

**Sttipfield, LLC v. Town of Pittsfield, #25366-09PT**  
**Dudek Realty, LLC v. Town of Pittsfield, #25336-09PT**  
**Whitesbrook, LLC v. Town of Pittsfield, #25330-09PT**  
**New Town Holdings, LLC v. Town of Pittsfield, #25365-09PT**  
**Gardner, Steven & Greta v. Town of Rye, #25343-09PT**  
**Fall Line Properties v. Town of Durham, #25339-09PT**  
**R.A.W. Rev. Trust & J.M.W. Rev. Trust v. Town of Durham, #25370-09PT**  
**Sunset International Building, LLC v. City of Manchester, #25375-09PT**  
**Manchester FFI, LLC v. City of Manchester, #25337-09PT**

**ORDER**

The board held a limited hearing on May 12, 2011 to address questions arising from various discrepancies in the mediation reports and later appraisals submitted in the above appeals. (See the April 11, 2011 Order scheduling this hearing.) In attendance at the hearing were: Christopher Snow, Property Tax Advisors, Inc., the representative for all of the “Taxpayers”; Tim Northcott for the Town of Pittsfield; Robert J. Gagne for the City of Manchester; Jim Rice for the Town of Durham; and Norm LeBlond and Todd Haywood for the Town of Rye.

The limited hearing focused on two sets of questions pertaining to the board's "Mediation" rules contained in Tax 203.07:

- (1) whether and when did the required mediation meeting(s) in each appeal take place between the Taxpayer and municipal representatives? and
- (2) whether and when the Taxpayer (through its representative, Mr. Snow) submitted appraisals to the municipalities as part of the mediation process?

The board heard testimony from Mr. Snow and the municipal assessors regarding these questions, along with Mr. Snow's further explanations of how he responded to the default orders issued in each of these appeals after the four-month time period for compliance with Tax 203.07 had expired.

The parties did not dispute the facts presented at the hearing regarding the relevant dates when mediation was ordered in each appeal, the untimely filing of mediation reports, the subsequent default orders and the later submitted appraisals from Mr. Snow. In brief, Mr. Snow, each Taxpayer's representative, stated he "took responsibility" for the fact mediation reports were not filed in a timely manner (within the four month period specified by the board in the November, 2010 orders issued in each appeal) and admitted he did not file the required mediation reports until after the board issued default orders (in March, 2011) based on his noncompliance. He also acknowledged his delays in sending appraisals to the municipality until the default period (ten (10) days after issuance of each order).

The board has considered the responses provided at the limited hearing regarding how the required mediation process was undertaken by Mr. Snow with the municipal representative(s) in each appeal. Except perhaps for the "Gardner" appeal (discussed separately below) where intermittent settlement discussions occurred with two municipal representatives, the board finds

no settlement meeting to comply with the letter and the spirit of the board's mediation rule actually took place during the ample (four month) prescribed period or even after the board issued the default orders for non-compliance with Tax 203.07. In this respect, the board finds simply exchanging phone messages without an actual settlement meeting to discuss the grounds for each appeal, together with any timely appraisal or other supporting documentation from Mr. Snow, does not constitute compliance with Tax 203.07.

As noted at the hearing, the board has some leeway or discretion regarding the remedy that should be imposed for this noncompliance. At one end of the range of sanctions, dismissal of the appeal can occur when a default remains uncured. Here, Mr. Snow failed to cure the noncompliance with Tax 203.07 even after issuance of each default order. The board finds the defaults in these appeals remained uncured even after Mr. Snow filed his mediation reports because they contain incomplete and misleading information and no actual settlement meeting or actual substantive compliance with Tax 203.07 was achieved.

At the other end of the range of sanctions, the board has the ability to waive the application of its own rules, including the default and dismissal provisions, in very special and limited circumstances. Such circumstances can arise where the failure to comply is due to "accident, mistake or misfortune," but the responses offered at the limited hearing by Mr. Snow do not meet the established criteria for such a waiver. See Tax 201.41 ("Relief from Failure to Comply with a Rule"); and Tax 102.02 ("Accident, mistake and misfortune' means something outside the party's own control and not due to neglect, or something that a reasonably prudent person would not be expected to guard against or provide for.") The board finds no grounds for granting such relief in these appeals.

Mr. Snow had full notice and knowledge of the board's proposed mediation rules (now contained in Tax 203.07) because he received the drafted rules when they were prepared and circulated for public comment in 2009. He submitted written comments to the board (on July 1, 2009) and received a detailed response (on August 6, 2009) explaining further the rationale for the rule before it was adopted (in September, 2009). These dates are notable because they precede the filing of each of the above appeals by at least one year. During that period of time, Mr. Snow had ample opportunity to make whatever changes to his "office practice" might have been necessary to enable him to comply with the board's rules and fulfill his responsibilities as an experienced tax representative. See Tax 207.01, et seq.

Upon review of these facts and the important underlying issues, the board finds the appropriate sanction is to exclude each of the appraisals Mr. Snow failed to submit to the municipalities on a timely basis and in compliance with the board's rules. Mr. Snow is further ordered to certify to the board (in writing within ten (10) days) that he has provided a copy of this Order to the Taxpayers, his clients in these appeals.

In addition, the parties are ordered to comply with Tax 203.07, within thirty (30) days of the Clerk's date shown below, by having a settlement meeting, but no new Taxpayer appraisal shall be permitted. The parties shall then accurately complete and file (either jointly or separately) the enclosed Report of Settlement Meeting & Order ("Report") and the Report will supersede any earlier filing. If the Report indicates no settlement has been reached, the board will then proceed to schedule a hearing on the merits of each such appeal.

This Order applies to each of these appeals except Gardner v. Town of Rye, Docket No.25343-09PT. (In Gardner, the board heard satisfactory explanations from the Town's representatives regarding the settlement communications that took place with Mr. Snow over an extended period of time and the basis of a settlement that was reached. The board closed the docket in the Gardner appeal on May 13, 2011 upon receipt of a signed settlement agreement.)

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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Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that copies of the foregoing Order have been mailed this date, postage prepaid, to: Christopher Snow, Property Tax Advisors, Inc., 125 Brewery Lane, Suite 6, Portsmouth, NH 03801, representative for the Taxpayers; Chairman, Board of Selectmen, PO Box 98, Pittsfield, NH 03263; Chairman, Board of Selectmen, 10 Central Road Rye, NH 03870; Todd Haywood, Granite Hill Municipal Services, PO Box 1484 Concord, NH 03302, Contracted Assessing Firm; Town of Durham Assessing Office, 15 Newmarket Road, Durham, NH 03824; Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm; Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101

Date: June 17, 2011

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Anne M. Stelmach, Clerk