Town of Tilton

v.

Natalie M. Costa

Docket No.: 25423-10OS

DECISION

Upon review of the allegations contained in the October 26, 2010 "Petition" filed by the "Town" and the applicable statutes prescribing jurisdiction, the board finds dismissal of the Petition is appropriate. The jurisdictional statutes invoked in the Petition (RSA 71-B:16, II and RSA 79-A:12, II) do not support the maintenance of this action regarding the "current use status" of a specific parcel of property (Tax Map U2, Lot 47) for the following reasons.

First, the issue of whether Lot 47, owned by Natalie M. Costa (the "Taxpayer"), is properly in current use is now before the Belknap County Superior Court. According to the Petition (¶7), the Taxpayer appealed to that tribunal in separate dockets (Nos.: 211-2010-CV-00206 and 211-2010-CV-00207) both the "ad valorem" assessment for tax year 2009 and the "LUCT" (land use change tax) assessed by the Town (when the Town allegedly discovered the Property should not have been in current use for at least five years). While the Town has allegedly filed a motion to "stay" both appeals (presumably based on the Petition filed with the board), the superior court has not yet ruled on this

motion and it is by no means clear a stay would be appropriate or justified under the governing law.

The board reaches this conclusion based on the following reasoning. To the extent the Town is correct (and it may or may not be) that Lot 47 does not qualify for a current use assessment (allegedly because the property "had several hardwood trees growing on it"), that question is currently on appeal by the Taxpayer in the superior court and should be decided there because the superior court has concurrent jurisdiction with the board to hear and decide appeals raising such issues: compare RSA 79-A:9; RSA 79-A:10; and RSA 79-A:11; see also RSA 79-A:2, XIV and Cub 301.12, which contain "wetland" definitions.

Moreover, when a taxpayer chooses one tribunal (the superior court) in which to file an appeal, that tribunal has sole jurisdiction to resolve all issues presented under these statutes. Here, according to the Petition, the Taxpayer has presented current use and ad valorem issues to the superior court and this choice need not, and should not, be overturned by the filing of a petition with the board.

Second, it appears the Town assessed the LUCT based on what the Taxpayer "should have paid [in] ad valorem taxes from her purchase of the Property in April, 2004 through the 2008 tax year (with credit for current use taxes paid)." (Petition, ¶6.) To the extent the Petition asks the board to "order a reassessment of taxes previously assessed for the tax years 2004 through 2008," the Town will have obtained the relief it has alleged it is entitled to if its position is upheld in the superior court tax appeals.

Finally, the authorities cited by the Town are simply not persuasive on the question of whether the board has jurisdiction to grant the relief the Town is seeking. See, e.g., Wolf v. Town of Chichester, BTLA Docket No.: 19957-03OS (October 29, 2004). In Wolf, a municipality had erred and had "mistakenly placed [14 acres of land] under current use taxation." Id. at p. 2. When an adjacent property owner (Wolf) objected and filed an RSA 71-B:16 appeal, the board exercised its jurisdiction, but limited the relief granted to an ad valorem assessment of the property for the current tax year (2003) only and did not overturn the municipality's decision not to impose a LUCT (due to a "zero" assessment). Id. at pp. 4-5.

The board is, of course, mindful of the jurisdictional statutes (RSA 71-B:16, II and RSA 79-A, II) cited in the Petition. On their face, these statutes confer broad authority when "it comes to the attention of the board from any source . . . that a particular parcel of real estate or item of real property . . . has been fraudulently, improperly, unequally, or illegally assessed." Such authority, however, must be exercised prudently and in light of the determinative factors that the superior court, by reason of the appeals already filed by the Taxpayer and the specific relief the Town is seeking, has jurisdiction to decide all of the issues presented. As the board noted in City of Lebanon v. Dartmouth College Trustees, et al., BTLA Docket No.: 10914-91 (January 5, 1993):

> It is evident from a review of the legislative intent and a review of case law that this statute was not intended to replace or be a "back door" appeal route to the specific requirements of RSA 76:16-a. See Appeal of Wood Flour, Inc., 121 N.H. 991 (1981)...; Appeal of Gillin, 132 N.H. 311

> (1989). Rather, it was intended to give the board the authority to broadly scrutinize the legality of assessments that come to its attention from any source. Such review is generally initiated by the board when there is evidence of clear violation of the law or gross assessment irregularities.

Consequently, and for these reasons, the board finds it would be improper and ill-advised to exercise jurisdiction through this Petition. The Petition is therefore dismissed.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") within thirty (30) days of the clerk's date below, <u>not the date this decision is received</u>. 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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark H. Puffer, Esq., Preti Flaherty Beliveau & Pachios, P.O. Box 1318, Concord, NH 03302-1318, Counsel for the Town; Douglas P. Hill, Esq., Nungesser & Hill, P.O. Box 665, Meredith, NH 03253, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Tilton, 257 Main Street, Tilton, NH 03276; and a courtesy copy to the Belknap County Superior Court, James I. Peale, Acting Clerk, 64 Court Street, Laconia, NH 03246.

Date: 11/12/10

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Anne M. Stelmach, Clerk

Town of Tilton

v.

Natalie M. Costa

Docket No.: 25423-10OS

ORDER

This Order responds to the "Town's" December 8, 2010 Motion for Reconsideration ("Motion"). The Motion is denied for the following reasons.

The board's November 12, 2010 Decision, denying the Town's "Petition" requesting the board assert jurisdiction pursuant to RSA 71-B:16, II and RSA 79-A:12, II, found it would be improper for the board, at this time, to assert jurisdiction when the "Taxpayer" had appealed to superior court the Town's issuance of the land-use-change tax. Because that action is now proceeding in superior court (see paragraph 7 of the Motion, which states the "Town has withdrawn its Motion to Stay the Superior Court action"), the board finds asserting jurisdiction relative to prior year ad valorem assessments would be premature until the superior court action is finally resolved. If,

after resolution of the superior court action, the Town believes it is appropriate to file another petition with this board, it may do so at that time.

Pursuant to RSA 541:6, any appeal of this Order by the Taxpayer/Municipality to the supreme court must be filed within thirty (30) days of the date on this Order with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

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Dated: December 21, 2010

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Anne M. Stelmach, Clerk