

John D. Hauslein

v.

Town of Durham

Docket No. 6484-89

DECISION

The "Taxpayer" purports to appeal an administrative error made by the "Town" concerning his current-use application.

The facts are simple. The Taxpayer applied to put 2 parcels (1.67 acres and 8 acres) in current use, as recreation land. The Town administrator erroneously granted the request without complying with current-use rule Rev. 1205.05(1), and upon learning of the error, the Town informed the Taxpayer the planning board would have to rule on the Taxpayer's request. The planning board denied the request, and the Taxpayer appealed here.

On appeal, the Taxpayer argued the board should grant him current use because the Town originally did so, and the Town's error in doing so has caused him hardship and to allow the Town to change would be unfair to him. The Taxpayer did not appeal the planning board's denial of classification or property's assessment.

The board lacks jurisdiction over this appeal. See Appeal of Gillin, 132 N.H. 311 (1989) (board's powers limited to those statutorily granted). The Taxpayer has not appealed under RSA 79-A:9 because he has not claimed he

was entitled to current use. Rather, he merely wants the board to order the Town to go back to its error.

The Town erred in originally telling the Taxpayer his land would be put in current use. To place a parcel of less than 10 acres in current use as recreational land the selectmen or town council must approve the request after receiving a recommendation from a designated town board. Rev. 1205.05(1). This procedure had not been followed, and the Town administrator erred in initially granting the current use. The Town administrator informed the Taxpayer of this error when the error was discovered. Therefore, the Town correctly informed the Taxpayer that his application had to be acted upon by the planning board and the Town council. The correct procedure was then followed and the application was denied.

The Taxpayer's appeal is denied. The Town corrected itself and followed the required procedures, albeit after erroneously informing the Taxpayer his request was granted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul Franklin

Ignatius MacLellan, Esq.

Michele E. LeBrun

I certify that copies of the within decision have been mailed this date, postage prepaid, to John D. Hauslein, the Taxpayer, and to the Chairman, Board of Selectmen, Town of Durham.

February 10, 1992

Melanie J. Ekstrom, Deputy Clerk

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