

**Joni Plante**

**v.**

**Town of Raymond**

**Docket No.: 23990-08PT**

**ORDER**

The limited hearing was held on July 28, 2009 to receive testimony and evidence on two issues: 1) who was the person aggrieved pursuant to RSA 76:16; and 2) whether the March 25, 2009 abatement application was timely filed pursuant to RSA 76:16 and Tax 203.04. Ms. Joni Plante and Mr. Vince Kerns, tenants in common owners of the “Property”, were in attendance at the hearing along with Normand Pelletier, Assessor for the Town of Raymond.

On the first issue, the board finds Joni A. Plante is a “person aggrieved” as she is President of HELP, Inc. by Joni, one of the tenants in common (the other being her brother, Vince Kerns) who purchased the Property on January 31, 2008. Therefore, Ms. Plante has standing to file the appeal.

The second issue is not so straight forward; however, based on weighing the evidence, the board concludes the abatement application was timely filed with the municipality.<sup>1</sup> The board employed the following statutory and rule provisions in reaching its conclusion.

RSA 76:16 provides that “[a]ny person aggrieved by the assessment of a tax... may, by March 1, following the date of notice of tax under RSA 76:1-a, and not afterwards, apply in writing on the form set out in paragraph III to the selectmen or assessors for an abatement of the tax.”

Tax 203.04 states the board does not have the statutory authority to extend timelines unless the following four conditions of municipal estoppel are met as detailed in Tax 203.04(d).

- (1) The municipality supplied the taxpayer with the incorrect filing deadline;
- (2) The taxpayer was unaware of the correct filing deadline;
- (3) The municipality should have known the taxpayer would rely on the municipality’s information; and
- (4) The taxpayer detrimentally relied on the municipality’s information such as missing the deadline for filing the abatement application with the municipality in accordance with City of Concord v. Tompkins, 124 N.H. 463, 467-68 (1984).

In property tax appeals, taxpayers have the burden of proof. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) and Tax 203.08. In determining whether taxpayers have carried their burden of proof, the standard of proof is the preponderance of evidence. Tax 201.27(f).

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<sup>1</sup> The board considers and weighs the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, in making its findings where there is conflicting evidence, the board must determine for itself the creditability of the witnesses and the weight to be given the testimony of each because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

While acknowledging it is a close decision, the following facts tip the scale for the board to conclude Ms. Plante carried her burden based on the preponderance of the evidence.

Ms. Plante testified in reasonable detail as to her inquiry of the Town in November, 2008 as to the process of filing an abatement application because she was anticipating filing one based on the significant difference between the purchase price of the Property in January, 2008 and the Town's assessment. Her personal calendar submitted as part of the record supports her understanding that the abatement application date was April 1, 2009 by her entry on the March calendar to file the abatement with the Town of Raymond by April 1. The board cannot reconcile, on one hand, her assertion that the individual she spoke with by telephone in November, 2008 told her the abatement deadline was April 1, 2009 with, on the other hand, Mr. Pelletier's assertion that the assessing clerk would not have given the incorrect date nor did she recall speaking with Ms. Plante. However, the board finds Ms. Plante's subsequent actions of the calendar entry, the preparation of documentary evidence to file the abatement application and indeed the actual filing of the abatement application on March 25, 2009 support her contention that she relied upon the April 1 date to her detriment.

The board recognizes that neither Ms. Plante nor the Town can definitively identify who Ms. Plante spoke with at the town office. Also, the Town's protocol, as testified to by Mr. Pelletier, of having all assessment inquiries be directed to the assessing clerk and not the tax collector (see also rear of tax bill – Taxpayer Exhibit No. 1) appears to be a reasonable one to minimize the chance of misinformation being provided to taxpayers. Nonetheless, the board finds Ms. Plante's testimony that she received the April 1 date from someone at the Town office to be credible and generally supported by her calendar entry.

The board also considered that the reverse side of the 2008 tax bill does contain a summary of “Taxpayer’s Rights” which includes the following quoted reference to filing property tax abatements – “Abatement, RSA 76:16, apply by March 1<sup>st</sup>.” However, that reference is in the middle of an extensive list of exemptions, credits and deferrals available to taxpayers without any description as to what the term “Abatement” relates to except the statutory reference. While this may meet the statutory requirement of what type of information must be included with tax bills (see RSA 76:11-a), it is not facially clear as to its meaning unless one is familiar with the statutory reference. In that regard, the board considered Ms. Plante’s testimony that she was in the business of buying and selling real estate but that she had never filed any abatement request on either her residential property owned in Candia or on any other property she has purchased for resale. Consequently, the board concludes Ms. Plante was not generally familiar with the March 1 abatement deadline nor would she have been cognizant of what the “Abatement” referenced on the back of the tax bill related to.

Thus, for all the reasons stated above, the board concludes the four provisions of Tax 203.04 apply in this instance and thus the March 25, 2009 filing was timely with the Town. Because the Town denied the abatement request based on it not being timely filed, the board will hold the appeal in abeyance and remands it to the Town for review of the substantive basis of the request. The Town shall review the abatement request and respond to the Taxpayer, copying the board, as to its determination within thirty (30) days of the date of this Order. Ms. Plante shall, within thirty (30) days of receipt of the Town’s response, notify the board if a hearing is necessary.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of this Order has been mailed this date, postage prepaid, to: Joni Plante, 27 Aunt Mary Brook Road, Candia, NH 03034, Taxpayer; and Chairman, Board of Selectmen, Town of Raymond, 4 Epping Street, Raymond, NH 03077.

Date: August 7, 2009

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Melanie J. Ekstrom, Deputy Clerk