

Portland Pipe Line Corporation

v.

Town of Gorham

Docket Nos.: 24198-08PT, 25123-09PT, 25539-10PT and 26176-11PT

ORDER

The board is in receipt of two motions from the “Town”: (1) a September 12, 2012 “Motion to Reconsider” (the August 24, 2012 Order); and (2) a September 19, 2012 “Motion to Consolidate” the tax year 2011 appeal (Docket No. 26176-11PT, filed on August 15, 2012) with the three prior year appeals which have been consolidated for hearing. The “Taxpayer” filed separate “Objection and Memorandum” pleadings on September 21 and 27, 2012, respectively, opposing these motions. The board denies the Motion to Reconsider and denies the Motion to Consolidate for the reasons noted below.

The Motion to Reconsider

Page 2 of this motion repeats the Town’s request “to exclude from evidence and consideration . . . the appraisal report of the Department of Revenue Administration [“DRA”] prepared for purposes of RSA 83-F.” This renewed request is based on an attached letter from DRA’s “Revenue Counsel” discussing the confidentiality provisions and exceptions contained in RSA 21-J:14.

The board has read the provisions of this statute for itself and has considered both the context of the disputes between the parties and the Taxpayer's intention to introduce the DRA appraisal report at the hearing of these appeals as one of a number of items of evidence to meet its burden of proof. The Taxpayer has represented to the board that its presentation will include another appraisal and other evidence, not simply the DRA appraisal report.

The board does not agree the Town will be "denied due process" if the DRA appraisal report is admitted into evidence, as set forth in the board's March 22, 2012 Order. Even if the board were to assume a municipality can assert such a constitutional right, the Town cites no legal authority to establish its contours or explain with sufficient specificity how that right would be violated.

The Taxpayer's September 21, 2012 Objection and Memorandum (at p. 1) correctly notes this is "the Town's third attempt to persuade the [b]oard to exclude the DRA [a]ppraisal" and asserts these "repetitive attempts . . . are a waste of the Board's and the Taxpayer's resources." The Taxpayer then goes on to detail the many reasons the Motion to Reconsider should be denied. Without repeating those reasons here, the board agrees the Motion to Reconsider should be denied.

In addition to arguing for denial of the Motion to Reconsider, the Taxpayer makes a repeated request of its own. This request is for an award of "attorneys' fees for having to respond to substantially the same motion for a third time." (See September 21, 2012 Objection and Memorandum, unnumbered page four.) The board denied the Taxpayer's prior request for attorney's fees. (See August 24, 2012 Order, p. 2.) For many of the same reasons, and also because the Town has presented additional information regarding the DRA's position, the board

finds no award of “attorneys’ fees” to the Taxpayer is warranted at this time. See RSA 71-B:9; and Tax 201.39 (authorizing and prescribing the standards for such an award).

The Motion to Consolidate

The board also denies the Motion to Consolidate the recently filed tax year 2011 appeal with the three prior year appeals. For the reasons stated in the September 27, 2011 Objection and Memorandum, the board finds the 2011 appeal should be processed and scheduled for mediation and hearing in the ordinary course to allow the parties sufficient time to undertake whatever discovery and appraisal preparation they may deem necessary. The three prior year appeals were previously consolidated and are now scheduled for hearing on December 11-14, 2012.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Jonathan A. Block, Esq. and Jeffrey M. White, Esq., Pierce Atwood, LLP, Merrill’s Wharf, 254 Commercial Street, Portland, ME 04101, Counsel for the Taxpayer; Robert Upton, II, Esq., Upton & Hatfield, LLP, P.O. Box 2242, North Conway, NH 03860, Counsel for the Town; Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, NH 03581; and George E. Sansoucy, George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584, Contracted Assessing Representative.

Dated: October 1, 2012

Anne M. Stelmach, Clerk