

**Elizabeth H. Breunig Trust**

**v.**

**Town of Randolph**

**Docket No. 25773-10PT**

**ORDER**

The board has reviewed the November 14, 2012 “Motion” filed by the “Taxpayer’s” representative, John T.B. Mudge, and the November 26, 2012 “Objection” filed by the “Town.” The Motion references two “prior proceedings” (identified below,<sup>1</sup> where Mr. Mudge appeared) and asks the board: (1) to “incorporate by reference” the “testimony” of one witness at the Cormier hearing and “the testimony, evidence and record in the Reassessment Proceeding”; and (2) make a ruling, in advance of the December 18, 2012 hearing, of a shifting in the burden of proof from the Taxpayer to the Town. (See Motion, p. 9.)

The Motion is denied principally because the outcome of this tax abatement appeal will rest on whether the Taxpayer meets its burden of proving the assessment on the “Property” in tax year 2010 was disproportional. Evidence of the market value of the Property adjusted by the

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<sup>1</sup> These are:

(1) an RSA 71-B:16, I appeal on one property owned by two other taxpayers in the Town [John T.B. Mudge v. Michelle and Paul Cormier and Town of Randolph, BTLA Docket No. 26076-11OS (heard on May 24, 2012 and decided on July 17, 2012)—“Cormier”]; and  
(2) an RSA 71-B:16, IV reassessment petition [In re: Town of Randolph Reassessment, BTLA Docket No. 26074-11RA (final hearing on July 12, 2012, resulting in an August 31, 2012 Order)—the “Reassessment Proceeding”), where Mr. Mudge was one “Lead Petitioner” and Elizabeth H. Breunig was the other.

level of assessment in the Town is probative on that issue, but the testimony and “record” in other proceedings involving one other property and its 2011 assessment (Cormier) or all other properties in the Town assessed in tax year 2009 (the Reassessment Proceeding) is not. See, e.g., Mudge v. Town of Randolph, BTLA Docket No. 24795-09PT (June 11, 2012), pp. 3 – 7.

On their face, the blanket requests stated in the Motion to take notice of the testimony and record in Cormier and the Reassessment Proceeding (by attempting to ‘incorporate them by reference’) are overly broad and patently unreasonable. In any RSA 76:16-a tax abatement appeal, the board can consider only evidence shown to have some probative value to the actual issues in that appeal. See Tax 201.30(c): “The board shall exclude irrelevant, immaterial and unduly repetitious evidence. . . .” A party simply will not be permitted to re-litigate or rehash the board’s findings and decisions in prior appeals.

In addition, as the Town notes in the Objection (p. 2), the board has made no finding the Town-wide assessments arrived at during the 2009 reassessment were based on “arbitrariness.” Therefore, the Taxpayer’s assertion that the board, in advance of the December 18, 2012 hearing, should somehow apply the “last paragraph” in one supreme court decision cited in the Motion [Porter v. Town of Sanbornton, 150 N.H. 363, 371-72 (2003)] is unsupported and cannot be accepted.

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 a copy of the foregoing Order has this date been mailed, postage prepaid, to: John T.B. Mudge, 25 Lamphire Hill Lane, Lyme, NH 03768, Taxpayer's Representative; Town of Randolph, Chairman, Board of Selectmen, 130 Durand Road, Randolph, NH 03593; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 12/5/12

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Anne M. Stelmach, Clerk