

**Shaw's Supermarket Company**

**v.**

**City of Manchester**

**Docket No.: 23516-07PT**

**ORDER**

The board has reviewed the Joint Motion for Entry of Protective Order (the "Motion") filed by the "Taxpayer" and the "City." For the reasons briefly discussed below, the Motion is denied without prejudice.

Any protective order entered by the board must be in concert with the provisions of RSA ch. 91-A, the New Hampshire "Right to Know Law." All documents brought before the board, except those that are by statute deemed confidential (see, e.g., RSA 21-J:14 and RSA 72:34, II) or are exempt governmental records enumerated in RSA 91-A:5, are subject to public perusal.

The "Stipulated Protective Order" submitted by the parties to this appeal is unclear and overbroad and potentially protects documents not exempt under RSA 91-A:5. For example, it purports to apply to "all documents" except "Confidential Documents," but no cognizable definition of what is or is not "confidential" is provided. (A claim that the terms of a commercial lease are confidential is plausible, but a blanket claim that any and all documents disclosed to the

other party in the course of discovery would not be.) It is also unclear whether and how the board will itself be subject to the Stipulated Protective Order's prohibitions against disclosure. (Compare, for example, Section 2(a), which seems to except the board from the prohibition against disclosure, and Section 10, which authorizes a party's counsel to "move for leave to file" a document "under seal" to protect its confidentiality.) Similarly, the Stipulated Protective Order does not acknowledge that the City, just like the board, is bound by the provisions of RSA ch. 91-A. Unless one or more of the narrow exceptions to the Right to Know Law applies to a document, the City is also precluded by law from refusing to disclose it.

Consequently, the board denies the Motion, but without prejudice. In other words, if the parties wish to renew their motion with a revised stipulated protective order that satisfies these concerns, the board will consider it and rule accordingly.

In light of this ruling on the Motion, the board grants the Taxpayer's "Motion for Extension of Deadline to Provide Evidence That it is an Aggrieved Party" (filed in response to the Clerk's December 8, 2008 Order) until thirty (30) calendar days after the Clerk's certification date shown below. Failure to provide this evidence on a timely basis shall result in dismissal of the appeal, whether or not another proposed protective order is submitted to the board and ruled upon within that time frame.

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 has this date been mailed, postage prepaid, to: Mark F. Murphy, Esq., Wulsin Murphy LLP, 30 Walpole Street, Norwood, MA 02062, counsel for the Taxpayer; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101.

Date: February 6, 2009

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Anne M. Stelmach, Clerk