

John W. Sargent and Priscilla J. Sargent

v.

Town of Sunapee

Docket No. 8044-89

ORDER

This orders relates to whether an appeal or appeals have been properly filed with the board. This issue is being raised after the board received from the "Town" a copy of a "Petition of Appeal for Tax Abatement" (Sullivan County Superior Court #90-E-078). The petition is another appeal filed by the Taxpayers for the 1989 tax year, even though they have also appealed to this board. The petition appeals property described as Map 14, Lots 21, 37, 38, and 39. The appeal filed with this board is for property described as Map 14, Lots 17, 37, 38, 39, 41, and 42.

Pursuant to RSA 71-B:11, "An election by a taxpayer to bring an action before the board shall be deemed a waiver of any right to bring an action in the superior court." Similarly, RSA 76:17 states any taxpayer may appeal to the superior court "in lieu of appealing [to the board of tax and land appeals] pursuant to RSA 76:16-a" Thus, the Taxpayers cannot maintain two appeals for the same tax year with one in the court and one with the board. The petition with the court was filed August 21, 1990, and the appeal to this board was filed August 22, 1990.

Having filed with the board after filing with the court, the board orders the Taxpayers to show cause why the appeals pending with the board should not be dismissed. Thus, the Taxpayers shall, within 10 days of the clerk's date below, file their reasons why the appeal should not be dismissed. The Taxpayers shall send a copy of their response to the Town, and the Town shall have 10 days after its filing to respond. If the Taxpayers fail to timely file a response, their appeal before the board shall be dismissed.

January 31, 1991

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within Order have been mailed this date, postage prepaid, to John W. and Priscilla J. Sargent, the Taxpayers, to Joseph A. DiBrigida, Jr., Esq., Counsel for the Taxpayers, and to the Chairman, Board of Selectmen, Town of Sunapee.

January 31, 1991

Michele E. LeBrun, Clerk

