George W. Mutti and Claire L. Mutti
v.
Town of Epping

Docket No. 7732-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $66,700 (land, $48,900; buildings, $17,800) on their real estate at 56 Mast Road, consisting of a dwelling on a 40,075 square-foot lot (the Property). The Town failed to appear, but consistent with our Rule, TAX 102.03(g), the Town was not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried this burden and proved they were disproportionally taxed.

The Taxpayers argued the assessment was excessive because:

1) the building was in such poor condition requiring such extensive structural work to make it habitable and safe that the house was donated to the Epping Fire Department for training and was burned down on March 8, 1990; and

2) there was no septic system or bathroom facilities in the house.

The Town did not present any evidence or arguments to support the assessment.

Based on the evidence we find the correct assessment should be $48,900 (land, $48,900 and building $0). This assessment is ordered because given the condition of the building, including the lack of septic or water, the building

had zero value. Certainly, the Taxpayers' decision to allow the fire department to burn the building done supports this conclusion.

If the taxes have been paid, the amount paid on the value in excess of $48,900 shall be refunded with interest at six percent per annum from date paid to refund date.

The board must comment on the Town's failure to appear at the hearing and failure to submit anything to support the assessment other than supplying the property-record cards. The board must review individual property assessments within the context of the assessments generally in the Town. The board cannot do this if the Town does not appear or submit supporting material. As the Town knows, taxpayers have the burden to show disproportionality. None-the-less, if a taxpayer makes a valid showing of disproportionality, which is not rebutted by the Town, due to non-attendance, the taxpayer would be entitled to an abatement.

In addition to not attending the hearing, the Town apparently did not take its review process seriously. All of the taxpayers from the Town who appeared at the hearings testified the Town had had minimal or no contact with them during the abatement process. Most importantly, several taxpayers testified the Town stated it was not going to review the assessments, so the taxpayers should just appeal to the board. This dereliction of duty has hopefully stopped, especially given the mandate in the recently amended RSA 76:16 II, which requires towns to review assessments. That amendment made explicit the Towns' previously existing duty to review abatement application, not just rubber stamp them "denied."

This board may award costs as in the superior court, RSA 71-B:9; TAX 201.05(c) and may refund the filing fee under RSA 76:17-b. Based on the Town's failure as discussed above, the Board orders the Town to pay the Taxpayers filing fee of $40.00.

While the board lacks jurisdiction over the 1990 and 1991 tax years, the board strongly recommends that the Town use the ordered 1989 assessment for 1990 and 1991 with any good faith adjustments, due to changes in the Property or changes under RSA 75:8. We note that in 1990, the house was demolished before April 1, 1990, and a manufactured home located on the Property in

August, 1990.

To arrive at the proper adjustments, if any, the Town should communicate with the Taxpayers. The Town should complete its communication and send out abatement checks, if appropriate, for 1990 and 1991 within 45 days of the clerk's date below. If the Town fails to do this, the Taxpayers may so notify the board, and the board will consider exercising its RSA 71-B:16 II jurisdiction. RSA 71-B:16 II states:

> **71-B:16 Order for Reassessment.** The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state:
>
> II. When it comes to the attention of the board from any source, except as provided in paragraph I, that a particular parcel of real estate or item of personal property has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed; or

Given the hearings held today, the board is concerned about the Town's diligence in reviewing its assessments. The abatements granted were based on egregious inattention, and these appeals probably could have been resolved locally. The board only uses its RSA 71-B:16 II power when it finds unusual circumstances and problems, which appear to exist here.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to George W. & Claire L. Mutti, taxpayers; and Chairman, Selectmen of Epping.

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Valerie B. Lanigan, Clerk

Date:
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