

Charles E. Williamson

v.

Town of Dunbarton

Docket No.: 8305-90 CU

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:9, the "Town's" refusal to accept the late filing of his current-use application for tax year 1990. For the reasons stated below, the appeal is granted.

The Taxpayer argued his current-use application should have been accepted because:

- (1) RSA 79-A:5 II allows for late filing due to accident, mistake or misfortune;
- (2) the increase in the land values caused by the revaluation was unexpected;
- (3) the late filing was not caused by neglect but rather due to misfortune because the new assessment was not known until September;
- (4) if the new assessment had been known before April 15th, the application would have been timely; and
- (5) the application was filed before the tax rate was set.

The Town argued the denial was proper because:

- (1) the revaluation process was explained at at least two Town meetings with the opportunity for questions from taxpayers;
  - (2) the Town gave taxpayers the opportunity to file current-use applications in April with the understanding that the applications would not be recorded until the taxpayers had the opportunity to review the new values and make a decision on whether to have the application processed;
  - (3) the Taxpayer did not file an application during the revaluation process;
- and
- (4) the Taxpayer timely applied for current use in 1991 and was granted current use.

#### Board's Rulings

Based on the evidence, we find the Taxpayer presented sufficient reasons for filing the current-use application after April 15 but before the tax rate was set.

Under RSA 79-A:5 II, an owner must file the current-use application by April 15 unless the filing was prevented by accident, mistake or misfortune. In reading RSA 79-A:5 II, the board must be cognizant of the purposes of the current-use law. RSA 79-A:1 specifically states: "It is further declared to be in public interest to prevent the conversion of open space to more intensive use by the pressure of property taxation at values incompatible with open space usage \*\*\*." Thus, while the purpose of current use is to preserve open space, the legislature acknowledged that the preservation of open space was threatened by the pressure of property taxes. In this case, the Taxpayer could not have known what pressures the property taxes would have asserted

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until he knew what the new assessment would be. All of the testimony indicated the land assessments in the Town increased dramatically and increased at higher rate than expected (ultimately land assessments increased several times over). Thus, on April 15, the Taxpayer would have been unable to determine whether he needed the protection of the current-use law to maintain his Property in open space. Filing the application before the tax rate was set and after knowing what the new tax burden were here sufficient grounds under RSA 79-A:5 II to file after April 15, and the Town should have accepted the application.

The Taxpayer's Property qualifies for current use because current use was granted in 1991. Thus, the only order needed is an order requiring the Town to place the Property in current use as of 1990 and to order the Town to refund the over payment of taxes (current-use assessment versus ad valorem assessment) with 6% interest from the date the taxes were paid to the date the refund is made.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence

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and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles E. Williamson, Taxpayer; and Chairman, Selectmen of Dunbarton.

Dated: May 23, 1994

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Valerie B. Lanigan, Clerk

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**Charles E. Williamson**

**v.**

**Town of Dunbarton**

**Docket No.: 8305-90CU**

**ORDER RE: REQUEST FOR REHEARING**

On June 7, 1994 the board received a request for rehearing from the Town.

The board grants the motion for rehearing and schedules a hearing for Friday, September 9, 1994 at 9:00 a.m. The parties should be prepared to address the issues raised by the appeal, the decision, the rehearing motion and the objection. The parties shall also be prepared to address the current-use rules in effect for tax year 1990, including the rule summarized in Rev. 1202.03 of the current use handbook. The board is trying to obtain a complete copy of the official current-use rules (not just the handbook), and the parties may wish to make similar efforts.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

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**CERTIFICATION**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Charles E. Williamson, Taxpayer; and Chairman, Selectmen of Dunbarton.

Dated: July 18, 1994 \_\_\_\_\_  
Valerie B. Lanigan, Clerk

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Charles E. Williamson

v.

Town of Dunbarton

Docket No.: 8305-90CU

DECISION RE: MOTION FOR REHEARING

On July 18, 1994 the board granted the "Town's" motion for reconsideration and scheduled a rehearing for September 9, 1994. For the reasons stated below, the board reverses its decision of September 29, 1994 and dismisses the Taxpayer's appeal because the Taxpayer failed to file the current-use application by April 15th as required by RSA 79-A:5.

The Town argued that the board should reconsider its original ruling because:

- 1) the board erred as a matter of law in ordering the Town to accept the late application;
- 2) assuming the Taxpayer's delay was due to accident, mistake or misfortune, the board made insufficient findings of fact in order to render its decision;
- 3) the board erred as a matter of law in finding the Taxpayer's application was delayed due to accident, mistake or misfortune; and
- 4) new evidence rebuts the board's central findings of fact.

The Taxpayer argued the board's decision should be upheld because:

- 1) he was only aware of the Town's procedures after he tried to "late file" his application in September 1990;
- 2) the eight fold increase in the number of current-use applications filed the following year indicates the Town's procedure was not widely known;
- 3) immediately after receiving the new assessment, steps were initiated to file for current-use; and
- 4) he was told by a selectman that he could not file, therefore, it would be impossible to satisfy the assessing officials that he had a good reason to late file.

**Board's Rulings**

Based on the evidence and the law, the board reverses its September 29, 1994 decision and dismisses the Taxpayer's appeal because the Taxpayer failed to file the current-use application by April 15th as required by RSA 79-A:5. The board further finds that accident, mistake or misfortune did not exist in this case.

In arriving at its decision the board reviewed the following chronology of events testified to by the parties.

<u>Date</u>	<u>Event</u>
March	Town meeting held - voted for revaluation
April 17th	First informational meeting concerning the revaluation and the current-use process
September 17th	New assessment booklets mailed
September 18th or 19th	Taxpayer received new assessment booklet

September 18th or 19th Taxpayer called Selectman William  
Nichols to file current-use application -  
told he could not apply for current use

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September 16th, 19th, 24th	Town accepted current-use applications from other taxpayers
September 28th to October 1st	Town held meetings on reassessment
September 28th	Taxpayer attended meeting with Town re: reassessment
Between September 28th and October 4th	Taxpayer arranged appointment with selectmen
October 4th (day)	Selectmen signed and mailed the current- use list for recordation in the registry of deeds
October 4th (evening)	Selectmen's meeting - Taxpayer dated and attempted to file current-use application
October 8th	Taxpayer's current-use application date stamped by Town
October 9th	Current-use list recorded
November 8th	Tax rate approved

RSA 79-A:5 II states that current-use applications must be filed on or  
before April 15th of the applicable tax year. RSA 79-A:5 II does allow owners  
to file after April 15th and before the local tax rate has been set, provided  
the failure to file by April 15th was due to "accident, mistake or  
misfortune." Accident, mistake or misfortune means something outside the  
parties' own control and not due to neglect, or something that a reasonably  
prudent person would not be expected to guard against or provide for. Pelham  
Plaza v. Town of Pelham, 117 N.H. 178, 183 (1977); see also TAX 101.02.

Department of Revenue Administration Rule REV 1202.03 Withdrawal of

Application states: "When an application has been submitted on or before April 15 of a given year, and approved by the assessing officials, the applicant

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shall be permitted to withdraw that application in the same year in which it was submitted, provided the municipality has not recorded the form A-4, as described in REV 105.04 of the administrative rules of this department, with the county registrar of deeds."

The Taxpayer testified that he could not have known what pressures the property taxes would have asserted until he knew what the new assessment would be, therefore, he was unable to determine as of April 15th whether he needed the protection of the current-use law to maintain his property in open space.

However, he testified that he was aware that a revaluation was ongoing and informational meetings were being held and that he was aware of the current-use law. Therefore, the Taxpayer should have filed his application for current-use with the Town with the understanding that until the applications were recorded in the registry of deeds by the Town that the application could be withdrawn pursuant to DRA Rule REV 1202.03.

The board's authority is strictly statutory and the board has no latitude to deviate from timelines. Although the board feels that this order is the correct decision in accordance with the statute and the current-use rules and regulations, the board must comment on the Town's failure to treat this Taxpayer fairly. This Taxpayer was told by Selectmen Nichols on or before September 18th that he could not file for current use, however, the Town did accept applications on the sixteenth, the eighteenth and the twenty-

fourth of September. The Town has the responsibility to treat all of its citizens fairly and in accordance with the law and the board hopes that in the future the Town will proceed in a proper manner.

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Any appeal from this decision must be as follows.

**Taxpayer.** The Taxpayer must file a motion for a rehearing of the decision within twenty (20) days of the clerk's date below. RSA 541:3; TAX 201.37; see also Appeal of White Mts. Educ. Ass'n., 125 N.H. 771, 775 (1984) (newly losing party must move for rehearing).

**Town.** The Town must file, pursuant to RSA 541:6, an appeal to the New Hampshire Supreme Court within thirty (30) days from the clerk's date below.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Charles E. Williamson, Taxpayer; and Chairman, Selectmen of Dunbarton.

Dated: December 13, 1994 \_\_\_\_\_  
Valerie B. Lanigan, Clerk