This is an appeal under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Woburn ("assessors" or "appellee") to abate taxes on certain personal property located in Woburn and assessed to Boston Communications Group, Inc. ("BCGI" or "appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2009 ("fiscal year at issue").

Chairman Hammond heard the appellee’s Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss"). He was joined in granting the Motion and deciding this appeal for the appellee by Commissioners Scharaffa, Egan, Rose and Mulhern.

These findings of fact and report are made at the request of the appellant pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32.

John W. MacSweeney, Esq. for the appellant.

John D. McElhiney, Esq. for the appellee.
FINDINGS OF FACT AND REPORT

At all times relevant to this appeal, BCGI was a Massachusetts corporation engaged in the business of providing billing services for the mobile telecommunications industry. BCGI’s principal place of business was in Bedford, Massachusetts, but it also had a facility in Woburn. On January 1, 2008, BCGI was the assessed owner of personal property, consisting of machinery and equipment ("personal property at issue"), located at its Woburn facility. For the fiscal year at issue, the assessors valued the personal property at issue at $5,273,950, and assessed taxes thereon, at the rate of $24.54 per $1,000, in the total amount of $129,422.73. It was undisputed that the appellant paid at least half of the taxes so assessed prior to filing its appeal with the Appellate Tax Board ("Board"), and therefore, under G.L. c. 59, § 64, the appellant’s failure to pay the remaining taxes due was not a jurisdictional bar to its appeal.¹

On January 30, 2009, the appellant filed an Application for Abatement with the assessors. The appellant’s abatement application was denied by vote of the assessors on April 18, 2009, but it appeared from the record that the assessors did not sign and mail the notice of abatement denial until

¹ G.L. c. 59, § 64 provides a right to appeal a tax on personal property or on a parcel of real estate, provided that “at least one-half of [the tax] has been paid.”
May 1, 2009, more than ten days after the assessors’ decision on the application. See G.L. c. 59, § 63 (“§ 63”). The appellant received the notice of abatement denial on May 2, 2009.2

The evidence further established that, following the appellant’s receipt of the notice of denial, there was a series of telephone calls, meetings, and correspondence between the appellant and the assessors regarding the valuation of the personal property at issue for the fiscal year at issue and subsequent fiscal years. These discussions commenced in the beginning of May of 2009 and continued into the fall of 2009. Notes taken by counsel for the appellant at one such meeting on June 4, 2009, were entered into evidence. Those notes reflected that:

[Counsel for the appellant] suggested that in the interest of efficiency for all concerned, it might make sense for the parties to settle the Fiscal 2009 valuation/abatement issue at the level of [BCGI’s] current short payment . . . . [Chief Assessor] responded that while he is not in an internal (political/financial/prior year budgetary position to agree to same) and would be forced to exercise rights and defend status quo position at the Appellate Level, he . . . . would be willing to work with me on a significantly lower fiscal 2010 Woburn personal property valuation . . . . (emphasis added).

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2 The notice of denial sent to the appellant stated that it was a denial of the abatement application filed by “Sprint PCS.” However, the notice of denial was addressed to, and received by, BCGI at its Bedford headquarters.
Additionally, the evidence showed that, during this same time period, the appellant desired to obtain a building permit for another of its properties located in Woburn, and that its failure to pay in full the taxes assessed for the personal property at issue had created an impediment to receiving such a permit. After additional meetings and discussions, the appellant entered into an agreement ("agreement") with Woburn’s Tax Collector ("Tax Collector"), dated September 30, 2009, in which the Tax Collector agreed not to oppose the issuance of the building permit provided the appellant made monthly installment payments of the remaining taxes due associated with the personal property at issue. In particular, the agreement stated:

It is understood that BCGI has contested the Fiscal Year 2009 personal property assessment and that an appeal of the April 18, 2009 decision of the City Board of Assessors to SPRINT PCS which was mailed to Boston Communications Group will be formally filed with the Appellate Tax Board on or before October 16, 2009. During the pendency of the BCGI’s appeal, BCGI desires to make installment payments toward the unpaid balance of the Fiscal Year 2009 Personal Property taxes remaining due to the City.

The appellant filed its petition with the Board for the fiscal year at issue on October 19, 2009. The assessors thereafter filed a Motion to Dismiss. The appellant opposed the assessors’ Motion to Dismiss, arguing that principles of equitable estoppel prohibited the assessors from raising a
jurisdictional issue because, it claimed, the assessors induced the appellant not to timely file an appeal with the Board by engaging in discussions with the appellant following the issuance of the notice of abatement denial. The appellant further asserted that it was induced not to file an appeal with the Board because of the agreement it entered into with the Tax Collector.

On the basis of the foregoing facts, the Board found that, although the assessors voted to deny the appellant’s abatement application on April 18, 2009, they did not sign or mail the notice of abatement denial until May 1, 2009, which was more than ten days later. Because the assessors failed to give notice of their denial within ten days, as required by § 63, the Board found that the date of the notice of abatement denial was “ineffective for the purpose of determining when to commence the running of the three-month appeal period.” Stagg Chevrolet, Inc. v. Bd. of Water Comm’rs, 68 Mass. App. Ct. 120, 121 (2007). The Board further determined that, because the assessors failed to comply with the requirements of § 63, the appellant had a “reasonable time [to file an] appeal based on the most relevant statutory standards.” Id. at 126.

The Board found that the relevant statutory standards were those found in G.L. c. 59, § 65 (“§ 65”), which allows taxpayers three months to file an appeal following a notice of
abatement denial or a deemed denial, and those found in G.L. c. 59, § 65C (“§ 65C”), which grants taxpayers up to an additional two months to file an appeal in the event that the assessors fail to send notice of a deemed denial within ten days from the deemed denial. The Board found that both of these statutes were relevant because they operate to preserve a taxpayer’s appeal rights in circumstances where the assessors have failed to act promptly on an application for abatement or have failed to give notice in a manner that complies with the requirements of § 63. Additionally, the Board found that the filing periods provided by these statutes were reasonable, particularly where the appellant admitted to receiving the notice of abatement denial in early May of 2009.

The appellant’s appeal was not timely under either standard. Had there been a deemed denial of the appellant’s abatement application, it would have occurred on April 30, 2009, and § 65 would have allowed the appellant three months from the date of deemed denial, or until July 30, 2009, to file an appeal with the Board. Further, § 65C would have allowed the appellant an additional two months, or until September 30, 2009, to file an appeal. Under the relevant statutory standards, the latest date the appellant could have timely filed its appeal was September 30, 2009, but the appellant did not file its petition until October 19, 2009. The appellant
therefore did not timely file its appeal within a reasonable time period based on the relevant statutory standards, and the Board found that it did not have jurisdiction to hear and decide this appeal.

Additionally, the Board found that the appellant’s equitable estoppel argument was misplaced. First, the Board does not have the authority to act based on principles of equitable estoppel; it has only that authority to act which has been granted to it by statute. Second, the Board found no merit in BCGI’s claim that it was induced by the assessors not to file an appeal with the Board. Contemporaneous notes taken by counsel for BCGI reflected the assessors’ unequivocal statement that they did not intend to settle with the appellant for the fiscal year at issue, and would instead defend the assessment at the Board. Similarly unavailing was the appellant’s assertion that the agreement reached between the appellant and the Tax Collector caused the appellant not to timely file an appeal with the Board. The agreement related to the issuance of a building permit, not the merits of the assessment at issue. Moreover, parties cannot consent to extend the time for filing at the Board, nor can they confer
The deadline for filing an appeal at the Board is set by statute, and appeals filed later than the deadline set by statute must be dismissed. Based on the foregoing, the Board rejected the appellant’s equitable estoppel argument.

On the basis of all of the evidence, the Board found that it did not have jurisdiction to hear and decide this appeal because the appellant failed to timely file its petition with the Board. Accordingly, the Board allowed the assessors’ Motion to Dismiss and issued a decision for the appellee in this appeal.

**OPINION**

Section 65 provides that:

>a person aggrieved . . . with respect to a tax on property in any municipality may, subject to the same conditions provided for an appeal under section sixty-four, appeal to the appellate tax board by filing a petition with such board within three months after the date of the assessors’ decision on an application for abatement as provided in section sixty-three, or within three months after the time when the application for abatement is deemed to be denied as provided in section sixty-four.

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3 Per G.L. c. 59, § 64, the taxpayer may consent to extend the time for the assessors to act on an abatement application, which would in turn extend the time for filing an appeal with the Board. Absent such an extension, the parties cannot agree or consent to extend the time for filing an appeal with the Board.
Further, Section 63 provides that:

[Assessors shall, within ten days after their decision on an application for an abatement, send written notice thereof to the applicant. If the assessors fail to take action on such application for a period of three months following the filing thereof, they shall, within ten days after such period, send the applicant written notice of such inaction.]

Thus, the statutory scheme generally requires the taxpayer to file an appeal with the Board within three months of the assessors’ decision on an abatement application or, if the assessors fail to timely act on an abatement application, within three months of the date of deemed denial. Assessors are required under § 63 to give notice of their decision on an abatement application, or of its deemed denial, within ten days of the decision or deemed denial date. Courts have ruled that a notice of abatement decision issued in a manner that does not comply with the relevant statute is insufficient to trigger the appeal period, and the Board so found and ruled in the present appeal. See Stagg Chevrolet, 68 Mass. App. Ct. at 124-26; SCA Disposal Servs. of New England, Inc. v. State Tax Commission, 375 Mass. 338, 376 (1978). Here, because the notice of abatement denial did not comply with the requirements of § 63, the Board found and ruled that the denial date reflected in the notice did not trigger the statutory appeal period. Instead, the appellant had a “reasonable time for
appeal based on the most relevant statutory standards.”  *Stagg Chevrolet*, 68 Mass. App. Ct. at 126.

The Board found and ruled that the most relevant statutory standards were those found in §§ 65 and 65C, and further found and ruled that these statutes provided a reasonable period of time for the appellant to file an appeal, particularly in light of the fact that the appellant conceded that it received the notice of abatement denial in early May of 2009. Under §§ 65 and 65C, the appellant had, at the latest, until September 30, 2009 to file its appeal. The appellant did not file its appeal with the Board until October 19, 2009, which was nineteen days past the latest day for the filing of the appeal.

“The Board has only that jurisdiction conferred on it by statute.”  *Stilson v. Assessors of Gloucester*, 385 Mass. 724, 732 (1982). “Since the remedy of abatement is created by statute, the [B]oard lacks jurisdiction over the subject matter of proceedings that are commenced at a later time or prosecuted in a different manner from that prescribed by statute.”  *Nature Church v. Assessors of Belchertown*, 384 Mass. 811, 812 (1981) (citing *Assessors of Boston v. Suffolk Law School*, 295 Mass. 489, 495 (1936)). Because the appellant failed to file its appeal within the timeline set forth in the relevant statutes, the Board found and ruled that it did not have jurisdiction to hear and decide this appeal.
The Board further found and ruled that the appellant’s equitable estoppel argument was misplaced. The Board does not have the authority to act based on principles of equitable estoppel; it has only that authority granted to it by statute. See Stilson, 385 Mass. at 732; Commissioner of Revenue v. Marr Scaffolding, 414 Mass. 489, 493 (1993) (“An administrative agency has no inherent or common law authority to do anything. An administrative board may act only to the extent that it has express or implied statutory authority to do so.”); see also Hillside Country Club Partnership, Inc. v. Commissioner of Revenue, Mass. ATB Findings of Fact and Reports 2011-191, 196 (“[T]he Board lacks the authority to grant an abatement based on principles of equitable estoppel.”).

In addition to being misplaced, the appellant’s argument was without merit. The appellant contended that it was induced not to file a formal petition with the Board because of the actions of the assessors and other Woburn officials. The Board disagreed. Contemporaneous notes taken by counsel for the appellant reflected the unequivocal statements of the assessors that they would not settle the fiscal year 2009 appeal, but would instead defend the assessment at the Board. Further, the agreement entered into between the appellant and Woburn’s Tax Collector related to the issuance of a building permit, and contained no indication that the assessors would settle the
appeal for the fiscal year at issue. Even if any of the evidence cited by the appellant could be construed as reflecting the assessors’ attempts to induce the appellant not to file an appeal with the Board, which the Board found that it did not, such evidence would not carry the day for the appellant. The Board’s jurisdictional requirements are set by statute, and neither agreements entered into between the parties nor any actions taken by the assessors can confer jurisdiction upon the Board where it does not exist. “[A] statutory prerequisite to jurisdiction cannot be waived by any act of the assessors.” *Suffolk Law School*, 295 Mass. at 494; *Old Colony R. Co. v. Assessors of Quincy*, 305 Mass. 509, 511-12 (1940). “The time limit provided for filing the petition is jurisdictional and a failure to comply with it must result in dismissal of the appeal.” *Doherty v. Assessors of Northborough*, Mass. ATB Findings of Fact and Reports 1990-372, 373 (citing *Cheney v. Inhabitants of Dover*, 205 Mass. 501, 503 (1910)); *Suffolk Law School*, 295 Mass. at 495. In sum, the Board found and ruled that the appellant’s argument was misplaced and without merit, and it therefore rejected that argument.
On the basis of the evidence presented, the Board found and ruled that the appellant failed to timely file its appeal with the Board for the fiscal year at issue. Accordingly, the Board allowed the assessors' Motion to Dismiss and entered a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____________________________

Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: ____________________________

Clerk of the Board