

Kooauke Island Association

v.

Town of Strafford

Docket No.: 26947-12PT

ORDER

The board has reviewed the “Town’s” October 23, 2014 Motion for Reconsideration (“Motion”). The Motion asks the board to “reconsider” the September 29, 2014 Decision granting the “Taxpayer’s” summary judgment motion “on the grounds there are material facts in dispute in this case.” The board disagrees. The suspension Order issued on October 30, 2014 is hereby dissolved and the Motion is denied for at least three reasons.

First, the Motion offers no explanation as to why the “additional facts” the Town now alleges were not presented to the board prior to the time the Taxpayer’s summary judgment motion was presented and decided. The Town had a clear and full opportunity to do so and the submission of these allegations for the first time in the Motion is untimely because of the specific timelines prescribed in RSA 491:8-a, the summary judgment statute. This statute gives the responding party thirty (30) days [ample time in comparison to the ten (10) days provided in Tax 201.18(d) for response to other types of motions] to file “affidavits based on personal knowledge...,” but no such affidavits were filed by the Town at the time it filed its “Objection”

on September 3, 2014 to the Taxpayer's summary judgment motion. (See RSA 491:8-a, II quoted in the Decision.)

Second, the Motion contains no affidavit attesting to the truth of the new allegations presented on pages 1 and 2. Instead, the only affidavit attached to the Motion is by the Town's contract assessor which is dated October 20, 2014 (well after the September 29, 2014 Decision) and references only the "factual representations" made in the Objection,¹ not the entirely new allegations in the Motion.

Third, none of the Town's new allegations challenge the key undisputed facts on which the Decision was based. These facts, detailed on pages 2-3 of the Decision, establish the Taxpayer did not obtain title to the Property "until July, 2012" and therefore did not "have any taxable estate as of the April 1, 2012 assessment date" that governs this appeal.

In summary, the board finds the Motion is not in compliance with the summary judgment statute because the new allegations presented are untimely and not supported by a proper affidavit and, in any event, do not present any "material facts" that require "reconsideration" of the basis for granting the Taxpayer summary judgment in this tax year 2012 appeal. The Motion is therefore denied.

Pursuant to RSA 541:6, any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of the date on this Order, with a copy provided to the board in accordance with Supreme Court Rule 10(7).

¹ The same notarial affirmation has been added to the copy of the Objection submitted by the Town as an attachment to the Motion.

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 Order 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: November 18, 2014

Anne M. Stelmach, Clerk