Town of Orford

Docket No.: 21473-05RA

ORDER

RSA 71-B:16 gives the board of tax and land appeals broad authority to order reassessments or to rectify assessments that have been "fraudulently, improperly, unequally, or illegally assessed."[1] In Appeal of Wood Flour, Inc., 121 N.H. 991, 994 (1981), the supreme court found "[t]he board of [tax and land appeals] thus has broad authority to remedy the inequities of improper and illegal taxation." While RSA 21-J:3, V gives general supervisory authority to the department of revenue administration ("DRA") to ensure "that all assessments of property . . . [are] in compliance with the laws of the state", RSA 71-B:16 gives the board specific authority to intercede, investigate and openly order a new assessment or reassessment. (See also RSA 71-B:5, I.)

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[1] RSA 71-B:16 provides:
"71-B:16 **Order for Reassessment**. The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state:
"I. When a specific written complaint is filed with it, by a property owner, within 90 days of the date on which the last tax bill on the original warrant is sent to the collector of taxes of the taxing district, that a particular parcel of real estate or item of personal property not owned by him has been fraudulently, improperly, unequally or illegally assessed. The board shall consider only one complaint from a property owner for each parcel of land until such time as a reassessment has been made. The complainant shall pay a fee of $65 for each specific particular parcel or specific item of personal property complained of. The board shall send notice by certified mail to the taxpayer against whose property the complaint is made; or
"II. When it comes to the attention of the board from any source, except as provided in paragraph I, that a particular parcel of real estate or item of personal property has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed . . . "

Recent articles in the Valley News (September 15, 2005 and September 22, 2005) indicate the Town of Orford ("Town") Board of Selectmen have voted to ignore the view influencing factors assigned to 129 properties in the Town utilized in the 2005 reassessment being performed by Avitar Associates of New England, Inc. ("Avitar"). The latest article indicates the Town plans to use the 1997 assessed values for 129 properties found to have view influencing factors in 2005. Such actions, if the news reports are accurate, could result in property being disproportionately assessed.

To receive better information as to the exact actions of the board of selectmen, its motivations and legal basis, the board has scheduled a hearing for Monday, October 17, 2005 at 9:00 a.m. at the board of tax and land appeals' office at 107 Pleasant Street, Johnson Hall – 3rd Floor, Concord. At that hearing the board of selectmen, or a representative, are ordered to attend and explain in detail the ramifications of their actions and legal basis for not considering or accepting the land condition factor related to a property's view.

In preparing for the hearing and testifying, the Town should consider how the board of selectmen's actions comply with established law including the following: 1) the provision in Part II, Article 5 of the New Hampshire Constitution that assessments be "proportional and reasonable" within the town, a multi-town regional school district and the state so that properties of similar market value are bearing fair shares of the total tax burden; 2) the provisions of RSA 75:1 and 75:7 that all taxable real estate be appraised at market value and that the board of selectmen take an oath that "all taxable property was appraised to the best of our knowledge and belief at its full value . . ."; 3) the provisions of RSA 75:8-a that require all real estate to be valued every five years in accordance with RSA 75:1; and 4) the established requirement that "all relevant factors to property value should be considered when making an appraisal in order to

arrive at a just result. (Citations omitted.)" Paras v. Portsmouth, 115 N.H. 63, 67-68 (1975), quoted in Steele v. Town of Allenstown, 124 N.H. 487, 491 (1984).

Further, to assist the board in its fact finding and investigative function as to the assessing actions within the Town, the board directs a representative of Avitar to be present at the hearing to explain its assessing methodology, market analysis and documentation that led to the application of condition factors related to views. In addition, the board directs a DRA representative to attend and respond to these issues. The board will also consider any relevant testimony of taxpayers in the Town.

After receiving testimony from the Town officials, Avitar, DRA and interested taxpayers, the board will issue an order as to the propriety of the Town's action and what, if any, remedy or other actions are necessary.

In accordance with TAX 208.05(a)(5) the Town shall, at least ten (10) days prior to the hearing date, post this Order in either two public places in the municipality or print it in a newspaper of general circulation.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order this date been mailed, postage prepaid, to: Chairman, Board of Selectmen, Post Office Box F, Orford, New Hampshire 03777; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, New Hampshire 03258; and Guy Petell, State of New Hampshire Department of Revenue Administration, Bureau of Assessments, Post Office Box 457, Concord, New Hampshire 03301-0457.

Date: September 22, 2005

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Anne M. Stelmach, Clerk