Alice M. Avery
v.
Town of Hinsdale

Docket No. 6224-89

ORDER

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $53,400.00 (land, $17,800.00; buildings, $35,600.00) on a single-family home (the Property). For the reasons stated below, the appeal for abatement is neither granted nor denied. Rather, the Town is ordered to review the property record card and correct any errors raised by the Taxpayer.

The Town failed to appear, but consistent with our rule, TAX 102.03(g), the Town was not defaulted. However, the Town's failure to appear at the hearing and its failure to address, before the hearing, the errors raised by the Taxpayer have hindered the board's ability to perform its duty. Additionally, the Town's failure to address the errors caused the Taxpayer to resort to this board for assistance. Thus, as outlined below, the board is taking steps to remedy this situation.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden and prove she was disproportionally taxed.

The Taxpayer presented several arguments, including

(1) errors in the property record card;

(2) the failure to grant exemption under RSA 72:37 I(a);

(3) her inability to pay due to her disability; and

(4) the poor shape of the road accessing the Property.

With the exception of the errors raised by the Taxpayer on the property record card, none of the Taxpayer's arguments warrant granting the Taxpayer's appeal for abatement. However, the board is interested in ensuring the property record card is correct. Unfortunately, neither the Taxpayer nor the board was able to ask the Town about the errors and what, if any, affect the error had on the assessment. Therefore, the Town is ordered to: (a) review the following errors asserted by the Taxpayer: (b) make corrections, if any, on the card: and (c) recalculate the assessment, if necessary.

The Taxpayer asserts the following errors:

(1) basement--card states a full basement when only a half basement exists;

(2) air ducts--card assesses air ducts when there are none; and

(3) carpets--card states all wall-to-wall carpet, when the wall-to-wall carpetry is not throughout the building.

We note the Taxpayer also claimed the Town erred in assessing her for 1 acre of land when she only has approximately 3/4 of an acre. The card shows only .68 acre, and thus the card is not in error on this point.

Within 20 days of the Clerk's date below, the Town shall file (with a copy to the Taxpayer) a revised property record card with any explanation it deems appropriate. The Taxpayer shall respond (with a copy to the Town) to the

corrections within 15 days from the date the corrected card is filed. The

parties should note that the board is not reopening the appeal with this order. The Taxpayer's appeal has been denied, except to correct any errors in the card.

We note the Taxpayer did not allow the Town into her home to gather the information needed to accurately complete the card. While her refusal cannot be grounds for dismissing her appeal, see Appeal of Gillin, 132 N.H. 311, 313 (1989), her continued refusal will keep the Town from determining whether errors in the card exist. If the Taxpayer refuses again to let the Town in, we will address that in any subsequent order, but we note such refusal could result in the board finding the Taxpayer failed to carry her burden with respect to the purported errors.

Because the Town failed to address, before the hearing, the Taxpayer's errors, the Town is ordered to pay the Taxpayer her filing fee of $40.00 plus $37.96 for mileage. The Town shall pay the Taxpayer $77.96 within 10 days of the Clerk's date below. See RSA 71-B:9; TAX 201.05(c).

SO ORDERED.

January 9, 1991

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Ignatius MacLellan

I certify that copies of the within Order have been mailed this date, postage prepaid, to Alice M. Avery, the Taxpayer, and to the Chairman, Board of Selectmen, Town of Hinsdale.

Michele E. LeBrun, Clerk

January 9, 1991

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Alice M. Avery
v.
Town of Hinsdale

Docket No. 6224-89

## ORDER

This order relates to the revised property record assessment card submitted by the "Town." The "Taxpayer" objected to the Town's 38,000 square-foot lot size, asserting the correct lot size is 27,200 square feet. The Taxpayer submitted a deed to support her position. Subsequently, the Town submitted a further revised card, showing the lot as 27,200 square feet. The board rules the correct lot size is 27,200 square feet, resulting in a new land value of $17,700. The ordered assessment is as follows: $47,400 (land, $17,700; and building, $29,700). If the taxes have been paid, the amount paid on the value in excess of $47,400 shall be refunded with interest at six percent per annum from date paid to the refund date.

The board notes that its decision involves correcting mistakes on the property record assessment card. Thus, the Town should revise the property record assessment card. The revised information and values should be used by the Town until changes have occurred on the property or until a town-wide reassessment is conducted. The board realizes this appeal only covers 1989. Nonetheless, the board directs the Town to RSA 71-B:16 II, which authorizes the board, on its own initiative after receiving information, to review an improper assessment even if the Taxpayer has not filed an appeal. The Town should be mindful of this power and it should treat the Taxpayer fairly and use the corrected card for subsequent years as appropriate.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

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Peter J. Donahue, Member

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Paul B. Franklin, Member

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Ignatius MacLellan, Member

Date:

I certify that copies of the within Order have this date been mailed, postage prepaid, to Alice M. Avery, taxpayer; and Chairman, Selectmen of Hinsdale.

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Michele E. LeBrun, Clerk

Date:

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