (2006 and 2007), the Town intends to complete its physical data review of all other types of properties, including the Woodbrook Development properties. Mr. Arnold stated the assessment-record cards were available for taxpayers to view at the informal reviews along with a listing of sales organized by location, size, etc. Mr. Arnold acknowledged the "antique appeal" rating is inherently somewhat subjective, but that sales indicated such a building factor, varying in magnitude up to 200%, was necessary to be applied to the replacement cost of older properties with antique features to achieve market value. Mr. Arnold testified the 2005 update performed by Vision resulted in a median ratio of 99% and a coefficient of dispersion ("COD") of 7.06% and that the sales analyzed indicated no market appreciation during the sample period of one year prior to the assessment date.

The Town argued before any further valuation update is performed the Town should be provided the opportunity over the next two years to review and improve physical data descriptions on assessment-record cards because many buildings have been modified over time without being picked up and corrected, particularly in the Woodbrook Development.

Testimony was also received from Ms. Gootee relative to the Report's conclusions. The Report's subsequent ratio study indicated an overall median ratio of 90% with a COD of 16.28%. Several strata including land-only sales, waterfront related properties, and the "Woodbrook Development" neighborhoods had disparate median ratios and high CODs. At the June 23, 2006 hearing, Ms. Gootee submitted a revision ("Report Revision") to the ratio study contained in the Report, excluding several sales

and including one additional sale based on further information from the Town as to the arm's-length nature of certain sales. The Report Revision indicated a median ratio of 90%, a COD of 15.11% and an improved level of assessment of the land-only sales strata, but minimal and no changes to the water related strata and Woodbrook Development strata, respectively. The Report also indicated that while there did not appear to be any selective appraisal practices, the base land values and adjustments were not supported or documented by any analysis.

Mr. Robert Boley, Property Advisor of DRA, testified a review of DRA's monitoring field report and the 2004 equalized valuation statistics indicate a significant improvement in assessment equity as a result of the 2005 update and any inequities that exist are best addressed through individual abatement requests.

### **BTLA's Rulings**

RSA 71-B:16 authorizes the board to order a reassessment when it determines assessments have been "fraudulently, improperly, unequally, or illegally assessed"<sup>1</sup>.

---

<sup>1</sup> 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.

Further, RSA 71-B:16-a, contains the criteria for the board to consider before ordering any reassessment or remedial action.<sup>2</sup>

Based on a review of the Lead Petitioners' arguments, the Report and the testimony and evidence received at the hearing from Town counsel, Vision representatives and DRA officials, the board concludes:

- 1) the RSA ch. 91-A issue (right-to-know) raised by the Lead Petitioners is moot;
- 2) inconclusive evidence exists at this time to order any immediate reassessment, but at least some of the concerns and information presented are troubling; and
- 3) based on the evidence submitted at hearing and Vision's appraisal manual (submitted on CD) and in keeping with the board's findings in Town of Orford,

Docket No.: 21473-05RA, improved documentation and sales analysis is necessary to understand Vision's valuation model conclusions utilized during the 2005 assessment update.

#### 1. RSA ch. 91-A Issue

The Lead Petitioners argued the lack of public access to the preliminary assessment-record cards and assessment manual that was not made available by the Town and Vision at the informal hearings was a violation of RSA ch. 91-A. While these practices cannot be condoned, the board finds the issue is moot because the assessment-

---

<sup>2</sup> RSA 71-B:16-a states: 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 therefore 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.

record cards and Vision's manual were subsequently available in the latter part of 2005. Further, the board notes DRA Rev 600 rules and the contract between the Town and Vision, at that time, allowed for the preliminary assessment-record cards and assessment data to not be released until the selectmen had accepted the values after the informal hearings.

The board has a concern as to whether such rules and contract provisions were indeed compliant with RSA ch. 91-A. See Goode v. New Hampshire Office of LBA, 145 N.H. 451 (2000). However, such concern is largely mitigated due to the fact the documents were shortly available during the RSA 76:16 abatement appeal time frame. Further, effective 12/01/05, the revision to DRA's Rev 600 rules requires such information to be made available to taxpayers at the informal hearings. See Rev 602.08(f) ("Notwithstanding [sic] Rev 602.04(c)(2), the company shall make available to all property owners the documentation related to their individual valuation(s).")

## 2. Need for Reassessment

At this time the board finds it would not be prudent to order the Town to undertake any assessment update or modification until the physical data listings of the assessment-record cards are fully updated as intended to be done in 2006 and 2007.

There are, however, indications contained in the Lead Petitioners analysis and in the Report and Report Revision that the level of assessment may actually be lower than that reported by Vision during the assessment update, and that several property type strata, such as more expensive properties, the Woodbrook Development neighborhoods and water related properties, are not proportionately assessed. Moreover, the drop in the

overall median ratio of 99% indicated by Vision during the assessment update to the 90% overall median ratio found in the Report, coupled with the fact that Vision did not adjust any of the sales for market appreciation, raises the question as to what the Town's level of assessment really was and if it is slipping below the Assessing Standards Board's guideline of a minimum of 90%. On the other hand, the board also notes the general improvement as the result of the update from the Town's 2004 median ratio and COD. (See DRA report on review of assessment practices for Municipality of Fitzwilliam at: [http://www.revenue.nh.gov/property\\_tax/assessment\\_review\\_rpts/2004/Fitzwilliam.doc](http://www.revenue.nh.gov/property_tax/assessment_review_rpts/2004/Fitzwilliam.doc).)

On balance, it appears only prudent for the Town to fully perform the physical data review and update before revisiting the reassessment issue in 2007 to determine what, if any, assessment update or revision is necessary. The board would encourage DRA, through its RSA ch. 21-J responsibilities, to work with and assist the Town to determine what assessment update in the future might be necessary.

In the meantime, taxpayers who believe they are disproportionately assessed have their individual abatement application and appeal remedies pursuant to RSA 76:16, RSA 76:16-a, and RSA 76:17. Further, the improved documentation the board is ordering in the next section relative to a number of Vision's basic assessment models should provide the taxpayers with a better understanding of how their assessments were derived and calculated and whether they are proportional to market value or not.

### 3. Sales Analysis and Documentation

As part of Ms. Gootee's investigation, she obtained a copy of the Vision assessment manual (the "Manual"). The Manual contains the valuation parameters of the land and building base rates and a summary of some of the adjustments to assist

taxpayers and municipal officials in understanding the assessment-record cards.

Information contained in the Manual is helpful and Vision should be commended for summarizing its base rates and adjustments. However, the board finds the Manual does not provide adequate documentation to understand the extraction of the major assessment models from the market. The analyses that are contained in the Manual are various ratio studies arraying the sales that incurred the year prior to the assessment date in different manners (e.g., land residual, land use, style, neighborhood, building size, lot size, actual year built, sales price quartile, and sale dates).

Only the land residual analysis provides an indication of market derived base rates by comparing the indicated land value from sales to the resulting appraised (assessed) value and the ratios generated therefrom. This analysis does not show or quantify the major adjustments for the various neighborhoods; nor is there any discussion as to how and why they were applied. As in any appraisal assignment utilizing the cost or market approaches, some sales are more indicative than others of different market factors or unit prices that are being extracted from the market. Parameters such as basic lot value, excess land value, water frontage, views, “antique appeal” rating, etc., all should be extracted and discussed so that there is a better understanding as to how the base rates and major adjustments were derived. The board certainly understands that not all properties specific adjustments can or should be quantified from the market. Certainly, good appraisal judgment has to be applied in a consistent and reasoned manner, particularly when empirical market data is lacking. However, the major assessment models should be based on inductive analyses and calculations rather than simply the reiterative ratio studies contained in the Manual.

Of particular concern here is the lack of any analysis to document Vision's "antique appeal" rating contained on page 32 of the Manual. While the ratings are described "none" to "superior" (0% to 200% factor) and the antique features to be considered are generally described, no market analysis was performed that shows the market derived foundation for the "antique appeal" factors. Also, no general guidelines were developed to assist the assessors and taxpayers in understanding where in the 200% range a property with certain quantity and quality of antique features would be placed.

Because it is important for Town officials and taxpayers to have such documentation to improve the understanding of the basis of the assessments and facilitate the maintenance of assessments, the board orders the Town to have such documentation prepared or made available for the major base rates and adjustments including the primary base lot value, waterfront base lot values, major neighborhood base rates (e.g., Woodbrook Development), and "antique appeal" rating factors. In addition, the Town shall obtain an analysis from Vision documenting its conclusion that no market appreciation occurred during the sales' sample period. The board has reviewed the quartile analysis of sales arrayed by sale date in the Manual and finds it does not conclusively demonstrate that no market appreciation occurred during the sales' sample period of one year prior to April 1, 2005 (Cf. Report at p. 10 and 11 concluding a 12% per annum time adjustment is indicated).

As the board has noted before,

[w]ithout such analysis and documentation providing more transparency, it is difficult for the local assessing officials and taxpayers to have confidence in the results; such documentation is especially helpful when assessments are challenged. Reiterative ratio studies, which have been used in Orford and in many municipalities to establish assessment models,

do not provide that ability for selectmen or taxpayers to understand the analysis of individual sales and to be able to critique it. The board finds well-documented extraction analyses, if they were provided prior to municipal acceptance of values, would provide for this ability to understand and critique the assessment models and, if necessary, adjust them if appropriate insights are received on the sales that the contract assessors may have been unaware of. ...[W]hile such analyses may not allay all the concerns presented by the [petitioners], it goes a long way toward bridging the prior information gap that existed between local sales data and the assessment-record cards generated for taxpayers.

Town of Orford, Docket No. 21473-05RA, (March 8, 2006 Order) p. 4.

Further, such documentation and the resulting insight it provides of how assessment methodology is market derived and based is an important part of ensuring assessments and the RSA 76:3 statewide education taxes are proportional between taxpayers in different taxing jurisdictions. In Sirrell v. State, 146 N.H. 364, 373 (2001), the court established a standard of proof relative to challenging that assessments are unconstitutional under the uniformity clause of the constitution: “We now hold that to establish a violation of the uniformity clause based upon the underassessment of other taxpayers, a taxpayer must prove a systematic pattern of taxation that is not proportional and reasonable. To prevail, the taxpayer must prove specific facts showing a ‘widespread scheme of intentional discrimination’. [Citation Omitted.]” Thus, for municipalities to defend (or for taxpayers to be able to meaningfully audit and challenge) any underassessment is not a “widespread scheme of intentional discrimination” and results in a “systematic pattern of taxation that is not proportional and reasonable,” clear and understandable market data analyses and documentation must be available. Municipalities or their assessing contractors may argue a reason for not opening up the “black box” of computerized mass appraisal systems and providing documented analyses

is that by doing so taxpayers will only be encouraged to further challenge their assessments and its various components. We would disagree with this proposition. Rather, a municipality's best defense of its assessments is full disclosure of how the assessments and their principal assessment models were market derived. "All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive." Part I, Article 8 of the New Hampshire Constitution. Sirrell at 373 (the approximation of proportionate assessments requires "absolute good faith and the best abilities of the public officers charged with making valuations.")

To provide examples of the type of documentation necessary, the board incorporates here by reference the November 3, 2005 Town of Orford, Reassessment Order Docket No. 21473-05RA (attached as addendum A).

The Town shall, within ninety (90) days of the clerk's date of this Order, obtain such improved documentation similar to that presented in Orford for the applicable base rates discussed in this Order including the "antique appeal" factor and any major adjustments along with any explanations and discussions to facilitate how the analyses and correlated values were derived and utilized in the assessment models. The board will retain jurisdiction in this matter until receiving and reviewing a copy of such documentation and will then issue an appropriate order.

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 Order has this date been mailed, postage prepaid to: Ashley Fletcher, 146 Route 119 West, PO Box 52, Fitzwilliam, NH 03447, Lead Petitioner; Margaret Wittenborg, 31 Temple Turnpike, PO Box 240, Fitzwilliam, NH 03447, Lead Petitioner; James P. Bassett, Esq. & James E. Morris, Esq., Orr & Reno, P.A., One Eagle Square, PO Box 3550, Concord, NH 03302, counsel for the Municipality; Vision Appraisal Technology, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532; Town of Fitzwilliam, Chairman, Board of Selectmen, PO Box 725, Fitzwilliam, NH 03447; and Guy Petell, State of New Hampshire Department of Revenue Administration, 57 Regional Drive, Concord, NH 03301, Interested Party.

Date: September 13, 2006

---

Anne M. Stelmach, Clerk