

**Chris Marken - #21217-04PT/Timothy and Theresa Callahan – #21283-04PT/
Nicholas Petropulos - #21284-04PT/Eugene T. and Janet L. Reed- #21285-04PT/
Keith and Julie Leader - #21286-04PT/Rhonda Roberts - #21287-04PT/
William and Patricia Mohalley - #21288-04PT/Langdon Construction, LLC - #21289-04PT/
Robert and Jennifer Davidson - #21292-04PT/Karen Davidson - #21293-04PT/
Sandra A. Taylor-Stockus - #21295-04PT/Cyruss and Kerry Silvester - #21296-04PT/
Mark and Diane Hardy - #21298-04PT**

v.

Town of Nottingham

ORDER FOR ENFORCEMENT OF DISCOVERY

This order responds to the “Town’s” May 2, 2007 Motion for Enforcement of Discovery (the “Motion”) and the “Taxpayer’s” May 12, 2007 Motion to Reject the Town of Nottingham’s Motion for Enforcement of Discovery (the “Objection”) in each of the thirteen appeals listed above. These appeals have previously been consolidated. While the Town’s interrogatories for which it seeks enforcement vary slightly from case to case, they are generally consistent in substance. Thus the board is responding to the Motion in a consolidated fashion.¹

The Taxpayers are represented by Mr. Eugene T. Reed and the Town is represented by Ms. Loren J. Martin of Avitar Associates of New England, Inc.

¹ The board notes the Objection cover letter cited Docket No. 21296-04PT; however the specific motion relative to that docket was not submitted. Nonetheless given the similarities of the properties and the interrogatories the board includes that docket in this order.

After review of the Motion and Objection, the board grants the Motion and orders as follows:

1. The Objection is correct in that Tax 201.19(e) requires the party seeking compliance make diligent efforts in obtaining compliance before filing an enforcement motion. Nonetheless, given the contentiousness between the parties' representatives exhibited in the various documents submitted to date, the board believes such efforts would likely have been unproductive. Consequently the board waives that provision of the enforcement rule.

2. The Objection's claims of ex parte communications between Ms. Martin and the board's clerk are unfounded. Ex parte communications generally would entail a party's contact with a board member, rather than one of the board's staff. It frequently and appropriately occurs that parties seeking guidance on procedural matters of the law over which the board has jurisdiction (statutes, case law and rules) may have telephone communication with the board's clerk. Where such communications may impact the opposing side, the clerk apprises the opposing party and requires future inquiries be placed in writing as was the case here.

3. With respect to specific interrogatories:

- a. Mr. Reed shall provide the actual time trending factor applied to sales and any analysis or analyses from which it was derived.
- b. Where applicable, Mr. Reed shall specifically identify any of the physical data errors noted in the appeal documents.
- c. Any appraisals performed for the appealed properties, whether or not it is the Taxpayer's intent to submit them and regardless of when they were performed, must be provided; the grounds to objecting to submission of such information is not that it may ultimately be inadmissible at hearing, but rather that the request

“appears reasonably calculated to lead to the discovery of admissible evidence.”

Superior Court Rule 35-b.

d. Any purchase and sale agreements where they exist and are available shall be submitted to the Town.

e. Where applicable, the Taxpayers shall provide an opinion of market value for the property with clarity as to which property it pertains to (e.g. Nicholas Petropulos v. Nottingham, Docket No.: 21284-04PT).

Mr. Reed shall provide these further responses to the Town’s interrogatories within thirty (30) days of the clerk’s date on this order. If the Town does not receive Mr. Reed’s responses or believe they are not responsive to this order, the Town may file a motion seeking default pursuant to TAX 201.04 through TAX 201.06.

4. Last, Mr. Reed’s signature on each response to the interrogatories was signed in compliance with TAX 201.06 and therefore appears to be in compliance with the signature requirements of the Superior Court Rule 36.

SO ORDERED

BOARD OF TAX AND LAND APPEALS.

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Chris Marken, et. al. v. Town of Nottingham

Docket Nos.: 21217-04PT, et. al.

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Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to:
Eugene T. Reed, 8 Michela Way, Nottingham, NH 03290, Taxpayer's Representative; Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representative; Chairman, Board of Selectmen, Town of Nottingham, PO Box 114, Nottingham, NH 03290; Town Clerk, Town of Nottingham, PO Box 114, Nottingham, NH 03290.

Date: June 8, 2007

Anne M. Stelmach, Clerk