

**128 South Main, LLC**

**v.**

**Town of Pittsfield**

**Docket No.: 26516-11PT**

**ORDER**

On March 28, 2013, the board held a limited hearing to resolve the question (presented by the “Town”) of whether a March 12, 2012 settlement agreement [the “Settlement Agreement”] entered between the Town and a prior owner to resolve a 2009 appeal on the “Property” is “binding on the new owner” (the “Taxpayer”) who filed this 2011 appeal. (See the December 20, 2012 Order; and the Town assessor’s November 9, 2012 letter to the board.) In attendance at this hearing were:

David L. Goolgasian, a member/owner of the Taxpayer, a limited liability company (“LLC”) that acquired title to the Property in October, 2011;

Christopher Snow of Property Tax Advisors, Inc., the “Authorized Agent” who signed the Settlement Agreement on behalf of the prior owner (Whitesbrook, LLC); and

Loren Martin of Avitar Associates of New England, Inc. (“Avitar”), the Town’s assessor, who sent the November 9, 2012 letter and questions whether the Taxpayer has “standing” to maintain this appeal.

Upon review of the relevant chronology reflected in the documents and the testimony presented, the board finds the Taxpayer is not precluded from maintaining this tax year 2011 appeal. After acquiring the Property on October 21, 2011 from the prior owner, the Taxpayer

timely filed an abatement application with the Town on February 16, 2012 and an appeal with the board on August 31, 2012. As discussed further below, the Taxpayer took these steps on its own behalf and without hiring Mr. Snow to act as its tax representative or in any other capacity.

Avitar became “the new contract assessing firm for the Town” in 2012 and discovered the Settlement Agreement in the process of reviewing the Town’s files. In that agreement, Mr. Snow on behalf of the prior owner, and Tim Northcott of Cross Country Appraisal Group, LLC (“Cross Country,” the Town’s prior assessing contractor), on behalf of the Town, agreed to a specific abated assessment (\$2,623,815) for tax years 2009, 2010 and 2011. While the Town contends the Taxpayer cannot contest that value and seek a further abatement for tax year 2011, the board does not agree, based upon the specific facts and circumstances presented at the hearing, which all parties agreed were highly “unusual.”<sup>1</sup>

From the evidence presented, the board finds the Town had knowledge of the purchase of the Property at the time the Town’s prior assessor, Mr. Northcott, negotiated with Mr. Snow and entered into the Settlement Agreement on the Town’s behalf. Indeed, the “\$2,000,000” purchase price was the key factor considered by the Town when it agreed to the settlement. This is plain from the February 20, 2012 recommendation letter from Mr. Northcott to the Town Board of Selectmen (included as part of Municipality Exhibit A).

This negotiated settlement resolved the tax year 2009 appeal filed by Mr. Snow on behalf of the prior owner: Whitesbrook, LLC v. Town of Pittsfield, BTLA Docket No. 25330-09PT. Influenced perhaps by the subsequent year statute (RSA 76:17-c), the parties to this agreement specified the agreed-upon abated assessed value (\$2,623,815) would apply to tax years 2010 and

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<sup>1</sup> The Town’s assessor testified at the hearing she had not encountered a similar situation in her more than 20 years in the assessing field.

2011 (as well as 2009) and would remain in place thereafter “until revised in good faith pursuant to RSA 75:8 or until a municipal wide reassessment.”

The Town complied with the Settlement Agreement by issuing separate tax abatement refund checks to the prior owner and the Taxpayer, allocating the total amount abated based on the date of purchase of the Property. (See Municipality Exhibit A.) In the Town’s May 9, 2012 letter to the Taxpayer enclosing the “check for a refund of taxes overpaid in the tax year 2011,” the Town stated the Taxpayer had the ‘option’ of appealing the Town’s abatement decision to either the board (under RSA 76:16-a) or the superior court (under RSA 76:17).

The board finds the Taxpayer (through Mr. Goolgasian) declined Mr. Snow’s proposal to act as its representative to seek a 2011 tax abatement. According to the undisputed testimony presented, this decision not to hire Mr. Snow occurred prior to the time Mr. Goolgasian filed the Taxpayer’s 2011 tax abatement application with the Town (on February 16, 2012) and, just as significantly, prior to the time of the Settlement Agreement. (The Settlement Agreement is dated March 12, 2012 and is signed by both Mr. Northcott and Mr. Snow, but was approved by the Town Selectmen on March 6, 2012.)

The board further finds Mr. Snow was not authorized to represent the Taxpayer in any capacity at the time he negotiated and signed the Settlement Agreement. This agreement only mentions the prior owner (Whitesbrook, LLC), not the Taxpayer. There is no dispute Mr. Snow only had authority to represent the prior owner for 2009, 2010 and for that portion of tax year 2011 (commencing April 1, 2011) until the sale of the Property to the Taxpayer (on October 21, 2011), a total of “204 days.”<sup>2</sup>

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<sup>2</sup> See the Town’s spreadsheet (included in Municipality Exhibit A) prorating the taxes and the abatements to the prior owner and the Taxpayer.

Mr. Snow, however, had no authority of any kind to bind the Taxpayer to a 2011 value and the Taxpayer is certainly a “person aggrieved” by the 2011 assessment for the remaining 161 days of that tax year since it bore the tax liability for this time period. See RSA 76:16-a (“any person aggrieved” by an assessment can file an appeal with the board and the board is empowered “to make such order thereon as justice requires”); and, e.g., Langford v. Town of Newton, 119 N.H. 470, 472-73 (1979) (new owners who acquired property after assessment date were “persons aggrieved” and could seek tax abatement because, to do otherwise, “would lead to unreasonable and unjust results”<sup>3</sup>).

The facts presented in this appeal are materially different from two prior decisions (not cited by the Town) where subsequent owners did not gain separate rights of appeal. In Appeal of Shane Brady, 145 N.H. 308 (2000), the supreme court found the new owner was bound by the failure of the seller (the prior owner) to satisfy the statutory requirement of filing a timely inventory form under RSA 74:7-a.<sup>4</sup> In the second decision, the board dismissed an appeal filed by a new owner where the settlement with the municipality had occurred five months before the property was sold. Pemigewasset National Bank v. City of Franklin, BTLA Docket No. 19031-01PT (June 6, 2003). In those tax appeals, unlike this one, the new owners could have, and should have, through due diligence, discovered the relevant facts since they all occurred prior to the time of purchase, not after it.

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<sup>3</sup> In Langford, 119 N.H. at 473, the supreme court further noted: “to deny justice to one who, being in no fault, has been wronged in the assessment of taxes, would be a glaring departure from that course of justice for which the statute was meant to provide.” Trust & Guaranty Co. v. City of Portsmouth, 59 N.H. 33, 34 (1879).”

<sup>4</sup> This statute was amended in 2011 and no longer mandates loss of appeal rights for failure to file a timely inventory form.

Upon review of the unusual facts chronicled above and these authorities, the board finds the Taxpayer is not bound by the \$2,623,815 assessed value stated in the Settlement Agreement entered into between Mr. Snow (solely on behalf of the prior owner) and the Town. The Taxpayer is entitled to a hearing on the merits of whether the Property was proportionally assessed at this value in tax year 2011.

If, in fact, the Taxpayer is able to meet its burden of proving the Property should have been assessed at a lower value in tax year 2011 (based on evidence of market value as of the April 1, 2011 assessment date adjusted by the level of assessment in tax year 2011), then the Taxpayer would be entitled to a refund of taxes calculated as the difference between the amount paid for the 161 days in tax year 2011 when the Taxpayer owned the Property and the lower amount that would have been due based on the abated assessment.

Finally, the board notes a prior order (issued on November 14, 2012) required the parties to comply with the board's Tax 203.07 mediation rules by March 14, 2013. In light of the board's rulings in this Order that the 2011 appeal can be maintained, the board has rescheduled the deadline for the parties to complete the mediation process (and file the Report of Settlement Meeting) until July 14, 2013.

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

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**CERTIFICATION**

I hereby certify a copy of the above Order has been mailed this date, postage prepaid, to: David L. Goolgasian, Jr., 100 Olympus Way, Jupiter, FL 33477, Taxpayer; Christopher Snow, Property Tax Advisors, Inc., 56 Middle Street, Portsmouth, NH 03801, representative for the previous owner; Chairman, Board of Selectmen, Town of Pittsfield, PO Box 98, Pittsfield, NH 03263; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway Chichester, NH 03258, Contracted Assessing Firm.

Date: April 11, 2013

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Anne M. Stelmach, Clerk