

Brian H. and Victoria M. Meyette

v.

Town of Cornish

Docket No.: 10544-90

DECISION

The "Taxpayers" have appealed, pursuant to RSA 76:16-a, the "Town's" 1990 ad valorem assessment of \$45,500 on a 25.9-acre vacant lot (the Property). The Property, however, was only assessed for \$900 since it was in current-use. The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied because the board lacks jurisdiction over the issues raised by the Taxpayers.

Board's Rulings

There are two issues involved in this appeal: 1) Does the board have jurisdiction to rule on the Taxpayers' challenge of the land-use-change tax?; and 2) Does the board have jurisdiction to issue an abatement on the ad valorem assessment even if the Taxpayers did not pay taxes based on that assessment? We answer both in the negative, concluding the board lacks jurisdiction over the issues raised by the Taxpayers.

1) Does the board have jurisdiction to rule on the Taxpayers' challenge of the land-use-change tax?

It appears the Taxpayers intended to appeal the land-use-change tax assessed against one acre that was removed from current-use. The Taxpayers argued that since the land-use-change tax was based on the ad valorem assessment, they could challenge the ad valorem assessment and thereby obtain an abatement of the land-use-change tax. The Taxpayers are wrong on this point.

For the board to have jurisdiction over the land-use-change-tax appeal, the Taxpayers should have filed an RSA 79-A:10 appeal with this board within 8 months from the Town's September 27, 1991 land-use-change-tax bill. While the Taxpayers filed an abatement application with the Town of the tax, they did not file with the board. Having failed to file an RSA 79-A:10 appeal with the board, the board lacks jurisdiction to render a decision on the land-use-change-tax issue.

2) Does the board have jurisdiction to issue an abatement on the ad valorem assessment even if the Taxpayers did not pay taxes based on that assessment?

The board does not have jurisdiction over the Taxpayers' ad valorem assessment since the Taxpayers were not taxed upon the ad valorem assessment.

The Taxpayers appealed their ad valorem assessment of \$45,500, but they were not taxed upon that assessment. Their tax was based on a \$900 current-use assessment. The selectmen and this board can only abate taxes

that were actually assessed to the taxpayer. RSA 76:16 states: Selectmen or assessors for good cause shown, may abate any tax assessed by them or by their predecessors. Any person aggrieved by the assessment of a tax ... may ... apply in

writing to the Selectmen or assessors for an abatement of the tax. (Emphasis added.)

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The Taxpayers were never aggrieved by the ad valorem assessment because they did not pay a tax based on the ad valorem assessment. See Barksdale v. Town of Epsom, ___ N.H. ___, slip op. at 3 (December 23, 1992). Therefore, the board has no jurisdiction to hear the Taxpayers' appeal of the ad valorem assessment. As discussed above, if the land-use-change tax was based upon the ad valorem assessment, the Taxpayers should have appealed the land-use-change tax.

Conclusion

The board does not have jurisdiction over the two issues raised by the Taxpayers. The Taxpayers failed to file an RSA 79-A:10 appeal, and they did not challenge the assessment upon which their taxes were actually assessed. Thus, the appeal is denied.

Reconsideration Motions

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Brian H. and Victoria M. Meyette, Taxpayers, and Chairman, Selectmen of Cornish.

Dated: March 16, 1993

Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order relates to the "Taxpayers" reconsideration motion. The motion fails to state any "good reason" or any issue of law or fact for granting a reconsideration. See RSA 541:3. Therefore, motion is denied.

Two of the Taxpayers' arguments warrant mention. First the Taxpayers stated: "It was made very clear throughout this entire process that our intent was to appeal the value that our current use change tax was based on." This is not true. In their appeal to the board, the Taxpayers only appealed their ad valorem assessment. Their appeal document does not mention the land-use-change tax. Second, the Taxpayers complained the board was being overly technical about filing requirements. The legislature, not the board, promulgates the appeal statutes. Under these statutes, the Taxpayers should have filed their appeal of the land-use-change tax under RSA 79-A:10. The board is bound by the statutes, and thus, we had to deny the land-use-change tax appeal. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction is controlled by statutes).

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SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

MacLellan, Esq., Member

Ignatius

LeBrun, Member

Michele E.

CERTIFICATION

I certify that copies of the within Order have this date been mailed, postage prepaid, to Brian H. and Victoria M. Meyette; Taxpayers and Town of Cornish.

Lanigan, Clerk
Date:

Valerie B.

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