

In re: Town of Seabrook

Docket No.: 26624-12OS

ORDER

The board has received letters (summarized below) from the “Town,” through its two attorneys (Robert D. Ciandella, Esq. & Justin Pasay, Esq. of Donahue, Tucker & Ciandella, PLLC) in response to the board’s February 6, 2013 “Decision.” This Order restates the Town’s obligation to recover the sum of \$1,428.80 wrongfully given to the “Taxpayer” (T Park Realty Trust, David Benoit, Trustee) and grants the Town a prescribed amount of additional time, until July 1, 2013, to do so and to confirm receipt to the board in writing.

Page 15 of the Decision provides as follows:

[T]he board finds the Town did not have the authority to grant a partial (50%) tax abatement and refund (in the amount of \$1,428.80) to the Taxpayer. The Town shall recover this sum from the Taxpayer and report on the steps taken to do so in writing to the board within thirty (30) days of the [February 6, 2013 Decision].

In his March 7, 2013 letter, Attorney Ciandella states the Town did not intend to “appeal” the board’s findings and rulings and, instead, the Town and his firm would be “turning our attention to enforcement of the [Decision].” On March 14, 2013, Attorney Ciandella sent the Taxpayer/Mr. Benoit a letter by certified mail, with a copy to the board, referencing the Decision and quoting the same sentences requiring recovery of the \$1,428.80.

Two months later, however, on May 13, 2013, the Town’s two attorneys wrote to the board stating “Mr. Benoit has not responded to the Town’s letter and has not returned the \$1,428.80.”

This letter states “the Town will continue to reach out directly to Mr. Benoit to seek a consensual resolution,” but does not explain how the attorneys intend to bring this about or detail the ‘research’ they performed regarding “what legal options exist for enforcing the [Decision].”

In light of these letters from the Town’s attorneys, the board grants the Town an additional period of time, until not later than July 1, 2013, to obtain full compliance with the Decision. A review of the relevant facts stated in the Decision indicates the Taxpayer’s failure to return the money received from the Town constitutes unjust enrichment at the expense of the Town and its other taxpayers. If compliance is not achieved by July 1, 2013, the board intends to make such further investigation and issue such orders as may be necessary, including review of the available “legal options” and remedies that exist. The board is copying Mr. Benoit, the Taxpayer’s representative, with this Order (as it did with the Decision) and expects no further delays.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has been mailed this date, postage prepaid, to: Robert D. Ciandella, Esq. and Justin L. Pasay, Esq., Donahue, Tucker & Ciandella, PLLC, 111 Maplewood Avenue, Suite D, Portsmouth, NH 03801, counsel for the Town; Chairman, Board of Selectmen, Town of Seabrook, P.O. Box 456, Seabrook, NH 03874; T Park Realty Trust, David Benoit, Trustee, P.O. Box 359, Hampton Falls, NH 03844; and Stephan W. Hamilton, State of New Hampshire, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301.

Dated: May 23, 2013

Anne M. Stelmach, Clerk