

Town of Bartlett

Docket No.: 25429-10RA

ORDER

The board opens this docket to investigate concerns arising at the recent hearing of a tax abatement appeal (described further below). RSA 71-B:16 gives the board broad authority to order reassessments or rectify assessments that have been “fraudulently, improperly, unequally, or illegally assessed.”¹ In Appeal of Wood Flour, Inc., 121 N.H. 991, 994 (1981), the supreme court held “[t]he board ... has broad authority to remedy the inequities of improper and illegal taxation” and noted that “the general thrust of the statute [RSA 71-B:16] is to promote the legality of real estate taxes.”

RSA 21-J:3, V, RSA 21-J:11 and RSA 21-J:11-a provide the department of revenue administration (“DRA”) general supervisory authority over municipal assessing

¹ This statute provides:

“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:

“I. When a specific written complaint is filed with it, by a property owner, within 90 days of the date on which the last tax bill on the original warrant is sent to the collector of taxes of the taxing district, that a particular parcel of real estate or item of personal property not owned by him has been fraudulently, improperly, unequally or illegally assessed. The board shall consider only one complaint from a property owner for each parcel of land until such time as a reassessment has been made. The complainant shall pay a fee of \$65 for each specific particular parcel or specific item of personal property complained of. The board shall send notice by certified mail to the taxpayer against whose property the complaint is made; or

“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. . . .”

to ensure “that all assessments of property... [are] in compliance with the laws of the state” and that “assessments of a municipality achieve substantial compliance with applicable statutes and rules.” However, RSA 71-B:16 gives the board overarching authority to intercede, investigate and order a remedy in the form of a new assessment or reassessment. See also RSA 71-B:5, I (board has the authority to hear and determine all matters involving taxation of property by instituting its own investigation, holding hearings or taking such other action as is necessary); and RSA 21-J:3, V (DRA has general supervision over the administration of taxation and assessing officials, “except the board of tax and land appeals...”).

In a hearing held on October 27, 2010 in a tax abatement appeal, Stisi v. Town of Bartlett, Docket No.: 24460-08PT, testimony and evidence was presented primarily by the Town’s representatives, Ellis B. Withington of Mayflower Valuation, Ltd., and Lynn P. Jones, Administrative Assistant to the selectmen. This testimony raised concerns as to whether the assessing practices and the resulting assessments are substantially compliant with applicable statutes and rules.

Specifically, Mr. Withington, who has been performing annual assessing functions including assessment updates for the Town to be compliant with RSA 75:8-a, is not certified to do municipal assessing functions as required by RSA 21-J:14-f. Further, both the testimony of Mr. Withington and Mr. Stephan W. Hamilton, Director of Property Appraisal Division, DRA, indicate there was no contract between either Mr. Withington and the Town or between Patriot Properties (the assessing firm whose assessing software the Town utilizes and with whom Mr. Withington stated he had a contract to do consulting

work) and the Town for the performance of assessing work as required by RSA 21-J:11. See also Assessing Standards Board Guidelines, paragraph B, 5.

Testimony also indicated that no complete or cyclical review of the physical property data (measure and listing) has occurred since 1993. While mindful that Pt. II, Art. VI of the New Hampshire Constitution requires valuation anew every five years, but not necessarily physical inspections, Sirrell v. State, 146 N.H. 364, 382 (2001), the board finds that commonly accepted standards for mass appraisal established by the International Association of Assessing Officers indicates the physical aspects of properties should be reviewed periodically (every 4-6 years).

Mr. Withington also testified the 2009 assessment update market analysis was largely a reiterative stratified ratio analyses of recent sales where the assessment models are “tweaked” until an acceptable coefficient dispersion (“COD”) is achieved. The board has held that “[t]he 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,” impacting proportionality and assessment equity. Town of Orford, Docket No. 21473-05RA (November 3, 2005), quoting from Town of Winchester, Docket No.: 18412-00RA (January 7, 2005).

This concern is possibly illustrated by the stratified ratio study of contemporary dwellings submitted as Taxpayer Exhibit No. 2. That ratio study was performed as the “bench mark” analysis by Mr. Withington for contemporary homes during the 2009

assessment update utilizing sales of such properties that occurred between April 2, 2007 and September 1, 2009 and indicates a median ratio of 1.34 for that strata. Even if the post 2008 ratio study sales are excluded, the median ratio still is substantially above market value at 1.33 and raises a question as to whether the reiterative ratio studies done in prior years (2007, 2008) truly produced equitable assessments.

Because of these concerns, the board directs its RSA 71-B:14 review appraisers to conduct an investigation and prepare a report regarding the Town's assessing practices and assessment equity considering the criteria enumerated in RSA 71-B:16-a. After the report is filed with the board and copied to the Town, a hearing will be scheduled, as provided in Tax 208.05, for municipal officials and taxpayers and any other interested parties to provide relevant testimony and evidence. After the hearing, the board will issue an appropriate order as to the need for any reassessment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert R. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Chairman, Board of Selectmen, Town of Bartlett, RFD 1, Box 49, Intervale, NH 03845; Stephan W. Hamilton, Director of Property Appraisal Division, State of New Hampshire, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301; Todd Haywood, Granite Hill Municipal Services, PO Box 1484, Concord, NH 03302, representative for Marcello Stisi; and a courtesy copy to Ellis B. Withington, Mayflower Valuation, Ltd., 150 Bump Rock Road, Plymouth, MA 02360.

Date: 11/10/10

Anne M. Stelmach, Clerk