

STATE OF VERMONT
WINDSOR COUNTY

Bear Creek Group, LLC,
Appellant

v.

Town of Stockbridge
Appellee

SUPERIOR COURT

Docket No. 575-8-09 Wrcv

OPINION AND ORDER

This tax appeal is before the court on parties' cross-motions for partial summary judgment. Appellant, Bear Creek Group (Bear Creek), is represented by Attorney Matthew Getty. Appellee, Town of Stockbridge (Town), is represented by Attorney Peter Bevere.

FACTS

The undisputed facts show that Bear Creek is the owner of property in the Town. On June 4, 2009, the Town sent a notice to Bear Creek entitled "Change in Appraisal of Real Estate." The notice indicated that if Bear Creek had a grievance with the change in property appraisal, then it could meet with the Town listers on June 23, 2009. On June 23, Bear Creek met with the listers to object to the appraisal change. On June 29, 2009, the Town sent Bear Creek an Appeal Result Notice which indicated that the appraised value of Bear Creek's property had increased from the previous year. The notice stated that Bear Creek had 14 days to appeal the appraisal decision to the Town's board of civil authority pursuant to statute. This notice was sent to Bear Creek via first class mail from the Stockbridge Post Office. The post office stamped a certificate of mailing indicating that the Town had mailed the notice to Bear Creek on June 29.*

Bear Creek did not receive the notice until July 15, 2009. The next day Bear Creek submitted a notice of appeal to the Town. The Town later informed Bear Creek that the board of civil authority denied the appeal as untimely. The instant appeal to the superior court followed.

STANDARD OF REVIEW

* Bear Creek denies that Exhibit 2, attached to lister Susan Pelletier's affidavit, is a certificate of mailing because the document does not conform to Postal Service regulations. Bear Creek has submitted excerpts from the Postal Service's Domestic Mail Manual to support this assertion. The manual states that official postal forms or facsimiles that "contain the same information as the postal-provided form[s]" may be used to obtain a certificate of mailing. (Appellant's Ex. A ¶¶ 5.2.2 & 5.2.3.) The document Ms. Pelletier submitted with her affidavit, which was dated and stamped June 29, 2009 by the Stockbridge Post Office, contains the same basic information as the official postal forms Bear Creek submitted. The court presumes the regularity of the official acts performed by the lister and the postal clerk. See *City of Montpelier v. Town of Calais*, 114 Vt. 5, 14 (1944). Therefore, Bear Creek's insinuation that the appraisal notice was not mailed on June 29 because the Town's certificate of mailing was not an official Postal Service document is without merit and does not rise to the level of a disputed material fact.

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JAN 28 2010

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Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . referred to in the statements required by Rule 56(c)(2), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law.” V.R.C.P. 56(c)(3). The party moving for summary judgment “has the burden of proof, and the opposing party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists.” *Price v. Leland*, 149 Vt. 518, 521 (1988). However, “[s]ummary judgment is mandated . . . where, after an adequate time for discovery, a party ‘fails to make a showing sufficient to establish the existence of an element’ essential to his case and on which he has the burden of proof at trial.” *Poplaski v. Lamphere*, 152 Vt. 251, 254-55 (1989) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

The court derives the undisputed facts from the parties’ statements of fact under V.R.C.P. 56(c)(2). Facts in the moving party’s statement are deemed undisputed when supported by the record and not controverted by facts in the nonmoving party’s statement which are also supported by evidence in the record. See *Boulton v. CLD Consulting Eng’rs, Inc.*, 2003 VT 72, ¶ 29, 175 Vt. 413 (citing *Richart v. Jackson*, 171 Vt. 94, 97 (2000)).

DISCUSSION

The sole issue for summary judgment is whether Bear Creek timely appealed the Town’s property appraisal. A person aggrieved by the final appraisal decision of a town’s listers may appeal in writing to the board of civil authority within 14 days after the date of notice of the decision. See 32 V.S.A. § 4404(a). With regard to mailing the listers’ final appraisal decision, “[u]nless the personal notices . . . were sent by registered or certified mail, or unless an official certificate of mailing of the same was obtained from the post office, in the case of any controversy subsequently arising it shall be presumed that the personal notices were not mailed as required.” *Id.* § 4224.

It is undisputed that the appraisal notice was dated June 29, 2009, and it informed Bear Creek that appeals must be filed with the Town on or before July 13, 2009. It is also undisputed that Bear Creek did not file its appeal until July 16. Section 4224 holds that it shall be presumed that the Town lister’s decision was not mailed as required *unless* the lister obtained an official certificate of mailing from the post office. Conversely, it shall be presumed that the Town lister’s decision was mailed as required if the lister obtained an official certificate of mailing from the post office. In this case, the undisputed evidence shows that the Town’s lister obtained an official certificate of mailing from the post office indicating that Bear Creek’s appraisal notice was mailed on June 29, 2009. Consequently, there is no dispute that Bear Creek’s appraisal notice was mailed on June 29, 2009.

Although Bear Creek may not have received the lister’s final appraisal decision in time to appeal, section 4404(a), when read in light of section 4224, indicates that it is the act of mailing the notice, and not its receipt, that controls the time for appeal. “The notice shall inform the taxpayer that he may appeal from this decision to the board of civil authority by lodging his appeal with the town clerk *within 14 days of the mailing of the written notice of amendments.*” *Id.*

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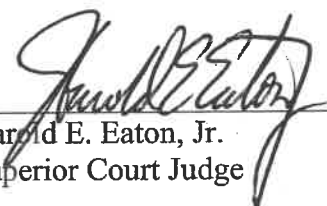
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(emphasis added). Because Bear Creek was required to appeal the lister's decision within 14 days of mailing the notice, and it did not do so, its appeal is untimely.

Bear Creek further argues that it should be granted an extension to file an appeal under the administrative code. "The board of civil authority shall hear an appeal filed within a reasonable time if action of the listers has prevented the taxpayer from filing a timely appeal." Vt. Code R. 10 061 001 § (32)4404(a)-1. However, Bear Creek has failed to establish that the Town's lister prevented it from filing a timely appeal. The evidence suggests only that a postal delay, and not the lister, prevented Bear Creek from filing an appeal. Neither the statute nor the administrative code allows for an extension under these circumstances. Therefore, partial summary judgment is GRANTED for the Town.

SO ORDERED.

Dated at Woodstock, Vermont this 28 day of January 2010.



Harold E. Eaton, Jr.
Superior Court Judge

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