

Town of Sanbornton

Docket No.: 21516-06RA

PRELIMINARY ORDER

On February 6, 2006, a petition signed by more than 50 taxpayers was filed with the board by Mr. Peter Dascoulias and Mrs. Donna Dascoulias (“Lead Petitioners”) pursuant to RSA 71:B-16, IV. In keeping with TAX 208.05(a)(3), Ms. Cynthia L. Brown, one of the board’s review appraisers, performed an investigation of the quality of the assessments and assessing practices that occurred during the 2005 assessment update and filed a report (“Report”) on May 10, 2006. A hearing was held on July 12, 2006 to receive testimony and evidence from the Lead Petitioners, “Town” officials, the Town’s assessing contractor, Vision Appraisal Technology (“Vision”) and taxpayers as to the need for the board to order a reassessment or any other remedial action.

In attendance at the July 12, 2006 hearing were the Lead Petitioners, Town representatives including Ms. Patsy A. Wells, chairperson of the board of selectmen, and Mr. Christopher L. Boldt, Town counsel, Mr. Robert McCarthy, Vision’s project supervisor of the 2005 update, Mr. Robert Boley, tax advisor of the department of revenue administration officials (“DRA”), several Sanbornton taxpayers and several members of the general public.

The petition requested “the Board to intervene, investigate taxpayer claims, and order the 2005 town-wide statistical update unsatisfactory/incomplete until the Sanbornton Selectmen have adequately addressed taxpayer concerns and made corrections as may be ordered by the Board.” The petition and the Lead Petitioners, at hearing, argued: 1) Vision and Sanbornton assessing officials were unresponsive to their inquires and were unable to explain how the assessments were calculated; 2) the Vision assessment manual does not document or explain how the base rates and major adjustments and neighborhood delineations were derived from the market; 3) neighborhood delineations, particularly in the Lake Winnisquam area, appear to be inconsistent and, at times, were based on a single sale and do not correspond to any geographic demarcations; and 4) in some cases, assessments on significantly renovated buildings or significant properties, such as buildings at Steele Hill Resort, had their assessments reduced as a result of the assessment update despite there being improvements to the property.

The Town, represented by Attorney Boldt, argued no order by the board was necessary because: 1) any reassessment will have some anomalies and areas which will need to be reviewed and corrected, but the assessment statistics were significantly improved from the level to which they had deteriorated since the 2003 reassessment; 2) the guidelines and rules for providing adequate assessment documentation have not yet been addressed by the RSA 21-5:14-a Assessing Standards Board (“ASB”); 3) the assessment statistics, either those calculated by DRA or by the Report, do not indicate a need for an immediate reassessment; and 4) the Town is planning to initiate a five year physical data review and assessment update process to correspond with its RSA 75:8-a 5 year valuation requirements and DRA’s RSA 21-J:11-a assessment reporting cycle.

The Report is part of the record pursuant to RSA 541-A:31, VI(h). The Report indicated the assessment update achieved an overall median ratio of 98% and a coefficient of dispersion (“COD”) of 16.47% based on a subsequent sales analysis of the sales occurring approximately 10 months subsequent to the reassessment date. The Report also indicated any update documentation was contained in Vision’s assessment manual (“Manual”) and, other than the land residual ratio study analysis, the Manual contained no other spreadsheets or analyses of the land base rates or adjustments for size, condition, or street neighborhood or locations.

During the board’s deliberations, the board directed Ms. Brown to do a follow-up subsequent sales analysis of sales that occurred since February 13, 2006 in Sanbornton. Ms. Brown submitted her “Follow-up Report” in a memorandum dated September 22, 2006 (attached as Addendum A). The Follow-up Report analyzing all qualified sales between April 1, 2005 and August 11, 2006 indicated an overall median ratio of 97% and a COD of 15.73%.

The board has extensively reviewed the evidence submitted and has performed its own analyses of that evidence in the spreadsheets referenced hereinafter. Because of the concerns and inconsistencies raised by these analyses, the board wants to receive comments from the Town and the Lead Petitioners as to the board’s analyses and preliminary findings and rulings before it definitively rules as to whether any reassessment or other remedial action is warranted. Thus, the board will reopen the record for the Town and the Lead Petitioners to file any comments on this “Preliminary Order”. The board will then issue a final order. What follows are the board’s preliminary findings and ruling subject to any revision based on the parties’ responses.

Board's Preliminary Findings and Ruling

After review of the substantial evidence submitted, the board concludes the 2005 assessment update did not result in proportional market value assessments as of April 1, 2005 and, thus, the assessments are not compliant with the requirements of Part II, Article 5 of the New Hampshire Constitution that assessments be "proportional and reasonable" and RSA 75:1 that assessments be at market value.

RSA 71-B:16¹ and RSA 71-B:16-a² grant the board authority to order reassessment after consideration of the five criteria on RSA 71-B:16-a. This authority has the constitutional foundation that assessments be proportional and reasonable not only on an individual basis but also generally on a taxing jurisdiction basis.

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.

² 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.

There are two general reasons the board concludes the update was not satisfactorily performed: 1) Vision's lack of market condition adjustments to the sales in the sample period of April 1, 2003 – April 1, 2005 ("Sample Period"), despite abundant evidence of a markedly appreciating real estate market, results in the assessments being disproportionate and not reflective of market value as of April 1, 2005; and 2) the lack of understandable market analyses and documentation showing how the assessment models and base rates were derived results in the inability of taxpayers to audit and understand their assessments, and for local assessing officials to be able to maintain the assessments equitably.

Lack of Adjustment for Appreciating Market Conditions

In a Revaluation Update Agreement ("Agreement") between the Town and Vision dated May 4, 2005 (Report at Addendum B), Vision was to perform an assessment update for tax year 2005 and to value all taxable real estate within the Town at its "full and fair cash value" as of April 1, 2005 (see Agreement General Requirements 3.1, 3.2 and 3.3). Both the Agreement and the Manual indicate all qualified sales between April 1, 2003 and April 1, 2005 were to be considered and analyzed in establishing market value as of April 1, 2005. These Agreement and Manual provisions are common and consistent with the general assessment methodology employed throughout the State of New Hampshire based on the board's experience and knowledge. (E.g. DRA rule Rev 602.07(b)(c) (reassessment companies shall conduct an analysis of property transfers that occurred for a minimum of two years preceding the effective date of the revaluation.))

Mr. McCarthy testified he analyzed the 110 qualified sales that occurred during the Sample Period, determined the market was flat during the two years, and therefore made no adjustment for market conditions. He testified the array of the improved sales shown in the

Manual under the spreadsheet entitled “Summary by Sale Date” indicated an overall median assessment to sale ratio of 100% for the two years of sales with the eight quartile ratios all being within 3% of the overall median ratio. He argued this analysis indicated there was no need to adjust for market conditions during the Sample Period.

Based on the substantial evidence to the contrary, the board finds this conclusion to not adjust for market conditions resulted in assessments that are disproportionate and generally below market value.

Adjusting for market conditions is a basic appraisal principle whether the assignment is a single property appraisal or a mass appraisal process that is at issue here. See:

(1) International Association of Assessing Officers, Mass Appraisal of Real Property, p. 58 (1999):

When price levels are changing significantly, sales prices must be adjusted for time.... If practical, the target date to which sales prices are adjusted should be the assessment date. When the assessment date is a future date, sales prices should be adjusted as close to it as possible.

(2) International Association of Assessing Officers, Standard on Ratio Studies, 6.5 (1999):

Sales prices used in ratio studies may need to be adjusted for financing, assumed leases, personal property, and date of sale.... 3. [An adjustment for date of sale reflects] differences in market value levels between the date of sale and the date of analysis.

(3) The Appraisal Institute, The Appraisal of Real Estate, p. 434 (12th ed. 2001):

An adjustment for market conditions is made if general property values have appreciated or depreciated since the transaction dates due to inflation or deflation or a change in investors’ perception of the market over time.

The board’s conclusion of significant market appreciation during the Sample Period is based on four general sources: 1) an analysis of the sales utilized by Vision in the Manual; 2) the market appreciation indicated in the Report and Follow-up Report utilized to adjust the sales that

occurred subsequent to April 1, 2005; 3) testimony and evidence provided by Mr. McCarthy at a hearing held in the appeal of Docket No.: 20188-03PT; and 4) testimony of Mr. Gregg Heyn, the Town's assessor.

On the next page is the board's analysis of the data contained in the Manual of the spreadsheet entitled "Summary by Sales Date". This analysis groups the eight quartiles by tax years 2003 and 2004 and compares the difference of the sum of each tax year's four quartiles' median and mean sale prices for the 91 improved sales in the Sample Period. A similar analysis is performed of the resulting assessed ("appraised") values of those 91 properties that sold in the Sample Period. This analysis indicates the sum of the median and mean sale prices increased between the two years by 14% and 31% respectively. While recognizing the four quartiles in each year may have some variation due to the nature of the individual sales, the forty plus sales in each tax year (43 improved sales in 2003 and 48 improved sales in 2004) provide a reasonable basis to estimate market appreciation. The effect of higher priced properties appears to inordinately influence the mean sale price percentage increase and consequently the board concludes it is not as reliable as the median percentage increase for estimating overall market appreciation. A comparison of the appraised values by the two tax years indicates Vision's assessments of sold properties mirror the appreciation reflected by the increase in sale prices between the two years. This is also indicated by the Manual's median assessment to sale ratios for each of the eight quartiles all hovering around 100%.

Board Analysis of Vision's Eight Quartile of Sales					
Y & QTR	Mean Sale Price	Median Sale Price		Mean Sale Price	Median Sale Price
2003, 2	\$224,224	\$219,933			
2003, 3	\$236,467	\$217,000			
2003, 4	\$278,576	\$237,366	*	\$279,677	\$115,151
2004, 1	\$150,000	\$155,000	**	31%	14%
Total	\$889,267	\$829,299			
2004, 2	\$319,891	\$248,000			
2004, 3	\$301,190	\$238,450			
2004, 4	\$321,196	\$275,000			
2005, 1	\$226,667	\$183,000			
Total	\$1,168,944	\$944,450			
Y & QTR	Mean Appraised	Median Appraised		Mean Appraised	Median Appraised
2003, 2	\$224,418	\$216,700			
2003, 3	\$237,747	\$217,200			
2003, 4	\$279,800	\$230,150	*	\$258,777	\$97,600
2004, 1	\$148,633	\$154,900	**	29%	12%
Total	\$890,598	\$818,950			
2004, 2	\$313,064	\$222,300			
2004, 3	\$287,288	\$237,950			
2004, 4	\$316,740	\$275,500			
2005, 1	\$232,283	\$180,800			
Total	\$1,149,375	\$916,550			
	* Calculation is 2nd year total less 1st year total.				
	** Difference of totals divided by 1st year total to arrive at %.				

The board also took a close look at the Manual's improved sales in 2003 and 2004 and compared the median sale price of each year rather than the sum of the medians of each quartile. This analysis also indicates substantial market appreciation (approximately 10%) during the Sample Period.

In short, these analyses indicate significant double digit market appreciation from the very same sales data that Vision concluded there was no market appreciation.

In defending a 2003 Sanbornton assessment appealed to the board, Docket No.: 20188-03PT, Mr. McCarthy presented a sales' comparison grid, utilizing three sales that occurred in the 2001 to 2003 time period, where he adjusted the sale prices at the rate of 12% per year to the assessment date of April 1, 2003 based on a paired sales analysis. This is evidence Vision was of the opinion that market appreciation in Sanbornton just prior to the Sample Period was 12% per year.

Through various analyses in the Report, Ms. Brown also concluded an overall market appreciation of 12% was occurring for the sample of sales analyzed between April 1, 2005 and February 13, 2006. Her Follow-up Report estimated, by a regression analysis, a 9% market appreciation rate based on the sales occurring between February 14, 2006 to August 11, 2006.

Mr. Greg Heyn testified at hearing, but did not provide any documentation, the market was appreciating in the 2003 to 2005 time period likely at differing rates for different properties or areas of Town. (Mr. Heyn also argued that it was his observation and belief that Vision's methodology placed more weight on the quartiles closer to April 1, 2005 in setting its assessment parameters. If that were the case, the earlier quartiles should indicate median ratios exceeding 100%, but they do not.)

This body of evidence indicates that before, during, and subsequent to the Sample Period, the market was appreciating at double digit rates in Sanbornton on an overall basis. The lack of any market condition adjustment by Vision is extremely troubling and causes the board to conclude the level of assessment for the Town as a whole was not accurately determined from the sample of sold properties, despite this sample (with no time adjustment) indicating a median of 100% and a COD of 3.98%. It is statistically impossible for there to be a 100% median ratio as of April 1, 2005 when the ratio study is based on a non-time adjusted sample of sales

occurring two years prior to that date during a time of significant market appreciation. For Vision to arrive at a 100% median ratio for the sold properties with such a low COD can only be the result of adjustments to the sold properties being made to tailor the assessments similar to the sale prices (through fragmented neighborhood delineation or street index factors and other adjustments to the sold property assessments).

To test its conclusion, the board applied a 12% annual market appreciation, to April 1, 2005, to the 110 vacant and improved sales utilized by Vision in the Sample Period. As the following summary of that analysis depicts, the overall median ratio is then indicated at 88%, significantly less than 100% shown in the Manual.

**Sales utilized during 2005 Update-trended at 12%
(4/1/03-3/31/05)**

Mean Ratio	0.89
Median Ratio	0.88
Geometric Mean	0.89
Weighted Mean Ratio	0.88
Average Absolute Deviation	0.05
Price Related Differential (PRD)	1.01
Coefficient of Dispersion (COD)	5.79
Standard Deviation	0.0624
Coefficient of Variation (COV)	7.01
Sample Count	110

It appears Vision's use of a two year Sample Period without any time adjustment generated a median ratio of 100% which is actually representative of the mid point of the Sample Period, April 1, 2004, because when the sales are appropriately adjusted for market conditions to April 1, 2005, the median ratio is 88% or approximately 12% lower.

This significantly lower actual level of assessment for April 1, 2005 is troubling for two reasons.

First, in performing its RSA 21-J:3, VIII, RSA 21-J:9-a and RSA 76:1 equalization responsibilities, DRA analyzed many of the same sales and assessment data used by Vision in the Manual and determined a median ratio of 97.8% and a COD of 7.7%. While the “sold” sample analyzed by DRA may have been at that level of assessment because they were part of the sales in Vision’s Sample Period, the unsold population was actually at a lower level of assessment. As a consequence, the Town’s equalization valuation was likely underestimated. Further, if indeed the Town’s level of assessment was closer to 88% rather than 100%, it is questionable whether the ASB guidelines (III A. 1. “A median ratio should be between 0.90 and 1.10...”) were met and whether DRA’s RSA 21-J:11-a, I(a) assessment report for 2005 could find substantial compliance with the ASB guidelines.

Second, without adjusting for market conditions and yet having the “appraised” values of all sold properties in the Sample Period be close to 100%³ of the sale prices results in inherently disproportionate assessments between properties in the “sold” sample (Sample Period sales) and properties in the “unsold” population. If properties of similar value sold on either end of the Sample Period, they could conceivably be assessed 24% differently and, furthermore, if those sales were the bases for establishing an assessment model, such as a neighborhood or street index factor, the population of unsold properties could also reflect such potential disproportionality.

³ Mr. Heyn opined that Vision had placed more weight on the sales in the quartiles closer to April 1, 2005. If indeed that is the case, the board finds no evidence of that in the Manual. The median ratios shown in the Manual spreadsheet entitled “Summary by Sale Date” are all close to 100% in the last several quartiles and do not increase going back in time to reflect the lower market prices of the earlier quartiles relative to higher assessed values. All the quartiles analyzed by Vision hover around the 100% mark and do not indicate that Vision did place more weight on the more recent sales.

The board believes the ratio studies in the Report and Follow-up Report reflect this lack of proper assessment model calibration. Both indicate a town-wide COD of approximately 16%, four times the 3.98% indicated by Vision. This rapid deterioration of assessment equity is an indication that Vision's assessment models were not truly reflective of market value but were more tailored to ensure the resulting assessment for each sale approximated the sale price.

The board cannot, however, reconcile its findings that the 2005 level of assessment was likely around 88% with the Report's and Follow-up Report's median ratio calculations of 98% and 97% respectively. Because of Vision's lack of any inductive analysis and its reliance on reiterative ratio studies, there is no paper trail this board, Town officials, or Taxpayers can follow to understand how the Vision generated assessments are indeed at market value. This is one of the reasons the board, in the next section, finds the need for improved market analysis and documentation.

Attorney Boldt stressed the Town, by entering into the Agreement with Vision, had relied upon Vision's expertise to produce equitable assessments. As the board has noted above, the constitution, the statutes, and the Agreement require assessments be based upon market value as of April 1, 2005. The board concludes for all the reasons noted above, the product supplied by Vision to the Town did not do so. Further neither the Town nor the DRA, through its RSA 21-J:11-a monitoring process, ensured that Vision had complied with this basic appraisal practice of adjusting sales to the April 1, 2005 assessment date. It is clear from the testimony, in particular Mr. Heyn's testimony of what he had assumed Vision had done, that an understandable, transparent, outside the "black box" analysis had not been done for the Town and DRA to review and determine if the assessments were truly reflective of market value as of April 1, 2005. Given this lack of adherence to appraisal standards and the resulting poor

assessment equity as indicated by the subsequent sales analyses of sales occurring immediately after the update, some remedial action may be appropriate for 2007.

Sales Analysis and Documentation

As referenced extensively above, the record includes a copy of the Manual prepared for the Sanbornton 2005 update. The Manual contains a description of Vision's scope of work and a general description of the valuation methodology employed in the building and land valuation procedures, including the residential land curve schedule, a listing of the various site index adjustments and building depreciation schedules among other schedules. The Manual, however, contains no discussion or analysis of the sales, other than a listing of those sales and various ratio study reports by various property types. Further, the site index tables and the various neighborhood factors employed, while depicted on a Town-wide map, are confusing and difficult for taxpayers, Town assessing officials and for this board to understand their market relationship due to the lack of an upfront sales analysis. As discussed in the previous section, the Manual did not include any analysis to determine market appreciation and the lack of such analysis is a significant flaw in establishing the resulting assessment parameters. The Manual's ratio studies do not show how the various neighborhoods and site index factors were extracted from the market; nor is there any discussion as to why and how they were established in different areas. 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, 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 property 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.

As the board noted in Town of Orford, Docket No. 21473-05RA, (March 8, 2006 Order) p. 4:

Without 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.

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.”)

Conclusion

Because this Preliminary Order contains new analyses that neither the Town nor the Lead Petitioners have had an opportunity to review and comment on, and because of the concerns raised herein, the Town and the Lead Petitioners shall have thirty (30) days from the clerk’s date below to: 1) file any response to the preliminary findings; 2) comment on the new analyses; 3) comment on why the board should not order a Town-wide update to be performed for tax year 2007; and 4) comment on why appropriate sales analysis documentation for the 2005 update should not be required. After receiving comments from the Town and the Lead Petitioners, the

board will determine whether to order such update or other remedial action and whether to order the sales analysis documentation for the 2005 update.

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 Preliminary Order has this date been mailed, postage prepaid to: Peter G. Dascoulias and Donna J. Dascoulias, 342 Black Brook Road, Sanbornton, NH 03269, Lead Petitioners; Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella, 104 Congress Street - Suite 304, Portsmouth, NH 03801, representative for the Municipality; Robert McCarthy, Contracted Assessor, Vision Appraisal Technology, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532; Chairman, Board of Selectmen, Town of Sanbornton, P.O. Box 124, Sanbornton, NH 03269; and Guy Petell, State of New Hampshire, New Hampshire Department of Revenue Administration, P.O. Box 487, Concord, NH 03302, Interested Party.

Date: 10/13/06

Anne M. Stelmach, Clerk