

In Re:

Public Service Company of New Hampshire

(See Attached Case List)

ORDER DENYING DIRECTED VERDICT MOTION

This Order addresses the “municipalities” joint motion for a “directed verdict” (the “Directed Verdict Motion”). For the reasons stated below, the board denies the Directed Verdict Motion and a corollary motion to waive Tax 201.18(d), a rule governing motion practice.

The relevant procedural background is somewhat detailed and can be summarized as follows:

- A. The Directed Verdict Motion was initially made orally on February 19, 2015, during the fourth day of the consolidated hearing on the merits of these appeals, after presentation of the “Taxpayer’s” case in chief. (Cf. “Day 4 PSNH Hearing Transcript,” pp. 72-109.) The parties presented extensive oral arguments, with citation of relevant authorities, on that date. The board stated it would need additional time “to review all of the authorities cited” and therefore decided to take this motion “under submission,” allowing the parties an opportunity “to present further arguments in their briefs, subsequent to the hearing, if they wish.” (*Id.*, p. 109.)
- B. On April 6, 2015, within the timeframe established following the close of the hearing, the municipalities filed a written version of the Directed Verdict Motion as part of their post-hearing brief (the “Joint Motion for Directed Verdict and Trial Memorandum of Law of the Municipalities”). In this pleading (pp. 8-17), the municipalities state they “hereby renew their prior Motion for Directed Verdict” and present additional arguments and case

authorities, prompting the Taxpayer, on April 16, 2015, to file its “Objection” to the “Joint Motion for Directed Verdict.”

- C. The municipalities then attempted (on April 21, 2015) to file a response to the Objection without seeking waiver of Tax 201.18(d), which provides: “Once an objection is filed with the board, no further documents pertaining to the underlying motion shall be accepted from any party unless a waiver is granted pursuant to Tax 201.41.”
- D. After being reminded by the Clerk of this rule, the municipalities filed a “Motion to Waive Rule [sic] Tax 201.18(d)” pursuant to Tax 201.41 on April 29, 2015 (the “Waiver Request”) because they wish “to file a Brief Reply to said Objection for the sole purpose of setting forth the correct legal standard.”
- E. The Taxpayer filed a timely objection to this waiver request on May 11, 2015 (the “Waiver Objection”), arguing it should be denied.

The board is not persuaded any further pleadings from either party would be helpful in light of the fact the parties have already had a full and fair opportunity to argue and brief their respective positions and there has been no showing by the municipalities that “justice . . . requires [otherwise].” [Cf. Tax 201.41(b) and (a), which further provides such waiver requests “shall not be routinely granted.”] Consequently, the Waiver Request is denied.

The board bases its denial of the Directed Verdict Motion on a full review of the entire record and for the reasons stated below and in Section I of the Objection. The legal authorities cited by both the municipalities and the Taxpayer makes it clear that directed verdict motions are procedural in nature and “may” be granted at the discretion of the trial court “only if [the trial court] determine[s], after considering the evidence and construing all inferences therefrom most favorably to the non-moving party, that no rational juror could conclude that the non-moving party is entitled to any relief.”

Kelleher v. Marvin Lumber & Cedar Co., 152 N.H. 813, 840 (2005) (emphasis added),
quoting from Dillman v. N.H. College, 150 N.H. 431, 434 (2003).

An earlier supreme court decision, Cloutier v. A. & P. Tea Co., Inc., 121 N.H.
915, 920 (1981) held this discretionary standard for granting a directed verdict constitutes
a “stringent test” requiring the trial court to find “the plaintiff’s claim was completely
without merit,” quoting from earlier decisions, as follows:

A trial court may grant a directed verdict ‘only when the evidence and all
reasonable inferences therefrom, construed most favorably to the party opposing
the motion, would not enable a jury to find for that party.’ London v. Perreault,
118 N.H. 392, 394, 387 A.2d 342, 344 (1978); Amabello v. Colonial Motors, 117
N.H. 556, 561, 374 A.2d 1182, 1185 (1977).

(Emphasis added.)

Further, the board agrees with the distinctions drawn by the Taxpayer between the
responsibilities of a jury, on the one hand, and those entrusted to a board (or, for that
matter, a judge in a ‘bench trial’). Unlike superior court cases, where juries can be used
to hear and decide contested issues of fact (subject to the right of a party to seek entry of
a directed verdict replacing a jury outcome), appeals filed with the board are not tried
before a jury. See Objection, pp. 1-2, quoting from Conrad v. N.H. Dept. of Safety, ___
N.H. ___, 104 A.3d 1029, 1038-39 (2014):

[The trial court] “may not weigh the evidence or judge the credibility of witnesses
and should deny the motion for a directed verdict unless it can affirmatively
determine that the plaintiff is not entitled to any relief on the evidence presented.”
Clark & Lavey Benefits Solutions v. Educ. Dev. Ctr., 157 N.H. 220, 226, 949
A.2d 133 (2008).

Applying these standards and recognizing the respective roles of trial judges and juries,
the board is unable to find any persuasive reason to grant the Motion. The municipalities

have cited no authority where either the board or the superior court in a non-jury trial has granted such a motion.¹

Denial of the Directed Verdict Motion is, of course, separate and distinct from the board's findings, to be issued in a subsequent Decision, as to whether or not the Taxpayer has met its burden of proving disproportional assessment in each municipality in each tax year under appeal. In brief, and as stated by the Taxpayer in the Waiver Objection (p. 2), "[t]hese appeals should be decided based on the full record."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chairman

Albert F. Shamash, Member

Theresa M. Walker, Member

¹ Further, and as reflected in the Day 4 PSNH Hearing Transcript (e.g., pp. 94-98), there was some question as to whether the Directed Verdict Motion could or should be viewed alternatively as a motion to dismiss. If so viewed, the board finds there is no basis for granting a motion to dismiss these appeals.

PSNH CERTIFICATION FOR TAX YEAR 2011

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Margaret H. Nelson, Esq., Sulloway & Hollis, 9 Capitol Street, Concord, NH 03301, Taxpayer representative; Walter L. Mitchell, Esq. and Judith E. Whitelaw, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246; Mr. George E. Sansoucy and Mr. Brian D. Fogg, George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; Mr. George Hildum, 2 Sanborn Road, Concord, NH 03301; Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella, PLLC, 56 NH Route 25, PO Box 214, Meredith, NH 03253; Justin L. Pasay, Esq., Donahue, Tucker & Ciandella, PLLC, 111 Maplewood Avenue - Suite D, Portsmouth, NH 03801; Matthew R. Serge, Esq., Upton & Hatfield LLP, PO Box 1090, Concord, NH 03302; Shawn M. Tanguay, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766; and Mr. Wil Corcoran, Corcoran Consulting Associates, Inc., PO Box 1175, Wolfeboro Falls, NH 03896.

PSNH CERTIFICATION FOR TAX YEAR 2012

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Margaret H. Nelson, Esq., Sulloway & Hollis, 9 Capitol Street, Concord, NH 03301, Taxpayer representative; Walter L. Mitchell, Esq. and Judith E. Whitelaw, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246; Mr. George E. Sansoucy and Mr. Brian D. Fogg, George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella, PLLC, 56 NH Route 25, PO Box 214, Meredith, NH 03253; Shawn M. Tanguay, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766; Matthew R. Serge, Esq., Upton & Hatfield LLP, PO Box 1090, Concord, NH 03302; Justin L. Pasay, Esq., Donahue, Tucker & Ciandella, 111 Maplewood Avenue - Suite D, Portsmouth, NH 03801; Mr. Wil Corcoran, Corcoran Consulting Associates, Inc., PO Box 1175, Wolfeboro Falls, NH 03896; Brett S. Purvis & Associates, Inc., c/o Allison Purvis, 1195 Acton Ridge Road, Acton, ME 04001; and Vincent Appraisal Associates LLC, Attn: Richard Vincent, CNHA, 68 Currier Road, Hill, NH 03243.

Dated: 5/19/15

Anne M. Stelmach, Clerk