

Mountain View Yacht Club, Inc.

v.

Town of Gilford

Docket No. 5509-88

DECISION

This decision relates to the "Town's" motion to dismiss this appeal (the Motion). The Motion asserts the named taxpayer, Mountain View Yacht Club, Inc. (the Club), lacks standing because the Club is not a "person aggrieved" as defined in RSA 76:16, 16-a. At the hearing, the board granted the Motion and stated a written decision would be issued.

The facts are straight forward. The Club has attempted to file one appeal for 284 owners of boat docks. All boat dock owners belong to the Club, which is an RSA 292 voluntary corporation. The Club, however, does not own the docks or any property in the Town. The docks are owned and taxed as realty to the dock owners.

Thus, the issue for the Motion is whether the Club, which does not own the property being appealed and does not pay the taxes on the appealed property, has standing to bring one appeal for the 284 dock owners. Based on the clear law, the Club lacked standing to bring the abatement application and to file the appeal with the board.

To file an abatement application with a municipality and then to file an appeal with this board, the filing party must comply with RSA 76:16, 16-a and be a "person aggrieved" under RSA 76:16, 16-a. The board's powers and taxpayers' rights are entirely statutory, and therefore, complying with RSA 76:16, 16-a are jurisdictional prerequisites to seeking an abatement. See

Appeal of Gillin, 132

N.H. 311, 313 (1989), citing Appeal of Sunapee, 126 N.H. 214, 216 (1985); see also Missionaries of LaSalette Corp. v. Town of Enfield, 116 N.H. 274, 274 (1976). Based on the facts, we conclude the Club is not a "person aggrieved" and did not comply with RSA 76:16, 16-a.

The term "person aggrieved" has been interpreted to mean the owner of the property or someone otherwise directly affected by the assessment, e.g., a party paying the taxes. E.g., Appeal of Town of Plymouth, 125 N.H. 141, 145 (1984); Langford v. Town of Newton, 119 N.H. 470, 472 (1979). The Club, therefore, is not a "person aggrieved" and does not have standing to pursue abatements for the 284 dock owners. Because of this, no valid abatement application was ever filed with the Town, and thus, this appeal must be dismissed. The board also notes the Club paid only one filing fee when RSA 76:16-a requires a filing fee for each "person aggrieved."

At the hearing, the Taxpayer raised four arguments against the Motion, namely:

- 1) in certain land use procedures the Town has treated the Club as if it were the property owner;
- 2) article 4-102 (J) of the Club's articles of incorporation authorizes the Club to take actions for the Club's common benefit;
- 3) RSA 71-B:16, II empowers the board to order a reassessment of the docks even if the Club lacks standing; and
- 4) the Club filed only one appeal because of instructions from the board. None of these arguments, however, empower the board to ignore the law discussed above.

The arguments numbered 3 and 4 warrant brief additional discussion. Argument number three fails because to adopt the Club's position and hear this appeal would totally eviscerate RSA 76:16, 16-a. We do not think the legislature, in enacting RSA 71-B:16, II, intended to repeal the existing statutes and overrule existing caselaw.

Argument four fails also. First, because no valid application was filed with the Town, there cannot be an appeal with this board. See RSA 76:16-a;

Appeal of Sunapee, 126 N.H. at 216. Thus, it is irrelevant if the taxpayers' representative, Equitax, received incorrect information from the board. ¹

For the reasons stated, the Motion is granted and the appeal is dismissed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue, Member

Paul B. Franklin, Member

Ignatius MacLellan, Member

Date:

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Gerry Prud'Homme, Equitax, representative for Mountain View Yacht Club, Inc., taxpayer; and Walter Mitchell, Esq., counsel for the Chairman, Selectmen of Gilford.

Michele E. LeBrun, Clerk

Date:

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¹ There was insufficient evidence that the board provided incorrect information to Equitax. In response to a board question, Equitax, stated when the board was contacted for advice on filing this appeal, the board was not informed that the Club did not own the property to be appealed. Equitax holds itself out to New Hampshire citizens as real estate tax consultants. Therefore, Equitax should have known the law would not allow the Club, which did not own the appealed property, to file a single appeal for 284 individual property owners.