

GRAFTON, SS.

SUPERIOR COURT

DOCKET NO: 02-E- 176

WATERVILLE ESTATES VILLAGE DISTRICT

vs.

TOWN OF CAMPTON

PETITION FOR DECLARATORY JUDGMENT AND EQUITABLE ACCOUNTING

NOW COMES Waterville Estates Village District (hereafter "Plaintiff" or "Waterville Estates" by and through its Attorneys, Waystack & King, and respectfully petitions this Court for declaratory relief and an equitable accounting between the above-named Parties, and, in support thereof, states as follows:

Nature of Action

1. This is an equitable action for declaratory judgment pursuant to N.H. RSA 491:22, as well as an equitable accounting, pursuant to RSA 498:1, to determine the rights of the parties with respect to the proceeds of an auction of properties taken by tax deed within the boundaries of both the Waterville Estates Village District and the Town of Campton.

Parties, Jurisdiction, and Venue

2. Plaintiff is a political subdivision and village district recognized by the State of New Hampshire, comprised of properties located within both the

Town of Campton and the Town of Thornton, New Hampshire. Plaintiff's mailing address is: RR 2, Box 1241-38, Campton, NH 03223-9705.

3. Respondent Town of Campton (hereafter "Defendant") is a political subdivision and town recognized by the State of New Hampshire, with a mailing address of: 1307 N.H. Route 175, Campton, NH 03223.
4. Jurisdiction is proper as a result of the fact that both parties are political subdivisions of the State of New Hampshire.
5. Venue is proper in Grafton County by virtue of the fact that both parties are political subdivisions existing within said county.

Background Facts and Law Relative to Underlying Present Dispute

6. As a Village District, the Plaintiff's conduct, including its ability to tax property within its legal boundaries, is governed mainly by RSA Chapter 52.
7. RSA 52:16 (Supp. 2001), entitled "Taxation, Procedure" provides, in its entirety, as follows:
 - I. Whenever the district votes to raise money by taxation or otherwise for any of its purposes, the clerk shall, within 10 days thereafter, deliver a certified copy of such vote to the selectmen of each town which contains any part of the district and to the commissioner of revenue administration. Whether or not the district is situated wholly within one town, the selectmen of each town shall assess the tax on that part of the district lying within their own town and commit it to the collector of taxes from their own town. ***The collectors shall then collect the tax as required by law.*** The selectmen may make such assessments in the manner provided under RSA 76:4.
 - II. In the case of districts with annual budgets of less than \$200,000, the town treasurer shall distribute the amount of taxes collected and held in trust by the town under paragraph I to the district treasurer no later than December 31 of each calendar year, unless otherwise agreed to in writing by the town and district treasurers. *In the case of districts with annual budgets of \$200,000 or more, the town treasurer shall distribute the amount of taxes collected and held in trust by the town under paragraph I by distributing to the district treasurer all taxes collected in any given calendar month by the end of the next following month, unless otherwise agreed to in writing by the town and district treasurers. The town*

treasurer, furthermore, shall turn over to the district treasurer all interest earned on district tax revenues held in trust by the town and all interest collected by the town on the account of any delinquent district taxpayers' district taxes in the same manner as the tax revenues are distributed.

(emphasis added).

8. This statute is the mechanism by which village districts work with the towns in which the village districts are situate, in order to secure funding for their village district government through the real estate taxation process. To put it simply, if the village district votes to tax real property within its boundaries, the village district submits its tax to the town for assessment and collection, which activities the town officials are supposed to undertake, for the benefit of the village district.
9. For purposes of this statute's application in this case, Plaintiff alleges as follows:
 - a. At all times relevant hereto, Plaintiff, at its Annual Village District Meetings, voted to raise money by taxation;
 - b. Plaintiff's clerk, within 10 days of such meetings, delivered certified copies of such votes to the selectmen of the Towns of Campton and Thornton, and to the commissioner of revenue administration;
 - c. The selectmen of such towns assessed taxes, as provided under RSA 76:4, on that part of the district lying within their respective towns, and committed same to the tax collectors of their respective towns;
 - d. The tax collectors of the respective towns were then required to collect the taxes so assessed as required by law; and,
 - e. At all times relevant hereto, Plaintiff has been and is a village district with an annual budget in excess of \$200,000, and as a result, Defendant's treasurer has been and is required to distribute, to Plaintiff's treasurer, the amount of all taxes collected and held in trust by Defendant under [RSA 52:16, I] in any given month, by the end of the next following month.
10. As is further described below, the parties' present dispute centers on a difference of opinion as to whether or not certain recent actions taken by

Defendant constitute “tax collection” within the meaning of RSA 52:16, such that Defendant’s obligation and duty to reimburse the Plaintiff applies.

Facts and Law Relative to Recent Auction of Tax-Deeded Properties

11. On Saturday, August 24, 2002, Defendant conducted an auction of 119 properties within its borders.
12. The Defendant had become the owner of legal title to said properties by taking and recording “tax deeds” to these properties for non-payment of taxes, as per either former RSA 80:76 or RSA 80:76, as amended.
13. Of these 119 properties, five (5) of them are not located within the boundaries of the Waterville Estate Village District, and thus are irrelevant for purposes of this proceeding.
14. The remaining 114 properties are located within the legal boundaries of both Plaintiff and Defendant.
15. Accordingly, Defendant owned legal title to these 114 properties by virtue of non-payment of taxes that were owed not just to Defendant, but to Plaintiff as well.
16. Defendant had the right to conduct this auction of tax-deeded properties within the parties’ legal boundaries by virtue of – *and only by virtue of* -- RSA 80:80.¹
17. RSA 80:80 (Supp. 2001) provides, in relevant part, that:
 - I. No transfer of any tax lien upon real estate acquired by a town or city as a result of the execution of the real estate tax lien by the tax collector for nonpayment of taxes thereon shall be made to any person by the municipality during the 2-year period allowed for redemption, *nor shall title to any real estate taken by a town or city in default of redemption be conveyed to any person, unless the town, by majority vote at the annual meeting, or city council by vote, shall authorize the selectmen or the mayor to transfer such lien or to convey such property by deed.*

¹ Plaintiff expresses no opinion, at this time, and for purposes of this pleading, as to whether certain of the auctioned properties were governed by former RSA 80:80 (prior to either or both of the 1997 and 1999 amendments, respectively the current RSA 80:80 (Supp. 2001)). Plaintiff submits that such distinction – assuming it exists, which Plaintiff has not determined – may have factual or legal relevance for purposes other than this pleading, but the distinction is not legally relevant for purposes of this pleading and the relief requested herein.

II. If the selectmen or mayor are so authorized to convey such property by deed, *either a public auction shall be held*, or the property may be sold by advertised sealed bids. *The selectmen or mayor shall have the power to establish a minimum amount for which the property is to be sold and the terms and conditions of the sale.*

II-a [omitted as irrelevant for purposes of this pleading]

III. The selectmen may, by a specific article in the town warrant, or the mayor, by ordinance, may be authorized to dispose of a lien or tax deeded property in a manner than otherwise provided in this section, *as justice may require.*

IV. Such authority to transfer or to sell shall continue in effect for one year from the date of the town meeting or action by the city or town council provided, however, that the authority to transfer tax liens, or to sell real estate acquired in default of redemption, or to vary the manner of such sale or transfer *as justice may require*, may be granted for an indefinite period, in which case the warrant article or vote granting such authority shall use the words “indefinitely, until rescinded” or similar language.

V. Towns and cities may retain and hold for public uses real property the title to which has been acquired by them by tax collector’s deed, upon vote of the town meeting or city council approving same.

VI. For purposes of this section, the authority to dispose of the property “as justice may require” shall include the power of the selectmen or mayor to convey the property to a former owner, or to a third party for benefit of a former owner, upon such reasonable terms as may be agreed to in writing, including the authority of the municipality to retain a mortgage interest in the property, or to reimpose its tax lien, contingent upon an agreed payment schedule, which need not necessarily reflect any prior redemption amount. Any such agreement shall be recorded in the registry of deeds. This paragraph shall not be construed to obligate any municipality to make any such conveyance or agreement.

(emphasis added).

18. Defendant’s auction, conducted by virtue of RSA 80:80, resulted in the Defendant’s authorized agents accepting bids on each and every one of the 114 properties in question.

19. Defendant imposed no minimum bid on any of these 114 properties.
20. As of the date of this pleading, upon information and belief, it is reasonable for the parties to assume that all of the 114 properties will eventually be sold to third parties (i.e., successfully “closed” within the forty-five (45) day requirement stipulated by the Defendant at the auction).
21. The successful closings on the sales of these 114 properties is expected to generate a substantial amount of revenue.
22. Defendant would not be in eventual possession of such revenue but for the existence of RSA 80:80.
23. In anticipation of the Defendant’s receipt of such revenue, Plaintiff, through counsel, has communicated with counsel for the Defendant as to the Defendant’s intentions with respect to these funds.
24. Specifically, Plaintiff’s counsel inquired of Defendant’s counsel as to whether or not Defendant would remit any of these funds to Plaintiff. *See*, August 12, 2002, correspondence attached hereto as Exhibit 1.
25. The basis for Plaintiff’s inquiry is the legal obligation of Defendant to remit to Plaintiff all taxes collected by Defendant, for the benefit of the Plaintiff, by virtue of RSA 52:16 (Supp. 2001), *infra*.
26. Simply put, the Plaintiff expected that the Defendant would remit to Plaintiff the taxes (with interest) that Defendant owed to Plaintiff, which taxes the Defendant had the legal duty and obligation to collect, for Plaintiff’s benefit.
27. Defendant, however, informed Plaintiff, through the parties’ respective counsel, that it had no intention whatsoever of remitting any of the auction proceeds to Plaintiff.
28. Plaintiff’s counsel confirmed Defendant’s position through its counsel, and on behalf of Plaintiff, made a present claim against Defendant for its appropriate portion of the auction proceeds. *See*, August 23, 2002, correspondence attached hereto as Exhibit 2.²
29. At present, the parties dispute whether or not Plaintiff is entitled to any of the proceeds from the auction of the 114 tax deeded properties.

In the August 23, 2002, correspondence, Plaintiff’s counsel incorrectly and inadvertently referred to one of the applicable statutes as “RSA 56:12”, which should have been “RSA 52:16”.

Legal Allegations and Argument

30. Plaintiff submits that Defendant is attempting to subvert the clear intent of RSA 52:16 by taking a narrow, unfair, and legally incorrect view of its entitlement to proceeds generated by an auction conducted under the authority of RSA 80:80.
31. The Defendant's only legal basis to conduct the auction was RSA 80: 80, which is part of a comprehensive statutory scheme related to "tax collection".
32. The Defendant, however, is taking the position that the auction process is not "tax collection".
33. Similarly, the Defendant is taking the position that the auction proceeds are not, in any way, "taxes" or "proceeds of taxes".
34. Defendant has apparently taken this position in an attempt to sidestep its duties to the Plaintiff under RSA 52:16, including the remittance of tax monies collected to the Plaintiff.
35. If the auction process (and its proceeds) are determined to be "tax collection", then Defendant owes funds from the proceeds, to the Plaintiff, by virtue of Defendant's obligations to the Plaintiff under RSA 52:16.
36. Defendant should not be allowed to escape from its obligations to the Plaintiff under RSA 52:16 by using a tortured interpretation of RSA 80:80; this Court should not reward the Defendant for its conduct under the circumstances, and allow it to reap a windfall from its conduct toward the Plaintiff.
37. Further, the Plaintiff submits that the Defendant's actions in connection with the auction proceeds are not in keeping with the requirement that the Defendant's selectmen act "as justice may require" under the circumstances. See, RSA 80:80, III & IV.

Request for Declaratory Relief

38. RSA 491:22 provides this Court with a basis to determine the parties' rights to the auction proceeds, by applying RSA 80:80 and RSA 52:16 to the present situation.
39. Plaintiff asks this Court to consider the Defendant's actions to be "tax collection" within the meaning of RSA 52:16, and to order that the

Defendant pay the appropriate proceeds to the Plaintiff.

Request for Accounting

40. Plaintiff asks that this Court, in advance of any final hearing on this matter, order the Defendant to account to the Plaintiff for all proceeds obtained in connection with the auction.
41. “Equity will take jurisdiction of an action for accounting where discovery is needed and a confidential or fiduciary relationship exists between the parties”. Claire Murray, Inc. v. Reed, 139 N.H. 437, 439 (1995) (citations omitted).
42. Defendant has a fiduciary relationship to Plaintiff as a result of RSA 52:16 and general common law principles, and thus Plaintiff’s request for an accounting should be granted.

Conclusion

43. Plaintiff Waterville Estates has been unjustly denied tax monies that it is owed by the Defendant Town of Campton, and needs this Court to determine the parties’ rights to the proceeds at issue.

WHEREFORE WATERVILLE ESTATES VILLAGE DISTRICT RESPECTFULLY REQUESTS THAT THIS HONORABLE COURT:

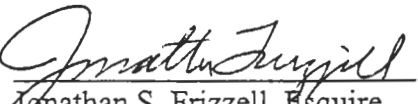
- A. Determine the rights of the parties to the proceeds of the August 24, 2002, auction of tax-deeded properties;
- B. Order the parties to attempt to stipulate to an accounting of such proceeds, but if no such stipulation is possible, appoint an independent third-party auditor to complete such accounting; and,
- C. Grant such other and further relief as may just and equitable.

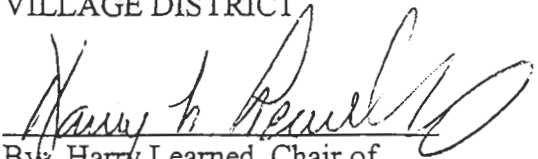
Dated: September 10th, 2002

Respectfully submitted,

WAYSTACK & KING

WATERVILLE ESTATES
VILLAGE DISTRICT


Jonathan S. Frizzell, Esquire
P. O. Box 137
Colebrook, NH 03576
(603) 237-8322


By: Harry Learned, Chair of
District Commissioners

STATE OF NEW HAMPSHIRE,
GRAFTON, SS.

September 4, 2002

Personally appeared the above-named Harry Learned, as Chair of the District Commissioners, and stated, under oath, that the facts contained in the foregoing are true and accurate, to the best of his knowledge and belief.

Before me,


Notary Public/Justice of the Peace

TARA A. DiSALVO, Notary Public
My Commission Expires June 20, 2006



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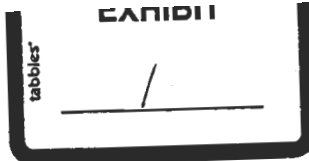
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PHILIP R. WAYSTACK, JR.

DAVID D. KING

CLARE M. HINKLEY

JONATHAN S. FRIZZELL

August 12, 2002

Timothy Bates, Esquire
Mitchell & Bates, PA
25 Beacon Street
Laconia, NH 03246

*Re: Your Client: Town of Campton
My Client: Waterville Estates Village District*

Dear Tim:

It is my understanding that you represent the Town of Campton Selectboard. Please understand that I am representing the Commissioners of the Waterville Estates Village District. They have asked me to contact you with regard to the planned auction of 114 tax deed properties within the District, which auction is currently scheduled for Saturday, August 24, 2002.

The first issue of concern to the Village District Commissioners is the transmission of tax monies generated by the auction from your client to my client. Several rumors have been heard, some of which are to the effect that the Town of Campton is not planning on remitting any tax monies collected, whatsoever, to the Village District. I would appreciate your written confirmation that your client is not taking this position. At a minimum, the Town should be transmitting monies that it receives according to the applicable statutory mechanisms, as well as the current practice between the two. My clients have some other issues with respect to the ongoing practice between the two, but the complete withholding of any monies from my client by your client would not only be contrary to the law, but would also increase the current severe financial pressure on my client.

Further, the Village District Commissioners are concerned that the method and manner by which this auction is being advertised and promoted, and possibly being conducted, is also contrary to New Hampshire law and your client's obligation to fulfill its duties as the agent for collecting taxes for the District. It is the Commissioners' understanding that the auctioneer is not being paid on a commission basis, and the extent of promotion and advertising has only been expanded as of late through the efforts of the

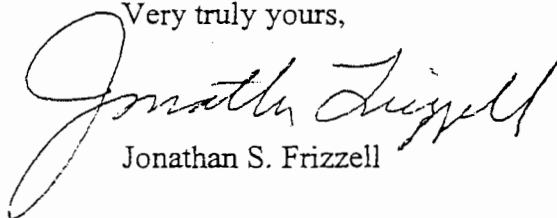
members of the Village District and the Waterville Estates Association (the homeowners association of the area). The Commissioners would like to have the auction promoted and advertised with an eye towards actually generating a substantial amount of tax monies, rather than simply being done with a bare minimum of requirements.

Please understand that I have only recently begun working with the Village District on these issues. The fact that I have identified these two issues outlined above should, in no way, be construed as any sort of waiver, of any kind, of other claims that my client may have against yours, with respect to its tax assessment and collection procedures and practices. My client has incurred significant long-term debt as a result of what it perceives to be unfair practices with respect to tax collection by your client, and as I sort things out with my client, there well may be other issues that may need formal resolution between them.

I would appreciate the opportunity to discuss these issues with you at your earliest convenience. I will, however, at a minimum, request written confirmation of the Selectboard's position as to their intentions with the planned auction. I think such confirmation is necessary under the circumstances, and my client has requested that I ask for it.

Thank you for your anticipated attention.

Very truly yours,

A handwritten signature in black ink, reading "Jonathan S. Frizzell". The signature is written in a cursive style with a large, looping initial "J".

Jonathan S. Frizzell



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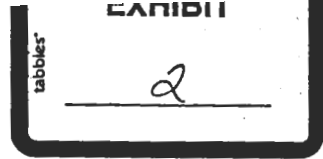
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PHILIP R. WAYSTACK, JR.

DAVID D. KING

CLARE M. HINKLEY

JONATHAN S. FRIZZELL

Via Facsimile (524-0745) and First Class Mail

August 23, 2002

Timothy Bates, Esquire
Mitchell & Bates, PA
25 Beacon Street
Laconia, NH 03246

Re: Waterville Estates Village District v. Town of Campton

Dear Tim:

This letter follows up on our telephone conversation of Thursday afternoon, August 22, 2002.

As a result of my correspondence to you of August 12, 2002, you and I have discussed the auction of properties in the Town of Campton that had been taken by tax deed for unpaid taxes. The auction is currently scheduled for tomorrow morning, Saturday, August 24, 2002. Altogether, it is my understanding that there are 119 properties that are being auctioned, and out of that, 114 of those properties are located within the Village District, a separate political subdivision within the Towns of Campton and Thornton.

Based upon available present information, it appears that the auction is going to be well attended and may likely result in a substantial amount of revenue for the Town of Campton. It is the legal position of the Village District Commissioners, whom I represent, that the monies generated by this auction, that relate to tax deeded properties within the Village District boundaries, constitutes "collection of taxes", within the meaning of RSA 56: 12, as it applies to the ongoing situation between the Town of Campton and the Village District. It is my understanding that your client, the Campton Selectboard, has a different position, specifically, that the conducting of the auction and the proceeds of the auction do not fall within the definition of "tax collection", and therefore, the Town of Campton owes none of this money to the Village District. As I believe we have discussed, this is an apparent legal dispute between our respective clients on this issue.

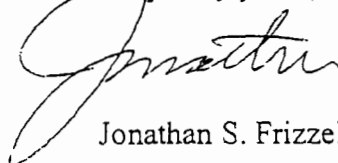
Accordingly, please consider this letter as a claim against the Town of Campton, for the appropriate net proceeds of the sale of the 114 properties that lie within the Village District. When I use the term "appropriate net proceeds", it is recognized that some expenses will exist that need to be paid, such as an appropriate and reasonable fee to the auctioneer, which expenses are necessary in connection with this auction. My clients reserve the right to object to any unreasonable or inappropriate expenses which your client may claim.

In the very near future, I will prepare and file, with the Grafton County Superior Court, a Petition for Declaratory Judgment and Equitable Accounting, in order to determine which of our clients has the legal right to the monies generated by the auction. Accordingly, in the event that the Court finds my client legally entitled to the funds, I would ask that you notify your clients that they are to place the proceeds of the auction in a separate escrow account, and to refrain from expending these funds without both parties' agreement and/or Court approval. Similarly, given the fact that we will be asking for an accounting, I would appreciate your confirmation that your client will be keeping a specific and itemized listing of all financial transactions that occur as part of this auction, so that there will be an adequate "track record" for the parties and the Court to sort out, in connection with the determination of the parties' legal rights.

Finally, please understand that other legal issues appear to exist between our respective clients. This letter, and our current discussions, have been specifically tailored to the issue at hand, i.e., the presently scheduled auction. The scope of this letter and the Village District's present legal position toward the auction should in no way be considered as a waiver of any other claims (or defenses) that my client may have in connection with other legal issues between the parties.

Regardless of the outcome of the declaratory relief that we will be seeking, it currently appears that it is in both parties' interests for this auction to generate as much revenue as possible. I would like to thank you for your personal availability this past week in order to discuss these issues without causing any unnecessary disruption to the auction process. I will contact you early next week to discuss the results of the auction and confirm the parties' actions and intentions.

Very truly yours,



Jonathan S. Frizzell

JSF/cl

cc: WEVD Commissioners (Via Fax (726-8611) and Electronic Mail)