

Candela Investments, LLC

v.

Town of Windham

Docket No.: 25573-10PT

The board has reviewed the “Motion to Dismiss Appeal” (the “Motion”) filed by the “Town” on September 26, 2011 and the response to the Motion filed by the “Taxpayer” on September 27, 2011. The Motion is denied.

The board finds, contrary to the Motion, the abatement application filed by the Taxpayer with the Town was timely. Therefore, the Town should have considered the merits of the abatement application rather than denying it solely on procedural grounds as untimely. The board remands the abatement application to the Town for further consideration and action within 60 days of the date of this Order.

Within that time frame, the Town shall notify the Taxpayer and the board of the Town’s decision whether to grant or deny a tax abatement. Following that decision, the Taxpayer shall notify the board within 30 days as to whether it intends to continue with this appeal.

There is no dispute the abatement application was filed with the Town on February 24, 2011, approximately one week before the statutory filing deadline of March 1. (See RSA 76:16, I.) The fact one page of this document appears to be a copy of a fax (rather than an original) is not a sufficient reason, in this case, for the Town to reject the filing. To the extent the Town argues dismissal is appropriate on

the facts presented, the board does not agree, especially in light of the board's authority to provide relief "when justice otherwise requires." (See Tax 201.41(b).)

Reliance by the Town on Tax 201.17 is misplaced because this rule prescribes a procedure for "Nonconforming Documents" filed with the board, not the Town. In any event, the Taxpayer's timely response to the Town Assessor (in an April 6, 2011 e-mail after the abatement application was returned on April 4, 2011) makes it clear the Taxpayer did not agree with the Town that an original signature was required on the abatement application or that the document as filed was nonconforming.

Greenhoe and McBreen v. City of Laconia, BTLA Docket No. 19859-02PT, cited in the Motion (at p. 3), is factually distinguishable and does not support the remedy of dismissal sought by the Town. In that case, the board decided dismissal was too harsh a sanction to impose when a party was not available to sign the abatement application: it was filed on the last date permitted without any taxpayer signature at all and, after the municipality complained, a faxed page with the taxpayer's signature was submitted approximately three weeks after the statutory deadline. Here, in contrast, the faxed page was included with the abatement request filed well before the statutory deadline.

Further, the Town has not shown any prejudice resulted from receiving a faxed page rather than an original signature. The Taxpayer is a limited liability company ("LLC") and the person signing the abatement request (Fernando Hilarion) is the owner and member of the LLC, a matter of public record reflected on the secretary of state's website. Therefore, his authority to sign on behalf of the LLC cannot be in dispute. While the Town may have a preference for original signatures, and while this preference is understandable, on the facts presented submission of a faxed signature or a copy of a page containing a signature is not adequate grounds for dismissal of an abatement application.

For all of these reasons, the Motion is denied and this appeal is remanded to the Town for the further action described above.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing Order has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, Taxpayer Representative; Chairman, Board of Selectmen, Town of Windham, PO Box 120, Windham, NH 03087; and, Bernard H. Campbell, Esq., Beaumont & Campbell Prof. Assn., 1 Stiles Road - Suite 107, Salem, NH 03079, Counsel for the Municipality.

Date: 10/12/11

Anne M. Stelmach, Clerk