

John T.B. Mudge

v.

Frederic and Sandra Wier and Town of Randolph

Docket No.: 26075-11OS

John T.B. Mudge

v.

Michelle and Paul Cormier and Town of Randolph

Docket No.: 26076-11OS

ORDER

On April 23, 2012, the “Town,” through its attorney (H. Bernard Waugh, Jr., Esq. of Gardner Fulton & Waugh PLLC), filed a “Motion for Clarification And /Or Bifurcation” (the “Motion”) regarding the scheduled May 24, 2012 hearing on the merits of these appeals. On May 1, 2012, John T.B. Mudge, the person who filed these appeals, submitted a letter objecting to the relief requested in the Motion (the “Objection”).¹ The board finds the Motion is without merit for the reasons discussed below.

¹ The Motion follows an earlier motion to dismiss filed by this attorney on behalf of the Town, which was denied on March 30, 2012. Mr. Mudge objects to the “successive . . . motions for dismissal, delay, clarification, and bifurcation” by the Town’s attorney. (See Objection, p. 2.)

The Town is a party in these appeals, as they concern the question of whether specific properties owned by others (the Wiers and the Cormiers) were “fraudulently, improperly, unequally or illegally assessed” in tax year 2011. The Town premises the Motion on the questionable assertion that, without more “clarity” regarding the proceedings, the Wiers and Cormiers would be “deprived” of their “Due Process” rights. The board disagrees.

The Motion first states, inaccurately, that the Town “has no municipal interest in the specific values assigned to the Wier or Cormier properties.” In fact, the Town has a clear legal obligation to assess each property, including these two properties, proportionally based on their market values and the level of assessment in the Town. See, e.g., Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985): “(it is) settled law that a town is obligated to assess all lots of land at the same percentage of fair market value. Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 206, 46 A. 470, 473 (1899).” (See also Objection, p. 2.) Thus, at the hearing, the Town should be prepared to present evidence to allow the board to decide whether the Wier and Cormier property assessments were/were not proportional. The Wiers and Cormiers will also be given a full and fair opportunity to rebut any evidence presented that indicates their properties were not proportionally assessed in tax year 2011.²

The Town next presumes it has standing to file the Motion and assert these constitutional claims pertaining to the scheduled May 24, 2012 hearing because Frederic Wier

² The only case cited by the Town’s attorney for the constitutional claims he is asserting is inapposite. City of Claremont v. Truell, 126 N.H. 30 (1985), is unlike these appeals in that the defendants in those child placement proceedings did not receive any notice of potential liability for the expenses incurred in those proceedings. (Cf. the dissent of Justice Souter in Truell, noting the difference in what “is desirable, rather than what is constitutional.” 126 N.H. at 44-45.) The Cormiers and Wiers, in contrast, have more than adequate statutory and other notice that the assessments on their properties may change as a result of these appeals. (See also Objection, p. 2.)

and Michele Cormier are “elected officials.” The Town’s attorney has previously acknowledged that he is representing only the Town, not these officials, in these appeals. The board does not agree with the arguments in the Motion that the Town can assert an alleged deprivation of due process on behalf of these individuals or that this hearing would deprive them of any such rights.

The board will not issue advisory opinions based on any hypothetical outcomes of the May 24, 2012 hearing that may be envisioned by the Town’s attorney. If the facts presented at the hearing demonstrate the properties at issue were “fraudulently, improperly, unequally or illegally assessed” in tax year 2011, RSA 71-B:16 clearly authorizes the board to “order a reassessment.” While the Town’s attorney claims not to know what such an order might contain, at least one board decision the Town has not cited demonstrates the clear and authorized remedy. In Wolf v. Town of Chichester, BTLA Docket No. 19957-03OS (October 29, 2004), the board, pursuant to its RSA 71-B:16 authority, corrected the improper assessment and calculated the additional amount owed by the property owner. To the same effect is the 1996 decision cited in the Motion (Hoffman v. Town of Gilford, BTLA Docket No. 15023-94OC), where the board reviewed the evidence presented and determined the proportional assessment of the property in question.

As in the Wolf and Hoffman cases, any ordered new assessment of property, like any other board decision, is subject to the rehearing and appeal rights prescribed by the statutes and the board’s rules. (See RSA 541:3 and RSA 541:6; and Tax 201.37.) In addition, any taxpayer has the right to challenge an ordered assessment in a subsequent tax year because assessments,

as well as the right to challenge them at the municipal level and through an appeal either to the board or the superior court, are annual in nature. See, e.g., RSA 74:1; RSA 76:16; RSA 76:16-a; and RSA 76:17.

In summary, the board disagrees with the Town that the statutory framework enacted by the legislature and the board's rules and decisions result in "areas of fundamental uncertainty and lack of clarity" causing a deprivation of due process or other constitutional rights. The Motion is therefore denied to the extent it asserts otherwise. The board finds the Town (not to mention the Wiers and Cormiers, who have made no objection of their own) has received full and fair notice of the issues presented in these appeals and should be prepared to proceed with the May 24, 2012 hearing without further guidance ("clarification") from the board. The Town's alternative request for "bifurcation" in advance of the hearing is also denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

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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, Lyme, NH 03768; Frederic and Sandra Wier, 278 Randolph Hill Road, Randolph, NH 03593; Michelle and Paul Cormier, PO Box 63, Gorham, NH 03581; H. Bernard Waugh, Jr., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766-1727, counsel for the Town; Chairman, Board of Selectmen, 130 Durand Road, Randolph, NH 03593; and a courtesy copy to Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: May 10, 2012

Anne M. Stelmach, Clerk