



LEGAL UPDATE | N.H. Supreme Court Clarifies Bases for Changing Real Property Assessments After Revaluation Date

By: Margaret H. Nelson & Trevor J. Brown

Supreme Court: In *Merrimack Premium Outlets, et al. v. Town of Merrimack*, the New Hampshire Supreme Court explained the role of the reassessment process in real property tax assessing and clarified the bases for making changes to assessments after the date of revaluation. No. 2020-035, 2021 N.H. LEXIS 147 (Oct. 1, 2021).

Under RSA 75:8, I, assessors and selectmen are required to annually adjust assessments “to reflect changes” to ensure all assessments are reasonably proportional with each municipality. That statute further provides in subsection II that “[a]ssessors and selectmen shall consider adjusting assessments for any properties that: they know or believe have had a material physical change, changed in ownership, have undergone zoning changes,” among other points. Moreover, under RSA 75:8-a, the assessors/selectmen are required to reappraise all real estate within the municipality at least every five years, in an effort to ensure that all assessments are at full and true value. This is commonly known as a “revaluation.”

In 2016, a revaluation was performed of all real estate located in the Town of Merrimack (the “Town”). An outlet shopping mall, owned by Merrimack Premium Outlets, LLC (and leased to Merrimack Premium Outlets Center, LLC) (collectively the “Taxpayer”), was assessed at approximately \$86.5 million. Shortly thereafter, the Town learned that in 2013, the same property had been appraised, as collateral for a loan, at \$220 million. Thereafter, the Town reassessed the property for the

2017 tax year at approximately \$151.1 million, claiming that it was correcting the earlier undervaluation of the property.

Based on this action, the Taxpayer filed suit against the Town, seeking a declaratory judgment and injunctive relief. Among other points, the Taxpayer argued that there were no changes in the property or the market that justified the 2017 reassessment, that the property was not sold during the timeframe at issue, that the 2017 reassessment was not done in order to correct a clerical or mathematical error in the earlier number, and that the increase was not the result of changes in assessment methodology that applied to all property in Merrimack.

On pretrial motions, the Superior Court held that “the Town had the legal authority to adjust the appraised value of the [Property] for the 2017 tax year despite the fact that there were no physical, zoning, or ownership change[s] to the property following the 2016 town-wide revaluation.” The Superior Court dismissed the Merrimack Premium Outlets’ first claim; subsequently, the Superior Court dismissed the Taxpayer’s second claim based on their failure to answer written discovery. After denying the Taxpayer’s motion for reconsideration, this appeal followed.

Among other points, the Taxpayer argued on appeal that the Town lacked statutory authority to make the 2017 reassessment when there had been no physical, zoning, or ownership changes to the property. Specifically, the Taxpayer

argued that once proportionality is achieved under the five-year revaluation (required by RSA 75:8-a), that proportionality can only be modified when there has been a “change” to property under RSA 75:8. The Town, in turn, argued that RSA 75:8, II contains no limitation on why selectmen may consider adjusting an assessment, and that the enumerated conditions are simply bases to “consider an adjustment.”

The Supreme Court rejected the Town’s position. Noting that while RSA 75:8, II lists situations where the Town “shall consider adjusting assessments”, the Court recognized that RSA 75:8, I explicitly requires that annually, “the assessors and selectmen shall adjust assessments to reflect changes so that all assessments are reasonably proportional within that municipality...” See, RSA 75:8 (emphasis added). Concluding that the Taxpayer relied “on paragraph I, which directs assessors and selectmen to annually ‘adjust assessments to reflect changes,’ the Court held that “some ‘change’ is a prerequisite to a municipality’s legal authority to adjust a property’s assessment under RSA 75:8, I.”

The Town also argued that a “change” was not limited to physical manifestations, such that the “discovery” of the financing valuation/alleged underassessment satisfied the “change” requirement in the statute. Rejecting this argument, the Court held that “adjustment to an assessment pursuant to RSA 75:8, I, requires an actual change in the property’s market value.” An “[a]quisition of information bearing on a property’s value is not a change in value itself; it is merely a change in what

the acquirer knows about the property’s value.” The Court further rejected the Town’s suggestion that RSA 75:8 allows for it to correct an undervaluation, noting that while an old version of RSA 75:8 contained language mandating the correction of errors, the Court would not “reinsert that language” “under the guise of statutory interpretation.”

Noting the importance of interpreting statutes in the context of the overall statute scheme, the Court concluded that New Hampshire’s real property tax framework, which “sets forth a system of municipality-wide reappraisals at least every five years and a limited authority to adjust assessments annually to reflect changes in value,” does not “allow for correction of even known errors in valuation prior to the next municipality-wide reappraisal.” Accordingly, the Court reversed the Superior Court’s ruling and remanded it for further proceedings.

Taken together, the Supreme Court’s decision in the *Merrimack Premium Outlets* provides a useful overview of the ability to change assessments after the date of revaluation, highlighting the importance for municipal assessing officials and taxpayers to ensure the accuracy of assessments in the first instance.

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