

Frederick F. Atwood

v.

Town of Ossipee

Docket No.: 15873-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$28,800 (land \$10,500; buildings \$18,300) on a .138-acre lot with a one-room schoolhouse (the Property). For the reasons stated below, the appeal for abatement is granted.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property was improperly transferred by the school district because the school district did not have the power to convey the Property due to the reverter provision in the original deed from William Wood to the school district;

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(2) researching the title in 1993, the Taxpayer discovered the original reverter provision; subsequently, an attorney researched the title and confirmed the title problem;

(3) the Taxpayer asked for an abatement until the title is cleared;

(4) the lot size was originally 66 feet by 82.5 feet; in 1937 the State of New Hampshire's Route 16 right-of-way cut through the rear corner of the lot;

(5) the school building is located closer to the stonewall than the plans depict, and, the building is actually in the state right-of-way; and

(6) no septic could be placed on the Property due to setback requirements from property lines and any well site.

The Town stated the issue should be addressed by the Taxpayer clearing title, and any discussions in acquiring the adjacent triangle should be with the school district. The Town also stated no adjustment had been given for the title and land ownership issues.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$7,200, which was calculated by reducing the assessment by 75% to reflect the following: 1) the title issue involving the original Wood-to-school-district deed under which the Property automatically reverted to Wood once the school district no longer used the Property for school purposes; 2) the issue concerning ownership of the triangular portion of land at the intersection of the town road and Route 16; 3) the issue about whether the state right-of-way actually goes through the school house; and 4) the issue of whether a septic and well could be located on the lot.

Assessments must be based on market value, see RSA 75:1, and assessments must take into consideration all factors that affect market value. Certainly, the issues stated above greatly affect the Property's market value. Given the board's experience and judgement, the board concluded a -75% adjustment was warranted to reflect the time, risk, and expense of addressing the above problems. Additionally, the problems are of such a nature that there is uncertainty about whether the problems can be resolved so the Property could be renovated and occupied and/or conveyed with good title.

If the taxes have been paid, the amount paid on the value in excess of \$7,200 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 in 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frederick F. Atwood, Taxpayer; Alice MacKinnon, Agent for the Town of Ossipee; and Chairman, Selectmen of Ossipee.

Date: September 16, 1996

Valerie B. Lanigan, Clerk

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