

Mountain View Trust

v.

Town of Frankestown

Docket No.: 13922-94CU

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:9, the "Town's" April 25, 1994 denial of the Taxpayer's current-use application on Lot 32, an 11.35-acre lot (the Property). For the reasons stated below, the appeal is dismissed.

The Taxpayer argued the Town erred in denying his current-use application because:

- (1) he filed the current-use application on April 25, 1994, and was unaware the deadline for filing was April 15th but believed it was the end of April;
- (2) RSA 79-A:5 II states, "if the owner shall satisfy the assessing officials that he was prevented by accident, mistake or misfortune from filing said application on or before April 15, said officials may receive said application at a later date....";
- (3) the Town's secretary stated by affidavit that she notified the Taxpayer of the correct deadline on April 3rd, but the Taxpayer denies hearing this information;
- (4) the local tax rate was not approved until some time in July (see RSA 79-A:5 II);

(5) RSA 79-A:5 III is some indication that applications can be accepted after July 1st; and

(6) the application should be accepted because it was not timely filed due to mistake.

The Town argued their denial of the Taxpayer's current-use application was proper because:

(1) the application was filed too late;

(2) the Taxpayer has already been granted current use on one other parcel in the Town so the procedure was known; and

(3) the secretary stated that she informed the Taxpayer of the deadline.

Board's Rulings

Based on the evidence and the law, the board 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.

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 reasonable 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. The board finds accident, mistake and misfortune do not exist in this case.

The Taxpayer filed his current-use application on April 25th. He picked

up the application some time in April but before the deadline. (The Taxpayer

stated he picked up the application on April 11, 1994, and the Town Administrative Assistant stated he picked up the application on April 3, 1994.) The application itself does not state the April 15th deadline, and the Town's administrative assistant stated she informed the Taxpayer of the April 15th deadline. The Taxpayer claims he did not hear the administrative assistant's statement because either she did not tell him, she told him when her back was turned toward him, or he did not have his hearing aids in at the time.

The Taxpayer is a retired attorney who is admitted to practice in Massachusetts and Florida. Moreover, the Taxpayer has another parcel that he placed in current use approximately 10 years ago. Finally, the Taxpayer knew there was a filing deadline, but he failed to take reasonable steps to determine that deadline. The Taxpayer could have easily determined the deadline by either asking the administrative assistant or looking at the statutes. In either case, the Taxpayer should have then memorialized the filing deadline.

Based on the above facts, the board finds the Taxpayer did not take reasonably prudent steps to determine and memorialize the filing deadline. Thus, his late filing was not due to accident, mistake and misfortune, and the appeal must be dismissed.

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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph E. Marino, Esq., Trustee of Mountain View Trust, Taxpayer; and Chairman, Selectmen of Francestown.

Dated: September 29, 1994

Valerie B. Lanigan, Clerk

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**James E. Marino, Trustee
Mountain View Trust**

v.

Town of Francestown

Docket No.: 13922-94CU

ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion failed to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

With reference to the Taxpayer's arguments in the October 8, 1994 letter, the board makes the following replies.

Paragraph 2. The Taxpayer should not overemphasize the board's reliance on the affidavit. The affidavit was only one factor, and even without the affidavit, the board would have reached the same conclusion. Moreover, the board is not bound by the strict rules of evidence. Thus, the affidavit was properly admitted. Additionally, while cross examination is available for witnesses, it would have: a) not changed the ultimate decision; or b) left the board with the same evidence -- the "Town" saying the Taxpayer was told about the April 15 deadline and the Taxpayer saying he did not hear the deadline (possibly because of the Taxpayer not wearing his hearing aid).

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Paragraph 3. The statement concerning the Taxpayer having property

already in current use was introduced at the hearing by the Town.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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 Joseph E. Marino, Individually and as Trustee of Mountain View Trust, Taxpayer; and Chairman, Selectmen of Frankestown.

Dated: October 24, 1994

Valerie B. Lanigan, Clerk

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