

BOARD OF CIVIL AUTHORITY AGENDA ABATEMENT MEETING

January 26, 2017

1. Call to order 6:30 p.m.
2. Remind those present the meeting will be audio taped.
3. Role Call
4. Approve/amend the agenda
5. Approve meeting minutes from Checklist Update Meeting held on November 2, 2016
6. Review Attorney letters regarding definition of taxpayer.
7. Administer abatement oath to BCA (remember to sign their oath):
"I do solemnly swear (or affirm) that I will well and truly hear and determine all matters at issue relating to the abatement of taxes and other levies submitted for my decision."
7. Hear the requests (see attached list).
8. Discuss new same day voter registration and changes for the Board
 - A) Charter required checklist meetings - amendment needed.
 - B) Changes to polling place setup for "same day registration" table.
 - C) Volunteers willing to learn the registration process.
9. Other Business as may come before the Board:
 - A) Appoint JPs to carry sick ballots for January 31, 2017 school revote.
 - B) Set meeting schedule for February - June 2017. Reorganization, abatement, Assessor card training, and what else?
 - C) Next election will be March 7, 2017; Annual school election.
 - D) Oaths of office for new term - must have by February 1, 2017 or cannot legally conduct business.
10. Adjourn

BOARD OF ABATEMENT MEETING MINUTES January 26, 2017

The duly warned Board of Abatement Meeting was held on January 26, 2017, Barre Town Municipal Building, Selectboard meeting room, in Lower Websterville at 6:30 p.m.

The following members were present: Chair Paul Malone, Town Clerk-Treasurer Donna Kelty, Pearl Bugbee, William Bugbee, Charles "Chip" Castle, Tracy Delude, J. Guy Isabelle, J.P. Isabelle, Philip Kolling, W. John "Jack" Mitchell, Edward Paquin, Virginia Poplawski, Christopher Violette, R. Lee Walther, Sheila Walther, Paul White, and Tom White.

Those absent included: Rob LaClair, Jay Perkins, Rolland Tessier, and Assessor Joseph Levesque. Others present included: Jeanne Daniele and Dottie Ricks (new BCA members to take office February 1, 2017) and Fred Thumm.

BOARD OF ABATEMENT MEETING OF JANUARY 26, 2017 continued:

WELCOME

Chair Malone called the January 26, 2017 Board of Abatement meeting to order at 6:30 p.m. He also welcomed the newest BCA members who are here this evening to observe. A role call was taken.

CHANGES TO THE AGENDA - None

MINUTES

On a motion by J. Guy Isabelle, seconded by Violette, the Board of Abatement voted to approve the Checklist Update Meeting Minutes of November 2, 2016 correcting the record of those not in attendance to include Charles "Chip" Castle. The following members were not present for the vote: Rob LaClair, Jay Perkins, Rolland Tessier, and Assessor Joseph Levesque.

REVIEW OF ATTORNEY LETTERS REGARDING DEFINITION OF TAXPAYER

During this Board's June 2016 meeting several items were tabled awaiting legal opinions regarding the definition of "taxpayer" as used in the Town Charter. Copies of the legal opinions were received and distributed to the Board prior to the meeting for review. A copy of the letters is attached as an appendix to these minutes.

In essence, both letters gave a definition for "taxpayer" as used within the Town Charter to mean both residents and non-residents who are indebted to the Town for any tax, charge, fee, etc., are considered a taxpayer.

Lee Walther stated he does not disagree with the opinions, but is concerned in that the letter from Attorney Paul Giuliani (a very well respected attorney) is rubber stamped by a friend of our Town Attorney as the response is addressed to "Mike". He further noted the BCA had recommended Paul Gilles (former Secretary of State) be contacted and suspects his opinion may have been a little different. Tom White stated the Selectboard reached out to Mr. Giuliani because they value his opinion and the two attorneys did not collaborate.

Those present agreed by consensus this issue has been resolved.

OATH TO VOTING MEMBERS

The Board members present took the following oath:

I do solemnly swear (or affirm) that I will well and truly hear and determine all matters at issue relating to the abatement of taxes and other levies submitted for my decision.

ABATEMENT ITEMS

1. Shaylene Whitney Bell

Ambulance (2 trips)

Date of Service October 31, 2013

Request: \$906.00 (partial abatement - half of total due)

Background: The patient was in an auto accident and did not have health insurance. The auto policy was limited as to what was paid. She is requesting abatement on half of the two bills which total \$1,812.00. An income/expense statement was received with her application.

BOARD OF ABATEMENT MEETING OF JANUARY 26, 2017 continued:

A motion was made and seconded to approve the request. However, after Board discussion the motion was withdrawn. The following was noted during discussion:

- ✓ The application is almost a year old which is no fault of the applicant.
- ✓ The application is not complete in that there was no reason checked by the applicant.
- ✓ It was unclear whether as to exactly what insurance had been billed and or paid.
- ✓ There was mention in the statement that the applicant had a cap on expenses. If this was a multi car accident was there any type of settlement received?
- ✓ The income and expense statement was also extremely old.
- ✓ Should the Board deny the applicant could reapply.
- ✓ The delay is a decision was this Boards doing not the applicants.

On a motion by Castle, seconded by Paquin, the Board of Abatement voted to table the request of Shaylene Bell, (2 ambulance trips) as noted above until the next meeting in February 2017 and to direct the Clerk of the Board to send a letter to the applicant requesting information as noted above. The motion passed with JP Isabelle voting no. The following members were not present for the vote: Rob LaClair, Jay Perkins, Rolland Tessier, and Assessor Joseph Levesque.

2. Jessie W. King

Ambulance

Trip # 15-11102, Date of service was July 26, 2015

Request: 50.00 (balance after insurance)

Background: The application and income/expense statement was received in March 2016. The patient stated she has no income and there is a balance of \$50.00 remaining on her ambulance bill after an insurance payment. She is requesting abatement of the balance due to financial hardship.

On a motion by Castle, seconded by JP Isabelle, the Board of Abatement voted to approve the request of Jessie W. King, and to abate the ambulance bill described as Trip #15-11102, date of service July 26, 2015 in the amount of \$50.00 citing financial hardship. The following members were not present for the vote: Rob LaClair, Jay Perkins, Rolland Tessier, and Assessor Joseph Levesque.

3 James Greene

Ambulance

Trip #15-9624, Date of service June 20, 2015

Request: \$575.00

Background: Mr. Greene informed the Board through his application of a major injury which has resulted in his inability to work. He was recently laid off and has no job prospects and expects what little he receives from unemployment to cover the cost of Cobra insurance. An income/expense statement was provided. He is requesting full abatement of the ambulance bill.

The following was noted during discussion:

- ✓ The application is almost a year old which is no fault of the applicant.
- ✓ The application is not complete in that there was no reason checked by the applicant.
- ✓ The amount requested did not match was due and owing, short a few dollars. The BCA inquired if this intentional?
- ✓ There was a question regarding why the insurance paid the mileage but not the transport. The Clerk informed member that the base rate code implied emergency but will check with the billing company to clarify.

BOARD OF ABATEMENT MEETING OF JANUARY 26, 2017 continued:

- ✓ The Clerk provided additional information on how the accident happened and other family medical issues.
- ✓ The income and expense statement was also extremely old.
- ✓ The delay is a decision was this Boards doing not the applicants.

On a motion by Delude, seconded by Pearl Bugbee, the Board of Abatement voted to table the request of James Greene as noted above and directed the Clerk of the Board to send a letter to the applicant asking for answers to the questions noted during discussion (see above). The motion passed with JP Isabelle voting no and Kelty abstaining from the vote due to providing additional information/evidence. The following members were not present for the vote: Rob LaClair, Jay Perkins, Rolland Tessier, and Assessor Joseph Levesque.

REQUESTS FROM THE TREASURER

For the record, Town Clerk-Treasurer, Donna Kelty, informed Board members that should would not be participating (recusing herself from the vote) in the following requests from the Treasurer as she is the applicant.

A) John Snow (deceased)

Ambulance Trip #15-14104, Date of Service is September 26, 2015.

Request: \$855.00

Background: A letter was received stating the patient is deceased, there is no insurance/money to pay the levy. The Treasurer is requesting abatement citing there is no probability the bill can be collected and the person liable for the debt is deceased.

On a motion by JP Isabelle, seconded by Delude, the Board of Abatement voted to table the Treasurer's request for John Snow, Ambulance Trip #14-14104, date of service September 26, 2015 citing the person liable for the debt is deceased. Those not present for the vote were: Rob LaClair, Jay Perkins, Rolland Tessier, and Assessor Joseph Levesque.

B) Samantha Dickinson

Parking fine #92, dated 6-7-2011

Request: \$15.00 plus penalties

Background: The mail has been returned - no forwarding address, the Town Clerk-Treasurer has been unable to locate a new address, and the amount is too small to send to collections. The Treasurer is requesting abatement citing the collection would create an undue expense for the Town.

On a motion by JP Isabelle, seconded by Delude, the Board of Abatement voted to approve the Treasurer's request for Samantha Dickinson, Parking fine #92, dated June 7, 2011 citing the collection would create an undue expense for the Town. Those not present for the vote were: Rob LaClair, Jay Perkins, Rolland Tessier, and Assessor Joseph Levesque.

C) Matthew Ballard

Parking fine #177, dated 11-7-2010

Request: \$15.00 for penalties

Background: The mail has been returned - no forwarding address, the Town Clerk-Treasurer has been unable to locate a new address, and the amount is too small to send to collections. The Treasurer is requesting abatement citing the collection would create an undue expense for the Town.

BOARD OF ABATEMENT MEETING OF JANUARY 26, 2017 continued:

On a motion by JP Isabelle, seconded by Delude, the Board of Abatement voted to approve the Treasurer's request for Matthew Ballard, parking fine #177, dated November 7, 2010 citing the collection would create an undue expense for the Town. Those not present for the vote were: Rob LaClair, Jay Perkins, Rolland Tessier, and Assessor Joseph Levesque.

D) John & Brittany Burt

Parking Fine #302, dated June 29, 2012

Request: \$15.00 plus penalties

Background: The mail has been returned - no forwarding address, the Town Clerk-Treasurer has been unable to locate a new address, and the amount is too small to send to collections. The Treasurer is requesting abatement citing the collection would create an undue expense for the Town.

On a motion by JP Isabelle, seconded by Delude, the Board of Abatement voted to approve the Treasurer's request for John & Brittany Burt, parking fine #302 dated June 29, 2012 citing the collection would create an undue expense for the Town. Those not present for the vote were: Rob LaClair, Jay Perkins, Rolland Tessier, and Assessor Joseph Levesque.

E) Jennette Chartrand

Parking Fine #57, dated August 26, 2012

Request: \$15.00 plus penalties

Background: The mail has been returned - no forwarding address, the Town Clerk-Treasurer has been unable to locate a new address, and the amount is too small to send to collections. The Treasurer is requesting abatement citing the collection would create an undue expense for the Town.

On a motion by JP Isabelle, seconded by Delude, the Board of Abatement voted to approve the Treasurer's request for Jennette Chartrand, parking fine #576 dated August 26, 2012 citing the collection would create an undue expense for the Town. Those not present for the vote were: Rob LaClair, Jay Perkins, Rolland Tessier, and Assessor Joseph Levesque.

ELECTION LAW CHANGES

The first is same day voter registration. On January 1, 2017, same day voter registration was enacted. This means several things for the Board of Civil Authority which oversees elections in Barre Town. Since there is a special school election on January 31st the issues must be resolved tonight.

Prior to January 1st there was a deadline to register to vote (Wednesday before each election at 5:00 p.m.). Usually, by Town Charter, the Board met on that Wednesday or Thursday evening to approve the deletions to the checklist and appoint Justices to carry sick ballots on election day.

With the new law the BCA is no longer required to approve the deletions to the checklist or to approve a checklist to be used at an election as there is no deadline to vote. This has raised concerns in that it contradicts what is written in Town Charter. The Clerk contacted the Town Attorney and asked for possible revisions to the Town Charter which would not contradict Town Charter and still allow the BCA the flexibility of meeting prior to an election to be provided an "update" as to checklist activity and appoint Justices for sick ballot delivery.

While looking at the Town Charter it was also noted that the definition for a quorum, of the BCA, for all meetings is a majority of those holding the position. State law

BOARD OF ABATEMENT MEETING OF JANUARY 26, 2017 continued:

defines quorum to be at least 3 BCA members. Barre Town Charter also defines who is/is not a member of the BCA for the various meetings. For example, the Assessor is part of the BCA for abatement purposes but not a member when hearing tax grievances or for election meetings. The Town Clerk-Treasurer and Selectboard members, on the other hand, are members for all BCA meetings.

Board members discussed the suggested Charter changes regarding meetings and agreed by consensus the new language would meet the needs of the BCA regarding elections. Once this charter amendment is approved policy will be put into place to have the BCA meet prior to an election for an "update on voter changes" and to appoint JPs to carry sick ballots. In the meantime, things will continue as they are with the BCA meeting prior to the election. This will allow inclusion into the record a list of those being removed and added for the specific reason and provide a forum for the appointment of JPs to carry sick ballots.

As for defining quorum, the BCA supports, by consensus, changing the Charter language a little. We will keep the requirement of a majority of BCA members for Abatement and Tax Grievance (as it is now) but to allow all other meetings to mirror State law.

This past summer the BCA approved polling place layouts (to include placement of check-in tables, handicap facilities, tabulators, voting booths, exits, etc.). With same day voter registration, this means the approved plan needs to be amended to accommodate a "same day voter registration table." The Clerk requested the Board allow her to experiment on the upcoming election day and work with the Logistics Committee to come up with an acceptable placement. One placement is found to be acceptable the plan will come before this Board for final approval. All agreed.

Kelty informed the Board the final piece of the election equation will be to appoint/have someone volunteer to learn the same day voter registration process (ability to complete applications correctly, look up information on the statewide checklist, and to help develop the protocol to be used on election day). Sheila Walther, Pearl Bugbee, and Ed Paquin volunteered.

OTHER BUSINESS

The consensus of those present is to appoint Chris Violette and Phil Kolling to carry sick ballots at the January 31, 2017 Special Barre Town School District revote. Alternates will be Lee Walther and Bill Bugbee.

Next Meeting: The Board discussed possible meeting dates and agenda items for a February meeting. Kelty reminded Board members that based on Town Charter they would also have to meet either March 1st or 2nd for checklist items and appointing JPs to carry sick ballots on Town Meeting Day (School elections only). It was also noted that motions had been made to hear abatement requests in February for the tabled items.

On a motion by Delude, seconded by Kolling, the Board of Civil Authority voted to amend the motions made previously and to set the next meeting date as March 1, 2017, 6:30 p.m., noting the Clerk will make the deadline for receiving abatement applications February 22, 2017.

By consensus items on the next meeting agenda will be the annual reorganization (appointing Chair, Vice Chair, possible Asst. Presiding Officer), old and new abatement items, election related items, and if time permits possible Assessor card training.

BOARD OF ABATEMENT MEETING OF JANUARY 26, 2017 continued:

ADJOURN

On a motion by Guy Isabelle, seconded by Delude, the Board of Abatement voted unanimously to adjourn at 8:20 p.m.






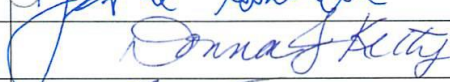




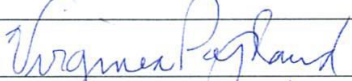
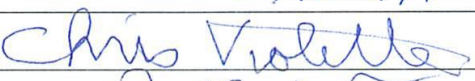
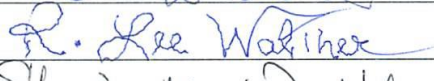
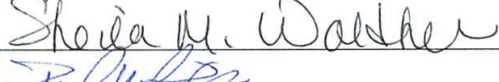

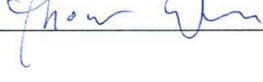
Board of Civil Authority

Donna J. Kelty, Town Clerk-Treasurer

APPENDIX - BOARD OF ABATEMENT OATHS

TOWN OF BARRE - ABATEMENT MEETING
OATH OF BOARD MEMBERS
January 26, 2017

I do solemnly swear (or affirm) that I will well and truly hear and determine all matters at issue at issue relating to the abatement of taxes and other levies submitted for my decision. So help me God (or under the pains and penalties of Perjury).

Name	Signature
Bugbee, Pearl	
Bugbee, William	
Castle, Charles	
Delude, Tracy	
Isabelle, J. Guy	
Isabelle, J.P.	
Kelty, Donna	
Kolling, Phillip	
LaClair, Robert	Absent
Malone, Paul	
Mitchell, W. John "Jack"	
Paquin, Edward	
Perkins, Jay	
Poplawski, Virginia	
Tessier, Rolland	Absent
Violette, Christopher	
Walther, R. Lee	
Walther, Sheila	
White, Paul	
White Thomas	
Assessor Joseph Levesque	Absent
Vacant	Vacant

ATTORNEY OPINIONS - TAXPAYER DEFINITION

PRIMMER

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ADMITTED IN VT
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December 19, 2016

Michael D. Monte, Esq.
Monte & Monte, P.C.
P.O. Box 686
Barre, VT 05461-0686

Dear Mike:

You have asked for my opinion regarding the availability of abatement relief afforded under Town of Barre Charter Section 101-34(d). Specifically, you have requested my opinion as to whether one must be a Town taxpayer in order to be eligible to submit an abatement request for consideration by the Board of Abatement.

In my opinion, abatement relief under Section 101-34(d) is available to any person, regardless of whether he, she or it is a taxpayer in the Town.

In discerning the application of Section 101-34(d), it needs to be read in the context of the entire statute in which it appears. Clearly, a "tax", "assessment" or "other levy" is imposed upon a taxpayer. Only a property owner (i.e., a taxpayer) can be the subject of those governmental exactions we call taxes, assessments and levies. By extension, then, only a taxpayer can seek abatement relief from the consequences of a Town levy of taxes and assessments (which is defined as a special tax under 24 VSA 3251(4)).

However, I do not believe that limitation of eligibility applies to the abatement of a "charge" or "other delinquent charges". The Charter provides that every meeting of the Board shall be noticed by physical posting, website posting and by newspaper publication. Presumably, notice to this extent is intended to reach persons who have an interest in the subject matter before the Board, and to furnish these persons with an opportunity to request abatement relief. Notice is not directed just to property owners or Town residents. It is universal notice.

"Charges" and "delinquent charges" are concepts not necessarily connected with the ownership of ratable property. That's clear from the text of Section 101-34(d) itself. It provides that "any taxpayer" is eligible to request abatement. Also within the universe of eligible applicants is an "individual [who] is or may become liable" for a "charge" or "delinquent charge". The Charter itself establishes two classes of abatement applicants – property owning taxpayers and individuals faced with liability for a Town "charge".

That scope of non-taxpayer eligibility is carried further in Section 101-34(d)(3) and (4). They provide, respectively, that abatement relief may be afforded "all persons liable for . . . [a] charge . . . [who] have died or removed from the State", and also to "persons liable for the . . . charge . . . [who] are financially unable to pay same."

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ATTORNEY OPINIONS - DEFINITION OF TAXPAYER CONTINUED

Michael D. Monte
December 19, 2016
Page 2

The Charter recognizes that abatement relief can be granted to a person liable for a "tax", "assessment" or "other levy" as well as to a "person" or "individual" with actual or potential liability for a municipal "charge".

There is an equal protection constitutional dimension to this subject. However, I don't think it is necessary to pursue that line of analysis because, in my opinion, the answer is found by reference to the statutory text itself.

Very truly ours,



Paul Giuliani

ATTORNEY OPINIONS - DEFINITION OF TAXPAYER CONTINUED

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December 28, 2016

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

Re: Definition of "taxpayer"

Dear Board Members:

As requested, I have reviewed Charter Section 34 with regard to whether the use of the word "taxpayer" in Section 34(d) limits the right to request abatement to persons who own property in the Town of Barre. I do not believe that the Charter establishes that limit.

"The fundamental inquiry at the heart of statutory interpretation is to ascertain the plain meaning of a statute's words in light of its legislative purpose." *Polly's Props., LLC v. Dep't of Taxes*, 188 Vt. 157, 2010 VT 41 (2010). The purpose of Section 34 is to provide a mechanism whereby amounts owed to the Town may be abated in an open and transparent manner.

Limiting requests to Barre Town taxpayers would thwart that purpose by requiring persons who do not own property in the Town to have their requests presented by the Tax Collector. The Collector could either present all requests to the Board, or decline in certain cases, thereby preventing the Board of Abatement from hearing those cases. Such a screening process would be contrary to the open intent of the Section, and would weaken the Board.

In addition, the plain meaning of the word "taxpayer" is one who pays taxes. In a very real sense, everyone pays taxes. In addition to property taxes, people are subject to income, sales, gas, and numerous other taxes. It would be virtually impossible for someone to accrue a charge in the Town without previously having paid some form of tax to the Town, State, or Federal government.

One should also consider Town residents who do not own property. Renters indirectly pay Town property taxes when those expenses are built into their monthly rent. Those indirect taxes would qualify them as "taxpayers" to the Town.

Furthermore, the current property tax system under Act 60 and Act 68 causes all education property taxes to be paid into the statewide system, which supports all of the public schools in the state. Therefore, property owners in Stowe, for example, are paying taxes toward the Barre Town School. That indirectly makes them Barre Town taxpayers.

For those reasons, interpreting "taxpayer" to mean only a person who pays taxes to the Town

ATTORNEY OPINIONS - DEFINITION OF TAXPAYER CONTINUED

contradicts the plain meaning of the word, as well as the intent of Section 34.

Beyond the examination of the plain meaning of "taxpayer", there is a more complicated constitutional question. Under the Fourteenth Amendment's due process clause, "a State may not treat those within its borders unequalled solely on the basis of their different residences" *Williams v. Vermont*, 472 U.S. 14 (1985). Put simply, the Town cannot treat persons differently based only on where they reside, unless the different treatment is rationally related to the purpose behind the law in question.

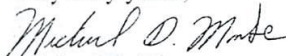
One might attempt to justify limiting requests to property owners by arguing that the abatement of ambulance charges impacts Town taxpayers negatively. However, since the ambulance fund is supported by per capita fees on the other towns in the service area, any abatement also impacts residents of those towns, while they have not ability to directly request abatement.

Furthermore, the purpose of Section 34 is to promote an open and transparent process for abatement. Therefore, limiting abatement requests to Town property owners is not rationally related to the purpose of the law in question.

In conclusion, use of the word "taxpayer" in Charter Section 34(d) does not prohibit persons other than Town property owners from requesting abatement of charges owed to the Town. Such a limitation reads too much into the use of the word, and appears to be unconstitutional.

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