

Kathleen S. Kastama and Mary F. Bringman

v.

Town of Wentworth

Docket Nos.: 08575-90-PT and 11001-91-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 72:34-a and RSA 72:37-a (exemption for improvements to assist persons with disabilities), the "Town's" 1990 assessment of \$103,100 and the 1991 assessment of \$101,750 on Map 02-02-07 (the Property). For the reasons stated below, the appeal for abatement is granted for 1990 and denied for 1991.

The Taxpayers have the burden of showing they were entitled to the exemption. See TAX 204.06. We find the Taxpayers carried this burden for 1990 but failed to carry the burden for 1991.

The Taxpayers argued they were entitled to an RSA 72:37-a exemption because:

- (1) there should have been an exemption for central heat and air conditioning and because they have a single-floor house;
- (2) Ms. Kastama has multiple sclerosis;
- (3) Ms. Bringman has back ailments;

(4) neither can use stairs, which is why the Taxpayers medically require a one-floor house;

(5) the Taxpayers had to move from their three-floor house because of their disabilities;

(6) single-floor homes are more expensive to build than multi-floor homes; and

(7) Ms. Kastama needs a constant temperature, which is why the central heat and air are medically required.

In 1991, the Town reduced the assessment by \$1,350 by exempting the value of the air conditioning. The Taxpayers asked for this reduction in 1990, which the Taxpayers claimed they were promised. In 1992, the Town reduced the assessment by an additional \$5,000 (\$1,350 for air conditioning plus \$5,000, totaling \$6,350) for the exemption. The Taxpayers also asked for the \$5,000 reduction in 1990 and 1991.

Finally, the Taxpayers argued the Town had not acted in good faith because of the Town's failure to address this matter without a hearing.

The Town argued the exemptions granted were proper and the assessments were proper because:

(1) the assessments did not include certain improvements that had been added to the Property for medical reasons, including the access ramp and the spa and spa addition that was added in 1991;

(2) the \$5,000 exemption was granted in 1992 under RSA 72:34-a for unknown items as an attempt to make a good-faith recognition of the Taxpayers' disabilities;

(3) the \$1,350 reduction for the air conditioning should not be given for 1990 given the Taxpayers' refusal to allow entry into the Property; and

(4) the \$5,000 should not be given for 1990-91.

The Town stated the Taxpayers would not allow access to the Property. The Taxpayers stated they had reasons for denying access in 1989, and they did not allow later access because the Taxpayers did not know why access was required.

Note: The Town did not pass a warrant article under RSA 72:37-b. Thus, the only issue before the board is the RSA 72:37-a exemption.

Board's Rulings

The board rules as follows:

- 1) the Town shall reduce the 1990 assessment by \$1,350 to reflect the air conditioning that is exempt under RSA 72:37-a; and
- 2) the Taxpayers' requests for further reduction for 1990 and 1991 are denied.

The only issue before the board is whether the assessments should be adjusted for items exempt under RSA 72:37-a (the Exemption). To qualify for the Exemption, a taxpayer must show:

- 1) he/she is a "person with a disability" as defined in RSA 72:37-a;
- 2) the property involved is the disabled person's "residential real estate" as defined in RSA 72:37-a;
- 3) the assessment included improvements to assist the disabled person, RSA 72:37-a I, II; and
- 4) the disabled person applied for the exemption in accordance with RSA 72:37-a.

There was no dispute that these Taxpayers met criteria 1, 2 and 4, leaving the board to decide criteria 3.

The board finds the Town should have exempted the \$1,350 allocated to air

conditioning. The Taxpayers presented adequate evidence of the medical need for the air conditioning, and thus, the air conditioning was a qualified RSA 72:37-a improvement. We find there was no reason to make any further adjustment. Specifically, the board concludes there was no basis under RSA 72:37-a for the Town to grant the additional \$5,000 exemption. The Town testified the \$5,000 exemption in later years was based on an attempt to make an adjustment, but the Town could not point to any qualified improvements for which the exemption was calculated. This type of lump-sum exemption, i.e., an exemption not based on specific improvements or alteration to improvements, is not authorized by RSA 72:37-a. Rather, such an exemption is only authorized by RSA 72:37-b, which requires a town vote, and the Town did not pass such an article.

The Town did not assess the ramp or the spa, and thus, these improvements cannot be exempted. The Taxpayers did not show what other improvements were assessed that should have been exempted, and thus, no further exemption was required. A single-floor house or central heat do not constitute qualified RSA 72:37-a improvements. The market is full of single-floor homes and homes with central heat. Building such a house or having such heat is not inextricably tied to meeting the disabled person's needs. Compare this to a ramp or to wide doorways, which are tied to a disabled person's needs.

If the taxes have been paid, the amount paid on the value in excess of \$101,750 for tax year 1990 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Page 5
Kastama & Bringman v. Town of Wentworth
Docket Nos.: 08575-90PT & 11001-91PT

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date

below, not the date this decision is received. RSA 541:3;TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ruth P. Gulick, Esq. for the taxpayers; and the Chairman, Selectmen of Wentworth.

Dated: July 20, 1994

Valerie B. Lanigan, Clerk

0006