

Jal Realty Company

v.

Town of Jaffrey

Docket No. 6688-89, 9414-90

DECISION

This decision relates to the disposition of these appeals and the "Taxpayer's" motion for costs. First, the appeals were settled at the hearing, using the assessment ordered by the board for the 1988 tax year. Therefore, if taxes have been paid, the "Town" is ordered to refund to the Taxpayer all taxes paid on a valuation greater than \$188,200, with 6% interest from date paid to refund date. Second, the board grants the Taxpayer's motion for costs, which will be discussed in the remainder of this order.

In January 1991, the board heard the Taxpayer's appeal for the 1988 tax year, and the board reduced the property's assessment from \$231,650 to \$188,200. Despite this ordered assessment, the Town assessed the property for 1989 and 1990 at \$231,650. Mindful of the board's prior decision, the Taxpayer called the Town on January 2, 1992, to see whether the Town was going to defend the appeal or use the board's prior-ordered assessment. The Taxpayer's representative testified he spoke with Hunter Riseburg, the Town manager, and Mr. Riseburg stated the Town would defend the appeal. Thus, the Taxpayer prepared for and attended the hearing. At the hearing, the board asked the Town for its position on why it did not use the prior-ordered assessment. The Town's representatives were unaware of the board's prior order. A recess was taken so the Town's representatives could review the board's prior decision. After returning on the record, the parties stated the prior-ordered assessment would be used for 1989 and 1990.

While the board's prior decision was not legally binding on the Town, see RSA 75, RSA 76:2, Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 832-33 (1980) (board's prior on decision is not conclusive on the issue but can be given weight as deemed appropriate by board), it was certainly evidence that the board would give significant weight to, especially where the appeal was heard only a year earlier by board members sitting on the present appeals. Moreover, as a matter of fairness to taxpayers, the board expects municipalities to use the board's prior-ordered assessment, except when the municipality in good faith, and pursuant to RSA 75:8, has a valid reason to change the assessment. Here it appears the Town simply ignored the board's prior decision even after the Taxpayer called to discuss these appeals and the prior decision. We find, therefore, the Town acted unreasonably, by frivolously maintaining its defense of these appeals, warranting the imposition of costs under RSA 71-B:9 and 76:17-b.

Taxpayer sought mileage, filing fees and 5 hours at \$200/hour. The board has decided the following costs are reasonable or required by statute:

| | | |
|-------------|----------|--|
| filing fees | \$65 | ('89-\$25 plus '90-\$40) |
| mileage | \$25.50 | (150 miles at .17/mile) |
| attendance | \$300 | (3 hours at 100/hour for attendance only, not for preparation) |
| Total | | |
| | \$390.50 | |

The Town shall pay the Taxpayer \$390.50, as costs, within 30 days of this order. If the Town fails to comply, the Taxpayer may file a motion for enforcement.

One final note. The Town's representatives at the hearing did nothing that warranted the imposition of costs. Unfortunately, they had not been told by Mr. Riseburg about the board's prior decision or of Mr. Riseburg's discussions with the Taxpayer before the hearing. Once informed of the prior decision, the Town's representative acted appropriately in remedying the problem. Nonetheless, the Taxpayer still had to prepare and attend the hearing

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because Mr. Riseburg did not address the issue earlier.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Marvin F. Poer & Company, representative for JAL Realty Company, taxpayer; and Chairman, Selectmen of Jaffrey.

Brenda L. Tibbetts, Clerk

Date: January 29, 1992

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