

**Cedar Waters Village Partnership**

**v.**

**Town of Nottingham**

**Docket No. 25669-10PT**

**ORDER**

The board has reviewed the “Town’s” May 15, 2012 Motion for Clarification/ Reconsideration (“Motion”) of the board’s May 1, 2012 Order and the “Taxpayer’s” May 21, 2012 “Objection.” The board dissolves its May 22, 2012 suspension order and rules as follows.

The Motion pertains to the board’s partial denial of the Town’s April 16, 2012 Motion for Enforcement of Discovery (“Enforcement Motion”). The board finds the Motion is without merit and is denied to the extent it still seeks an order from the board to force the Taxpayer, as part of the Town’s discovery, to permit an inspection of the “Property.”

The board’s decision to deny this part of the Enforcement Motion is based on the repeal of RSA 74:17, II by the legislature in July, 2011, a fact noted in the Taxpayer’s objection to that motion. This statute formerly provided that a party would “lose the right to appeal any matter pertaining to the property tax” if that party refused to grant “consent” for an inspection, but this loss of appeal rights as a consequence has been specifically removed from the statute.

The board concluded an enforcement order requiring an inspection of the Property as a part of the discovery process (at the risk of dismissal, and therefore loss of appeal rights, for non-compliance) would be inconsistent with the legislature's removal of this statutory provision and therefore would not be a legally enforceable order. The board cannot enforce any rule that is shown to be in conflict with a statute enacted by the legislature. Cf. Appeal of Wilson, 161 N.H. 659, 662 (2011) (an administrative agency such as the board would exceed its delegated authority if it acts in contradiction or in conflict with the terms of a statute).

Further, to the extent the Motion (see page 1, paragraph 2) seeks clarification as to whether this partial denial of the Town's discovery enforcement request reflects an "intention . . . to limit the Municipality to the use of the income approach to value . . . .," no such "intention" is manifested in the board's May 1, 2012 Order. The Town is not precluded from performing whatever analysis it wishes.

The Town still has the remedy provided in RSA 74:17, I, which permits the Town to "obtain an administrative warrant under RSA 595-B" for an inspection of the Property. To the extent the Town believes it has "just cause" for an inspection of the Property (see Motion, page 1, paragraph 5), those grounds can be presented in support of a request for an administrative warrant directed to the appropriate judicial officer. (See RSA 595-A:1.) The board, however, does not have the authority to grant such an administrative warrant.

Finally, nothing in the board's rulings diminishes the Taxpayer's burden of proving disproportionality in a tax appeal. To the extent the Taxpayer's grounds for appeal rest on comparing the Property, operated as a commercial campground, to other campgrounds or any

other properties, establishing each is sufficiently comparable to the Property in terms of physical features and other attributes may be a critical element in satisfying the Taxpayer's burden of proof with probative evidence.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing Order has this date been mailed, postage prepaid, to: Cedar Waters Village Partnership, c/o Terry and Mary Bonser, 24 Smoke Street, Nottingham, NH 03290, Taxpayer; Chairman, Board of Assessors, Town of Nottingham, P.O. Box 114, Nottingham, NH 03290; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: June 1, 2012

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Anne M. Stelmach, Clerk