

**Joseph S. Haas**

**v.**

**Town of Boscawen**

**Docket No. 25918-10PT**

**DECISION**

On May 31, 2012, the board ordered the “Taxpayer” and the “Town” to submit, within thirty (30) days, “all relevant information concerning” a superior court action mentioned in the RSA 76:16-a tax abatement appeal document filed by the Taxpayer with the board for tax year 2010. On June 22, 2012, the Town complied in a timely manner by providing an explanatory letter and copies of relevant documents concerning the superior court action. The Taxpayer did not respond until July 11, 2012, when he filed a “Reply” to the Town’s response, which the board has also considered. For the reasons discussed below, the board dismisses this appeal for lack of jurisdiction.

The following chronology is relevant to this dismissal and is not in dispute:

- (1) on or about April 15, 2011, the Town denied the Taxpayer’s abatement requests for tax year 2010 on two lots he owns in the Town (Map 49/Lot 36 and Map 49/Lot 33 - hereinafter, “Lot 36” and “Lot 33”);
- (2) following that denial, the Taxpayer on May 24, 2011 filed a superior court action (Docket No. 217-2011-CV-00325) seeking an abatement on Lot 33;

- (3) subsequently, on September 1, 2011, the Taxpayer filed a separate appeal with the board in this docket seeking an abatement on Lot 36;
- (4) shortly thereafter, on September 7, 2011, the superior court dismissed the appeal on Lot 33 and then denied the Taxpayer's reconsideration motion on November 23, 2011; and
- (5) the Taxpayer appealed the superior court dismissal to the supreme court on December 22, 2011 (Docket No. 2011-0898) and the supreme court denied the appeal and then denied his reconsideration motion on February 8, 2012.

The board's jurisdiction is limited by the governing statutes enacted by the legislature. Appeal of Land Acquisition, 145 N.H. 492, 494 (2000). The relevant jurisdictional statutes are RSA 76:16-a and RSA 76-17, further clarified by RSA 71-B:11, which allow taxpayers to file appeals either with the board or the superior court, but not both, if they are dissatisfied with the selectmen's RSA 76:16 decision on their tax abatement request. This limitation applies irrespective of how many lots any taxpayer may own within a municipality.

Taxpayers are obligated to make an election to file a tax abatement appeal either with the board or the superior court. Phetteplace v. Town of Lyme, 144 N.H. 621, 622, 624 (2000). Here, the Taxpayer elected to file a tax year 2010 appeal with the superior court and does not have the right to file a second tax year 2010 appeal with the board because filing with one tribunal operates as a waiver of the right to file with the other. See RSA 71-B:11; and Tax 201.24(a).

The Taxpayer has filed tax abatement appeals for prior years and should have been aware of these governing principles. He was, in addition, specifically advised by the Town regarding his appeal rights. The Town's April 15, 2011 letter notified the Taxpayer of the denial of his tax

abatement requests for Lots 33 and 36 and the second paragraph of this letter states the timeline for filing a tax abatement appeal either with the board “or” with the superior court.

The board recognizes the Taxpayer chose to focus on a different lot in each appeal but this is of no moment because in each appeal the tribunal is required to consider the assessment on the Taxpayer’s entire estate within that municipality (both of the lots he owned). Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) (“When a taxpayer owns two parcels, then, a request for abatement on the first will always require consideration of the assessment on the second.”).

Nor does the board agree with the implication in the Taxpayer’s Reply that dismissal can occur only if the other appeal is ‘maintained’ in some manner (presumably determined on the merits rather than on any other ground). Here, the Taxpayer filed and proceeded with his superior court appeal to the point where it was dismissed, his reconsideration motion denied and his appeal of those superior court rulings to the supreme court was also denied.<sup>1</sup> Principles of judicial and administrative economy caution against allowing any taxpayer to ignore the relevant statutes, rules and case law and proceed with a second tax abatement appeal with the board (for the same tax year and against the same municipality), given a prior election to file a tax abatement appeal in the superior court and proceed with that appeal.

For these reasons, the Taxpayer’s RSA 76:16-a tax abatement appeal to the board for tax year 2010 is now dismissed

Any party seeking a rehearing, reconsideration or clarification of this decision must file a motion (collectively “rehearing motion”) 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

---

<sup>1</sup> Although the Reply states the Taxpayer filed the two appeals in the two tribunals “by accident,” his persistence in maintaining the superior court action and then appealing that decision to the supreme court demonstrate an intention to proceed with each appeal without regard to the other.

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 in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Michele E. LeBrun, Chair

---

Albert F. Shamash, Esq., Member

---

Theresa M. Walker, Member

**CERTIFICATION**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Joseph S. Haas, PO Box 3842, Concord, NH 03302, Taxpayer; Chairman, Board of Selectmen, Town of Boscawen, 116 North Main Street, Boscawen, NH 03303; Matthew R. Serge, Esq., Upton & Hatfield, PO Box 1090, 10 Centre Street, Concord, NH 03302-1090, counsel for the Town; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 7/20/12

---

Anne M. Stelmach, Clerk