

Kooauke Island Association

v.

Town of Strafford

Docket No.: 26947-12PT

DECISION

The board has reviewed the “Taxpayer’s” August 5, 2014 Motion for Summary Judgment (“Motion”) and the “Town’s” September 3, 2014 “Objection” to the Motion, as well as the assessment-record card and appeal document indicating the Taxpayer is appealing the tax year 2012 assessment of \$26,100 on the “Property” (described by the Town as Map 23, Lot 1). For the reasons summarized below, the Motion is granted and the assessment is abated to zero for tax year 2012.

The Motion was filed pursuant to RSA 491:8-a¹; and the parties agree the board has “jurisdiction” to hear and decide summary judgment motions. (See Motion, paragraph 1; and

¹ See Exhibit 1 to the Motion; this statute provides, in material part, as follows:

491:8-a Motions for Summary Judgment. –

I. A party seeking to recover upon a claim. . . may, at any time after the defendant has appeared, move for summary judgment in his favor upon all or any part thereof. . . .

II. Any party seeking summary judgment shall accompany his motion with an affidavit based upon personal knowledge of admissible facts as to which it appears affirmatively that the affiants will be competent to testify. The facts stated in the accompanying affidavits shall be taken to be admitted for the purpose of the motion, unless within 30 days contradictory affidavits based on personal knowledge are filed

Objection, paragraph 1.) In appropriate cases,² the board can grant summary judgment when it finds “there is no genuine issue as to any material fact” and the moving party (the Taxpayer in this appeal) “is entitled to judgment as a matter of law,” as stated in paragraph III of this statute.

The board finds there is no dispute regarding the following material facts which control the outcome of this tax year 2012 appeal:

- the Taxpayer did not acquire the Property until July, 2012 and the Town did not assess the Taxpayer or any “predecessor in interest” for the “40 years” preceding tax year 2012;
- instead, because 57 property owners (distinct from the Taxpayer, which is an association in which they are members) have “deeded rights and easements” to the Property (described in the Motion as consisting of “common property, roads, and recreational areas”), they were assessed for the value of those rights by the Town over that same period of “40 years”; and
- after title to the Property transferred to the Taxpayer in July, 2012, there was no change to the 2012 assessments on those other properties insofar as they,

or the opposing party files an affidavit showing specifically and clearly reasonable grounds for believing that contradictory evidence can be presented at a trial but cannot be furnished by affidavits. . . .

III. Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . .

IV. If affidavits are not filed by the party opposing the summary judgment within 30 days, judgment shall be entered on the next judgment day in accordance with the facts. When a motion for summary judgment is made and supported as provided in this section, the adverse party may not rest upon mere allegations or denials of his pleadings, but his response, by affidavits or by reference to depositions, answers to interrogatories, or admissions, must set forth specific facts showing that there is a genuine issue for trial. . . .

² See, e.g., Adams v. Town of Durham, BTLA Docket No. 19125-2001PT (May 9, 2003) at p. 1 (granting summary judgment in a tax appeal where the opposing party filed no affidavits); and Comcast Corporation v. City of Claremont, BTLA Docket Nos. 23337-06PT/23976-08PT at p. 4 (granting “Cross-Motion” for summary judgment by opposing party).

according to the Town, “were not assessed an additional amenity value” for that tax year.

[Cf. Quitclaim Deed (Exhibit 4 to the Motion); Motion, paragraphs 6, 7, 9-11 and 22; and Objection, paragraphs 6, 7, 12, 15 and 22.]

On these undisputed facts, the board finds the Taxpayer is entitled to judgment as a matter of law for the simple reason that, for tax year 2012, the Town had no basis for making a separate assessment on the Taxpayer’s estate by reason of the title transfer that did not occur until July, 2012. There is no evidence that would allow the board to conclude the Taxpayer had any taxable estate as of the April 1, 2012 assessment date. Consequently, there is no basis for finding the Town, for tax year 2012, was not already assessing the “amenity value” of the rights transferred in the separate tax year 2012 assessments on the 57 properties. The only evidence before the board is that those assessments did not increase as a result of the July, 2012 change in title. (Cf. the various statements by the Town’s contract assessor in the Objection, particularly paragraphs 15 and 22.)³

Consequently, the appeal is granted and the tax year 2012 assessment on the Property is abated to zero. If any taxes have been paid on that assessment, the Town shall abate them with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

³ The board further finds the Town did not comply with the requirements of the summary judgment statute. The Objection does not contain any affidavit in opposition to the Motion, but only consists of the unsworn statements of the Town’s contract assessor. This omission constitutes a separate and independent ground for granting the Motion. [See RSA 491:8-a, IV (quoted in fn. 1).]

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, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John C. Orr, President, P.O. Box 71, Strafford, NH 03884, Taxpayer Representative; Granite Hill Municipal Services, P.O. Box 1484, Concord, NH 03302, Contracting Assessing Firm; and Chairman, Board of Selectmen, P.O. Box 23, Center Strafford, NH 03815.

Date: September 29, 2014

Anne M. Stelmach, Clerk

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