

Town of Bartlett

Docket No.: 25429-10RA

ORDER

On November 16, 2012, the board held a limited hearing pursuant to its October 25, 2012 Order (the “October Order”). In the October Order, the board detailed six areas of concern identified by the department of revenue administration (“DRA”) with respect to the 2011 reassessment performed for the “Town” by its contract assessor, Cross Country Appraisal Group, LLC (“CCAG”). The matters presented are of critical importance because the Town’s 2011 reassessment is not “satisfactory,” as prescribed in RSA 71-B:17, in light of the deficiencies reported by the DRA. The DRA monitored the 2011 reassessment, both pursuant to its statutory responsibilities and a specific “Contract” between CCAG and the Town, which the DRA had reviewed and approved.

The Contract resulted from an investigation into the Town’s assessing practices the board opened through its November 10, 2010 Order (when the board learned the Town had not completed a reassessment since 1993). Shortly after issuance of that Order, the DRA and the Town filed a “Joint Motion” asking the board to hold its investigation in abeyance because they were in agreement the Town would perform a full reassessment for tax year 2011 and the board,

in reliance on that plan, granted this request. (See December 30, 2010 Order.) The Joint Motion (at ¶11) specifically states:

The parties agree that the [2011 reassessment] will be completed in accordance with the Rev 600 rules in [their] entirety including those referenced for Board or court ordered reassessments, the Uniform Standards of Professional Appraisal Practice [“USPAP”], the International Association of Assessing Officers Standards on Mass Appraisal, and all other relevant statutes and administrative rules.

The Town and CCAG then entered the Contract for the 2011 reassessment, a “Full Revaluation Contract” dated March 18, 2011.

As discussed below, the deficiencies pertain to the 2011 Reassessment “Manual” (present version included as DRA Exhibit No. 2), one of the essential products CCAG is contractually required to provide to the Town. (See Contract Sections 2.2.3 and 2.2.4.) Section 2.2.4 specifies the “revaluation shall be considered complete and in its final form only when” all of the stated obligations, including a reassessment manual meeting specified requirements, have been provided by CCAG to the Town and “[t]he DRA has completed its final monitoring report.” Rev 602.06(c) prescribes the items that must be included in a reassessment manual.

Despite multiple revisions in response to the deficiencies identified by the DRA, the Manual still does not comply with the Contract, the DRA’s rules (contained in Rev 600) and professional standards, including USPAP Standard 6. As noted in the October Order (p. 3, quoting from Town of Milford, BTLA Docket No. 17330-97RA (July 5, 2002)), every satisfactory reassessment must be technically accurate and understandable, not just to the assessor, but to the Town and its taxpayers, with a sufficient degree of transparency to enable the general public to understand the assessments and how they were established. See, e.g., Town of Orford, BTLA Docket No. 21473-05RA (November 3, 2005 Reassessment Order at pp. 10 – 17.)

Findings Regarding the Non-Compliant Manual Prepared by CCAG

In the October Order (p. 3), the board stated it would “receive testimony and other evidence from the parties and CCAG regarding the outstanding issues with the 2011 reassessment and how best to remedy them.” At the limited hearing, the DRA, represented by Kathryn E. Skouteris, Revenue Counsel, presented testimony from: Josephine Belville, a Property Appraisal Supervisor; and Stephen Hamilton, Director, Property Appraisal Division. The board also heard testimony from: Jeffrey Earls, president and owner of CCAG; Christina Murdough (formerly employed by CCAG); and Gene Chandler, Selectman for the Town.

At the close of the hearing, the board directed the parties to make additional submissions with respect to several issues discussed further below. These submissions are: a November 26, 2012 letter from Ms. Murdough (the “Murdough Letter”); a November 28, 2012 letter from Mr. Earls of CCAG (the “CCAG Letter”); and a November 29, 2012 Post-Hearing Submission from the DRA (the “DRA Response”).¹

The board has reviewed the evidence presented, much of it undisputed, and finds, despite numerous opportunities and revisions by CCAG, the Manual is still deficient and the reassessment has not been satisfactorily performed for the reasons stated by the DRA. Ms. Belville testified at length, and without contradiction by Mr. Earls, CCAG’s owner and representative, regarding specific shortcomings of the Manual and remaining unanswered questions and inconsistencies between this version of the Manual and prior versions. The problem areas she detailed in her testimony are also stated in DRA Exhibit Nos. 1 and 3. The

¹ The board also received a December 7, 2012 letter from the Town selectmen indicating the Town’s inability to proceed with the processing of abatement appeals until a “compliant” Manual is obtained.

board found this testimony and the DRA's supporting documentation to be credible and fully supported by its own review of the Manual.

The documentation included in a reassessment manual and on the accompanying assessment-record cards ("ARCs") are part and parcel of a satisfactorily completed reassessment. Providing such documentation to enable taxpayers and others to understand the process and values determined in a reassessment is a necessity, not just a technicality. Thus, the compilation of a complete and understandable manual is a substantive and important matter, not simply a superfluous exercise or an afterthought. Mr. Earls' testimony indicated an opinion to the contrary, reflecting his mistaken belief that taxpayers cannot understand any reassessment manual and therefore attempts to provide sufficient documentation in a manual is, in effect, an exercise in futility.

There is no doubt the Manual, even in its fourth version, does not provide taxpayers with an understanding of how many of the properties in the Town were actually assessed. Further, for specific strata of property, it does not provide enough information to allow even Mr. Earls, CCAG's president and a DRA-certified assessing supervisor, to understand or explain the methodology underlying the resulting assessments to either the DRA or the Town and its taxpayers.² Further, the board finds the shortcomings in the Manual, if not rectified, will inhibit the Town in maintaining assessment equity in future years.

The board made careful note of Mr. Earls' disturbing testimony and responses to the board's questions. Mr. Earls acknowledged signing the Contract (in his role as president and owner of CCAG) but demonstrated a lack of knowledge of important details regarding the 2011

² In response to board questions, Mr. Earls testified he could not state with any certainty whether the assessed value of the "Storyland" property was proportional. He was equally vague and evasive about other properties in the Town and how they were assessed.

reassessment and attempted to explain or excuse the deficiencies that still exist in the Manual by repeatedly stating the supervisor who “handled the entire job and has the background knowledge to end this USPAP issue” is no longer employed by CCAG.³

A stark example of his testimony involves Section 6 of the Manual (“Improved Property Data”). Mr. Earls stated “[p]age 88 has been corrected to show the appropriate square foot cost. The square foot analysis has been removed because I cannot explain why 36 improved sales were used and not all.” Removal of the analysis provides the Town with no explanation as to how the base rate for all single-family residential properties was determined and no way for the taxpayers in the Town to understand their assessments.

Further, the board finds the Manual was prepared in a manner that was intentionally misleading⁴ in several respects. First, the front page states it was, “Prepared By: Christina N. Murdough, CNHA,” which is not true. Second, it contains a June 28, 2012 letter on CCAG’s letterhead that is not signed, with a statement that “there is nothing more I can offer,” but without any identification of who the author (“I”) is.⁵ Third, the “Certification of Value” is neither signed nor dated, but does have a blank line with “Christina N. Murdough, Assessor Supervisor,

³ While Mr. Earls stated he was willing to continue to work toward satisfying the DRA’s concerns regarding the Manual, he also said: “I think we’ve done all that we can to satisfy them, but without the help of Chris Murdough, I don’t think we ever can satisfy them,” and “we’re never going to satisfy Ms. Belville.” Regarding several specific deficiencies in the Manual, the June 28, 2012 CCAG letter in the Manual (addressed to Ms. Belville) states “there is nothing more I can offer.”

⁴ Mr. Earls is an experienced assessor and is obligated (by USPAP and AsB rules) to perform his duties in compliance with USPAP and with the AsB’s rules. The “Ethics Rule” contained in USPAP (which is incorporated into the AsB’s “Code of Ethics and Standards of Professional Conduct”) states “[a]n appraiser: must not communicate assignment results with the intent to mislead or to defraud; must not use or communicate a report that is known by the appraiser to be misleading or fraudulent; must not knowingly permit an employee or other person to communicate a misleading or fraudulent report; must not willfully or knowingly violate the requirements of the RECORD KEEPING RULE. . . .” The “Record Keeping Rule” states a “workfile must include: all other data, information, and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with USPAP....”

⁵ Mr. Earls testified Mandy Irving, CCAG employee of CCAG, wrote this letter. Ms. Irving did not attend the November 16, 2012 hearing because of other “priorities,” according to Mr. Earls.

Certified NH Assessor, Cross Country Appraisal Group, LLC” typed below it. Finally, the resume and DRA certification of Ms. Murdough are included in the Manual. (See Manual, cover page, pp. 7 and 133-135.) As Ms. Murdough has not been an employee of CCAG since February, 2012 and the Manual was prepared in June, 2012, these facts reflect an intent to mislead any reader of the Manual as to Ms. Murdough’s actual level of involvement. The true facts concerning these issues were not revealed until the board heard Mr. Earls’ sworn testimony at the hearing and there is still uncertainty regarding which individuals at CCAG actually compiled the Manual.

The board heard testimony from Mr. Earls that CCAG cannot comply with DRA’s concerns regarding the Manual because that information “is only available in the head of” Ms. Murdough. This attempted excuse is not satisfactory. As head of CCAG, Mr. Earls had an obligation to establish reasonable procedures to insure compliance with the Contract, irrespective of personnel turnover. The fact one employee left CCAG does not relieve CCAG of its contractual obligations to the Town, its client. Consequently, CCAG should undertake any additional work required, if directed to do so by the Town, at no additional cost. At the hearing, Mr. Earls stated his willingness to provide assistance to the Town at no further expense.

In summary, one of CCAG’s fundamental contractual obligations is to provide a “USPAP Standard 6 Compliant Final Appraisal Report.” As of this date, that obligation has clearly not been met. The board, however, does not have the authority to order CCAG to fulfill its contractual obligations. This is an issue between the Town and CCAG. See, e.g., DRA v. Town of Winchester, BTLA Docket No. 18412-00RA (November 1, 2005 Order at pp. 2-3) (discussing a municipality’s remedies when an assessing contractor fails to perform and another contractor is hired).

Meeting the Standards for a Satisfactory Reassessment

Determination of whether a reassessment is satisfactory rests on evaluating the five criteria specified in RSA 71-B:16-a and compliance with the DRA's "600 Rules" (Rev Part 600), the terms of the reassessment contract and widely accepted professional standards, some of which are articulated in USPAP. (See Winchester, (January 7, 2005 Order at pp. 3-4.) The five statutory criteria are stated in RSA 71-B:16-a, as follows:

- 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 fact the Town in good faith contracted for and completed a reassessment for tax year 2011 satisfies criteria I and II. Based on the testimony and the DRA's 2011 Equalization Summary, the 2011 reassessment resulted in acceptable assessment equity indices satisfies criterion III. However, CCAG's work product is deficient relative to the Contract requirements and a number of Rev 600 and AsB rules and these deficiencies directly affect the understandability of the 2011 assessments and the Town's ability to maintain them adequately. Even at the time of the limited hearing, Mr. Earls was unable to explain the basis of the assessments from the information contained in the Manual. Therefore, criterion IV has not been met. Until corrected, the deficiencies in the Manual also adversely impact criterion V.

Remedies for Non-Compliance

In light of the evidence, the board finds the 2011 reassessment has not been satisfactorily completed and could order a new reassessment. However, the board is cognizant of the additional financial burdens such an order would place on the Town. Therefore, rather than

mandating that remedy at this time, the board orders the Town to produce to the DRA and the board supplemental documentation to satisfy the concerns articulated by the DRA regarding the Manual within thirty (30) days of the date of this Order. Further, upon receipt, the DRA shall perform its review within thirty (30) days and report to the board and the parties in writing as to whether the Manual, as revised, is compliant with all applicable requirements, including Standard 6 of USPAP. In complying with this Order, the Town has the option of continuing its involvement with CCAG⁶ or choosing to hire a different assessing firm.

In summary, while the Town in good faith employed CCAG as its contract assessor, the board finds the Town has not yet complied with the terms of the Joint Motion with respect to the 2011 reassessment, despite the close monitoring of the DRA and the Town's intention to do so. The Town recognizes its statutory responsibilities and has thus far relied upon CCAG to fulfill them.⁷ The board finds CCAG's excuses for noncompliance are not reasonable. More importantly, the deficiencies in CCAG's performance do not relieve the Town of its statutory obligations to complete a satisfactory reassessment, which includes a manual that meets the applicable standards. If the Manual remains non-compliant, the board will have no option but to order a full reassessment.

⁶ The board is aware of, and sensitive to, the circumstances the Town finds itself in with CCAG, and recognizes the Town's reluctance to pay an additional sum of money to complete a reassessment the Town feels it has already paid to CCAG. However, the Town still has a statutory obligation to reappraise all property in a satisfactory manner at least once every fifth year. See RSA 75:8-a and RSA 71-B:17.

⁷ One of the Selectman, Gene Chandler, who attended the hearing, indicated he lacked confidence in CCAG's ability to complete the work required in a satisfactory manner.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Order and Hearing Notice has this date been mailed, postage prepaid, to: Chairman, Board of Selectmen, Town of Bartlett, RFD 1, Box 49, Intervale, NH 03845; Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301; and Kathryn E. Skouteris, Revenue Counsel, State of New Hampshire Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301.

Date: December 20, 2010

Anne M. Stelmach, Clerk