Jug Hill, LLC

v.

Town of Wakefield

Docket No.: 19868-03CU

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:9, the "Town's" denial of applications for current use on 14 lots designated on Map 6 as Lots 45 – 56, inclusive, and 58 and 59 (collectively, the "Property"). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the Town erred in denying its applications for current use. See TAX 206.06. The Taxpayer failed to carry this burden.

The Taxpayer argued the current-use applications should not have been denied because:

(1) it was the high bidder for the Property at a mortgage foreclosure auction conducted on January 23, 2003;

(2) it was prepared to complete payment of the purchase price and take title by March 9, 2003, within the 45 days required at the auction, but litigation between the foreclosing mortgage institution and the prior owner (Lakeview Village, Inc.) delayed the payment and actual closing until August 21, 2003;

(3) the Town was aware of the Taxpayer's intention to place the Property in current use at all relevant times;

(4) the Taxpayer promptly filed current-use applications after taking title to the Property in August, 2003;

(5) RSA 79-A:5, II provides an extension for filing a current-use application until the date the tax rate is set if an owner is prevented by "accident, mistake or misfortune" from filing by April 15; and

(6) the Town improperly refused to accept the Taxpayer's applications as timely filed.

The Town argued its denial of the current-use applications was proper because:

(1) the Taxpayer was not the "owner of record" until August 21, 2003, well past the April 1 inventory date (RSA 74:1 and RSA 76:2) and the April 15 current-use application date (RSA 79-A:5, II);

(2) the "accident, mistake or misfortune" exception can only apply to the owner of record as of April 1, not someone who subsequently acquires title and, as a consequence, claims he was prevented from taking ownership any earlier; and

(3) the Taxpayer failed to sustain its burden of proof.

Board's Rulings

Based on the evidence, the board finds the Town's denial of the Taxpayer's August 2003 application for current use is proper. In this case, because the timing of certain actions is central to the decision, the board will present a chronology of the pertinent events.

- January 23, 2003 — Foreclosure auction with the Taxpayer being the successful bidder with a bid of $450,000. Taxpayer makes initial deposit of $25,000.

- January 31, 2003 — Taxpayer adds $20,000 to the initial deposit to bring the total deposit to $45,000 or 10% of the successful bid price.
- Prior to March, 9, 2003 — Foreclosing lending institution and prior owner of the Property begin litigation relative to the Property.
- March 9, 2003 — Original closing date passes without transfer of title to Taxpayer due to the ongoing litigation.
- Prior to April 15, 2003 — Taxpayer makes the Town aware of its intent to place the Property in current use as soon as title is acquired.
- August 21, 2003 — Taxpayer acquires title to the Property.
- August 23, 2003 — Taxpayer pays all outstanding taxes on the Property.
- August 25, 2003 — Taxpayer files current-use applications.
- August 28, 2003 — Town denies current-use applications.

RSA 79-A:5, II states:

> "No owner of land shall be entitled to have a particular parcel of his land classified for any tax year under the provisions of this chapter unless he shall have applied to the assessing officials on or before April 15 of said year, on a form approved by the board and provided by commissioner, to have his parcel of land so classified. If any owner shall satisfy the assessing officials that he was prevented by accident, mistake or misfortune from filing said application on or before April 15, said officials may receive said application at a later date and classify the parcel of land hereunder; but no such application shall be received after the local tax rate has been approved by the commissioner for that year."

There was no dispute between the parties that the local tax rate had not been set prior to the Taxpayer filing the current-use applications with the Town. The issue, therefore, is whether the Town improperly refused to receive and grant the current-use applications under the "accident, mistake or misfortune" filing extension provision of RSA 79-A:5, II.

While admitting it did not file the current-use applications on or before the statutory deadline for filing of April 15, 2003, the Taxpayer testified it was fully prepared to take title to the Property "on or before the forty-fifth (45th) day" (March 9, 2003) closing date specified at the auction.[1] The Taxpayer contends that through "misfortune" and no fault of its own, it was prevented from closing and taking title to the Property in March. The ongoing litigation between the foreclosing lending institution and the prior owner was the sole reason for the delay. Further, the Taxpayer testified it regularly conversed with Town officials reiterating its intent to place the Property in current use several times prior to the April 15th statutory filing deadline. In addition to trying to acquire title, the Taxpayer testified it requested the former owner to put the Property in current use but received no response from the former owner who was located in Houston, Texas and did not respond to any of the Taxpayer's requests.

The board finds the Taxpayer is not entitled to have the Property placed in current use for the 2003 tax year. The Taxpayer was not the owner of record on April 1, 2003, the beginning of the tax year, and, therefore, did not meet the threshold "ownership" criteria as it did not acquire title to the Property until August 21, 2003.

The Taxpayer's arguments confuse the ownership requirements for current-use taxation with the filing timeline ("on or before April 15") and excusable extension (due to "accident, mistake or misfortune") provisions in the statute. Eligibility for filing a current-use application "for any tax year" is restricted only to a person who is an "owner of [the] land" at the start of the tax year (April 1) and then makes timely application "to have his parcel of land so classified." See RSA 79-A:2, X, RSA 79-A:5, II and RSA 76:2. The statute must be interpreted in the context of the overall statutory scheme and not in isolation; when the plain language is clear and

[1] See Item #3 in the Addendum of the "MORTGAGEE'S SALE MEMORANDUM AND DEPOSIT RECEIPT" submitted with the Taxpayer's appeal.

unambiguous, no further inquiry regarding legislative intent is required. See, e.g. Appeal of Taylor Home, 149 N.H. 96, 100 (2003); and cases quoted therein.

The current-use statute does not excuse delay in acquiring ownership, but only a delay, under limited circumstances, in filing an application if the land is already owned by the applicant as of April 1.[2] In other words, a person who acquires title (i.e., becomes the "owner of record") after the start of the tax year, whether by design or because the acquisition is unavoidably delayed (by "accident, mistake or misfortune"), cannot "look back" to April 1 in the application process, but is only eligible to apply for current-use classification for a succeeding tax year.[3]

Just as the Taxpayer should not have and prudently did not assume the mantle of ownership by paying all the back taxes prior to August 2003, conversely, the Taxpayer should not and cannot benefit from current-use assessment in 2003 because it was not the owner as of April 1, 2003. Further, no evidence was submitted as to how there was any "accident, mistake or misfortune" that prevented the actual owner of record as of April 15 (Lakeview Village, Inc.) from applying in a timely fashion if it had so wished to place the Property in current use.

For the previously discussed reasons, the board finds the Town did not err in denying the Taxpayer's current use applications for tax year 2003 and the appeal is therefore denied.

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

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[2] Cf. Appeal of Brady, 145 N.H. 308, 309-10 (2000) (appeal dismissed because "accident, mistake or misfortune" exception in inventory filing statute, see RSA Ch. 74, is not applicable to Taxpayer, who completed purchase after April 15, where prior owner had failed to file required inventory).

[3] In the relatively rare instance where the buyer completes an acquisition (takes title and becomes the "owner of record") between April 1 and April 15 but intends to seek current-use classification for that tax year, a clear solution would be for the buyer to require the seller (the owner as of April 1) to cooperate and facilitate the application process. See also CUB 302.05 (permitting later withdrawal of a filed application).

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 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 of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jug Hill, L.L.C., 271 Walsh Road, Wakefield, New Hampshire 03872, Taxpayer; Richard Sager, Esq., Sager, Sager, Wunder & Depree, Post Office Box 385, Ossipee, New Hampshire 03864, counsel for the Town of Wakefield; Chairman, Board of Selectmen, Town of Wakefield, 2 High Street, Sanbornville, New Hampshire 03872; and Current Use Board, c/o Department of Revenue Administration, Post Office Box 457, Concord, New Hampshire 03302, interested party.

Date: April 30, 2004

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Anne M. Stelmach, Deputy Clerk