

In re: Town of Seabrook

Docket No.: 26624-12OS

DECISION

The board held a noticed hearing, pursuant to its October 29, 2012 Order (the “October 29 Order”), on November 30, 2012 for the presentation of additional facts and arguments regarding the partial tax abatements granted on July 18, 2012 for tax years 2007 – 2011 on one property (Map 7, Lot 90, at 944 Lafayette Road, the “Property”), a mobile home park owned by the “Taxpayer”: T Park Realty Trust (Dave Benoit, Trustee).

In attendance at the November 30, 2012 hearing to provide testimony and legal arguments were: the Town’s assessor (Angela Silva); and the Town’s attorneys (Robert D. Ciandella, Esq. and Justin L. Pasay, Esq. of Donahue, Tucker & Ciandella, PLLC). At the close of the hearing, the Town requested and was granted leave to file a legal memorandum and to request findings of fact and rulings of law. The board received the Town’s Memorandum of Law (“Memorandum”) and “Proposed Findings of Fact and Rulings of Law” (“Proposed Findings”) on December 10, 2012.

At issue is whether the Town selectmen had the statutory authority to grant partial tax abatements for five years even though the Taxpayer never filed any tax abatement applications. The board, after consideration of the evidence and arguments presented, finds the Town did not have the authority to do so for the reasons discussed below.

Undisputed Facts

The Town selectmen granted the partial abatements in response to an oral “complaint” made by the Taxpayer’s trustee (Mr. Benoit) to the Town assessor (Ms. Silva) in “late May of 2012.” (Memorandum p. 2; see also Municipality Exhibit A, Tab 9, the Town assessor’s June 5, 2012 memorandum.) As stated in her June 5, 2012 memorandum to the selectmen (and Town Manager), the assessor concluded the Town may have violated RSA 75:3¹ by not providing the Taxpayer with “notice in writing” of the assessment of certain improvements, valued at approximately \$44,000 of a total assessment of over \$1.6 million on the Property: specifically, a “Bath Hs [House]” “Wood Deck,” and an “IG (In Ground) Pool,” as described on the Property’s assessment-record cards. (See Municipality Exhibit A, Tab 5.)

The Town learned of these improvements and added them to the assessment on the Property when two building permits were applied for and issued in September and December, 2006 for the construction of an “in-ground pool” and a “4 season room” (to house the pool) to be owned and used by the Taxpayer’s tenant (Ms. Shock²), a resident in the mobile home park. (See Municipality Exhibit A, Tabs 3 and 4.) Mr. Benoit’s daughter applied for the building permits (while he was temporarily out of the country, according to Ms. Silva’s testimony), his name and address appears as the ‘land owner’ on both permit applications and one contains a notation Mr. “Benoit is aware that he will be billed for taxes.” In the Response (p. 2), the Town states

¹ RSA 75:3 provides as follows:

Land and Buildings. – Whenever a person owns or erects a building on land of another both may be taxed together as real estate to the owner of the land, provided a selectman or assessor, before or when taking the inventory, gives notice in writing to the landowner that such building is to be taxed to the landowner as real estate. An affidavit by the selectman or assessor giving the notice that such notice was given shall be evidence of the fact. The owner of the land shall have a lien on such building for the payment of the tax.

² Ms. Shock, like other tenants on the Property, leased the site for her manufactured home from the Taxpayer, but owned the improvements.

“Mr. Benoit was verbally informed that the additional tax would be assessed against him, as the landowner,” but contends the Town did not do so “in writing. . . as is required by RSA 75:3.”

At a meeting on July 18, 2012, the Town selectmen voted to refund 50% of the taxes pertaining to these improvements from 2007 through 2011, plus interest from the dates of payment of those taxes, and the Town issued a check to the Taxpayer in the total amount of \$1,428.80. (See Memorandum, p. 2; and Municipality Exhibit A, Tab 10, which shows how this amount was calculated.) The clear effect of this action is loss of property tax revenues to the Town for these five tax years.³ In explaining this outcome, the Memorandum (p. 2) states: “The Town’s granting of an abatement without the filing of an abatement application for current and prior years is unique”; further, “this practice is not systemic throughout the Town and not indicative, in any way, of a policy initiative.”

The Town’s Arguments in Defense of the Partial Abatements

In the Response and in the Memorandum, the Town attempts to defend the partial abatements granted to the Taxpayer in this “unique” instance. The Town contends, “[p]ursuant to the first sentence [in RSA 76:16, I], selectmen, for good cause shown, may abate *any* tax assessed by them or their predecessors,” whether for the current year or for prior years, and irrespective of whether a taxpayer has filed a timely abatement application and complied with the remaining provisions of this statute. (See Memorandum, p. 3; italics in original.) The Town argues the first

³ At the hearing, the Town indicated in tax year 2012 these improvements were assessed to the new tenant of the space in the mobile home park formerly occupied by Ms. Shock.

sentence can be read independently of, and in isolation from, the rest of the statute.⁴ The Town argues this is a “plain meaning construction” (Memorandum, p. 3) of RSA 76:16 and is supported by its own analysis of the legislative history of this statute.

The board does not agree for a number of reasons. These reasons, discussed below, include established principles of statutory interpretation, consistent case law interpreting and applying the tax abatement and appeal statutes, and the board’s own reading of the limited legislative history presented by the Town, as well as policy and other considerations.

⁴ RSA 76:16 provides, in pertinent part, as follows.

76:16 By Selectmen or Assessors. –

I. Selectmen or assessors, for good cause shown, may abate any tax assessed by them or by their predecessors, including any portion of interest accrued on such tax. Any person aggrieved by the assessment of a tax and who has complied with the requirements of RSA 74, may, by March 1, following the date of notice of tax under RSA 76:1-a, and not afterwards, apply in writing on the form set out in paragraph III to the selectmen or assessors for an abatement of the tax. The municipality may charge the taxpayer a fee to cover the costs of the form required by paragraph III.

II. Upon receipt of an application under paragraph I, the selectmen or assessors shall review the application and shall grant or deny the application in writing by July 1 after notice of tax date under RSA 76:1-a. The failure to respond shall constitute denial. All such written decisions shall be sent by first class mail to the taxpayer and shall include a notice of the appeal procedure under RSA 76:16-a and RSA 76:17 and of the deadline for such an appeal. The board of tax and land appeals shall prepare a form for this purpose. Municipalities may, at their option, require the taxpayer to furnish a self-addressed envelope with sufficient postage for the mailing of this written decision.

III. The abatement application form shall be prescribed by the board of tax and land appeals. The form shall include the following and such other information deemed necessary by the board:

- (a) Instructions on completing and filing the form, including an explanation of the grounds for requesting tax abatements, including abatements for poverty and inability to pay pursuant to RSA 76.
...
- (g) A place for the applicant's signature with a certification by the person applying that the application has a good faith basis and the facts in the application are true.
...

IV. Failure to use the form prescribed in paragraph III shall not affect the right to seek tax relief.

Applicable Principles of Statutory Interpretation

When statutory interpretation is at issue, certain basic principles are applied. Three principles are of special importance to the issues presented.

First, when the language in a statute is clear and unambiguous, the board must apply the statute as written and not entertain a different construction or meaning. State v. Dushame, 136 N.H. 309, 313 (1992); Penrich, Inc. v. Sullivan, 136 N.H. 621, 623 (1993). In such circumstances, there is no need to examine or consider legislative history. State v. Gagnon, 135 N.H. 217, 221 (1991). The board finds RSA 76:16, I is clear and unambiguous insofar as the first sentence, both structurally and logically, must be read in conjunction with the rest of the paragraph and the statute as a whole. The first sentence of the statute establishes a “good cause” requirement for the granting of an abatement and the remaining sentences of the statute spell out, if there is a such a claim, who can qualify for an abatement (as a “person aggrieved” by the assessment) and the process and timelines for applying for an abatement based on good cause (in writing and by March 1 following the date of notice of tax).

Second, statutory enactments should be interpreted “in the context of the overall statutory scheme and not in isolation.” Appeal of Wilson, 161 N.H. 659, 662 (2011), citing Appeal of Kat Paw Acres Trust, 156 N.H. 536, 537 (2007). The board does not agree with the Town that the first sentence of RSA 76:16, I can be read in isolation. While this first sentence has historical antecedents dating back to the 19th century, it is part and parcel of a unified statutory framework governing the process of considering and granting or denying tax abatement requests. The remainder of RSA 76:16, elaborating the process of applying for a tax abatement from the selectmen and what must be included in a written abatement application, as well as the tax appeal provisions (in RSA 76:16-a and RSA 76:17) and the cases construing how and when tax abatement

requests and appeals must be presented and filed, support the conclusion that the first sentence of RSA 76:16 cannot be read in isolation as an independent grant of authority to grant an abatement, either in general or for the type of “unique” situation the Town supposes.

Third, to the extent an inquiry into the legislative intent of a statute is warranted, the board must “interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Appeal of Walsh, 156 N.H. 347, 355 (2007). The board finds the legislative intent (to require the filing of an application with the selectmen as a mandatory prerequisite for the granting of a tax abatement) is clear from the wording and structure of RSA 76:16 and the consistent manner in which the courts have interpreted it. The legislature could have stated the selectmen have the authority to abate an assessment whether or not a timely abatement application is filed or, alternatively, that nothing in the remainder of RSA 76:16, I affects the independent authority of the selectmen to grant an abatement under the first sentence of this statute, but did not do so. In other words, the legislature has never expressed the notion that the first sentence of this statute provides an alternative remedy if a taxpayer fails to file a timely abatement application in compliance with the rest of the statute. There is no indication the legislature intended to preserve the authority of the selectmen to grant abatements under the first sentence, either as a matter of course or, as the Town asserts, in “unique” or exceptional situations.

In brief, the dual authority to grant abatements claimed by the Town (to grant an abatement for good cause at any time or after the filing of a timely abatement request) is not supported by how RSA 76:16 is actually worded and structured and the governing principles of statutory interpretation discussed above. Nor is the Town’s dual reading of RSA 76:16, I supported by the consistent interpretation and application of this statute in the case law.

Case Law Confirming the Timely Filing Requirement of an Abatement Application

Two recent supreme court decisions demonstrate the filing of an abatement application with the municipality is mandatory rather than permissive in order to obtain a tax abatement. In Appeal of Wilson, 161 N.H. at 663-64, the supreme court rejected the argument that a taxpayer can receive a tax abatement even if he or she does not comply with two provisions in RSA 76:16, I (pertaining to signature and certification of a timely abatement application by the taxpayer) because: these requirements are valid and “affect[] the right to seek tax relief”; and not applying them would “render the statute a virtual nullity, which we will not do. [Citations omitted.]” In Wilson, 161 N.H. at 664, the supreme court discussed GGP Steeplegate v. City of Concord, 150 N.H. 683, 685-86 (2004), noting that the statute “requires” the filing of an abatement application, but that a “brief statement of the reasons supporting [an] abatement request” is sufficient. In other words, the filing of an abatement application is mandatory, even if there is no basis for a municipality to demand “*more* information than is statutorily required. [Italics in original.]” There is nothing in these cases that suggests or implies a municipality has the authority to grant a tax abatement for good cause when no abatement application of any kind, let alone a timely application, has been filed.

In addition to Wilson and Steeplegate, a long line of authority confirms the principle that failure to file a timely abatement application with the municipality is a bar to obtaining a tax abatement. For example, if a taxpayer owns two lots and only requests an abatement by the selectmen on one lot, it is well established that no abatement can be granted on the second lot. Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985).

In Appeal of Estate of Van Lunen, 145 N.H. 82, 86 (2000), an appeal involving abatement of a land use change tax (pursuant to RSA chapter 79), the supreme court summarized the applicable law under RSA chapter 76 as follows:

The petitioner never filed an abatement request [application] on either lot after receiving the land use change tax assessments. The statutory deadlines for requesting a tax abatement under RSA chapter 76 and its predecessor have historically been strictly enforced, see, e.g., Larkin v. Portsmouth, 59 N.H. 26, 26 (1879), and failure to timely submit an appeal is fatal regardless of accident, mistake, or misfortune, see Turetsky [v. Town of Gilsum, 118 N.H. 23 (1978)] at 25 Therefore, the board properly refused to consider requests for tax abatements that were not timely filed with the town. See Thayer v. State Tax Comm'n, 113 N.H. 113, 115 . . . (1973).

At the time of the Larkin decision (1879), the tax abatement statute provided for direct appeal to the supreme court if a taxpayer was dissatisfied with an assessment within nine months of the notice of tax. Even though the taxpayer in Larkin “had no information about the notice” of the assessment (since notice was constructive – posting at city hall and in a newspaper, rather than actually delivered to him), he was still time barred from seeking an abatement because:

[T]he statute bar limiting the right of petition to the court for abatement to the period of nine months after notice of the tax [is a] plain and positive provision of law [that] cannot be disregarded, even for the purpose of correcting gross injustice. Relief has never been given against the general statute of limitations to a creditor with a just claim, who, through mistake or misfortune, has failed to seasonably bring his action [Citation omitted]; and the special statute limiting the time within which a petition for the abatement of an unjust tax must be brought is as binding as any other statute. The petition was presented too late, and cannot be entertained.

Larkin, 59 N.H. at 26. (Emphasis added.) If the Town has the alternative option claimed in the Memorandum (allowing the selectmen to abate whether or not an abatement application is filed to remedy what the Town portrays as an “inequitable” outcome), the timely filing requirement would

have no force or effect, rendering it a “nullity,” and these and other cases⁵ would have been decided differently.

The Memorandum concludes with a discussion of RSA 76:14 and two cases [Pheasant Lane, 143 N.H. 140 (1998), and Barksdale, 136 N.H. 511 (1992)] mentioned by the board in the October 29 Order. The board finds the Memorandum’s attempt to diminish the relevance of these authorities misses the mark.

There is no question the statutory framework for tax assessments and abatements includes RSA 76:14. This statute constrains and limits the selectmen’s authority to correct “omissions” or “improper assessments” to the time period “before the expiration of the year in which a tax has been assessed” and clearly means selectmen lack the authority to revise assessments for prior years, as the selectmen did on the Property of the Taxpayer. This is an important limitation on the power of selectmen to change an assessment.

While presenting different facts (an attempt by a municipality to *increase*, rather than decrease, an assessment based on later discovered information), the holding in Pheasant Lane is clear that, because of RSA 76:14, a municipality is precluded from changing the assessment for any tax year after the statutorily prescribed time period has expired. As stated in Pheasant Lane, 143 N.H. at 143, “the power to tax arises solely by statute. . . [M]istaken property tax valuations can be corrected only through legislatively authorized remedies.” Id. (Emphasis added.) To the extent the Town believed it had made a ‘mistake’ and did not comply with RSA 75:3, its power to

⁵ The board has consistently denied appeals where taxpayers have filed untimely abatement applications with the municipality. See, e.g., Curcio v. Town of Eaton, BTLA Docket No. 25144-10PT (January 10, 2011) (timely filing of abatement application with the municipality by March 1 statutory deadline was mandatory requirement which municipality did not have “authority to waive or extend”); Gosma v. Town of Walpole, BTLA Docket No. 8489-90 (June 17, 1991) (abatement application filed prematurely (not within statutory time frame) was not effective due to noncompliance with RSA 76:16); and DeFlorio v. Town of Bow, BTLA Docket No. 2900-84 (July 9, 1986) (“RSA 76:16 is jurisdictional in nature and not subject to equitable tolling. [Citations omitted.]”).

correct that mistake did not extend to prior tax years.⁶

Pheasant Lane was decided one year after LSP Assoc. v. Town of Gilford, 142 N.H. 369 (1997). In LSP, the court noted RSA 76:14 “grants to a municipality the right to correct omissions or improper assessments before the expiration of the tax year for which the tax has been assessed”; if the municipality fails to correct that error “within the established time constraints, the error is irremedial. . .” 142 N.H. at 374-375. (Emphasis added.) In this section of the LSP decision, the supreme court quoted with approval the following statements in a leading treatise [16 P. Loughlin, New Hampshire Practice, Municipal Law and Taxation §15.06 at 204 (1993)]:

The rationale for the one-year restriction [in RSA 76:14] for making such corrections is that the Legislature may have considered that a revision by selectmen of the doings of their predecessors would produce greater mischief than the occasional escape of taxable property from taxation. This is consistent with the provisions regarding abatement of taxes which provide that a petition for abatement must be filed with the selectmen or assessors within four months of the notice of tax.... Also consistent with this rationale is the fact that if a particular property is overassessed or assessed to the wrong person for a number of years and that person does not file for an abatement, the right is lost forever and the taxpayer has no remedy against the municipality other than for a year for which a petition for abatement was filed. [Emphasis added.]

These cases and the Loughlin treatise demonstrate that no authority exists for selectmen to grant retroactive abatements for prior tax years even if “good cause” is asserted.

The board cited the Barksdale decision in the October 29 Order, not because of its specific facts (cf. Memorandum, p. 16), but because of the supreme court’s clear statements that only two

⁶ The board need not decide here whether the Town in fact violated RSA 75:3 with regard to notice “in writing.” No case law applying this statute has been cited by the Town or discovered by the board. The Town’s assessor, in her June 5, 2012 memorandum, expressed ambivalence, stating the Taxpayer “may or may not prevail” if Mr. Benoit challenged the assessments on this ground. There is no question the Taxpayer had actual notice of the assessments and RSA 75:3 is silent both on the form of written notice that is required and the consequence for not providing such notice. With every tax assessment for each year, and through every tax bill sent out and paid, the Taxpayer received written notice of the assessment of these items. Assessments are annual events (see, e.g., RSA 74:1 and RSA 75:1) and every taxpayer has the obligation to review assessments and take timely action (by filing an RSA 76:16 abatement application) if there is disagreement regarding proportionality for any tax year. Thus, the equities do not clearly weigh in the Taxpayer’s favor and the Town selectmen most likely took this into account in deciding on a compromise solution (50%) rather than granting a total (100%) abatement of the amounts assessed for the five tax years.

“good cause” grounds for a tax abatement exist in New Hampshire: “disproportionate assessment or inability to pay. [Citations omitted.]” Barksdale, 136 N.H. at 515. To the extent the Town contends selectmen have the authority under RSA 76:16, I to abate an assessment for any reason they believe constitutes “good cause,” such a sweeping interpretation cannot be supported.⁷

Resort to Legislative History is Unavailing to the Town’s Interpretation of the Statute

Even if, for the sake of argument, the board were to assume RSA 76:16, as presently enacted, is ambiguous on the issue presented and if the board could ignore the case precedents discussed above, there is little if any support in the legislative history presented in the Memorandum for the Town’s alternate reading of the statute. The Memorandum (pp. 7 - 12) includes “a review of the available legislative materials regarding the 1967 amendments,” but these materials are limited and inconclusive.

The materials do not mention a transcript of any hearings that would help place the consideration of the 1967 amendments in context, but only selected comments and “notes” by several individuals who participated in the process. These selected statements do not suggest, let alone establish, the legislature ever intended selectmen to have dual sources of authority to abate taxes [(i) for any reason and at any time even if no abatement application is filed; and (ii) only after a timely abatement application is filed].

The board is able to glean the following points from the legislative history compiled in the

⁷ Similarly, the language quoted in the Response (p. 3) from Briggs’ Petition, 29 N.H. 547, 551 (1854) to the effect “any irregularity in the assessment of a tax” constitutes good cause for an abatement is dicta, as the Town’s attorneys conceded at the hearing, and is not persuasive. That language is also in conflict with Larkin, 59 N.H. at 26, Pheasant Lane, 143 N.H. at 143 and LSP, 142 N.H. at 375 (all quoted above).

Memorandum:

- (1) For a considerable period of time (at least from 1867 until 1939), predecessor statutes to RSA 76:16 provided for direct appeal of selectmen's decisions to the supreme court (see Chapter 53 of the General Statutes of 1867; Memorandum Exhibit D; and Larkin, discussed above at pp. 8-9;
- (2) the requirement that all applications for a tax abatement must be made to the selectmen (or assessors) in writing dates back to at least 1939 (with the passage of Chapter 46:1 of the Laws of 1939; Memorandum Exhibit G);
- (3) a time limit for appeal was first enacted in 1955, requiring the filing of an action in the superior court within six months of the "notice of tax" if the selectmen (or assessors) "neglect or refuse so to abate" (see former RSA 76:17; Memorandum Exhibit I), in 1967, the timelines were significantly changed to specify when the application in writing for abatement must be filed with the selectmen (or assessors): "within four months after notice of tax, and not afterwards" (see former RSA 76:16 (enacted in Chapter 180 of the Laws of 1967; Memorandum Exhibit J), and in 1990 the time period was shortened to "60 days after notice of the tax" (enacted in Chapter 49 of the Laws of 1990; Memorandum Exhibit M); and
- (4) following further minor amendments in 1991 - 1994 (see Memorandum Exhibits N, O, P and Q), in 1995 the Legislature adopted the "March 1, following the date of notice of tax" deadline for the application in writing for a tax abatement (Memorandum Exhibit R) and then made further amendments in 1997, 2002 and 2004, resulting in the present wording of RSA 76:16 quoted above.

The board must construe the statute as presently written, without placing undue emphasis or significance on prior enactments at times when the process of applying for an abatement and appealing an adverse decision was manifestly different. The three sentences in RSA 76:16, I, as well as the remaining paragraphs of RSA 76:16, can and should be read as a unified whole, rather than disjointedly (with the first sentence separate and apart from the last two sentences and, indeed, separate and apart from the remainder of the statute and the entire statutory framework). The evident purpose of the abatement application process prescribed in the remaining sentences of this statute is to identify whether good cause exists for granting an abatement. In this regard, RSA 76:16, III(e) requires the applicant "to state with specificity the reasons supporting the abatement

request”: in other words, to demonstrate the “good cause” referenced in the first sentence of RSA 76:16, I actually exists before the selectmen decide to grant a tax abatement.

The board finds the 1967 amendments were intended to modify and streamline the tax abatement process, but did not create a second method for doing so. In this regard, the requirement of an application in writing predates the 1967 amendments by four decades (from 1939) and it is undisputed that Mr. Benoit never applied to the Town selectmen in writing for an abatement. Rather, the selectmen acted in July, 2012 only in response to an oral complaint made to the Town’s assessor that she then relayed to them. Thus, the Town was without authority to grant an abatement, even under the statute as it existed before the 1967 amendments.

Additional Reasons the Partial Abatements Were Unauthorized and Improper

If the Town is correct in its alternate interpretation of RSA 76:16, I (i.e., that the first sentence provides a separate and alternative basis for granting an abatement at any time and for any prior year), no statutory procedure exists for appealing the selectmen’s decision on that basis. For example, if the selectmen had decided not to grant an abatement on the Property or to grant one in an amount less than Mr. Benoit was willing to accept, then no means would exist for the Taxpayer to appeal that decision and argue the selectmen had erred in their “good cause” determination. In that instance, the selectmen’s decision would not be subject to review at all and no accountability would exist, unlike the established review process that exists when a taxpayer files a timely abatement application followed by a timely appeal to either the board or to the superior court pursuant to RSA 76:16 and RSA 76:16-a or RSA 76:17.

Further, there was no evidence presented that, in granting the partial abatements, the selectmen ever considered the “entire estate” of the Taxpayer and whether the alleged error made by the Town resulted in disproportionality, the accepted standard for granting an abatement for

good cause. See Appeal of Town of Sunapee, 126 N.H. 214 (1985); Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003); and Appeal of Walsh, 156 N.H. at 356. The assessed value of the improvements at issue (approximately \$44,000) constitute a very small part (less than three percent) of the value of the Property as a whole (a mobile home park with a total assessed value of over \$1.6 million).

The board is also not persuaded what the Town did by partially abating the taxes on these improvements for prior years is mandated by RSA 75:3 or actually remedied an “inequitable” outcome. As noted above (see fn. 1 and 6), RSA 75:3 does not prescribe what form of “notice in writing” is required. Here, there is evidence Mr. Benoit had actual notice of the assessment of these items, both at the time when the written building permit applications were approved in 2006 and each year thereafter when he received written notice of the total assessed value of the Property and paid taxes based on these assessments. In addition, Mr. Benoit could have contacted his tenant and requested reimbursement for the additional tax, but apparently decided not to do so for unknown reasons. The board finds the Town’s attempt to relieve him of taxation for prior years is inequitable to the remaining taxpayers in the Town.

Finally, the position taken by the Town in the Memorandum is also at variance with the information the Town provides to its own taxpayers through its website. A review of two pages on the Town’s assessing website⁸ confirms that taxpayers do not have an option: they “must” file a timely abatement application with the Town if they seek a tax abatement. No mention is made of an alternative avenue for obtaining an abatement (persuading the Town selectmen “good cause” exists without complying with these basic statutory requirements either in general or in “unique”

⁸ See http://www.seabrooknh.org/Pages/SeabrookNH_Assessing/questions?textPage=1; and http://www.seabrooknh.org/Pages/SeabrookNH_Assessing/2011%20abatement%20form.pdf

situations). Transparency and equity are lost when one taxpayer is treated differently than how other taxpayers are instructed to proceed should they wish to challenge an assessment. The law requires every taxpayer to be treated equally and therefore each is required to comply with the statutory process and timelines for applying for and obtaining an abatement.

Summary

In summary, the board finds the Town did not have the authority to grant a partial (50%) tax abatement and refund (in the amount of \$1,428.80) to the Taxpayer in July, 2012. The Town shall recover this sum from the Taxpayer and report on the steps taken to do so in writing to the board within thirty (30) days of the Clerk's date noted below.

The board has responded to the Town's Proposed Findings in Addendum A attached hereto.

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, 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

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Addendum A

The Town's Proposed Findings are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in **bold face**. With respect to the board's responses, "neither granted nor denied" generally means one of the following.

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request overly broad or narrow so that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the request was irrelevant; or
- e. the request is specifically addressed in the decision.

TOWN'S PROPOSED FINDINGS

Findings of Fact

1. On or about September 28, 2006, the Town of Seabrook (hereinafter "the Town") issued a Building Permit to Ms. Patricia Shock (hereinafter "Ms. Shock") for the construction of an in-ground pool at her residence located at Town Map 7, Lot 90-59.

Granted.

2. On or about December 14, 2006, the Town issued to Ms. Shock a Building Permit for the construction of a four season room for an in-ground pool (hereinafter “the Building”).

Granted.

3. On or about 2007, Ms. Shock constructed the Building at her residence located at Town Map 7, Lot 90-59.

Granted.

4. From tax year 2007 through tax year 2011, Mr. David P. Benoit, Trustee of T. Park Realty Trust, owner of Adam’s Park (Town Map 7, Lot 90) (hereinafter “Mr. Benoit”), the mobile home park in which the Building is located, was assessed and billed for the Building as the landowner pursuant to RSA 75-3.

Granted.

5. Mr. Benoit was never notified in writing that the Building constructed by Ms. Shock was going to be assessed and taxed to him as the landowner pursuant to RSA 75-3.

Neither granted nor denied.

6. Mr. Benoit paid the taxes assessed to him for the Building from tax year 2007 through tax year 2011.

Granted.

7. On or about May of 2012, Mr. Benoit approached Ms. Angela Silva (hereinafter “Ms. Silva”), Town Tax Assessor, to address his tax bill and complain about being taxed for the Building. During this conversation, Mr. Benoit stated that he was “going to get his lawyer involved,” or words to that affect.

Granted.

8. After researching the matter, Ms. Silva discovered that Mr. Benoit had not been properly notified in writing that he would be taxed for the Building pursuant to RSA 75-3.

Neither granted nor denied.

9. Ms. Silva drafted a memorandum for the Town’s board of selectmen which explained the issue, described the potential for and costly nature of litigation, and recommended the board of selectmen offer Mr. Benoit a partial abatement for the five tax years in question.

Granted.

10. The board of selectmen ultimately decided to grant Mr. Benoit an abatement in the amount of \$1,428.80 which represented 50% of the tax on the Building between tax year 2007 and tax year 2011.

Granted.

11. The board of selectmen's issuance of abatements for prior tax years and under circumstances where there was not an abatement application is not a systemic or common practice in the Town.

Granted.

Rulings of Law

1. The legislative history analyzed in the Town's Memorandum of Law dated December 10, 2012, is incorporated herein.

Granted.

2. Since 1842, the statutory language granting boards of selectmen the authority to abate any tax assessed by them or their predecessors has remained broad and the selectmen's authority to abate taxes has never been conditioned on the submission of an abatement application from a taxpayer.

Denied.

3. Prior to 1967, there was no time constraint on a taxpayer's application for abatement to the board of selectmen. Accordingly, there was no time constraint on boards of selectmen to abate taxes.

Denied.

4. The first sentence of RSA 76:16, I, which states that "[s]electmen or assessors, for good cause shown, may abate any tax assessed by them or by their predecessors, including any portion of interest accrued on such tax[]" makes the showing of "good cause" the sole precondition for a board of selectmen to abate any tax assessed by them or their predecessors.

Denied.

5. The Town had the statutory authority pursuant to the first sentence of RSA 76:16, I, to abate the subject taxes regardless of whether a tax abatement application was submitted because the first sentence of RSA 76:16, I, is separate and distinct from the remaining sentences.

Denied.

6. In 1967, RSA 76:16 was amended by adding a time constraint on the submission of individual taxpayer abatement applications to boards of selectmen. Based on the legislative materials available, this amendment was motivated by an effort to ensure that individual taxpayers did not forfeit their right to appeal the abatement decision of the board of selectmen through failure to timely file with the Tax Commission or the courts.

Denied.

7. The 1967 amendment to RSA 76:16 was not motivated by an intent to limit or qualify the historically broad power of selectmen to abate any tax assessed by them or their predecessors.

Denied.

8. Pursuant to the dicta in Briggs Petition, 29 N.H. 547 (1854), equitable principles of justice inform the abatement decision making process of boards of selectmen and the court. In this case, the Town's failure to provide written notice to Mr. Benoit as the landowner to whom the Building tax was to be assessed violated RSA 75-3. As a result, the taxes assessed to Mr. Benoit for the Building between tax year 2007 and tax year 2011 were illegal and unjust.

Denied.

9. Because the taxes assessed against Mr. Benoit between tax year 2007 and tax year 2011 were illegal, the Town had good cause to abate them.

Denied.

10. The equitable principles of fiscal economy, judicial economy, and justice demand that boards of selectmen have the authority to abate taxes in unique circumstances similar to those found in this case.

Denied.

CERTIFICATION

I hereby certify a copy of the foregoing Decision has been mailed this date, postage prepaid, to: Robert D. Ciandella, Esq. and Justin L. Pasay, Esq., Donahue, Tucker & Ciandella, PLLC, 111 Maplewood Avenue, Suite D, Portsmouth, NH 03801, counsel for the Town; Town of Seabrook, Chairman, Board of Selectmen, P.O. Box 456, Seabrook, NH 03874; T. Park Realty Trust, David Benoit, Trustee, P.O. Box 359, Hampton Falls, NH 03844 and Stephan W. Hamilton, State of New Hampshire, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301.

Dated: 2/6/13

Anne M. Stelmach, Clerk