

STATE OF WISCONSIN
TAX APPEALS COMMISSION

TOWN OF PEEKSVILLE
c/o Howard Schuster
Route, 1, Box 35
Butternut, WI 54514,

DOCKET NO. 03-E-277

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

DON M. MILLIS, COMMISSION CHAIRPERSON:

This matter comes before the Commission on respondent's motion to dismiss the petition for review for lack of subject matter jurisdiction. Both parties have filed submissions with respect to respondent's motion. Petitioner appears by its Town Board Chairperson, Howard Schuster. Respondent is represented by Attorney Donald J. Goldsworthy.

Based on the submissions of the parties and the entire record in this matter, the Commission finds, rules, and orders as follows:

On October 14, 2003, petitioner filed a petition for review with the Commission. The petition for review took the form of a one-page memorandum and contained two paragraphs of substance:

This memo is intended to provide written notice that the Town of Peeksville would like to appeal the increase in this years equalized value. Part of our concerns relate to the blend groups Peeksville is paired with. Another relates to the current economy and economic opportunities in Peeksville. A third concern is the amount of the increase.

This memo is not intended to be an all inclusive list of concerns, but other issues are related to the three areas listed above. If we need to provide any additional information, feel free to contact me.

By filing the petition for review, petitioner apparently sought review, under section 70.64 of the Statutes, of respondent's assessment and determination of the relative value of taxable general property in the Town of Peeksville issued in August of 2003 under section 70.57 of the Statutes.

Petitioner's town board did not take any action authorizing the appeal to the Commission prior to filing of the petition for review. In March of 2004, members of petitioner's governing board signed a document which apparently sought to ratify the filing of the petition for review after the fact.

On or about March 22, 2004, petitioner's clerk sent certified copies of the values established by respondent for the other towns in Ashland County. This was apparently an attempt to comply with section 70.64(4) of the Statutes.

Section 70.64(2) mandates that the governing board of a taxation district shall authorize an appeal to be taken under section 70.64:

(2) AUTHORIZATION OF APPEALS. To authorize such appeal an order or resolution directing the same to be taken shall be adopted by the governing body of the ... taxation district taking the appeal at a lawful meeting of the governing body. When an appeal shall have been authorized the prosecution of it shall be in charge of ... the chairperson ... of the taxation district taking the appeal unless otherwise directed by the governing body. ...

Section 70.64(3) sets forth very specific requirements for the form of the petition for review filed with the Commission:

(3) FORM OF APPEAL. To accomplish an appeal there shall be filed with the tax appeals commission on or before October 15 an appeal in writing setting forth:

(a) That the county or taxation district, naming the same, appeals to the tax appeals commission from the assessment made by the department of revenue under s. 70.57, specifying the date of such assessment.

(b) Whether the appeal is to obtain a review and redetermination of the assessment of all the taxation districts of the county or of particular districts only, therein specified.

(c) Whether review and redetermination is desired as to real estate, or personal property, or both.

(d) That the appeal has been authorized by an order or resolution of the county board or governing body of the taxation district in whose behalf the appeal is taken.

(e) A plain and concise statement, without unnecessary repetition, of the facts constituting the grievance sought to be remedied upon appeal, which shall specifically allege in what respects the assessment is in error.

(f) The appeal shall be verified by a member of the governing body of the county or taxation district authorizing the appeal in the manner that pleadings in courts of record are verified. When 2 or more taxation districts join in taking such appeal the verification may be made by the proper officer of any one of them.

Respondent cites three basic grounds in support of its motion to dismiss: (1) petitioner 's governing board failed to authorize the filing of the petition for review as required by section 70.64(2); (2) the petition for review fails to comply with the requirements of 70.64(3)(a) to (f); and (3) petitioner failed to provide certified copies of respondent's values in accordance with section 70.64(4).

Section 70.64(2) clearly required petitioner's governing board to authorize the appeal to the Commission by an order or resolution adopted at a lawful meeting of the governing body. No such action was taken prior to the filing of the petition for review. When a statute requires that a municipality's governing body authorize the commencement of a suit or an appeal and no such authorization is made prior to the deadline for filing the suit or appeal, then such a suit or appeal must be dismissed for lack of jurisdiction. *Town of Nasewaupsee v. City of Sturgeon Bay*, 77 Wis. 2d 110, 118-19 (1977); *Peterson v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-860 (Milw. Co. Cir. Ct. 1987). Ratification of the action after the fact is ineffective. *Nasewaupsee*, 77 Wis. 2d at 118. Because petitioner failed to authorize the appeal as required by section 70.64(2), the Commission lacks subject matter jurisdiction to consider the petition for review.

We decline to consider respondent's other bases for dismissing the petition for review. We note, however, that because section 70.64(3) sets forth very specific requirements for the petition for review, the Commission's holding in *Mobile Transport Systems, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-293 (WTAC 1997) (failure to comply with the statutory requirements for the contents of a petition for review need not result in a dismissal if the defect is subsequently cured), may not be applicable to appeals filed under section 70.64. We leave this issue for another day.

ORDER

Respondent's motion to dismiss is granted, and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 7th day of July, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

Jennifer E. Nashold, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"