

Lynda Rayner
v.
Town of Andover
Docket No.: 24818-09PT

Mario and Caroline Ratzki
v.
Town of Andover
Docket No.: 24819-09PT

Ralph and Constance Ressler
v.
Town of Andover
Docket No.: 24821-09PT

Julie P. Mayo Revocable Trust
v.
Town of Andover
Docket No.: 24796-09PT

ORDER HOLDING APPEALS IN ABEYANCE

The board scheduled the above four appeals for hearings on August 30, 2011. On that morning and just before the hearings were scheduled to begin, the parties raised several issues pertaining to the assessments under appeal. These issues focus on the individual assessments for a waterfront lot (Map 17, Lot 13) for tax year 2009. In attendance for the abatement hearings were the individual “Taxpayers” and for the “Town”: Gary Roberge and Mark Stetson of Avitar Associates of New England, Inc.,

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the Town's contract assessor, and Dana Hadley, Town Administrator. None to the Town Selectmen attended the scheduled hearings.

Upon further review and investigation, including the board's jurisdiction under RSA 71-B:16, II, the board finds the substantive hearings on these appeals should be held in abeyance until such time as the board concludes an investigation (opened under a separate docket: No. _____) regarding the Town's assessment practices. RSA 71-B:16, II, gives the board authority to investigate and enter an appropriate remedy "(w)hen it comes to the attention of the board from any source . . . that a particular parcel of real estate . . . has not been assessed, or that it has been fraudulently, unequally, or illegally assessed." The board's "broad authority" under this statute (and its predecessor, former RSA 71:12) extends both to unequal or illegal assessments but also to unequal or illegal abatements of prior assessments previously made. See Appeal of Wood Flour, 121 N.H. 991, 994 (1981) (the board "has broad authority to remedy the inequities of improper and illegal taxation" and "the general thrust of the statute is to promote the legality of real estate taxes. The legislature obviously intended the board to scrutinize the legality of abatements as rigorously as it reviews the lawfulness of assessments.")

The board will briefly summarize the underlying facts giving rise to this investigation. Each Taxpayer¹ has an undivided 1/5th ownership interest in this waterfront lot which is "appurtenant to" a house lot. The Town performed a revaluation in tax year 2009 and raised the collective assessments on the waterfront lot, initially to a total of \$233,500, subsequently reduced to \$200,000, and each Taxpayer was assessed

¹ A fifth property owner (John and Shelley Chesley) did not file the "2009 Inventory of Taxable Property" or abatement application with the municipality and therefore their appeal was dismissed. (See August 13, 2010 letter from the board and October 21, 2010 Final Order in BTLA Docket No. 24820-09PT.)

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\$40,000 for their interest in the waterfront lot (1/5th of the total tax assessment), an assessment each disputed and appealed to the board.

In December, 2010, after the appeals were filed, the Selectmen met and decided, according to a document submitted to the board, to “limit the amount of increase” in the assessment for each owner of the waterfront lot to “150% of the 2008 value.” (See the “Excerpt from December 6, 2010-Selectmen’s Meeting.”)² The board also received another document from Avitar, an August 15, 2011 letter to one of the property owners, stating “the current assessment of the waterfront portion of your property is \$13,100.” (Apparently, \$13,100 represents 150% of the 2008 assessed value.) Although tax refunds were issued to each Taxpayer, the Town’s assessment-record cards, notwithstanding the conflicting statement in Avitar’s letter, still reflect the higher \$40,000 individual assessments for the waterfront lot.

The board is taking these steps because of its clear authority to undertake an investigation under RSA 71-B:16, II and its inherent authority and responsibility to manage its docket effectively. (See Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (“the board has the inherent authority to decide whether a case on its docket is contested or resolved. (Citation omitted.)”)

Consequently, each of the above appeals is held in abeyance until the board completes its RSA 71-B:16, II investigation into the Town’s assessment and abatement practices. The board will not process any proposed settlement or withdrawal of any of these appeals until such time as that investigation is concluded. **The board will keep the**

² Several of the Taxpayers informed the board it was their understanding that this action was taken by the Selectmen for both tax years 2009 and 2010.

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Taxpayers advised of the progress of that investigation by adding them as interested parties to any notices and other orders sent in that proceeding.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order and Amended Hearing Notice has this date been mailed, postage prepaid, to: **PLEASE ADD ALL TP's**, Taxpayers; Chairman, Board of Selectmen, Town of Andover, PO Box 61, Andover, NH 03216; and Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm; **AND DRA?**

Date:

Anne M. Stelmach, Clerk