

**In Re: Town of Northumberland**

**Docket No.: 22579-07RA**

**ORDER**

On December 17, 2007, the board of tax and land appeals (“board”) held a noticed hearing regarding an RSA 71-B:16, IV petition (“Petition”) filed on June 15, 2007 with the board in which the lead petitioners requested the board address a number of inaccuracies resulting from the 2006 statistical update (“Update”) and that any remedy be performed at no cost to the Town of Northumberland (“Town”). As provided by Tax 208.05, one of the board’s RSA 71-B:14 review appraisers, Theresa M. Walker, investigated the Petition’s allegations and performed a subsequent assessment to sale ratio study to measure the assessment equity resulting from the Update. Her findings were submitted in a report filed on October 19, 2007 (“Report”) and are part of the record.

At the hearing the board received testimony from Ronald Caron, Linda Caron and Deborah Weeks (“Lead Petitioners”) and several taxpayers in attendance. Steve M. Allen and Gary Fournier of Brett S. Purvis & Associates, Inc. (“Purvis”) and Lorna Aldrich, Town Manager, and Elaine Gray, Town Assessing Clerk testified on behalf of the Town. Robert M. Boley, Property Tax Advisor, with the department of revenue administration (“DRA”) was also present and testified.

**ISSUES PRESENTED:**

The Lead Petitioners submitted detailed concerns in paragraphs A through S in the Petition which, while too lengthy to recite in their entirety, can be summarized in several areas. First, the market analysis performed by Purvis for the Update was not accurate due to the lack of verification of sales and verification of the accuracy of the data listed on the assessment-record cards. Second, a number of assessment revisions and abatements granted taxpayers were done without adequate review or determination of whether such abatements were property specific or neighborhood related. Third, the land assessments for commercial properties were not consistently assessed and residential building costs were not localized for the Northumberland market. Fourth, the selectmen improperly entered into a number of tax freezes on various business properties as a tax incentive. Fifth, the DRA did not adequately monitor the Update or follow up on earlier shortcomings noted by the DRA in the Town's current-use assessments.

The Town argued various ratio studies performed by Purvis, the DRA or the board in the Report generally indicate acceptable assessment indices with the exception of the price related differential ("PRD") being high. The Town also noted it currently has a three year contract with Purvis running until the end of 2008 to perform annual assessment maintenance, to annually measure and list 20% of the municipality and to perform another statistical update for 2008. However, Ms. Aldrich noted, because of statutory changes as to assessment documentation for reassessments done for tax year 2007 and after, the Town is seeking requests for proposals from various assessment companies as an alternative to the remaining provisions of the existing Purvis contract. Ms. Aldrich also stated the selectmen have agreed not to take any further action as to assessing plans awaiting the outcome of the board's ruling on the Petition. Ms. Aldrich

acknowledged the existence of the various tax freezes and stated the selectmen, after discussion with Town counsel, realized there was no basis for entering into those agreements, but felt they should honor the remaining term of the existing agreements.

Mr. Boley testified the DRA did file a monitoring report on January 22, 2007 only after the assessment manual was made available to them in December, 2006. The monitoring report indicated the statistical analyses performed generally fell within assessing standards guidelines. Also, the board requested Mr. Boley review DRA's files and submit a follow-up to the Town's improvement of its current use records and a clarification of the total number of taxable acres in the Town. Mr. Boley's December 18, 2007 letter indicated the Town had undertaken a program to improve the missing information on current use applications and this corrective action had brought the Town into compliance with DRA's compliance requirements. Further, his letter noted the current acreage listed on the "MS-1 report" is now generally consistent with the total acreage estimated by the New Hampshire Office of State Planning.

#### **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.

The board's order will first address the need for a reassessment or other remedial action and then the existing "tax freeze" arrangements provided by the selectmen to a number of Northumberland's properties.

#### NEED FOR REASSESSMENT

Although no selectmen were present at the hearing, both Purvis representatives and Ms. Aldrich indicated the Town's plans for a reassessment were in limbo due to 1) the filing of this Petition (Ms. Aldrich stated the selectmen were awaiting the board's ruling before proceeding with any further assessment updates) and 2) the fact the existing three year contract with Purvis was entered into prior to the 2006 amendment to RSA 21-J:14-b, I(c) requiring reassessment documentation be based upon USPAP Standard 6 for any reassessments occurring after the 2006 tax year. It appears, therefore, that it is incumbent on this board to set a reasonable course of action for the Town to maintain its assessment equity as its plans are on hold.

On the one hand, the board acknowledges the Update's assessment equity indices, contained in the DRA's 2006 equalization study and the Report's assessment to sale ratio study, indicate the assessments are generally within acceptable guidelines (with the exception of the overall PRD of 1.11). On the other hand, the board notes the Town had in place plans for a statistical update in 2008 accompanied with a cyclical five year data and measurement review process, neither of which appears to be progressing with certainty or in a timely fashion. As noted earlier, the planned 2008 update is on hold pending resolution of this Petition and the

listing review slated for 2006 was not done and is being combined with the 2007 review now being undertaken in December 2007.

Consequently, the board orders the Town to perform an assessment update for tax year 2008 and to continue with the rolling data and measurement review but that it be done in a more timely manner so that at least 60% of the Town's improved properties have had the data review completed for implementation with the 2008 update. The board notes that performing an update in 2008 would be consistent with the DRA's assessment review year for the Town. As the Town stated at the hearing, because of the revisions to the statutes, the 2008 assessment update must provide all the documentation required by RSA 21-J:14-b, I and as audited by the DRA. As required by RSA 21-J:11, I (b), the proposed contract to perform the ordered 2008 update must "be first submitted to the commissioner [of the department of revenue administration] for examination and approval."

In contracting for the 2008 assessment update, the Town should ensure the market analysis is done in a diligent fashion with adequate verification of sales and adequate time is provided for informal reviews following the reassessment by qualified personnel that are able to informatively answer taxpayer questions and knowledgeably explain the process and assessment-record cards to taxpayers. The assessment documentation, transparency of the process and meaningful follow-up are critical to the understandability and credibility of any reassessment. While the 2006 assessment update did not result in outright unacceptable assessment equity statistics, it was clear from the testimony of both the Lead Petitioners and the municipal officials that better explanation and documentation of the process would have addressed many of the concerns and frustrations voiced by the Lead Petitioners. Good reassessments entail thorough market analyses to develop the appropriate assessment models coupled with thorough and

understandable documentation and implemented and explained by knowledgeable personnel so that taxpayers and municipal officials will understand how the market was evaluated and distilled to the calculations on the individual assessment-record cards.<sup>1</sup>

The board reviewed the concerns raised by the Lead Petitioners and finds none of them (with the exception of the “tax freeze” arrangements) warrant any further retrospective or prospective action. For example, despite the Lead Petitioners’ assertions at hearing, the board finds the Report concluded the \$75.00 per square foot residential replacement cost estimate is reasonable and consistent with estimates from the Marshall Valuation Service and the residential and commercial land base rates were applied consistently as determined by the use of the property. If indeed either of these assessment models factors were not market related or consistently applied, the overall assessment equity as exhibited in the assessment to sale ratios would be less acceptable. Again, however, the documentation and explanation of the origin and use of those base rates needs to be improved and addressed in the 2008 statistical update.

While appreciating the cost incurred by taxpayers, the board has no statutory authority to order a reassessment be done by a contractor at no expense to the Town.

(Cf. Department of Revenue Administration v. Town of Winchester, Docket No.: 18412-00RA, February 16, 2005 Order, where the board was able to order an update be performed at no expense to the town only because the contractor had offered to do as much.) Here the Town had plans to do an update in 2008 which it put on hold due to the filing of the Petition. Ordering the

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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.”

Town to proceed with an update in 2008 and to more timely perform the data review should ensure they are performed in a satisfactory manner and will provide for monitoring by both the DRA (RSA 21-J:11-a) and the board.

Consequently, the board orders the Town to perform a statistical update effective for tax year 2008 and to continue its current plan of reviewing assessment data and measurements over a five year period. The Town shall report to the board every three months as to its progress in carrying out this Order starting on April 1, 2008. The board will retain jurisdiction in this matter until: 1) the DRA issues a positive assessment review report (RSA 21-J:11-a); and 2) the board's review appraiser's subsequent assessment to sale ratio study indicates acceptable assessment equity and the update is determined compliant with all applicable statutes and rules.

#### “TAX FREEZE” ARRANGEMENTS

As the Town acknowledged at the hearing, such arrangements occurred without the Town having adopted the provisions of either RSA Ch. 162-K, Municipal Economic Development and Revitalization Districts or RSA Ch. 79-E, Adoption of a Community Revitalization Tax Relief Incentive Program. The board understands the selectmen's desire to honor their existing agreements with the various taxpayers; however, to do so would perpetuate disproportionate assessments contrary to Pt. 1, Art. 12 and Pt. 2, Art. 5 of the New Hampshire Constitution. Part I, Art. 12 requires taxpayers to contribute their just share towards the expense of government and Pt. II, Art. 5 mandates that taxes levied must be “proportional and reasonable”. RSA 71-B:16 grants the board broad authority and responsibility to rigorously scrutinize the legality of assessments and to remedy improper and illegal taxation. Appeal of Wood Flour, Inc., 121 N.H. 991, 994 (1989). (“[T]he general thrust of the statute is to promote the legality of real estate taxes.”) Therefore, the Town shall notify those taxpayers with whom

“tax freeze” arrangements still remain, provide them a copy of this Order and, beginning in tax year 2008, assess the properties in accordance with RSA 75:1. Any taxpayer aggrieved by those assessments have the usual venues for remedy by filing an abatement application with the Town (RSA 76:16) and filing an appeal with either the board or superior court (RSA 76:16-a and RSA 76:17). The Town shall incorporate in its three month reporting to the board that it has complied with contacting these taxpayers and assessing those properties pursuant to RSA 75:1 for 2008.

SO ORDERED.

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Ronald and Linda Caron, 10 State Street, Groveton, NH 03582, Deborah Weeks, 103 Lancaster Road, Groveton, NH 03582, Lead Petitioners; Chairman, Board of Selectmen, Town of Northumberland, 2 State Street, Groveton, NH 03582; Brett S. Purvis & Associates, Inc., 3 High Street, 2A PO Box 767, Sanbornville, NH 03872, Contracted Assessing Firm; and Guy Petell, State of New Hampshire Department of Revenue Administration, PO Box 487, Concord, NH 03302, Interested Party.

Date: January 17, 2008

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Anne M. Stelmach, Clerk