

Town of Milford

Docket No.: 17330-97RA

ORDER

The board has reviewed the “Motion for Rehearing” document filed on behalf of Cole-Layer-Trumble, Inc. (“CLT”) on May 15, 2003 (the “Motion”) and the “Objection” filed by the “Town” on May 21, 2003. The Motion is denied for at least four reasons briefly discussed below.

First, the Motion is premature as it appears to be prompted by CLT’s belief that the board’s evidentiary rulings at a show cause hearing held on April 15, 2003 are “unacceptable.” The Motion is not responsive to the board’s subsequent order (dated May 16, 2003) addressing the hearing issues. At that hearing, CLT attempted to submit two documents which were objected to by the Town. The board sustained the Town’s objections and excluded the documents for reasons made clear on the record. One document was offered as CLT’s “Response” to a submittal by the board’s staff review appraiser that was circulated to all interested parties, including CLT, in January 2003, well before the board’s show cause order dated March 13, 2003. The other document, a “Memorandum of Law,” is represented to contain legal arguments as to why the board

did not have the authority “to certify the reassessment to the DRA,” a remedy the board has chosen not to employ in this case, making these arguments moot.

When it made the evidentiary rulings to exclude these documents at the April 15, 2003 hearing, the board concluded that accepting them for consideration would serve no valid purpose and would only prolong the proceedings unnecessarily. See the board’s Order dated May 16, 2003, where these points are addressed further. The board did not, however, preclude or limit CLT from presenting its position at the hearing.

Second, the Motion is ambiguous in stating what ‘hearing’ it is addressed to: the relief requested in paragraph B of the Motion is to “Allow CLT to request a rehearing on any matter determined in the action or proceeding, or covered or included in this Board’s final order.” (Emphasis added). To say the least, such a request is overbroad and would serve no other purpose but to delay and complicate an already lengthy record. In addition, the Motion is internally inconsistent in requesting a “rehearing” since it presupposes that a “final order” has been issued in this case, even though it is clear the board has retained jurisdiction over the reassessment.

Third, the board has already held numerous hearings at which representatives from CLT, including its attorney, and the Town were present and participated. These hearings resulted, as noted above, in a prior order dated March 13, 2003 and a show cause hearing on April 15, 2003. No adequate grounds have been stated as to why these rulings and prior proceedings should now be reconsidered through a rehearing. See also TAX 201.37: paragraph (d) of this rule states that rehearing motions shall “only be granted for ‘good reason’ and not for “harmless error, meaning errors that, if corrected, would not challenge [change] the [b]oard’s ultimate decision”; paragraph (f) precludes

the consideration of “new arguments that could have been raised at the hearing.” CLT made no mention of RSA Ch. 541-A (the Administrative Procedure Act) at the hearing.

Fourth, the board disagrees with CLT’s analysis of whether only “final” orders are subject to time constraints for motions for rehearing or reconsideration. Neither RSA 541:3, contained in RSA Ch. 541 (Rehearings and Appeals in Certain Cases), nor TAX 201.37, both of which state the 30-day time limit for rehearing motions, is so limited. See also RSA 541-A:35, part of RSA Ch. 541-A now relied upon by CLT, which distinguishes a “final” decision or order from other types of agency decisions or orders. Moreover, RSA 541:2 clearly states that “any order or decision” (emphasis added) is subject to the rehearing and appeal provisions set forth in RSA 541:3 and other sections of RSA Ch. 541. These provisions help refute CLT’s premise that only “final” decisions or orders should be subject to a 30-day time limitation.¹

In summary, while CLT clearly took exception to the board’s evidentiary rulings made at the April 15, 2003 hearing, those exceptions were duly noted and do not serve as an adequate basis for granting the Motion.

¹ If there is an ambiguity in the statutory scheme, as claimed by CLT, it undercuts, rather than supports, the Motion because it would create the anomaly that “final” orders or decisions are subject to a 30-day time limitation whereas other orders and decisions are not. The board sees no reason for reading such an anomaly into the statutory scheme. Cf. Anderson v. Fidelity & Cas. Co. of N.Y., 134 N.H. 514, 519 (1991) (“plain meaning” of statutes should be followed “that leads to relatively logical, equitable results”; no anomaly found).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that copies of the within Order have this date been mailed, postage prepaid, to William R. Drescher, Esq., Drescher & Dokmo, P.A., P.O. Box 7483, Milford, N.H., 03055, counsel for the Town; Michael Lambert, Esq., Sheehan, Phinney, Bass and Green, P.A., 1000 Elm St., P.O. Box 3701, Manchester, N.H., 03105-3701; Chairman, Board of Selectmen, Town of Milford, 1 Union Sq., Milford, N.H., 03055; Roy W. Tilsley Jr., Esq., William H. Kelley, P.A., P.O. Box 3280, Manchester, N.H., 03105, counsel for Cole-Layer-Trumble; and Guy Petell, Manager, Bureau of Assessments, Department of Revenue Administration, 57 Regional Drive, Concord, N.H., 03301.

Date: May 29, 2003

Anne M. Bourque, Deputy Clerk