

Robert Webb

v.

Town of Brentwood

Docket No.: 24030-08PT

ORDER

The board has reviewed the “Town’s” August 26, 2010 Motions for Rehearing, Reconsideration and Clarification (the “Motion”) of the August 9, 2010 Decision in this appeal filed by Mr. James Michaud, Century Consulting. The September 1, 2010 suspension order is hereby dissolved and the Motion is denied for the reasons noted below.

Rehearing motions are governed by RSA 541:3 and Tax 201.37. The moving party must demonstrate “good reason” exists for a rehearing. See Tax 201.37(e). Parties are obligated to present all evidence and arguments at the hearing and therefore rehearing motions will not be granted “to consider evidence previously available to the moving party but not presented at the hearing or to consider new arguments that could have been raised at the hearing.” Tax 201.37(g).

The Town seeks rehearing and reconsideration because it asserts “the BTLA’s August 9, 2010 decision was erroneous in fact, law and rule.” (Motion, p. 1). For several reasons, the board disagrees with Town’s assertions contained in the Motion.

First, the Town argues the board should not have allowed the submission of the “Taxpayer’s” appraisal because the Taxpayer did not “renotify” the Town it would be relied upon at the hearing pursuant to Tax 201.35. During its deliberations regarding the Motion, the board reviewed the tape recording of the hearing. At hearing, the board ruled it would allow the Daigneault Appraisal into evidence because the Town acknowledged it had the appraisal in its possession for more than a year as it had been provided with the Taxpayer’s abatement application and it had taken the opportunity to review it and therefore was not prejudiced by its submission. Further, as stated during the hearing, the board has the authority to waive its rules “when justice otherwise requires”. See Tax 201.41(b). The court has held that “[t]he tax abatement scheme is written to make the proceedings free from technical and formal obstructions. Arlington Mills v. Salem, 83 N.H. 148, 154 (1927). ‘It should be construed liberally, in advancement of the rule of remedial justice which it lays down.’ *Id.* (quotation omitted).” GGP Steeplegate v. City of Concord, 150 N.H. 683, 686 (2004). The board indicated at the hearing it would give the Taxpayer’s appraisal the weight it deserved and would base its decision on a thorough review of all the evidence and testimony received.

Second, the Town contends the assessment should be based on a market value finding of \$120,000 for the buildings and the 80,000 square feet of land not in current use “plus the parcels current use land values of \$2,442 on the remaining 18.2 [sic] acres.” (Motion at p. 4).¹ The record does not support such a finding. A review of the tape recording of the hearing clearly indicates that on more than one occasion the Town testified the market value for the “Property” was \$120,000. For example, at index 2220 of the hearing tape, Mr. Michaud states his “opinion

¹ The board notes the 2008 assessment-record card indicates the land not in current use is 80,000 square feet and 18.463 acres is in current use. The Michaud Appraisal values the Property as 2.0 acres of land not in current use and the balance of the 20.3 acres in current use.

of market value is \$120,000 inclusive of the current use land.” Later during the hearing, Mr. Michaud states he “did not split off the value of the land attributable to the primary site or the current use land.” Municipality Exhibit A, the Town’s summary appraisal report prepared by Mr. Michaud, also lends support to his testimony. On the first page of the appraisal, Mr. Michaud writes “the estimated market value of the fee simple estate as of 04/01/2008 of the property referenced above... was \$120,000.” The “property referenced above” is listed as “31 Middle Road, Brentwood, NH 03833 (aka Tax Map 212 Lot 21)”. Further, on the second page of the appraisal, at subheading 10, Mr. Michaud writes “[c]onsidering the fee simple rights, the property has a value representative of market conditions on 04/01/2008 of: \$120,000.” The board notes several vague statements in the Michaud Appraisal which could suggest the ad valorem value was appraised separately from the current use value; however, the board finds the ambiguity in the Michaud Appraisal does not support the testimony at the hearing. If the intent of the Town was to separate the value of the buildings and the land not in current use from the value of the remaining current use land, Mr. Michaud should have clearly explained that methodology during his presentation.

Last, the board notes its determination of the Property’s \$120,000 market value was based on all the testimony and evidence submitted which included both the Daigneault Appraisal and Michaud Appraisal. See pgs. 4 and 5 of the Decision. A thorough review of the record supports the Decision and the Motion is therefore denied.

Any appeal of this Order must be by petition to the supreme court filed within thirty (30) days of the date shown below, see RSA 541:6, with a copy provided to the board in accordance with Supreme Court Rule 10(7).

Robert Webb v. Town of Brentwood

Docket No.: 24030-08PT

Page 4 of 4

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Robert Webb, 37 Middle Road, Brentwood, NH 03833, Taxpayer; Chairman, Board of Selectmen, Town of Brentwood, 1 Dalton Rd., Brentwood, NH 03833; and Jim Michaud, Century Consulting, 11 Laurel Road, Hooksett, NH 03106, representative for the Town.

Date: 11/12/10

Anne M. Stelmach, Clerk