

Town of Littleton

v.

Department of Revenue Administration

Docket No.: 18170-99ER

FINAL RULING

On June 12, 2000, the board held a hearing on the merits of the “Town’s” appeal, filed on May 12, 2000, of the equalized valuation of property determination by the department of revenue administration (“DRA”) for the 1999 tax year. For all of the reasons stated herein, the appeal is denied.

The board’s authority to review the DRA’s equalized valuation decisions is contained in RSA 71- B:5, II. This statute provides: “Any municipality aggrieved by its equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 20 days The board shall hear and make a final ruling on such appeal within 45 days of its receipt The board’s decision on such appeal shall be final pending a decision by the supreme court.”

To prevail on an appeal, the Town must show that it was “aggrieved” by the DRA’s

determination and that the determination was not in accordance with the law. RSA 21-J:3, XIII.

In this case, the Town failed to make the requisite evidentiary showing and hence did not sustain its burden of proof.

The Town alleged that the “DRA inventory adjustment” used to compute its equalized valuation changed substantially (from approximately \$79 million in 1998 to approximately \$27 million in 1999) and that this adjustment was due primarily to a change in how certain utility property located within the Town’s taxing jurisdiction (the Moore Dam hydro-electric facility on the Connecticut River) was assessed by the DRA. According to the Town, the DRA changed its approach (following the acquisition of Moore by U.S. Generating) from a “unit/net book [value] methodology” to one based on a “market value” appraisal prepared by George K. LeGasse.

Although the Town requested and received a copy of the LeGasse appraisal from the DRA as a discovery request in this proceeding, it did not present that report or any other documentary evidence to the board or establish how, if at all, the report reflected an erroneous value for the Moore facility. Instead, the Town at the hearing relied entirely on testimony by John W. McSorley, the DRA’s Deputy Director for Assessments. Mr. McSorley testified before the board on June 5, 2000, pertaining to the Town’s discovery request, and testified further on June 12, 2000, following the Town’s presentation and at the board’s request.

Mr. McSorley acknowledged that the LeGasse appraisal was used by the DRA to reassess the value of the Moore facility and five other New Hampshire hydro-electric plants acquired by U.S. Generating. The DRA used the value established by this appraisal to collect the statewide Utility Property Tax adopted in 1999 pursuant to RSA Chapter 83-F, and also to make the

adjustments prescribed by RSA 21-J:3, XIII for equalization purposes. The former statute requires the DRA to appraise utility property “at its full and true value,” RSA 83-F:3, and the latter requires the DRA to make such adjustments to town property valuations to bring them to “the true and market value of the property.” RSA 21-J:3, XIII. See also Appeal of Town of Bow, 133 N.H. 194, 198 (1990) (“the market value of a public utility’s property is determined by the DRA.”)

Under the relevant statutes and case law, the DRA had an obligation to make a market value determination of utility property. While the LeGasse appraisal resulted in a higher valuation in 1999, the Town failed to show the DRA did not establish a proper market value for the Moore hydro-electric facility. The Town also failed to show how much, if any, other utility property within the county of Grafton (but not within the Town) was improperly valued by the DRA. Such a showing is necessary since the Town claims to be “aggrieved” by the fact that its share of “county taxes and cooperative school district taxes” increased from 1998 to 1999.¹ Although Littleton’s share of county-wide taxes appears to have increased from 4.7729% in

¹The Town, in paragraph 6 of its appeal document, also alleges that its “total equalized valuation not including utility valuation and railroad monies” went up by approximately \$12 million and affected the Town’s “portion of the state education property tax.” The Town, however, presented no evidence of how the allegedly improper DRA inventory adjustment affected this outcome.

1998 to 5.4792% in 1999, the Town presented no evidence of how much of that increase could be attributed to the reassessment of the Moore hydro-electric facility in relation to the valuation of other utility property within the county of Grafton. The Town's attorney stated that at least a part of this increase may have been due to an unrelated factor, namely economic growth within the Town itself.

While the Town did not carry its burden of proof, the board must note that the substantial change between the DRA's 1998 and 1999 inventory adjustments raises a question as to whether the DRA should commit more resources to the utility portion of the equalization process to ensure consistency of appraisal procedures between "stand alone" utility facilities and the more traditional integrated systems. A case in point is the increase in the DRA's estimated value of six hydro-electric generating facilities from approximately \$16.5 million in 1998, when they were part of an integrated system (New England Power), to approximately \$212 million in 1999, when the DRA estimated their value as "stand alone" generating facilities (acquired by U.S. Generating). This example raises the concern as to whether other properties similarly situated, but not separately owned, are being proportionately valued for equalization purposes.

If the Town had submitted evidence to show such disproportionality in this case, the board's conclusion might be different. However, the Town failed to submit sufficient evidence to meet its burden of showing the DRA failed to comply with its statutory responsibilities with regard to equalization when it used a market-based valuation of the Moore hydro-electric facility instead of "net book value" or some other method. Cf. Town of Bow, supra at 203 ("While it is conceivable that the DRA's method could unfairly disadvantage [the town], we have insufficient

evidence before us upon which we can determine that the allocation has harmed [the town].”)

Therefore, the Town’s appeal is denied.

Findings of Fact and Rulings of Law

Prior to the close of the hearing, the Town requested eight specific findings of fact and rulings of law. TAX 201.36. The board responds to these requests as set forth below in numbered paragraphs corresponding to each request. In these responses, “neither granted nor denied” generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the request was irrelevant; or
- e. the request is specifically addressed in the decision.

1. Neither granted nor denied.
2. Granted.
3. Granted.
4. Neither granted nor denied.
5. Neither granted nor denied.
6. Neither granted nor denied.
7. Neither granted nor denied.

Page 6

Town of Littleton v. Department of Revenue Administration

Docket No.: 18170-99ER

8. Neither granted nor denied.

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 been mailed, postage prepaid (as well as faxed) this date to: John J. Ratigan, Esq., counsel for the Town of Littleton; Chairman, Selectmen of Littleton; and Mark J. Bennett, Esq., counsel for the Department of Revenue Administration.

Date: June 23, 2000

Lynn M. Wheeler, Clerk