



THE COMMONWEALTH OF MASSACHUSETTS

*Appellate Tax Board*  
100 Cambridge Street, Suite 200  
Boston, Massachusetts 02114

Docket No. F325406

SUNSET ROCK LLC,  
Appellant.

BOARD OF ASSESSORS OF THE CITY OF LOWELL,  
Appellee.

DECISION WITH FINDINGS

The decision is for the appellee. The appeal is dismissed for lack of jurisdiction. On the basis of the evidence and testimony introduced at the hearing of this appeal, the Appellate Tax Board ("Board") makes the following findings and rulings.

The appellant filed this appeal from the refusal of the assessors to classify the subject parcel, identified as Map-Block-Lot #194/4065/2, located at 272 Methuen Street, consisting of 9.3 acres of unimproved land, as Recreation land under G.L. c. 61B, §6. On August 21, 2013, the appellant timely filed its application for classification of the subject parcel (Exhibit "A"). On November 22, 2013, the assessors voted to deny the application for classification. The assessors mailed notice of the disallowance of the classification application on November 26, 2013 (Exhibit "B").

Under G.L. c. 61B, § 14, "any person aggrieved by any determination . . . by the board of assessors under this chapter may **within 60 days of the date of notice thereof apply in writing to the assessors for modification** or abatement thereof." (emphasis added). The appellant timely filed its request for modification with the assessors on January 15, 2014. On March 11, 2014 a hearing was conducted before the appellee on appellant's request for modification. Appellant's request for modification was not acted upon by the assessors.

G.L. c. 61B, § 14 further states "any person aggrieved by the refusal of the assessors to modify such a determination . . . or by their failure to act upon such an application may appeal to the appellate tax board **within thirty days after the date of notice of their decision or within three months of the date of the application, whichever date is later.**" (emphasis added). Under a similar statutory scheme for Horticultural and Agricultural classification under G.L. c. 61A, the Appeals Court has held that similar language imposes two distinct deadlines:

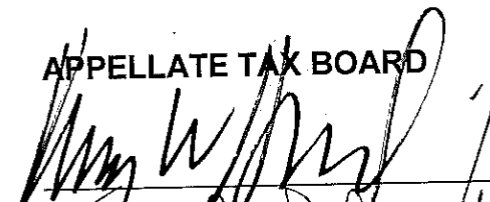
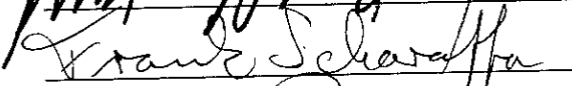
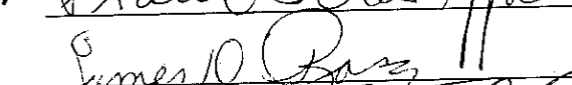
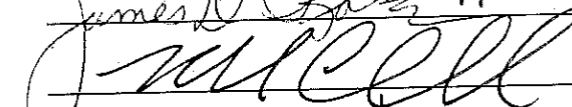
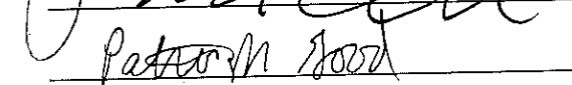
First, if the assessors notify the taxpayer that they refuse to grant an abatement, the taxpayer must act within thirty days of that notice . . . .  
Second, if the assessors do nothing they are assumed to have refused a

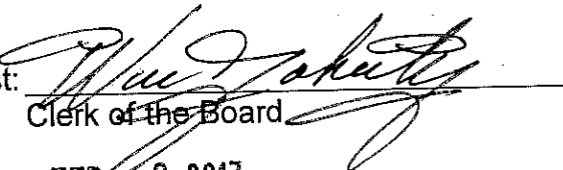
tax abatement and the taxpayer must file with the [ ] Board within three calendar months of the application for abatement.

**W. D. Cows, Inc. v. Assessors of Shutesbury**, 34 Mass. App. Ct. 944, 945 (1993). Therefore, the Court ruled, appeals to the Board must be "filed within three months of an application for abatement." *Id.* The Board has consistently applied this rule in the context of a Chapter 61A appeal where the taxpayers received notice of the assessors' denial after the 3-month appeal period had expired. See **Gonthier v. Assessors of Amesbury**, Mass. ATB Findings of Fact and Reports, 2008-1096, 1100-02; **Hill v. Assessors of Sudbury**, Mass. ATB Findings of Fact and Reports, 1994-294.

The appellants here filed their appeal with the Board on September 5, 2014. Under §14, the appeal was due no later than 3 months from the January 15, 2014 request for modification, on April 15, 2014. The subject appeal was filed well beyond the 3-month period provided in § 14, at least 4 months late, and therefore the Board has no jurisdiction over this appeal. Thus, the decision is for the appellee for lack of jurisdiction.

APPELLATE TAX BOARD

  
Chairman  
  
Commissioner  
  
Commissioner  
  
Commissioner  
  
Commissioner

Attest:   
Clerk of the Board

Date: FEB - 2 2017  
(Seal)

**NOTICE:** Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.