



THE COMMONWEALTH OF MASSACHUSETTS

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

Docket No. F324887

**MARGARET T. OLDFIELD, F. JOSHUA OLDFIELD,
MARGARET T. OLDFIELD A/K/A MARGARET T. LAING AND
THAYER NURSERY CORPORATION,
Appellants.**

**BOARD OF ASSESSORS OF THE TOWN OF MILTON,
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 appellants filed this appeal from the refusal of the assessors to classify five subject parcels as Agricultural or Horticultural land under G.L. c. 61A. On September 20, 2013, the appellants timely filed three applications for classification of the five subject parcels as follows:

1. Application for classification of 2.68 acres at 217 Hillside, lot 15 (Exhibit A1);
2. Application for classification of: (a) 3.29 acres at 270 Hillside, lot 1A; (b) 1.01 acres at 24 Forest, Lot 1B; (c) 1.11 acres at 24 Forest, lot 1C (Exhibit A2);
3. Application for classification of 1.001 acres at 237 Hillside, lot 18A (Exhibit A3).

On November 6, 2013, the assessors voted to deny two of the applications for classification: the application concerning 217 Hillside, lot 15 (Exhibit A1) and the application concerning 237 Hillside, lot 18A (Exhibit A3). The assessors mailed notice of the disallowance of the classification applications the following day, November 7, 2013. On December 16, 2013, the assessors voted to deny the remaining application for classification concerning the other three parcels (Exhibit A2) and mailed notice the following day, December 17, 2013.

Under G.L. c. 61A, § 19, “any person aggrieved by any determination . . . by the board of assessors under this chapter may **within 30 days of the date of notice thereof apply in writing to the assessors for modification** or abatement thereof.” (emphasis added). The appellants filed their request for modification with the assessors on December 31, 2013, well beyond the 30 day period under § 19 with respect to the two applications that were denied on November 6, 2013. Accordingly, the Board has no jurisdiction over the appeals concerning the two subject parcels of 217 Hillside, lot 15, and 237 Hillside, lot 18A.

As to the remaining three subject parcels, the appellants’ December 31, 2013 request for modification to the assessors was timely. Under G.L. c. 61A, § 19, “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). The Appeals Court has held that this language imposes two distinct deadlines:

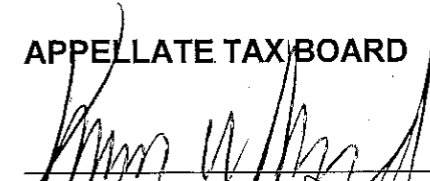
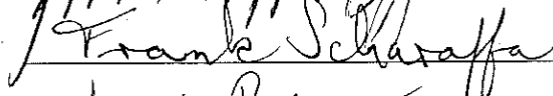
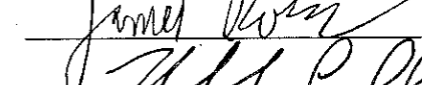
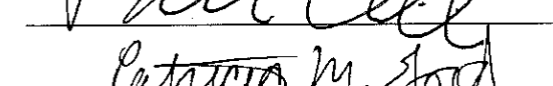
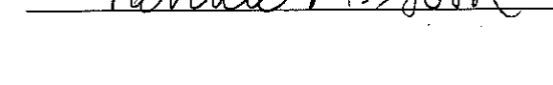
First, if the assessors notify the taxpayer that they refuse to grant an abatement, the taxpayer must act within thirty days of that notice
Second, if the assessors do nothing they are assumed to have refused a tax abatement and the taxpayer must file with the [] Board within three calendar months of 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, as in the present case, 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 July 11, 2014. Under § 19, the appeal was due no later than 3 months from the December 31, 2013 request for modification, or March 31, 2014. The subject appeal was filed beyond the 3-month period provided in § 19 and, therefore, the Board has no jurisdiction over this appeal.

Accordingly, as to the two subject parcels located at 217 Hillside, lot 15, and 237 Hillside, lot 18A, the appeal is dismissed for two jurisdictional defects: (1) the late filing of a request for modification to the assessors, and (2) for the late filing of an appeal to the Board. As to the three remaining subject parcels, the appeal is dismissed for the late filing of an appeal to the Board. Thus, decision is for the appellee as to all five subject parcels for lack of jurisdiction.

APPELLATE TAX BOARD

 Chairman
 Commissioner
 Commissioner
 Commissioner
 Commissioner

Attest:  Clerk of the Board
Ass't.

Date: DEC 22 2016
(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