

TMT Real Estate Development, LLC

v.

Town of Auburn

Docket No. 26625-12OS

DECISION

Following review of the “Taxpayer’s” October 29, 2012 “Petition for Reassessment of Taxes Previously Assessed Pursuant to RSA 71-B: 16, II” (“Petition”), the board issued its November 9, 2012 Order requesting the “Town” provide a detailed explanation, along with copies of any pertinent documentation, pertaining to the allegations in the Petition. The Town did so by filing its December 5, 2012 response (“Response”). Upon review of these pleadings and the applicable law, the board finds the Petition should be dismissed.

In essence, the Taxpayer claims the “Property” it owns in the Town (Tax Map 1, Lot 19) was overassessed “at least for the 2010 tax year” and possibly “for the 2009 tax year as well,” because of its failure to complete certain steps pertaining to subdivision and condominium conversion, and seeks reassessment pursuant to RSA 71-B:16, II. (Petition, ¶ 8.) The Taxpayer did not file a timely tax abatement application with the Town for either tax year as provided in RSA 76:16. The Response confirms this fact and further notes the Taxpayer did file a timely abatement application for tax year 2011, resulting in an abated assessment for that year (which the Taxpayer has not appealed).

The Petition is silent on why the Taxpayer did not file tax abatement applications with the Town for tax years 2009 and 2010,¹ but nonetheless attempts to look back to these prior tax years, asking the board to take jurisdiction pursuant to RSA 71-B:16, II,² rather than requiring compliance with RSA 76:16 and RSA 76:16-a. The board finds this reliance is misplaced since each statute is intended to fulfill a different objective. A taxpayer has an obligation to review the assessment of his or her property annually and to challenge a disproportionate assessment on a timely basis, as prescribed in RSA 76:16 and RSA 76:16-a.

Consistent with its prior decisions, the board cannot allow a party, whether it be a taxpayer or a municipality, to use RSA 71-B:16, II as a “back door” method of challenging prior year assessments when it has failed to comply with the timelines prescribed in the tax abatement and appeal statutes. See, e.g., Town of Tilton v. Costa, BTLA Docket No. 25423-10OS (November 12, 2010) at pp. 4 - 5, quoting from City of Lebanon v. Dartmouth College Trustees, BTLA Docket No. 10914-91 (January 5, 1993); and In re: Town of Richmond, BTLA Docket No. 25490-11OS (December 9, 2011) at p. 2, where the board stated:

Assessments are an annual event. (See RSA 74:1.) . . .When a taxpayer’s property is overassessed in any year, the legislature has provided a statutory process for seeking and obtaining an abatement, provided the taxpayer acts in a timely manner each year. (See RSA 76:16 and RSA 76:16-a.)

The [municipality] corrected the error for the 2011 tax year and the board finds no further action to compel the [municipality] to do so for the prior years is warranted.

As in these appeals, the Petition requesting exercise of the board’s authority under RSA 71-B:16, II is 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, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with

¹ In fact, the Town’s Response indicates the Taxpayer “first question[ed] his assessment” on October 17, 2011 and did not do so before that date.

² The Petition (at page 1, paragraph 1) incorrectly references this statute as “RSA 76-B:16, II.”

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

CERTIFICATION

I hereby certify that a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Paul J. Alfano, Esq., Alfano Law Office, 4 Park Street, Concord, NH 03301, Taxpayer Representative; Chairman, Board of Selectmen, Town of Auburn, PO Box 309, Auburn, NH 03032-0309; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; and Mr. Stephan W. Hamilton, Director, Property Appraisal Division, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301, Interested Party.

Date: January 29, 2013

Anne M. Stelmach, Clerk