STATE OF MAINE
KENNEBEC, ss

BOARD OF PROPERTY TAX REVIEW
DOCKET NO. 2018-013, 014, 015

MAINE COAST MEDICAL REALTY, INC.

Petitioner,

v.

DECISION ON JURISDICTION

CITY OF ELLSWORTH

Respondent

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Property Tax Review

INTRODUCTION

This matter came before the Board on appeal of Maine Coast Medical Realty, Inc. ("MCMR") for the tax year April 1, 2017. MCMR is organized as a public benefit corporation under the Maine Nonprofit Corporation Act. MCMR's sole member is Maine Coast Regional Health Facilities d/b/a Maine Coast Memorial Hospital ("MCMH") which is also organized as a public benefit corporation under the Maine Nonprofit Corporation Act. MCMR filed three separate petitions with the Board. The Taxpayer asserts that all three properties are exempt as charitable/benevolent institutions pursuant to 36 M.R.S. § 652 and seeks an abatement to zero for each of the three properties.

STATEMENT OF THE CASE

Docket No. 2018-015 involves four condominium units situated at 50 Union Street in the City of Ellsworth occupied by MCMH. The City assessed the four units at $3,092,500 in the entirety rather than separately. Docket No. 2018-014 involves property also occupied by MCMH located at 324 Main Street and assessed at $111,900 that Maine Coast Medical Realty utilizes as an "on-call" location for hospital staff. Finally Docket No. 2018-103 involves property located at 107 Church Street assessed at $35,000 consisting of a "storm water detention pond" adjacent to and serving the hospital campus.[1]

In connection with the 50 Union Street condominium property and in addition to its claim of exempt status for that property, the Taxpayer claims that the assessment is illegal because the condominium units were not assessed separately. In any event, according to the Taxpayer, the property is substantially overvalued at $3,092,000 if the property were determined not exempt. For the other two properties the Taxpayer claims only that the property is exempt and seeks an abatement to zero. Whether or not a property is exempt, or illegally assessed, or substantially overvalued if assessed at fair market value, are issues to be considered at a hearing on the substance of the appeal if the Board determines that it has jurisdiction over

[1]The assessed value of the three properties was set forth by MCMH's in each petition and admitted by the City in its response to the petition. For the purpose of this hearing on jurisdiction the assessed value of 50 Union Street is over $1,000,000 and the two other properties are assessed at under $1,000,000.

the property and the parties' effort at mediation mandated by 36 M.R.S. § 271(5-A) is unsuccessful.

In connection with jurisdiction, the parties have stipulated that on March 31, 2017, MCMR filed separate applications for tax exempt status with the City regarding property at 50 Union Street and 324 Main Street. (Stip. #2.) It did not file for exempt status on or before April 1, 2017 for the 107 Church Street property as required by 36 M.R.S. § 652 last paragraph. (Stip. #2.) The commitment date for the April 1, 2017 tax year was August 2, 2017 and on February 1, 2018, the Taxpayer filed three separate applications for abatement for the three properties. (Stip. #7 and #8.) The Assessor did not act on the applications for abatement filed on February 1, 2018 such that the three applications were deemed denied 60 days thereafter. 36 M.R.S. § 842. (Stip. #9.) On April 23, 2018, the Taxpayer filed three separate appeals to the City's Board of Assessment Review. (Stip. #10.) On July 9 and August 13, 2018, the City's Board of Assessment held a consolidated hearing and on August 13, 2018 issued a Notice of Decision denying the appeals. (Stip. #11.) On September 8, 2018, the Taxpayer filed three separate petitions with the State Board of Property Tax Review. (Stip. #12.)

Based on the foregoing stipulations, the Taxpayer and the City do not dispute that all statutory deadlines set forth in Sections 841-843 have been met for all three properties. The Taxpayer filed an application for abatement for each of the three

properties on February 1, 2018 within 185 days of the August 2, 2017 commitment date. Given the inaction by the Assessor, the applications were deemed denied within 60 days of February 1, 2018 as set forth in 36 M.R.S. §842. The Taxpayer filed an appeal to the City's Board of Assessment on April 23, 2018 within 60 days of the deemed denial as required by Section 843(1-A). The City's Board of Assessment conducted a hearing and then issued a Notice of Decision dated August 13, 2018, after which the Taxpayer filed three Petitions with the State Board on September 8, 2018 within 60 days of the Notice of Decision as required by Section 843(1-A).

In connection with the 107 Church Street "detention pond," the Taxpayer argues that the requirement that a Taxpayer file an application for exempt status with the Assessor on or before April 1st of the relevant tax year, as set forth in the last paragraph of 36 M.R.S. § 643, is not a condition precedent to the Board's jurisdiction to hear an appeal on the issue of denial of exempt status for that property, and that because it met all the statutory deadlines after the commitment date set forth in Sections 841-843 for the 107 Church Street property, then the Board has jurisdiction over the "detention pond" and denial of exempt status:

> The City takes the position that:
>
> A taxpayer may seek charitable and benevolent tax exemption in two ways: by applying for an exemption pursuant to 36 M.R.S.§ 652, or by applying for an abatement pursuant to 36 M.R.S.§ 841. The taxpayer may choose either method, but it may not choose both. Because MCMR has attempted to do just that, its later abatement appeal for 50 Union Street and 324 Main Street must be dismissed under the doctrine of res

> judicata, and its remaining abatement appeal for 107 Church Street must be dismissed for failing to reach this Board's jurisdictional threshold.

Respondent's Reply Jurisdictional Memo, p. 7-8.

According to the City, MCMR chose to pursue the first of the two "methods" for the two properties other than 107 Church Street. Having done so, the Taxpayer's sole recourse in connection with those two properties is to appeal to Superior Court within 30 days of a written notice of denial of exempt status from the Assessor or within 30 days of the deemed denial of the Assessor, or non-action by the Assessor within 60 days from March 31st, the date on which the Taxpayer filed for exempt status under Section 653. According to the City, having failed to appeal to Superior Court, the Taxpayer cannot choose to pursue the second "method" of appeal to the Board because the doctrine of res judicata would preclude a second appeal. It is for this reason — the City argues — that the Board lacks jurisdiction over the two properties as "[t]he taxpayer may choose either method, but it may not choose both."

Finally, in connection with the 107 Church Street "detention pond," the City argues that because the Taxpayer chose the second "method" by appealing to the Board, then that property cannot be aggregated with the two other properties under 36 M.R.S.§ 843(1-A) to meet the $1,000,000 jurisdictional requirement of the Board and therefore the appeal must be dismissed for the "detention pond."

DELIBERATIONS

The requirement that the Taxpayer file an application for exempt status on or before April 1st of the relevant tax year — similar to that required of Taxpayers who seek Tree Growth, Farm and Open Space, or Working Waterfront classification — is mandatory and a condition precedent to the Board's jurisdiction to hear an appeal of the commitment and denial of exempt status. *See Gregory v. MMC Realty Corp. and Maine Medical Center,* No. 2000-001, at 56 (BPTR November 14, 2000) ("The Board has consistently interpreted this deadline [last paragraph to Section 652] to be mandatory and jurisdiction[al]. If a taxpayer fails to make a timely application, the Board does not have jurisdiction to hear the matter and the parties cannot foist it upon us."); *See also*, *Russell v. Town of Fryeburg,* No. 91-33, at 2 (BPTR April 5, 1994) ("landowner desiring to have certain lands classified under the Tree Growth Tax Law must file an application for same on or before April 1 of the year in which classification is sought"); *Fasse v. Town of St. Albans and Town of Ripley*, No. 2002-005, nt.10 (BPTR April 5, 1994) (April 1st deadline of 36 M.R.S.A. § 579 [Tree Growth] is mandatory). To rule otherwise would render the requirement meaningless. Moreover, because the Taxpayer has not alleged over-valuation based on fair market value for the "detention pond," then the equalized assessed value of the 107 Church Street property may not be aggregated with the equalized assessed value of the 50 Union Street property — for which the Taxpayer has asserted over-

valuation — in order to meet the $1,000,000 jurisdictional requirement of the Board for appeals involving substantial overvaluation when compared to fair market value. For these reasons, by a vote of 5-0, the Board lacks jurisdiction to hear the appeal involving the 107 Church Street property.

In connection with the 50 Union Street and 324 Main Street properties, the Board explained in *Camp O-At-Ka, Inc. v. Town of Sebago*, No. 2016-010, p. 4, (BPTR 2016-010) that:

> Unlike the April 1st deadline for applications for exempt status, the critical date for commencement of the abatement process is the commitment date [here August 2, 2017]. The first step in that process is filing an application for abatement with the assessors. Because the Petitioner did not file an application for abatement the Board has no jurisdiction to hear the appeal. This reasoning is consistent with the Law Court decision in *Berry v. Daigle* 332 A.2d 320, 324 (Me. 1974) wherein the Court concluded that "[t]he failure of an assessor to grant an exemption is properly included within a category of over-taxation subject to review by a proceeding for abatement." See also, *Maine Central R.R. Co. v. Town of Dexter*, 588 A.2d 289, 292 (Me. 1991) ("An abatement proceeding is a proper vehicle in which to challenge the taxation of property claimed exempt"): and *American Martial Arts Foundation v. City of Portland*, 2002 WL1335850, at *1 (Me. Super. Ct. Cum. Cty. May 31, 2002), citing both *Berry* and *Maine Central R.R. Co.*

See also, *Salvation Army v. City of Lewiston*, No. 95-119, at 2 (BPTR January 26, 1996)("...section 652(1) sets forth no appeal procedure, the only route to a hearing before the Board is via timely abatement request.")

Here, as discussed in *Camp O-At-Ka* at 4, and set forth in Section 841, the critical date for the commencement of an abatement proceeding, and distinct from

the requirement that a taxpayer file for exempt status on or before April 1st, is the commitment date of August 2, 2017, only after which an application for abatement is filed within 185 days — as was done here. Like the Tree Growth Tax Law, no provision of Title 36 requires that the assessor notify the taxpayer prior to commitment that its request for exempt status filed on or before April 1st is denied. The decision of the assessor is not final until committed. Up to the date of commitment the assessor may review and change his/her assessment for any property within her jurisdiction for the relevant tax year. As stated by the Board in *Camp O-At-Ka*, at 4, "[i]ndeed, it is not until taxes are actually committed that the value of property is finally determined – be it full value, or zero value in the event of exempt status, or less than full value if classified as tree growth. It is only then that the abatement process may begin for all taxpayers – including those who, as here, had applied for exempt status and whose property was committed at full value."

For all these reasons the City's argument that a second "method" for appeal is available to the Taxpayer based on the date that it files a request for exempt status, rather than the final decision of the assessor set forth in the commitment, does not make sense. The commitment is the assessor's final action from which the appeal process may begin by filing an application for abatement with the assessor as described in Sections 841-843 of Title 36 — which was done here. For these reasons

the Board, by a vote of 5-0, has jurisdiction to hear the appeal involving the 50 Union Street and the 324 Main Street properties.

APPEAL RIGHTS

Either party may appeal this Decision by filing a petition for review in the Superior Court within 30 days of receipt of this Decision pursuant to 5 M.R.S. §§ 11001-11008. If the Decision is not appealed, it shall become binding on the parties at the end of the 30-day period.

Dated: 1/6/2020

Steven J. Silver,
Chairman, Panel A
State Board of Property Tax Review