

**Joseph A. and Carol Coulombe Lacasse**

**v.**

**City of Berlin**

**Docket No.: 19764-02EX**

**DECISION**

On May 20, 2004, the board completed the hearing begun on March 4, 2004 and discussed further in the board's Interim Order dated March 11, 2004. The Taxpayers and three representatives of the "City" (Susan Warren, Laura Viger and David S. Woodward) attended the noticed continued hearing.

Mr. Woodward, an employee of Avitar Associates, the City's assessing contractor, stated denial of the Taxpayer's RSA 72:38-a tax deferral application for tax year 2002, the only year at issue in this appeal, was proper because the application was untimely. The application is dated June 30, 2003 and is attached to the Taxpayers' appeal document. It was received by the City on or after that date. See Municipality Exhibit A at p. 6. By statute, the Taxpayers were required to file the application with the municipality by March 1, 2003. See RSA 72:33, I. Mr. Woodward argued this is a "date certain" statute and therefore full compliance is required. The Taxpayers submitted no explanation or reason for the delay in the filing of this application, other than alluding to continuing acrimony with the City's employees and officials.

The board has no authority to extend statutory timelines established for municipal filings. See TAX 203.04(c) and the authorities cited therein. Timely filing requirements are jurisdictional in nature and, as such, can be raised at any stage in the proceedings. As evident from cases decided under the tax abatement statute (RSA 76:16-a), they are in the nature of statutes of limitations and thus must be strictly adhered to, with no allowance permitted for possible accident, mistake or misfortune. Cf. Appeal of Roketenetz, 122 N.H. 869, 870 (1982); Missionaries of La Salette Corp. v. Town of Enfield, 116 N.H. 274, 275-76 (1976); and Arlington Am. Sample Book Co. v. Board of Taxation, 116 N.H. 575, 576-77 (1976).

As stated on page 2 of the Interim Order, the board's authority in this appeal is restricted to the narrow issue "of deciding whether the City's denial of the Taxpayers' tax year 2002 tax deferral application . . . was 'unreasonable' or, alternatively, constituted 'an error of law.'" See RSA 72:38-a, VI.<sup>1</sup> In light of the undisputed fact the application was not timely filed with the City, and regardless of the merits of several other arguments raised by the City and addressed by the Taxpayers, the board finds the denial of a deferral for tax year 2002 was neither unreasonable nor an error of law. Consequently, the appeal is denied.

This ruling on the timely filing issue makes the City's "Motion to Dismiss" (the "Motion"), based on alternate grounds not pursued by the City's representatives at the continued hearing, moot and of no further relevance.<sup>2</sup> The Motion was filed by an attorney (John J. Ratigan, Esq.) who has not filed an appearance in this case, in violation of TAX 201.07(a) and TAX 201.09 (a). See also the board's Interim Order at p. 4. Because no ruling is needed on the

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<sup>1</sup> This statute was amended effective April 1, 2003. See RSA 72:38-a (Supp. 2003).

<sup>2</sup> The Motion is based on several attachments (a tax collector's deed and an order of condemnation). Based on these documents, the City, through Attorney Ratigan, asserts the Taxpayers cannot qualify under RSA 72:38-a, I(c) because they cannot be "living in the home." The putative relevance of these documents is discussed further in the Interim Order at pp. 3-4.

Motion in order to decide the appeal, the board will not comment further either on the arguments submitted by this attorney or on his failure to comply with the board's rules in this regard.

In summary, the appeal is denied on the fundamental ground that the Taxpayers failed to file a timely application for a tax deferral with the City.<sup>3</sup> The board is mindful of the Taxpayers' continuing and serious disagreements with the City and the hardship they expressed regarding the loss of the Property in a foreclosure proceeding, as well as the additional financial obligations to provide for their welfare that the City may incur if the Taxpayers lose the Property. The board is also mindful of the Taxpayers' representations that they wish to sell the Property<sup>4</sup> and leave the City and how a negotiated sale could result in satisfying the amounts owed to the City as well as the State. These issues appear to be resolvable with minimum discord if the parties are willing to act reasonably to protect their respective interests, but are clearly well beyond the scope of this appeal and the board's statutory authority.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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

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<sup>3</sup> The Taxpayers' remaining argument that they cannot lose their house to foreclosure if they qualify for tax deferral is without merit. This argument relies entirely on a property tax relief brochure prepared by Legal Assistance (Taxpayer Exhibit 2) that is quoted out of context and is not legally supportable since the City's foreclosure is based on additional unpaid taxes, not any property taxes previously deferred under RSA 72:38-a. See Municipality Exhibit B ("SUMMARY OF TAXES, INTEREST AND COSTS DUE as of June 1, 2004.")

<sup>4</sup> The Taxpayers submitted a fax dated May 13, 2004 from the Department of Health and Human Services to their realtor (John Edwards of Coulombe Real Estate), see Taxpayer Exhibit 3, to indicate they were taking steps to sell the Property and that the State has liens of at least \$41,130 which, they stated, would take priority over the City's tax claims. The City, for its part, presented a detailed timeline and chronology of events dating back from 1993 to the present with respect to the tax delinquencies, liens and other actions taken with respect to the Property. See Municipality Exhibit A.

the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(f). 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Joseph A. and Carol Coulombe Lacasse, 303 Cates Hill Road, Berlin, New Hampshire 03570, Taxpayers; Chairman, Board of Assessors, City of Berlin, 168 Main Street, Berlin, New Hampshire 03570; and John Ratigan, Esq., Donahue, Tucker & Ciandella, 225 Water Street, Exeter, New Hampshire 03833, courtesy copy.

Date: June 14, 2004

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Anne M. Stelmach, Deputy Clerk