

**In Re: Town of Barrington Reassessment**

**Docket No.: 22551-07RA**

**ORDER**

On November 19, 2007 the board held a noticed hearing regarding an RSA 71-B:16, IV petition (“Petition”) filed with the board requesting the board find the 2006 statistical update (“Update”) performed for the Town of Barrington (“Town”) by its contract assessor, Cross Country Appraisal Group, LLC (“Cross Country”), “erred” in establishing proper values. At the hearing the board received arguments and testimony from one of the “Lead Petitioners”, David M. Hynes, from Judith E. Whitelaw, attorney for the Town and from Jeff Earls of Cross Country. The board’s review appraiser, Ms. Theresa M. Walker, who, on September 10, 2007, filed a report (“Report”) containing an assessment to sale ratio study and findings relative to her investigation into the Petition’s allegations, was also present, but did not testify.

**ISSUES PRESENTED:**

The Lead Petitioners raised four general arguments as to why the Update was not properly done: 1) abutting but separate lots of record were improperly combined and assessed as one lot; 2) the land assessment for improved properties was not as if vacant but rather was inclusive of site work; 3) the Town did not have the authority to correct assessments of properties for which no abatement application had been filed even if other properties in the same neighborhood had received corrections as the result of the

abatement process; and 4) the Town did not require Cross Country to have a bond as part of the contract for the Update.

The Town agreed the assessment manual prepared as part of the Update was not compliant with Standard 6 of the Uniform Standards of Professional Appraisal Practice (“USPAP”) (See RSA 21-J:14-b, I) and Cross Country’s “Proval” assessment software system did not provide pricing information on the assessment-record cards. The Town testified that it intends to perform a 2008 statistical update in which it will have a compliant assessment manual and will be acquiring the Avitar Associates of New England, Inc.’s (“Avitar”) assessment software to provide better assessment-record cards. The Town stated it discovered during the abatement process a clerical error had been made inputting the land base rates for a number of properties in the Ayer Lake/Small Road neighborhood and made those adjustments effective for the 2006 tax year to correct the error and to improve assessment equity. The lot merger policy employed during the 2006 assessment update was based upon existing statutes and was not shown to have been done systemically incorrect. The provision in the contract between the Town and Cross Country not requiring a bond is not an issue relevant to the board’s RSA 71-B:16 assessment review authority.

**BOARD’S RULINGS:**

The board’s statutory authority in these proceedings is contained in RSA 71-B:16:

**Order for Reassessment.** 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:

....

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; . . . .

Further, RSA 71-B:16-a provides:

**Criteria for Ordering Reassessment.** 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 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.

Based on the evidence submitted at the hearing and considering the RSA 71-B:16-a criteria, the board finds no basis exists for ordering a reassessment or other remedial action as a result of the Petition. The Town has a reasonable plan for maintaining assessment equity and none of the Petition's allegations are of sufficient merit to warrant any remedial order by this board.

The Town plans to perform a statistical update in 2008 and acquire Avitar's new assessing software to produce more understandable assessment-record cards and to comply with the Assessing Standard Board's ("ASB") guidelines, particularly USPAP Standard 6 (See RSA 21-J:14-b, I(c))<sup>1</sup>. The Town also has an ongoing contract to remeasure one quarter of the properties each year concluding with a full revaluation in 2010. The Town is responsibly proceeding to maintain assessment equity by performing a statistical update in

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<sup>1</sup> In part, the 2006 Chapter 193:1 legislative findings and intent noted the following. "Documentation of the analysis of market data used to set values are (sic) needed by the governing body and the taxpayers in the state of New Hampshire. The general court also finds that documentation, assumptions, and calculations shall be transparent for our citizens and shall be guided by the 2005 Edition of the Uniform Standards of Appraisal Practices, Standard 6. The general court's intent is that a written report of a revaluation or mass appraisal pursuant to Asb 301.10 must clearly communicate the elements, results, opinions, and value conclusions of the appraisal."

2008, improving its physical data by the cyclical remeasuring and improving its assessment documentation during the 2008 update, even though its next assessment review by the department of revenue administration (“DRA”) (RSA 21-J:11-a) is not scheduled to occur until 2011. As noted in the Report and discussed at the hearing, the Town should take the opportunity with the 2008 statistical update when reviewing its overall assessment equity to attempt to improve the land assessments, particularly in the Long Shore/Berry River areas as reflected in the high coefficients of dispersion and price-related differentials noted at page 13 of the Report. (The board acknowledges it may be difficult to discern market patterns and to achieve good statistical assessment equity in this neighborhood due to the low value properties and the fact that often the sales occur between related parties.)

In short, the board finds the Town is acting in a proactive manner in an effort to improve and/or maintain assessment equity. As the board has noted in several reassessment orders<sup>2</sup>, it 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. In this case, the board finds no basis exists to intercede.

Because the Lead Petitioners raise a number of specific allegations relative to the Update, the board will address them in order.

The board finds no evidence to support the Lead Petitioners’ assertion the Town improperly combined abutting lots for valuation purposes. To the contrary, the evidence submitted at hearing was that the Town considered and complied with the various statutes that provide guidance on such issue including RSA 75:9 and the statutes cited therein.

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<sup>2</sup> Department of Revenue Administration v. Town of Deering, Docket No. 18409-00RA, January 13, 2006; and Town of Orford, Docket No. 21473-05RA, November 3, 2005.

Mr. Hynes testified that, although making this allegation, he had not familiarized himself with those statutes.

Mr. Hynes asserted the Town did not have the authority to correct assessments when it found a clerical input error and where no abatement had been filed. The board finds such assertion is contrary to the New Hampshire Constitution at Pt. I, Art. 12 and Pt. II, Art. 5 and RSA 76:16. Part I, Art. 12 requires each taxpayer to contribute their just share towards the expense of government and Pt. II, Art. 5 mandates that taxes levied must be “proportional and reasonable”. Thus, for the Town to be aware of a clerical error that results in disproportionate assessments and not rectify such error in a timely manner would be to ignore these constitutional cornerstones of proportional taxation.

Further, the first sentence of RSA 76:16 provides that selectmen may abate any tax assessed by them or their predecessors. This provision is distinct from the second sentence which provides for any person aggrieved by an assessment may seek relief by filing an abatement request. Thus, in the course of performing their assessing responsibilities, selectmen must always ensure that assessments be proportional, and if not, adjust assessments (RSA 75:8 and RSA 76:14) or abate them (RSA 76:16, I). Here, the selectmen discovered a clerical error which resulted in disproportionate assessments, and properly rectified that disproportionality and abated the taxes as provided by RSA 76:16, I.

The board need not rule on the propriety of including site improvements in the land assessments of improved properties, because the board finds no evidence was submitted that Cross Country’s assessment methodology in doing so resulted in discernible disproportionality (see Report’s discussion at pp.16-17). Again, the board would encourage the Town during the 2008 statistical update to review this methodology

and perform an appropriate market analysis to determine the magnitude of the site improvements to be included with the land value if it continues with this methodology.

The board finds there was no statute or rule to require Cross Country to have carried a bond during the Update. The Update was not ordered by the board but was performed voluntarily by the Town to comply with its assessment review by DRA. DRA's rule Rev. 602.15 requires a bond only if the reassessment performed was ordered by the board or a court.

Last, the Petition's conclusion requests the board "find in our defense and make the Town and its Contractor liable for all cost incurred by the lead petitioners in an effort to establish the failed revaluation effort." Having found the allegations contained in the Petition are without merit, the board denies the Lead Petitioners' request for cost.

In conclusion, the board finds nothing in the Lead Petitioners' allegations nor the Report's findings warrants the board to step in and order the Town to perform any reassessment or other remedial action other than it has planned. As a consequence, the board dismisses the Petition and closes the record in this docket.

The "Requests" received from the Town 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 Report.

### **Town of Barrington's Requests for Findings and Rulings**

1. At the direction of the Board of Tax and Land Appeals ("board"), tax review appraiser Theresa M. Walker completed an investigation and analysis of assessment equity and procedures in Barrington and prepared an "Investigation and Analysis of Assessment Equity for Reassessment Show Cause Hearing" report ("Report") for purposes of the hearing on the petition for reassessment. Ms. Walker determined that, "with the exception of the seasonal waterfront area on Maps 102, 103 and 104...the [2006] update has achieved market value and has improved the overall equity of the Town." See Report, p. 19.

#### **Granted.**

2. The Assessment Manual that will be prepared with the 2008 statistical update, if prepared in conformance with the criteria established in Standard 6 of USPAP as required by law, will cure the deficiencies in the 2006 Report identified by Ms. Walker and the petitioners.

#### **Neither granted nor denied.**

3. The town intends to change its software system from Proval to Avitar following adoption of the 2008 annual budget. The insufficiency of the information included on the assessment record cards that was noted in the Report is expected to be resolved upon utilization of the Avitar program.

#### **Granted.**

4. The town has a five-year contract with Cross Country Appraisal Group, LLC ("Cross Country"), effective for the 2006 tax year, pursuant to which Cross Country will perform a four-year cyclical re-measure beginning in 2006, complete statistical updates per DRA rule Rev. 601.24, effective April 1, 2006 and April 1, 2008, and a full revaluation per DRA rule Rev. 601.11, effective April 1, 2010. The town also has a separate contract with Cross Country to perform annual assessing tasks. See Report, Addendum A.

#### **Granted.**

5. The town last performed a complete reassessment in 2004.

#### **Granted.**

6. The town is scheduled to conduct a complete reassessment in 2010.

**Granted.**

7. The overall assessment-to-sales ratio for the town for 2006 including all valid sales was 0.99, for all valid sales excluding outliers it was 0.97, and for all valid sales excluding extreme outliers it was 0.98, all within the acceptable range of central tendency (0.94 - 1.04).

**Granted.**

8. After application of a confidence interval of 95% to the median results of the assessment-to-sale ratio study of the four strata with median ratios outside of acceptable ranges, there was insufficient statistical evidence to find that the various strata of properties in town were not all appraised at the same level of market value.

**Granted.**

9. The Long Shore/Berry River area is an area in transition, being primarily comprised of small lots containing non-homogeneous structures and uses, with structures of diverse quality, size, age and condition.

**Granted.**

10. It is difficult to ascertain whether the sales of properties in the Long Shore/Berry River area are "at arm's length" due to purchases by abutters and family members, and the failure of purchasers to file DRA's PA-34 form.

**Granted.**

11. The town has reassessed the properties in the Small Road area of Ayers Lake and corrected the errors identified in the petition.

**Granted.**

12. The Department of Revenue Administration ("DRA") conducted a review of five areas of assessing practices as required pursuant to RSA 21-J:11-a, and presented its findings in the "Report on Review of Assessment Practices For Municipality Of Barrington for the Property Tax Year Beginning April 1, 2006," sent to the town via cover letter dated July 5, 2007 ("DRA REPORT").

**Granted.**

13. The DRA Report presents the DRA's determination that the town's assessment practices met all required criteria with the exception of documentation in the current use property records. See DRA Report.

**Granted.**

14. The town has taken action to correct the identified deficiencies in the current use files.

**Neither granted nor denied.**

15. The records of the Strafford Country Registry of Deeds showed the following: in 2004 the lots identified as Map 107, Lot 0012 and Map 107, Lot 0001 were merged with each other; the lots identified as Map 107, Lot 0011 and Map 107, Lot 0002 were merged into one lot; the town's planning board approved the voluntary mergers as required pursuant to RSA 674:39-a; the documents specifically state that "no such merged parcels shall thereafter be separately transferred without subdivision approval."

**Granted.**

16. The town has reassessed the properties in the Small Road area of Ayers Lake and corrected the errors identified in the petition.

**Granted.**

### **RULINGS OF LAW**

1. RSA 71-B:16-a provides that 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.

**Granted.**

2. Pursuant to Criteria I and IV of RSA 71-B:16-a, there is no need to order Barrington to conduct a full reassessment because the town has a contract with Cross Country to conduct the annual and periodic tasks necessary to maintain assessment equity.

**Granted.**

3. Pursuant to Criteria II and V of RSA 71-B:16-a, there is no need to order Barrington to conduct a full reassessment because the town conducted a full reassessment in 2004 and is scheduled to conduct a full reassessment in 2010.

**Granted.**

4. There is insufficient evidence to establish that the ratio of sales prices to assessed valuation in the Long Shore/Berry River area is inequitable in comparison to that in the other strata in Barrington.

**Neither granted nor denied.**

5. Pursuant to Criterion III of RSA 71-B:16-a, there is no need to order Barrington to conduct a complete reassessment because the ratio of sales to assessed valuation, PRDs and CODs do not indicate a lack of assessment equity.

**Neither granted nor denied.**

6. The board must look at the facts surrounding the lot mergers to determine whether the town correctly treated the merged lots as one for assessment purposes. Appeal of Loudon Road Realty Trust, 128 N.H. 624 (1986).

**Granted.**

7. The town correctly assessed two lot mergers, one being of Map 107, Lot 0012 with Map 107, Lot 0001 and the other of Map 107, Lot 0011 and Map 107, Lot 0002, as one lot.

**Granted.**

8. Given the facts presented to the board and the prevailing law in the State of New Hampshire, the petition for reassessment is denied.

**Granted.**

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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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: David M. Hynes, 37 Brock Street, Rochester, NH 03867-4403 and Janice Erricolo, 119 Moore Avenue, PO Box 1362, Warren, MA 01083, Lead Petitioners; Judith E. Whitelaw, Esq., Mitchell & Bates, P.A., 25 Beacon Street, East Laconia, NH 03246, counsel for Municipality; Chairman, Board of Selectmen, Town of Barrington, 41 Province Lane, Barrington, NH 03825; Cross Country Appraisal Group, LLC , 210 North State Street, Concord, NH 03301, contracted assessing firm; and Guy Petell, Department of Revenue Administration, PO Box 487, Concord, NH 03302, Interested Party.

Date: January 8, 2008

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Anne M. Stelmach, Clerk