

Michael and Linda Steir

v.

Town of Atkinson

Docket No.: 16698-96EX

DECISION

The "Taxpayers" appeal, pursuant to RSA 72:37-a, the "Town's" April 14, 1997 denial of the Taxpayers' November 1995 exemption application. The Town previously granted the application, adjusting the \$300,000 1995 assessment to \$250,600. The Taxpayers made a new application on September 4, 1996, requesting an additional exemption of \$77,900, which was denied. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden to prove they were entitled to the statutory exemption or credit for the year under appeal. See TAX 204.06. The Taxpayers carried this burden.

The Taxpayers argued they were entitled to the exemption because:

- (1) there is no dispute that the Taxpayers' daughter, Marika, is severely handicapped;
- (2) the house was constructed in 1994 to accommodate Marika's needs; an indoor swimming pool with a built-in spa was constructed for aqua therapy, a

medical necessity;

(3) the Town has built in the value of the pool and spa as part of the house assessment;

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(4) the Taxpayers are entitled to a total exemption of the value of the pool, not just one-fourth as the Town claims; and

(5) an additional \$46,000 should be exempted.

The Town argued its denial of the exemption application was proper because:

(1) the pool was depreciated by 23% and an additional \$15,400 (one-quarter of its value) was exempted;

(2) because the four family members can use the pool and because the contributory value of the pool and spa can be recaptured when the Property is sold, the entire value should not be exempted;

(3) the pool was built larger than necessary for their daughter's medical needs;

(4) functional depreciation of approximately 13% for all of the handicapped features (excluding the pool and spa) has already been applied; and

(5) a reduction of the \$300,000 assessment to \$250,600 is appropriate.

Board's Rulings

Based on the evidence, the board finds the correct assessment for the Property should be \$204,600. This assessment is based on the board's finding those improvements relating to the Taxpayers' daughter's special needs should

be exempted under RSA 72:37-a. Therefore, the total contributory value of the indoor pool/spa should be exempt.

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

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- 4) the disabled person applied for the Exemption in accordance with RSA 72:37-a.

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

The board finds the Town should have exempted the entire contributory value of the pool. The Town testified that the contributory value of the pool was approximately \$61,400 and that it had exempted one-quarter of that amount or \$15,400 when it considered the Exemption. The board finds that an additional \$46,000 should be removed from the assessment to properly exempt the Property under RSA 72:37-a.

The Taxpayers' daughter is an eleven-year-old, non-verbal, spastic quadriplegic. The Taxpayers submitted a letter from their daughter's doctor indicating that regular and frequent water therapy is an ideal treatment and a

pool appeared to be a medical necessity for the girl. The Taxpayers also testified that they would not have built the pool had it not been a medical necessity. The pool is uniquely modified with very gradual steps to provide access for the Taxpayers' daughter. It is of a sufficient size and depth to provide adequate room for a swimming area and an associated spa for their daughter. The spa in a section of the pool has warmer water than the main part of the pool. It is used regularly during water therapy due to the necessity of maintaining their daughter's circulation. The pool temperature is usually 81 degrees and the spa temperature is usually 101 degrees. The board finds that the pool is inextricably tied to the Taxpayers' daughter's needs.

The Town testified that because the pool was also used by the other three members of the family that only one-quarter of the pool's contributory value should be considered exempt. In support of the Town's position, the Town testified this case was analogous to the case of Gail M. Mintken v. City of Concord, BTLA Docket No.: 8778-90. However, the board finds the Mintken case is not analogous to this case. In the Mintken case, the taxpayer argued

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that it was necessary for her to revise her construction plans from a two-story to a one-story house due to disability. However, in that case, the board found that revising these plans was not a basis for an abatement or an exemption under RSA 72:37-a. The choice of whether to construct a one-story rather than a two-story house is not inextricably tied to meeting the needs of a disabled person, and thus, is not a specific improvement that is exemptible under RSA 72:37-a. The Town also testified that the current assessment

reflected the pool considerations. However, RSA 72:37-a II reads as follows:
72:37-a Exemption for Improvements to Assist Persons with Disabilities.

II. Every owner of residential real estate upon which he resides, and to which he has made improvements for the purpose of assisting a person with a disability who also resides on such real estate, is each year entitled to an exemption from the assessed value, for property tax purposes, upon such residential real estate determined by deducting the value of such improvements from the assessed value of the residential real estate before determining the taxes upon such real estate.

As may be seen from the reading of this statute, a property owner is entitled to an exemption determined by deducting the value of the improvements made due to the disabled person from the assessed value of the real estate. At no point does it discuss a prorated deduction or a partial deduction similar to the deduction the Town has made.

Lastly, the board wishes to acknowledge the legitimate concerns the Town raised in this case and briefly explain why we, in this case, do not agree with the Town's conclusion. In short, the Town's concerns are that if this Property had an original cost in excess of \$400,000 and if the cost of the handicapped features including the pool are \$130,800, then the residual value of the nonexemptable portion of the real estate would be \$269,200 ($\$400,000 - \$130,800$). The Town argued given that since the appealed assessment of \$250,600 is equalized to \$269,462 ($\$250,600 \div .93$), no further abatement is warranted. The board deliberated at length as to this approach of calculating the assessment, and as the decision states, chooses not to agree with the Town. The primary reason is that the board questions whether the original

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1994 cost of \$400,000 to construct the dwelling (land included) could be recaptured in the market. In essence, the question is, does the Property,

without the pool and handicapped features, have a market value of approximately \$269,000 or \$220,000 (the ordered assessment of \$204,600 ÷ .93)?

After reviewing the assessment-record card, the square footage of the Property, and the photographs of the Property, the board finds that its ordered assessment of \$204,600 (and the resulting equalized market value of \$220,000) more accurately reflects the Property's potential market value exclusive of the handicapped features.

Properties must be taxed at market value (RSA 75:1), unless otherwise exempted (RSA 72:6). In a case such as this where the amount of the exemption is directly related to the value of the handicapped improvements, the board must always be mindful of whether the ordered assessment, minus the exempted amount, is reasonable and relevant to the market value of the taxable portion of the Property. In this case, based on the evidence submitted, we find it is.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$204,600 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 1997. 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
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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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bernard H. Campbell, Esq., Attorney for Michael and Linda Steir, Taxpayers; and Chairman, Selectmen of Atkinson.

Date: February 10, 1998

Valerie B. Lanigan, Clerk