

**Littleton Hospital Association
d/b/a Littleton Regional Hospital**

v.

Town of Littleton

Docket No. 26537-11PT

ORDER

The board has reviewed the “Town’s” June 28, 2013 Motion in Limine (“Motion”), the original of the Lessard Affidavit filed in support of the Motion on July 8, 2013 and the “Taxpayer’s” July 10, 2013 “Objection” to the Motion. The Motion is denied for many of the reasons stated in the Objection and the following additional findings.

In general, the board is inclined to view favorably pre-trial motions that actually serve to narrow and streamline the issues for a hearing on the merits. The Motion does not serve this purpose. To the extent the Motion (p. 9) seeks entry of an “order that excludes all evidence at the hearing on the merits in support of a claim that areas of the facility that the Town taxed for the 2011 tax year should be tax exempt,” the board finds such an order is unwarranted and would deprive the Taxpayer of its full rights to contest the proportionality of the assessment. See, e.g., the 1906 “Winnepeseogee” supreme court decision cited and quoted in the Objection (pp. 2-3); and, more generally, GGP Steeplegate, Inc. v. City of

Concord, 150 N.H. 683, 686 (2004) (the “well established rule” is that tax abatement proceedings should “remain free from technical and formal obstructions”).

The Town claims it wishes to seek “the maximum amount of information.” (Motion, p. 6.) Yet, the effect of the Motion would be to curtail and limit the evidence the Taxpayer would be able to present at the hearing on the merits. The Town can, of course, do whatever “discovery” it feels is appropriate and cost effective, but appears to have adequate information already at its disposal (reflected in the Lessard Appraisal) to defend this tax abatement appeal without excessive costs or further delays.

Insofar as the substantive issues are concerned, the board previously denied a “Motion to Dismiss” filed by the Town’s attorney which presented similar arguments. (See March 26, 2013 Order, pp. 2-6.) The Town’s attorney claims (Motion, p. 2) the Town wished to make an additional response at the time the board denied the Town’s earlier Motion to Dismiss, based upon the Taxpayer’s response to that motion. The Town could have, but did not, request leave to file such a response. (See Tax 201.18(d), citing Tax 201.41.) The Town also could have, but did not, file a reconsideration motion. (See RSA 541:3 and Tax 201.37.)

The Taxpayer argues the Town did not comply with Tax 201.18(a)(4). This rule, however, is tempered by paragraph (b) quoted below,¹ which excuses, to some degree, the Town’s failure to seek concurrence, if not its failure to include an appropriate statement in the Motion.

¹ “The moving party shall make a good faith attempt to obtain concurrence from the opposing party in the relief sought, except for dispositive motions or other motions where it can reasonably be assumed the moving party will be unable to obtain concurrence. The motion shall recite compliance with this paragraph.”

In brief, the Motion is denied. The board further finds the Taxpayer has not stated sufficient grounds to require the Town to ‘reimburse’ the Taxpayer for “its attorneys’ fees expended in responding to” the Motion. (Cf. Objection, pp. 5-6; RSA 71-B:9; and Tax 201.39.)

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Mark C. Russell, Esq., Samaha Russell Hodgdon, P.A., P.O. Box 70, Littleton, NH 03561, counsel for Taxpayer; Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the Town; and Town of Littleton, Chairman, Board of Selectmen, 125 Main Street, Suite 200, Littleton, NH 03561.

Date: 7/24/13

Anne M. Stelmach, Clerk