Cropsey & Mitchell Company, Inc.

v.

Town of Tilton

Docket No. 27239-13PT

ORDER

The board has reviewed the "Town's" June 5, 2015 Motion for Costs ("Motion") and the "Taxpayer's" June 15, 2015 "Objection." The Motion is denied.

The Motion cites Tax 201.39 (Costs), but does not satisfy the requirements of this rule. The Town has failed to satisfy its burden of establishing this tax year 2013 appeal "was frivolously brought, maintained or defended . . ."; in addition, the board notes the specific costs requested by the Town (preparation of an appraisal update by an expert witness) are not "fees incurred for the witness's testimony." [See Tax 201.39(a) and (d).]

The Motion nonetheless reasons the Town is entitled to an award of costs ("in the sum total of $1,000") because the Taxpayer's representative should have notified the Town's assessor earlier than he did of the Taxpayer's decision to withdraw this 2013 appeal. Based on the facts presented and the sequence of events leading to the voluntary withdrawal of the appeal, the board does not agree with the Town's reasoning.

The Taxpayer's representative notified the board's Clerk of the Taxpayer's decision to withdraw the 2013 appeal by telephone on April 13, 2015 and then mailed a letter on that date to the board to that effect, with a copy also mailed to the Town's assessor. In doing so, the Taxpayer complied with the requirements of the board's rules. [See Tax 201.22 (Withdrawal of Case).]

The Town argues, however, that if the Taxpayer had made and communicated its decision to withdraw the 2013 appeal earlier, the Town could have avoided the $1,000 cost of a 2013 update of the "2011/12" appraisal prepared by the Town's appraiser (Barry Cunningham). There is no statement in the Motion regarding precisely when the Town decided to ask Mr. Cunningham to update his appraisal (only that it was done at the "11th hour") and no indication in the attached "Invoice Summary" as to when the update work was performed (except for an "Issue date" notation of "04/03/215").

What is clear is that the Town's assessor knew, or should have known, that, pursuant to Tax 203.07(g), the Taxpayer would be precluded from presenting a 2013 appraisal since no such appraisal was submitted by the time of the mediation conference. (That conference occurred on January 21, 2015, as indicated in the "Report of Settlement Meeting & Order" filed with the board on February 13, 2015.)

Even without a 2013 appraisal, the Taxpayer could have decided not to withdraw the 2013 appeal. The Town, for its part, had a choice regarding whether to ask its appraiser (Mr. Cunningham) to prepare an appraisal update to defend the 2013 assessment.

It is clear the Taxpayer decided to withdraw the 2013 appeal only after the board granted the Town's "motion to consolidate" the 2012 and 2013 appeals for hearing on April 16, 2015.

(See March 19, 2015 Order.) The board finds the Taxpayer was within its rights to withdraw the 2013 appeal after reviewing the Order and the Motion fails to establish any entitlement to costs.

For all of these reasons, the Motion is denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Albert F. Shamash, Member

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Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Tilton, 257 Main Street, Tilton, NH 03276; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: June 23, 2015

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Anne M. Stelmach, Clerk