

Sylvia M. Austin
v.
Town of Dorchester

Docket No. 5859-89

DECISION

A hearing in this appeal was held, as scheduled, on August 2, 1990. The Taxpayer was represented by herself and her representative and husband, Frank M. Austin. The Town was represented by Valentine F. Parker, Selectman and Blanche A. MacDonald, Selectman.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$20,530 (land, \$10,000; buildings, \$10,530) placed on her real estate, located on State Rt. 118 for the 1989 tax year. The Thibodeau property was assessed for \$35,200 (land, \$10,500; buildings, \$24,700). (Lot B, Jackson subdivision.)

Neither party challenged the Department of Revenue Administration's equalization ratio of 56% for the 1989 tax year for the Town of Dorchester.

The Board rules the correct assessment in 1989 to be the value found by Mr. J. Philip Estey, the review inspector for the Board of Tax and Land Appeals:

Parcel 14 (East Side, Rt. 118)

| | |
|--------------------------------------|-----------------|
| 3/4 acre site value | \$ 6,100 |
| Current use 4.25 acres x .15 x .56 = | \$ 50 |
| Water on site | \$ 300 |
| Building | <u>\$ 6,300</u> |
| | \$12,750 |

Lot B (Jackson subdivision; former Thibodeau property.)

| | |
|----------|-----------------|
| Land | \$ 5,500 |
| Building | <u>\$15,050</u> |
| Total | \$20,550 |

If the taxes have been paid, the amount paid on the value in excess of \$33,300 is to be refunded with interest at six percent per annum from date of payment to date of refund. The Board denies the Taxpayers Motion for Costs.
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue, Member

Paul B. Franklin, Member

Date: October 29, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Sylvia M. Austin, taxpayer; and Chairman, Selectmen of Dorchester.

Michele E. LeBrun, Clerk

Date: October 29, 1990

0009

Sylvia M. Austin

v.

Town of Dorchester

Docket No. 5859-89

ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied because: 1) the rehearing motion raises issues not raised in the "special plea"; 2) the board does not have jurisdiction over years after 1989; and 3) any relief for the 1989 tax year was untimely requested.

Here is a brief review of the procedural history of this case. The Taxpayer filed an appeal for tax years 1988 and 1989. In October 1990, the board granted the Taxpayer's appeals but not to the Taxpayer's satisfaction. The Taxpayer then appealed to the supreme court, and in March 1991, the court declined to accept the appeal. For tax year 1991, the "Town" underwent a complete revaluation. The Taxpayer appealed the 1991 assessment to the Grafton County Superior Court, and the superior court denied the appeal sometime in the middle of 1995. In July 1995, the Taxpayer filed a "special plea" with the board, asking the board to order the Town to comply with the board's decision for the 1989 tax year (the 1989 Decision). The board denied the Taxpayer's request, and the Taxpayer then moved for reconsideration. The board ordered the parties to submit evidence of whether the 1989 Decision had been complied

with.

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With this background, the board now addresses the rehearing motion.

The board denies the motion for failing to state any "good reason" for changing the board's August 30, 1995 order.

The rehearing motion must be denied to the extent it requested relief or presented arguments not in the "special plea." A reconsideration motion cannot be used to raise new arguments. See RSA 541:3; TAX 201.37.

The rehearing motion raised issues that were not raised in the original "special plea." The "special plea" asserted the Town had not complied with the board's 1989 Decision, and the "special plea" discussed the Town's actions concerning how many acres should be assessed ad valorem and how many acres should be assessed in current use. The plea only appeared to address the Town's actions for tax years after 1989. The plea did not assert that the Town had not issued the proper abatement checks for tax year 1989 (calculated based on the board's 1989 Decision). In the rehearing motion, however, the Taxpayer changed tacks and asserted the Town did not comply with the board's decision for the 1988 tax year (docket number 4293-88) in making abatements, and the Town did not comply with making the abatements pursuant to the 1989 Decision for the 1989 tax year. These assertions were not the assertions contained in the "special plea."

The motion must also be denied to the extent it or the plea requested relief for years after 1989. Before July 1991, taxpayers were required to appeal for each tax year. RSA 76:16-a I (Supp. 1991) (repealed 1992); and RSA 76:16-c (Supp. 1992) gave the board jurisdiction to order abatements for subsequent years even though the taxpayer had not filed for an abatement with

the municipality or filed an appeal with the board. Appeal of Town of Newmarket, ___ N.H. ___, slip

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op. at 2 (October 6, 1995). Therefore, in this Taxpayer's 1989 appeal, the board only had jurisdiction over 1989, i.e., the board did not have jurisdiction over the subsequent years. If the Taxpayer had concerns about the Town's handling of the subsequent years, she was required to comply with RSA 76:16 (filing an abatement application with the municipality) and with RSA 76:16-a, 17 (filing an appeal with the board or court). The Taxpayer did not file any subsequent appeal with the board, and therefore the board does not have jurisdiction over tax years after 1989.

As noted in the board's August 30, 1995 order, the Town underwent a complete revaluation in 1991, the Taxpayer appealed that assessment to the superior court. The superior court denied the appeal.

The above factors demonstrate the board lacks jurisdiction to provide the Taxpayer's requested relief for years after 1989.

Concerning tax year 1989, the Taxpayer, in her rehearing order asserted for the first time that the Town had not issued the proper abatement checks to her. This enforcement request of the 1989 Decision was filed in July 1995, which was several years after: a) the board's October 1990 decision on the 1989 tax year; b) the March 1991 supreme court order declining the Taxpayer's appeal; and c) the Town's May 1991 abatement check. Certainly, if the Taxpayer had any problem with the Town's compliance in issuing the abatement checks, she should have filed a motion with the board in a more timely manner. Several years cannot be considered filing in a timely manner and shows a lack of

diligence. The board has several thousand appeals in its docket, and the board is not required to revisit matters that are several years old. See, e.g., State v. Weeks, 134 N.H. 237, 240 (1991); Wood v. General Electric Co., 119 N.H. 285, 289 (1979) (laches Page 4 Austin v. Town of Dorchester Docket No.: 5859-89PT

prevents a party from seeking a remedy when that party has failed to assert the right within a reasonable time).

Finally, even if we were to review the merits of this "special plea," we would probably not rule for the Taxpayer because: 1) the Taxpayer did not provide sufficient specificity as to how the Town's abatement for the 1989 tax year did not comply with the board's 1989 Decision; and 2) the Town supplied documentation that demonstrated the Town had complied in making the abatement.

The board reviewed the Town's submitted documentation, and given the information that we were provided, which may not have included all of the information on this issue, the board found the abatement calculations were reasonably accurate.

For the reasons stated above, the board denies the motion for reconsideration and again denies the Taxpayer's special plea.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Sylvia M. Austin, Taxpayer; and Chairman, Selectmen of Dorchester.

Date: November 7, 1995

Valerie B. Lanigan, Clerk

0006

Sylvia M. Austin

v.

Town of Dorchester

Docket No.: 5859-89PT

ORDER

This order relates to the "Taxpayer's" November 30, 1995 request for clarification (Request) of the board's October 29, 1990 order and the board's November 7, 1995 order.

The board denies the Taxpayer's request for two reasons. First, the board's previous orders fully addressed the issues the Taxpayer raised in her July 17, 1995 special plea and the new Request. Second, the Taxpayer is only entitled to file one rehearing motion, Petition of Ellis, 138 N.H. 159, 161 (1993), which was filed on August 30, 1995, and was denied by the board's November 7, 1995 order.

SO ORDERED.
BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Sylvia M. Austin, Taxpayer; and Chairman, Selectmen of Dorchester.

Dated: December 29, 1995

Melanie J. Ekstrom, Deputy Clerk

Sylvia M. Austin

v.

Town of Dorchester

Docket No.: 5859-89PT

ORDER

This order responds to the "Taxpayer's" Special Plea filed July 17, 1995, in which the Taxpayer requests the board enforce its 1989 decision for the 1991 tax year. The "Town" filed an objection on August 5, 1995.

The board denies the Taxpayer's request. The board has no jurisdiction over the Taxpayer's 1991 assessment because she chose to appeal that year's assessment to superior court. See RSA 71-B:11 and TAX 201.24 (election to file an appeal in either the superior court or the board is deemed a waiver to filing the action in the other tribunal). Even if the Taxpayer had not appealed her 1991 assessment to superior court, the board would similarly conclude it had no jurisdiction to enforce its 1989 order forward to 1991 because the Town had undertaken a complete revaluation in 1991.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Sylvia M. Austin, Taxpayer; and Chairman, Selectmen of Dorchester.

Dated: August 30, 1995

Valerie B. Lanigan, Clerk

0005

Sylvia M. Austin

v.

Town of Dorchester

Docket No.: 5859-89PT

ORDER

The board has reviewed the "Taxpayer's" Motion for Reconsideration of Decision Dated August 30, 1995 (Motion). Before responding to the Motion, the parties shall, within 20 days of the clerk's date below, submit evidence of whether the board's October 29, 1990 decision relative to the 1989 tax year was complied with and an abatement issued.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Sylvia M. Austin, Taxpayer; and Chairman, Selectmen of Dorchester.

Dated: September 25, 1995

Valerie B. Lanigan, Clerk

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