

Town of Milford

Docket No.: 17330-97RA

ORDER

The board has reviewed the department of revenue administration's ("DRA") July 19, 2004 "Motion for Reconsideration and Clarification" ("Motion") with respect to the board's June 29, 2004 Order ("Order"), as well as the "Town's" July 20, 2004 "Objection." The Motion is denied.

The Order responded to the Town's June 15, 2004 "Request for Waiver" ("Request") copied to the DRA and the Town's assessing contractor, Vision Appraisal ("Vision"). While the Motion questions the relief granted to the Town, no appearance or filing of any type was made by the DRA in response to the Request within the 14-day period before the board issued the Order.

The board's rehearing/reconsideration rules, as well as considerations of judicial economy and efficiency, clearly contemplate that a party should present all evidence and arguments before the board makes a ruling. See TAX 201.37(d) and (f), also referencing the "good reason" standard set forth in RSA 541:3. The DRA gives no reason why it failed to make

its position known to the board in the period between the filing of the Request and the issuance of the Order.¹

The Motion cites “RSA 541-A:22, I” and concludes this statute “prohibits agencies from granting waivers to their rules unless a waiver procedure is provided by rule.” The cited statute does not support this conclusion.² The other statute cited by the DRA, RSA 21-J:11, I (Supp. 2002) does contain the language quoted in paragraph 8 of the Motion, but the consequences of a municipality failing to obtain the approval of the reassessment contract by the DRA is nowhere specified.

The Motion appears to recognize the Order does not invalidate any DRA rule, including REV 603.17(c), but only affects its application to a specific reassessment previously ordered by the board for the Town. The board has had continuing jurisdiction over the Town since January, 1998 when it issued its first order in this docket. A number of proceedings, hearings and interim orders culminated in the board’s May 16, 2003 reassessment order (“Reassessment Order”). The board has broad authority to order and review reassessments under the “satisfactory to the board” standard specified in RSA 71-B:17. In exercising this responsibility, the board finds it has the authority to specify how an ordered reassessment should proceed, based on the facts and circumstances pertaining to each municipality.

In this case, the Reassessment Order specified full compliance by the Town with the DRA’s REV 600 rules. After considering the Town’s Request and the Town’s “Contract” with Vision, which had already been negotiated and entered into, as well as other factors (such as the Town’s employment of a full-time assessor available to review abatement requests and defend

¹ The DRA had full notice of the Town’s position, since the Town requested a waiver of REV 603.17(c) from the DRA on May 27, 2004 and the DRA denied that request on June 17, 2004. See Motion, ¶¶ 1-4.

² RSA 541-A:22, I states: “No agency rule is valid or effective against any person or party, nor may it be enforced by the state for any purpose, until it has been filed as required in this chapter.”

appeals), the board concluded compliance with REV 603.17(c) would not be necessary in order for the Town to complete a satisfactory reassessment and therefore amended its own Reassessment Order to that limited effect.

The board has considered the alternate remedies stated in the Motion. For the reasons discussed above, it finds no good reason to “[r]econsider” the Order or rule (counter-factually) that the Contract complies with REV 603.17(c). To the extent the DRA is unable to approve the Vision Contract solely because of noncompliance with REV 603.17(c), the board confirms that, given the reasons outlined in the Order and the board’s broad statutory authority over reassessments, such approval will not be a pre-condition for a satisfactory reassessment in this case.

Any appeal of the Order must be by petition filed with the supreme court within 30 days after the date shown below.

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 a copy of the foregoing Order has this been mailed this date, postage prepaid, to: William R. Drescher, Esq., Drescher & Dokmo, P.A., Post Office Box 7483, Milford, New Hampshire 03055, counsel for the Town; Michael Lambert, Esq., Sheehan, Phinney, Bass and Green, P.A., 1000 Elm Street, Post Office Box 3701, Manchester, New Hampshire 03105-3701, co-counsel for the Town; Chairman, Board of Selectmen, Town of Milford, 1 Union Square, Milford, New Hampshire 03055; Vision Appraisal Technology, 44 Bearfoot Road, Northborough, Massachusetts 01532, Contracted Assessors; Roy W. Tilsley Jr., Esq., William H. Kelley, P.A., Post Office Box 3280, Manchester, New Hampshire 03105, counsel for Cole-Layer-Trumble, Interested Party; and Guy Petell, Manager, Bureau of Assessments, Department of Revenue Administration, 57 Regional Drive, Concord, New Hampshire 03301, Interested Party.

Date: July 29, 2004

Anne M. Stelmach, Deputy Clerk