

Steven J. and Laura A. Snelling

v.

Town of Charlestown

Docket No.: 24591-08PT

DECISION

The board has reviewed the “Town’s” January 13, 2010 Motion to Dismiss (“Motion”) and the responses filed by the “Taxpayer” and the Town after the board’s February 2, 2010 Order (“Order”). The board dismisses the appeal for the reasons stated in Sections I, II and III of the Motion, but denies the Town’s request for attorney’s fees and costs (a request stated in Section IV of the Motion, but not repeated in the “Town’s Response to Board Order of 2/2/10”).

The board finds merit in the Town’s argument that the Taxpayers are attempting to litigate issues relating to alleged “illegal taking” claims of part of their “Property” by the Town, rather than whether they are entitled to a tax abatement based on disproportional assessment (for example, with market value evidence adjusted by the level of assessment to meet their burden of proving disproportionality). The board simply has no jurisdiction to decide the other issues the Taxpayers seek to raise in this RSA 76:16-a tax abatement appeal filed for tax year 2008.

The board further finds, however, that an award of costs and attorney’s fees is not warranted on the facts presented in light of the standards set forth in RSA 71-B:9 and Tax 201.39. While the Motion initially contended the Taxpayers “should have known” the applicable law supporting the Town’s position before filing the appeal, it is not clear from the record

presented, including the parties' responses to the Order, that the appeal was "frivolously brought [or] maintained." In other words, the board is unable to find, on the limited record presented, that the Taxpayers necessarily had an improper purpose in filing the appeal that would warrant an award of monetary sanctions.

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 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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

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 foregoing Decision has this date been mailed, postage prepaid, to: Steven J. and Laura A. Snelling, 68 Unity Stage Road, Charlestown, NH 03603, Taxpayers; Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street Lebanon, NH 03766, counsel for the Town; Chairman, Board of Selectmen, Town of Charlestown, 26 Railroad Square - PO Box 385, Charlestown, NH 03603; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: 2/22/10

Anne M. Stelmach, Clerk