

John Murphy

v.

Town of Bartlett and Pear Mountain Associates

Docket No.: 19516-03OS

ORDER

On February 3, 2004, the board held a show cause hearing to determine the merits of an appeal filed by John Murphy (“Murphy”) pursuant to RSA 71-B:16, I. This statute provides a remedy when a property owner can establish that property “not owned by him has been fraudulently, improperly, unequally or illegally assessed.” The “Property” was acquired in 2002 by Pear Mountain Associates (“Pear Mountain”), which was also served with a copy of the hearing notice issued on December 2, 2003.

Mr. Murphy argued:

- (1) in 1994, the prior owners (William and Esther Levy) applied for current use using the current use “A-10” form to put the eligible land of 116.4 acres in current use and the Town taxed the land based on current-use values until a change of ownership occurred in 2002;
- (2) for unknown reasons, the Town did not record the notice of contingent lien (the white counterpart of this form) in 1994 or at any time thereafter;

(3) under the current-use law and regulations, the Town could not allow the new owner to “buy-out” the land use change tax (“LUCT”) liability for anything less than 10% of the full value of the land subject to the LUCT; and

(4) the Town should declare the land was in current use and should collect the 10% LUCT based upon the Town’s subsequent higher valuations of the 12 lots subdivided by Pear Mountain as reflected on the assessment-record cards.

The Town argued:

(1) the A-10 form was signed by the owner, but never recorded;

(2) the Town did assess the 116.4 acres in current use until Pear Mountain purchased the Property in 2002 and then approached the Town to resolve the potential liability issue;

(3) Pear Mountain proposed a payment of \$60,000 to resolve the issue, but the “Selectmen” determined a payment of \$80,000 was reasonable as a good-faith compromise of a disputed claim (because of doubts regarding the ultimate collectability of the tax) and this amount was paid to the Town by Pear Mountain;

(4) the Town sought guidance from the department of revenue administration regarding how to treat the negotiated payment and was advised to treat it as a payment in lieu of taxes; and

(5) Mr. Murphy failed to sustain his burden of proof.

No representative of Pear Mountain was present at the hearing.

Board’s Rulings

The crux of this appeal is whether the Town’s actions in arriving at a settlement with Pear Mountain for payment of \$80,000 in lieu of assessing subsequent LUCTs should be set aside where Pear Mountain’s predecessors in title (William and Esther

Levy) received the benefit of their land being assessed in current use, but the Town did not record the notice of contingent lien required by RSA 79-A:5, VI and VII.

The board's authority in this case, as cited above, is contained in RSA 71-B:16, I which gives the board authority to order a reassessment if it finds property "has been fraudulently, improperly, unequally or illegally assessed." After a review of the unique facts in this case, the board finds that a reassessment order is not justified as the Town's actions were reasonable and prudent for the following reasons.

No statutes or case law provide direct guidance as to how the Selectmen were to have resolved the situation of the disqualification of land assessed in current use but for which no attendant contingent lien had been recorded. Nonetheless, the board finds the Selectmen made a reasonable decision to resolve the questionable LUCT liability of the Property by reaching the \$80,000 settlement with Pear Mountain under the Selectmen's general authority in RSA 41:8 to "manage the prudential affairs of the town" and under their specific authority in RSA 76:16 to abate a tax for good cause shown. See the Selectmen's letter dated September 12, 2003 ("Letter") to the board.

The Selectmen's concern was the Town may not have been able to collect subsequent LUCTs against Pear Mountain or subsequent owners when the land became disqualified from current use (RSA 79-A:7) due to the unrecorded contingent lien and the real risk of litigation or uncollectability of subsequent LUCTs. The Selectmen made a reasonable and prudent decision to resolve this concern through an \$80,000 settlement with Pear Mountain rather than risk the distinct possibility that the subsequent LUCTs

could likely involve significant litigation and possible inability to collect such LUCTs.¹

Given the uncertainty of the Town's legal standing, the board finds their resolution with Pear Mountain is, as they indicated, a good-faith compromise of a disputed claim within the Selectmen's general duties as financial officers of the Town and as assessors.²

Consequently, the board finds the questions raised by Mr. Murphy against the Town and Pear Mountain do not warrant the board to assert its RSA 71-B:16 authority and order a new assessment.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX

¹ The Town's attorney, John Ratigan, acknowledged that while the sum total of the potential subsequent LUCTs would likely have exceeded the \$80,000 settlement, the Selectmen had no reasonable assurance of collecting such LUCTs, and thus, the settlement was prudent. The testimony indicates the Selectmen arrived at the settlement amount by considering the arms-length sales price of the Property (\$1.1 million), deducting the estimated market value of the portion not in current use (\$300,000) and applying the LUCT percentage to the remainder. See also Letter.

² Cf. Annotation, "Power of City, Town, or County or Their Officials to Compromise Claim," 15 A.L.R.2d 1359 ("Generally speaking, a municipality has the inherent power to settle and compromise claims in its favor or against it. The capacity to contract and be contracted with, and to sue and be sued, is the basis for the implied power of the municipality to settle disputed claims, controversies, and matters in litigation. . . . "[I]t may be stated as a general rule that a municipality has the power to compromise claims which exist in its favor or against it and which arise out of a subject matter concerning which the municipality has the general power to contract if at the time of the settlement there was a bona fide reasonable doubt or dispute as to the validity of the claim"); citing J.E.D. Associates, Inc. v. Town of Danville, 122 N.H. 234, 235-37 (1982).

201.37(f). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days from the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify copies of the foregoing Order have been mailed this date, postage prepaid, to John Murphy, RR 1, Box 70, Dundee Road, Intervale, New Hampshire 03845; Taxpayer; John Ratigan, Esq., Donahue, Tucker & Ciandella, 225 Water Street, Exeter, New Hampshire 03833, counsel for the Town; Chairman, Board of Selectmen, RR 1, Box 49, Intervale, New Hampshire 03845, Municipality; and Pear Mountain Associates, Post Office Box 1272, Glen, New Hampshire 03838, Interested Party.

Date: February 24, 2004

Anne M. Stelmach, Deputy Clerk