

125 Development NH Corp.

v.

Town of Newton

Docket Nos. 26572-11PT and 27039-12PT

ORDER

This Order addresses the “Taxpayer’s” November 4, 2014 “Motion for Enforcement” (“Motion”). In essence, the Motion requests an “order” directing the “Town” to pay sums in excess of the amounts agreed to in the “Settlement Agreements” on file in these appeals.

The Motion is denied for the following reasons.

The Motion references a single settlement agreement (by mentioning “the settlement agreement”), but in fact the board’s files contain three agreements pertaining to these appeals: a July 2, 2014 Settlement Agreement with respect to “2 Puzzle Lane”; a February 11, 2014 “Partial Settlement Agreement” with respect to two other “Puzzle Lane” properties; and a July 2, 2014 Settlement Agreement with respect to “3 Puzzle Lane.” The Settlement Agreements control the outcome of the Motion because each was signed by the Taxpayer’s representative and the

Town's representative; they are therefore binding upon the parties, especially in the absence of any allegation that they should be set aside (such as for fraud or duress).

In paragraph 2 of each of the Settlement Agreements, the Town agreed to pay to the Taxpayer "6 percent interest from the date paid to the refund date" on the abatements the Taxpayer agreed to accept. (Six percent is the rate specified in RSA 76:17-a.) Even if the Taxpayer previously paid additional amounts (such as "12% interest" on late paid taxes¹), the board finds the Taxpayer waived any claim for reimbursement of such amounts when it voluntarily entered into the Settlement Agreements with the Town.

The Taxpayer's reliance on 378 D.W. Highway Trust v. Town of Merrimack, BTLA Docket No. 7790-89 (January 14, 1993) is misplaced. In that tax year 1989 appeal (along with a subsequent tax year 1990 appeal), the board ordered an abatement after a hearing on the merits; those appeals did not involve an abatement voluntarily agreed to by the parties pursuant to a settlement agreement prescribing what interest (or penalties), if any, would be reimbursed. Consequently, in later rulings pertaining to the Highway Trust appeals (see, in particular, the May 4, 1993 Order), the board confirmed that, when an abatement is ordered, the Town is obligated "to refund interest and penalties paid on the ordered abatement" and to pay six percent interest (on any interest and penalty overpayment).

In these appeals, however, the Motion seeks recovery of sums in excess of what the parties specifically agreed to in the Settlement Agreements pertaining to assessments for the tax years under appeal (and 2013). The parties could have agreed to settle their disputes on different terms, but did not do so, and adding such terms is not warranted on the facts presented.

¹ Compare RSA 76:17-a with RSA 76:13, which provides for interest at 12% per annum on unpaid taxes; see also Tax 202.06 and Tax 202.07.

In summary, the board finds the Taxpayer's request for an order directing the Town to pay additional sums not provided for in the Settlement Agreements is not warranted.

Consequently, the Motion is denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

CERTIFICATION

I hereby certify that a copy of the foregoing Order has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, Taxpayer Representative; and Town of Newton, Chairman, Board of Selectmen, PO Box 378, Newton, NH 03858.

Date: 11/21/14

Anne M. Stelmach, Clerk