

TOWN OF BARRE - TAX GRIEVANCE HEARING

August 4, 2015

AGENDA

(This meeting is being audio taped.)

1. Call to order 6:30 p.m.
2. Amend the Agenda
3. Approve minutes of June 24, 2014 and June 17, 2015 Board of Abatement meetings.
4. Administer Oath to Board Members:
I do solemnly swear (or affirm) that I will well and truly hear and determine all matters at issue between taxpayers and Assessor submitted for my decision. So help me God (or under the pains and penalties of perjury).
5. This hearing is being audio taped. Be advised the tape recorder can pick up background conversations. Speak clearly and identify yourself.
6. In accordance with Vermont Statutes, Chapter 32, Section 4404 (b), the first Tax Grievance hearing must begin no later than 14 days after the last date allowed for the notice of appeal, at some place within the Town. The deadline to submit appeals to this Board was Wednesday, July 20, 2015.
7. Review the Tax Grievance code of Conduct Policy. Review the Abatement Hearing Code of Conduct Policy. (Consider the proposed the proposed amendment made during the June 17, 2015 meeting. Awaiting opinion from Town Attorney.)
8. Discuss Board of Abatement blanket authorization for Town Treasurer to abate "No Transport" calls without a hearing.
9. Other Business:
 - A) Next Meeting is Thursday, September 17, 2015 to take evidence from the Assessor and appellant (Stephen & Lisa Brassard).
 - B) Authority for Clerk to not present an abatement request to the BOA when all completed and required documents (application, income/expense statement, etc.) are not provided by the necessary deadlines.
 - C) Procedure question: Should best practice be that the Chair incorporates into Tax Grievance/Abatement agendas a question for the Board asking if "a member would like to disclose or be recused from hearing a request."
 - D) To discuss any other Board of Civil Authority business as needed.
10. A motion to adjourn the meeting to Thursday, September 17, 2015.

TAX GRIEVANCE HEARING MINUTES

August 4, 2015

CALL TO ORDER - Vice Chair J. Guy Isabelle called the Tax Grievance Hearing meeting to order on this 4th day of August 2015 at 6:30 p.m.

ROLE CALL - The following members were present: Chair Paul Malone, Town Clerk-Treasurer Donna J. Kelty, Jeff Blow, Gordon Booth, Charles "Chip" Castle, J. Guy Isabelle, Philip Kolling, Robert LaClair, Jay Perkins, Virginia Poplawski, Rolland Tessier, Christopher Violette, R. Lee Walther, Sheila Walther, and Tom White. Those not present were Pearl Bugbee, William Bugbee, Tracy Delude, JP Isabelle, W. John "Jack" Mitchell, and Edward Paquin.

AMEND THE AGENDA

The agenda was amended as follows: Item 7 should be to Review the Abatement Code of Conduct not Tax Grievance, and to change the next meeting date from Wednesday to Thursday.

MINUTE APPROVAL

On a motion by J. Guy Isabelle, seconded by Rolland Tessier the BCA voted to approve the meeting minutes of June 25, 2014. Philip Kolling, Jay Perkins, and Charles Castle abstained as they were not on the Board at that time. The following members were not present for the vote: Pearl Bugbee, William Bugbee, Tracy Delude, JP Isabelle, W. John "Jack" Mitchell, and Edward Paquin.

On a motion by Charles Castle, seconded by Gordon Booth, the BCA voted to approve the meeting minutes of June 17, 2015 as amended:

1. Page 5, Item #6, end of second line delete the word "no" and insert the word a. The following members were not present for the vote: Pearl Bugbee, William Bugbee, Tracy Delude, JP Isabelle, W. John "Jack" Mitchell, and Edward Paquin.

BCA OATH

The BCA members present were administered their oath. The Chair reminded the Board members and those present the tax grievance hearings are being audio taped. Please speak clearly and identify yourself prior to speaking.

POSTING CERTIFICATION

The following notice was published (in the Times Argus Newspaper) and posted (Barre Town Municipal Building, Barre Town website, Hannaford's Market, Trow Hill Grocery, and Lawson's Store). "Barre Town Residents - Pursuant to the provision of 32 V.S.A., section 4404 (b) notice was duly given that the Board of Civil Authority (B.C.A.) within and for the Town of Barre, Vermont is meeting this 4th day of August 2015 at 6:30 p.m. at the Municipal Building, Selectboard Meeting room, in Lower Websterville to hear grievances of persons, or other parties who are aggrieved by the action of the Assessor's Grievance process and have timely filed their written grievances with the Town Clerk. Hearings will continue as scheduled by the BCA, with appellants until all aggrieved parties are heard."

REVIEW ABATEMENT HEARING & CODE OF CONDUCT POLICY

During the June 2015 Board of Abatement meeting R. Lee Walther had proposed an amendment to the Code of Conduct Policy which was presented as follows:

If the clerk or any other member of the Board of Abatement becomes aware that anyone seeking abatement has made any statement, written or spoken, that may constitute defamation of character, libel, or slander against any named member of the Board of Abatement, such statement shall immediately be brought to the attention of the chair of the Board of Abatement and Chair of the Selectboard, as well the affected Board of Abatement member(s) for appropriate action.

Due to the lateness of the meeting the Board agreed to place the item on the next meeting agenda and to request the Clerk of the Board get a legal opinion with regards to the use of certain words.

The Clerk provided a copy of the Town Attorney's opinion (see attachment #2). His advice to the Board is to "not require the Clerk or fellow Board members to be responsible for "determining" whether statements are defamatory...advise against requiring notification of all statements made regarding Board members as that could be potentially interpreted as an attempt to restrict free speech." A suggestion was to add language to require alerting the full Board of requests for recusal in advance of the meetings, which would serve the legitimate purpose of allowing the Board member time to consider the request without being surprised at a meeting. "

Mr. Walther stated he had read the Attorney's opinion and submitted a revised proposal for amending the policy:

If the clerk or any other member of the BOA/BCA becomes aware that anyone seeking abatement or grieving property tax assessment has made any statement, written or spoken, that names any member of the BOA/BCA, such statement shall immediately be brought to the attention of the Chair of the BOA/BCA and Chair of the Selectboard, as well the affected BOA/BCA member(s) for appropriate action.

Discussion focused on:

- Notification on only select members prior to full Board when "evidentiary documents" are clearly addressed to the Board of Civil Authority, not specific individuals;
- Is the issue advance warning to member(s) or information being in a document and taking a separate route;
- Altering a document which is evidence;
- Conflict of Interest addressed in our Policy (ensuring the appellant is confident they are receiving a fair hearing, even if the conflict is not apparent);
- Allowing for additional statements evidence the night of the meeting;
- With the BOA only meeting 2 times a year giving immediate notification is wanted;
- Should this be policy or procedure due to changes in membership over the years.

A motion was made by White, seconded by Perkins to amend on the Board of Abatement Policy. Said motion was withdrawn after discussion.

On a motion by White, seconded by Perkins, the Board of Civil Authority voted to amend the Tax Grievance Hearing Code of Conduct Policy, #5 and insert the following new paragraph: "If the clerk or any other member of the BOA/BCA becomes aware that anyone seeking abatement or grieving property tax assessment has submitted any evidence that names any member of the BOA/BCA or their employer, such evidence shall immediately be distributed to the BOA/BCA."; and to amend the Board of Abatement Hearing and Code of Conduct by inserting a new section for Conflict of Interest and inserting the same information to keep the policies consistent. The motion passed with Charles Castle, Sheila Walther, and Chris Violette voting no. The following members were not present for the vote: Pearl Bugbee, William Bugbee, Tracy Delude, JP Isabelle, W. John "Jack" Mitchell, and Edward Paquin.

NO TRANSPORT - BLANKET AUTHORIZATION

During the June 2015 Board of Abatement meeting the Clerk was instructed to add the topic of "discussing blanket authorization for Town Treasurer to abate No Transport ambulance bills without a hearing."

It was noted for the record that the Board of Civil Authority has sent a letter to the Selectboard asking that they review the policy of billing for no transport ambulance service.

The majority of no transport calls which come before the Board of Abatement are associated with automobile accidents which do not require auto insurance involvement. Our ambulance billing service does provide a note in the billing form footer advising individuals to submit it to their auto insurance.

Jeff Blow informed the Board it is policy that when an ambulance crew is toned out for an accident a second crew comes to the station to cover. The no transport fee helps to recoup some of the cost associated with this process. He prefers the idea of having the Board of Abatement reviewing all abatement requests.

Castle, echoed by other members, stated there was a fairness issue involved, especially when there are several members in a vehicle or when no auto insurance is needed. Many times it is just a passerby calling 911 to report the accident when it definitely is not necessary.

The revenue to the Town, number of no transports billed per year, cost to process the billing were all noted. Authorizing the Treasurer to write-off the bills for abatement (meaning completed application) would eliminate the review time during meetings, reduce the billing costs, and allow uncollectible amounts to be removed from the books in a timely manner.

On a motion by Charles Castle, seconded by R. Lee Walther, a motion was made to authorize the Town Treasurer to write-off (abate) no transport ambulance calls submitted for abatement and to provide the Board of Abatement with a report for the record at the next meeting failed.

In favor: Gordon Booth, Philip Kolling, Paul Malone, Jay Perkins, R. Lee Walther, and Tom White. Opposed: Jeff Blow, Charles Castle, J. Guy Isabelle, Robert LaClair, Virginia Poplawski, Rolland Tessier, Christopher Violette, and Sheila Walther. Kelty abstained from the vote. The following members were not present for the vote: Pearl Bugbee, William Bugbee, Tracy Delude, JP Isabelle, W. John "Jack" Mitchell, and Edward Paquin.

Lee Walther had suggested contacting the EMS Billing and recrafting the billing footer notice advising individuals to submit to their auto insurance companies.

OTHER BUSINESS

The Town Clerk-Treasurer noted the next tax grievance hearing will be on Thursday, September 17, 2015 to take evidence from the one appeal. Formal notice will be forthcoming to the Board, Assessor and Appellant.

Authority for Clerk to not present Abatement requests when application is incomplete. *On a motion by Blow, seconded by White, the Board of Civil Authority voted to give the Town Clerk-Treasurer the authority to NOT submit an abatement request to the Board if the application if the required information is not provided by the deadline. The following members were not present for the vote: Pearl Bugbee, William Bugbee, Tracy Delude, JP Isabelle, W. John "Jack" Mitchell, and Edward Paquin.*

The Board of Civil Authority agreed the Town should do an educational piece in the Town Newsletter regarding the abatement process.

Conflict of interest - best practice discussion.

On a motion by Charles Castle, seconded by J. Guy Isabelle, the Board of Civil Authority voted unanimously to make it best practice that the Chair incorporate into the Tax Grievance and Abatement meeting agenda and item for asking Board members if there

are any "conflicts of interest" on requests being heard at said meeting. The following members were not present for the vote: Pearl Bugbee, William Bugbee, Tracy Delude, JP Isabelle, W. John "Jack" Mitchell, and Edward Paquin.

R. Lee Walther he would like to see a future housekeeping agenda item regarding the differing Abatement Hearing opinions from the Secretary of State handbook and VLCT's opinion on "getting a second bite of the apple."

RECESS UNTIL SEPTEMBER 2015

On a motion by Rolland Tessier, seconded by Jay Perkins, the Tax Grievance Hearing was recessed at 8:03 p.m. to reconvene on Thursday, September 17, 2014 at 6:30 p.m.

 Donna J. Kelty, Town Clerk-Treasurer

 B.C.A. Chair

BARRE TOWN BOARD OF CIVIL AUTHORITY REPRESENTATIVES

TOWN OF BARRE - TAX GRIEVANCE HEARING
 OATH OF BOARD MEMBERS

Commencing August 4, 2015

I do solemnly swear (or affirm) that I will well and truly hear and determine all matters at issue between taxpayers and Assessor submitted for my decision. So help me God (or under the pains and penalties of Perjury).

Name	Signature
Jeff Blow	x <i>Jeff C. Blow</i>
Gordon Booth	x <i>Gordon Booth</i>
Pearl Bugbee	x
William Bugbee	x
Charles "Chip" Castle	x <i>Charles Castle</i>
Tracy Delude	x <i>Tracy Delude</i>
J. Guy Isabelle	x <i>J. Guy Isabelle</i>
JP Isabelle	x <i>JP Isabelle</i>
Donna J. Kelty	x <i>Donna J. Kelty</i>
Philip Kolling	x <i>Philip Kolling</i>
Robert LaClair	x <i>Robert LaClair</i>
Paul Malone	x <i>Paul Malone</i>
W. John "Jack" Mitchell	x <i>W. John Mitchell</i>
Edward Paquin	x
Jay Perkins	x <i>Jay Perkins</i>
Virginia Poplawski	x <i>Virginia Poplawski</i>
Roland Roland Tessier	x <i>Roland Tessier</i>
Christopher Violette	x <i>Chris Violette</i>
R. Lee Walther	x <i>R. Lee Walther</i>
Sheila Walther	x <i>Sheila M. Walther</i>
Tom White	x <i>Tom White</i>

Attorney Opinion

LAW OFFICES OF
MONTE & MONTE, P.C.
61 SUMMER STREET
P.O. BOX 686
BARRE, VERMONT 05641

JOSÉ M. MONTE (1911-1993)
JOHN P. MONTE (1939-1986)
DANIEL T. MONTE (Retired)
MICHAEL D. MONTE

TELEPHONE: 802-476-6671
FACSIMILE: 802-476-6673
TOLL FREE: 800-974-6671
Office@MonteAndMonte.net

July 31, 2015

Barre Town Board of Abatement
c/o Donna Kelty, Town Clerk
dkelty@barretown.org

Re: Defamation amendment to Policy

Dear Board Members:

As requested, I have reviewed the proposed amendment to the Board of Abatement Hearing and Code of Conduct Policy, whereby the Clerk or other Board members would be required to give notice of potentially defamatory statements. I advise against such a change, because the law of defamation is very complicated and I do not believe that the clerk or Board members should be making such a determination.

The term defamation includes both libel (written words) and slander (spoken words). It is a civil matter, consisting of “(1) a false and defamatory statement concerning another; (2) some negligence, or greater fault, in publishing the statement; (3) publication to at least one third person; (4) lack of privilege in the publication; (5) special damages, unless actionable per se; and (6) some actual harm so as to warrant compensatory damages.” *Lent v. Huntoon*, 143 Vt. 539 (1983).

It gets very complicated when the fourth element of privilege is involved. Because the US Constitution protects free speech, there are a number of “privileges”, or places and types of speech which do not amount to defamation.

The first relevant privilege is for statements made during or preparing for judicial proceedings. Because the judicial process is designed to seek truth, participants must be able to speak freely. There are no reported cases involving defamation and abatement, but the Board is considered a “quasi-judicial” process, so the privilege would almost certainly apply.

Another relevant privilege is for statements related to public figures, unless actual malice is involved. The American political system relies upon citizens being able to speak freely about government officials. Therefore, one can say virtually anything about public officials unless the speaker knows for certain that the statement is false or makes the statement with reckless disregard for whether it is true.

A third and critical privilege is for opinions. Citizens need to be able to express their opinions in order for our system of government to function. This means that the statement “he is a crook” could be defamation, while the statement “I believe he’s a crook” is not defamation.

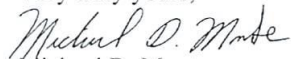
The bottom line is that requiring the Clerk or Board members to notify the Board of potential

defamation would put them in the position of trying to determine whether statements are defamatory, which I advise against. I also advise against requiring notification of all statements made regarding Board members, as that could potentially be interpreted as an attempt to restrict free speech. I would suggest that the language be altered to require alerting the full Board of requests for recusal in advance of the meetings, which would serve the legitimate purpose of allowing the Board member time to consider the request without being surprised at a meeting.

In the interest of full disclosure, I should note that I have represented Ann Valliere in the past. However, I have not represented her with regard to the Board of Abatement. In addition, I have specifically not addressed her request for certain Board members to recuse themselves in order to avoid the appearance of a conflict of interest.

If you have any further questions, please feel free to give me a call.

Very truly yours,


Michael D. Monte
Barre Town Attorney

cc: Carl Rogers