

Peter G. Ness and Barbara E. Dutile

v.

Town of Franconia

Docket No.: 27958-14PT

ORDER

The board has reviewed the “Taxpayers” December 23, 2015 Motion for Rehearing (“Motion”) which seeks “reversal or withdrawal” of the December 3, 2015 Decision dismissing this tax year 2014 appeal (based on the Town’s September 16, 2015 Motion to Dismiss). The suspension Order issued on January 5, 2016 is hereby dissolved and the Motion is denied for the following reasons.

Rehearing motions are governed by RSA 541:3 and Tax 201.37 and are only granted when the movant demonstrates “good reason” for doing so. The board finds the Motion fails to satisfy this standard.

Parties are required to “submit all evidence and present all arguments” in a timely manner and rehearing motions “shall not be granted to consider evidence previously available to the moving party but not presented... or to consider new arguments that could have been raised....” [See Tax 201.37(g).] The Taxpayers did not file any objection or other response to the Town’s Motion to Dismiss this tax year 2014 appeal. Instead, they waited until twenty (20) days after

issuance of the Decision granting the Town's motion and dismissing this appeal to file the Motion. [See also October 21, 2015 Order, referencing related pleadings filed by the Taxpayers in the prior tax year "2012 Appeal" (BTLA Docket No. 26725-12PT), noting receipt of the Town's dismissal motion in this 2014 appeal and the board's intention to rule on the dismissal motion without a hearing after "receipt of the completed checklist from the Town."]

A review of the Taxpayers' appeal document and the pleadings in both dockets makes it clear their claim of entitlement to a tax year 2014 abatement is based entirely on a written agreement the parties reached in order to resolve the 2012 Appeal. The Taxpayers emphasize the wording of a February 7, 2014 Settlement Agreement obligates the Town to apply a lower assessed value (\$110,400) to the "Property" to grant a tax refund for tax year 2012 and to use that lower value "until revised in good faith pursuant to RSA 75:8 or until a municipal-wide reassessment." RSA 75:8 obligates municipal assessors and selectmen "annually" to "consider adjusting assessments" for any property "[t]hey know or believe have had a material physical change" or "[h]ave undergone other changes affecting value." [See RSA 75:8, I and II(a) and (f).]

Based on the undisputed record presented in the two appeals, it would be disingenuous for the Taxpayers to argue no "material physical change" occurred to the Property after the April 1, 2012 assessment date, the operative date for the \$110,400 assessed value agreed to by the parties for tax year 2012. The record reflects the key fact the Taxpayers made improvements to the Property well after that date and they have not denied making them.

When the Town's assessor performed a physical inspection of the Property "in the fall of 2013," he noted "renovations subsequent to the 4/1/12 assessment" date had occurred. [See the Town's Motion to Dismiss, the Town's August 15, 2014 letter to the board (filed in the 2012

Appeal) and the November 2, 2015 completed checklist attaching an updated assessment-record card (“ARC”) assessing the Property in tax year 2014 for \$149,500.] The August 15, 2014 letter explains why the Town was not bound by the \$110,400 value in tax year 2013, but nevertheless agreed to apply it to that tax year only because it did not discover the improvements had occurred until later (well after the April 1, 2013 assessment date) and therefore wanted to be “fair” to the Taxpayers for the 2013 tax year.

On this record, the board finds the Taxpayers’ ongoing contention the Town is obligated to apply the \$110,400 value to tax year 2014 and later tax years is without merit. To require the Town to do so would result in a disproportional assessment, in violation of both RSA 75:8, quoted above and RSA 75:1, which requires assessments to be based on market value. See also October 21, 2015 Order (p. 2) where the board noted the Town’s argument that “to bind the Town” to the \$110,400 abated assessment “would result in disproportionality.”

Further, the Taxpayers filed no motion for reconsideration or other response to the October 21, 2015 Order. In that Order (p. 1), the board denied the Taxpayers’ request to enforce the Settlement Agreement “because, by its terms, that agreement does not apply to any tax year after 2012; thus, it cannot be enforced with respect to the tax year 2014 assessment and appeal.”

The ARC submitted by the Town with the completed checklist shows in sufficient detail the basis for the Town’s \$149,500 assessment in tax year 2014, demonstrating a good faith determination of how the improvements made to the Property resulted in material physical changes which positively impacted its market value. In comparison, the Taxpayers, aside from referencing the \$110,400 value stated in the Settlement Agreement for the 2012 Appeal, have offered no evidence or arguments to establish the market value of the Property as of April 1, 2014.

Contrary to their beliefs, the Taxpayers, not the Town, bear the burden of proof on these issues and they have failed to even attempt to satisfy this burden. Consequently, the board finds this tax year 2014 appeal was properly dismissed and the Motion is 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 of this Order, with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Albert F. Shamash, Member

Theresa M. Walker, Member

CERTIFICATION

I hereby certify a copy of the above Order has been faxed and mailed, this date, to: Peter G. Ness and Barbara E. Dutile, 149 Wildlife Boulevard, Belmont, NH 03220, Taxpayers; Chairman, Board of Selectmen, Town of Franconia, P.O. Box 900, Franconia, NH 03580; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Dated: 1/19/16

Anne M. Stelmach, Clerk