

Henderson Holdings at Sugar Hill, LLC

v.

Town of Sugar Hill

Docket No.: 23853-07PT

ORDER

The board held a limited hearing on July 1, 2010 on the “Town’s” May 5, 2010 “Motion for Partial Reconsideration” (the “Motion”) of the board’s April 5, 2010 Order in this docket and the “Taxpayer’s” May 10, 2010 “Objection to Town’s Motion for Partial Reconsideration” (the “Objection”). In addition, the board considered the responses filed by the Town and the Taxpayer to the questions contained in the board’s May 21, 2010 Order and Limited Hearing Notice.

In essence, the Motion seeks reconsideration of one sentence on the “final page” (page 10) of the April 5, 2010 Order (indicating the 2005 abated assessment should apply to tax years 2007 and 2008). The Town now asserts the 2005 abatement ordered by the board in an earlier appeal (BTLA Docket No. 22385-05PT) should not apply to tax year 2008 because the Taxpayer filed a new appeal of the 2008 assessment in Grafton County Superior Court. Henderson Holdings at Sugar Hill LLC v. Town of Sugar Hill, Docket No. 215-2009-EQ-00183 (the “2008 Superior Court Action”). The board agrees.

At the time of the board's April 5, 2010 Order, neither the Taxpayer nor the Town had advised the board of the 2008 Superior Court Action, leading the board to assume (without any facts to the contrary) the abated assessment should apply to tax year 2008 due to the normal operation of RSA 76:17-c (Effect of Abatement Appeal on Subsequent Taxes) when no subsequent appeal has been filed.

Neither the Taxpayer's representative in any of his prior filings with the board¹ nor the Town mentioned the existence of a tax year 2008 appeal and this omission of a very relevant fact influenced the board's wording on page 10 of the April 5, 2010 Order. (The board does not agree with the Town that this fact was not "relevant" since disclosing it to the board could have avoided the need for the Motion entirely, along with the associated expenditures of time and money involved for the board as well as the parties.)

The 2008 Superior Court Action was filed on or about August 31, 2009 (as indicated in the attachment to the Town's response to the board's May 21, 2010 Order scheduling the limited hearing on the Motion). If the Taxpayer had filed a 2008 tax abatement appeal with the board, and if the board had heard that appeal, the prior abatement ordered by the board would not be applicable to the 2008 tax year: instead, the board would have determined anew the proportionality of the Town's assessment based on market value and level of assessment findings for 2008. The board is unable to see why the same outcome should not occur when the Taxpayer filed its tax year 2008 appeal with the superior court. The board and the superior court have concurrent jurisdiction over tax abatement appeals and a taxpayer can elect to file in any tax year

¹ See, e.g., the Taxpayer's "Rehearing, Reconsideration and Clarification" motion, filed by Mr. Lutter on February 20, 2010 and the Town's March 12, 2010 "Objection."

either with the board or with the superior court, but such an election is binding for that tax year.

See RSA 71-B:11, RSA 76:16-a and RSA 76:17.

The board finds the outcomes and benefits intended when the Legislature enacted RSA 76:17-c in 1992 to relieve congested tax appeal dockets should only apply if a taxpayer decides not to file an appeal in a “subsequent” tax year (following a prior appeal to the board or to the superior court). Alternatively, a taxpayer might choose to file a subsequent year tax appeal when the taxpayer believes the prior appeal “will not protect the taxpayer’s rights” for various reasons. See Tax 203.05(n).

RSA 76:17-c is not free of complications when applied to unusual circumstances, of course, but was plainly intended by the Legislature to relieve a taxpayer of the obligation to make annual tax appeal filings in a large number of cases where the grounds for appeal have not changed. When a subsequent tax year appeal is filed and pursued to a substantive decision on the merits, however, the optional protection (or “insurance”) provided by RSA 76:17-c is lost. To argue otherwise, as the Taxpayer does, that the board has continuing jurisdiction under RSA 76:17-c to require the Town to apply the abated assessment for 2005 to 2008, after the 2008 Superior Court Action was filed and is still being prepared for trial, may raise a conflict with RSA 71-B:11.

Insofar as legislative intent is concerned, the entire statutory scheme, not just one sentence or one paragraph in isolation, must be considered to insure the purpose(s) intended by the Legislature is (are) achieved. In other words, the board must read the language at issue in the context of the entire statute as a whole and the statutory scheme. See, e.g., Pennelli v. Town of Pelham, 148 N.H. 365, 366 (2002); Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992); and Great Lakes Aircraft Co. v. City of Claremont, 135 N.H. 270, 277 (1992).

The board's Decision in the 2004 and 2005 appeals (ordering a tax abatement in each year) did not become final until December 19, 2008 (in the Order denying the Town's reconsideration motion), a date several months after the tax year 2008 tax bills were issued by the Town (on October 30, 2008). (See BTLA Docket Nos. 21034-04PT and 22385-05PT.) At that time, the 2007 appeal (filed by the Taxpayer on September 2, 2008) was pending with the board and neither the Taxpayer nor the Town were certain whether abatements would apply for the earlier years. This timing helps explain why the Town did not abate the 2008 assessment, since the 2007 appeal, when it was filed, and before it was dismissed, placed at issue the unabated assessment on the Property for both years.

In conclusion, and after a detailed review of the special facts and chronology presented, the board grants the Motion. The board is guided by the reasoning and discussion regarding the application of the subsequent year statute contained in its prior orders (which need not be repeated here).² Because the Taxpayer chose to file its 2008 appeal with the superior court, it is the court's jurisdiction, not the board's, to determine the proportionality of the tax year 2008 assessment through the 2008 Superior Court Action. (See RSA 76:17 and RSA 71-B:11.) Therefore, the board corrects the sentence requiring clarification in its April 5, 2010 Order (on page 10) to read as follows:

Because the 2007 appeal was dismissed for lack of jurisdiction rather than on substantive grounds, and because it was not a judgment on the merits, the subsequent year statute, RSA 76:17-c, applies and the Property is entitled to an abatement (based on the 2005 ordered assessment) for tax year 2007.

² See, e.g., pages 3 – 10 of the April 5, 2010 Order in this docket and the December 19, 2008 Order in BTLA Docket Nos. 21034-04PT and 22385-05PT

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 copies of the above Order have this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Adele M. Fulton, Esq. and J. Justin Sluka, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the Town; Chairman, Board of Selectmen, Town of Sugar Hill, PO Box 574, Sugar Hill, NH 03585; and Brett S. Purvis & Associates, Inc., 3 High Street, 2A PO Box 767, Sanbornville, NH 03872, Contracted Assessing Firm.

Dated: July 15, 2010

Anne M. Stelmach, Clerk