

James Sullivan

v.

Town of Fitzwilliam

Docket No.: 23569-07PT

ORDER

On March 16, 2009, the board held a limited hearing in two¹ other tax year 2007 appeals raising the same fundamental jurisdictional issue of whether the “Taxpayer” can maintain this appeal in light of the appeal filed in the Cheshire County Superior Court, Docket No. 08-E-0143 (the “Superior Court Action”) for the same tax year by Gary H. Sheldon, Esq. of Sheldon, Davis, Wells & Hockensmith, P.C. on behalf of approximately ninety (90) property owners, including the Taxpayer. This issue was framed in the board’s December 16, 2008 Order. The Taxpayer’s motion to continue the scheduled limited hearing with respect to his appeal was granted by the board on February 26, 2009. The board is sending the Taxpayer concurrently herewith a copy of the order in those two appeals, which discusses the testimony presented at the limited hearing and how the board intends to proceed. The statutes and board rules require that only one appeal can be maintained for a taxpayer’s estate in either the superior court or the board for any one tax year. See RSA 71-B:11; RSA 76:16-a; RSA 76:17; and Tax 201.14.

¹ Teras v. Town of Fitzwilliam, BTLA Docket No. 23622-07PT; and Anderson v. Town of Fitzwilliam, BTLA Docket No. 23510-07PT.

The board finds the Taxpayer in this appeal should be given the same option regarding choice of forum and therefore will require him to choose whether he desires to proceed with this appeal before the board or continue with the Superior Court Action. If he desires to proceed with the board, the Taxpayer, within thirty (30) days of the clerk's date shown below, shall provide the board with a copy of a written request to Attorney Sheldon to withdraw as a named plaintiff in the Superior Court Action and an order (or other written confirmation) from the superior court that such withdrawal has occurred. Upon receipt of these documents, the board will proceed to schedule this appeal for hearing. If these documents are not received, however, the board will conclude the Taxpayer intends to continue with the Superior Court Action and will dismiss the appeal filed with the board.

On the other hand, if the Taxpayer has some compelling need to be heard regarding this choice of forum issue, he should request a hearing in writing from the clerk within this same thirty (30) day period.

The board is sending a courtesy copy of this Order to the Clerk of the Cheshire County Superior Court (Barbara A. Hogan) to apprise her of these procedural developments.

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

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CERTIFICATION

I hereby certify a copy of the above Order has this date been mailed, postage prepaid, to:
James Sullivan, 35 Sandy's Way, Manchester, NH 03103, Taxpayer; Chairman, Board of Selectmen,
Town of Fitzwilliam, PO Box 725, Fitzwilliam, NH 03447; Gary Roberge, Avitar Associates of New
England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm;
Gary H. Sheldon, Esq., Sheldon, Davis, Wells & Hockensmith, P.C., 28 Middle Street, Keene, NH
03431; and Barbara A. Hogan, Clerk, Cheshire County Superior Court, 12 Court Street, Keene, NH
03431.

Dated: March 20, 2009

Anne M. Stelmach, Clerk