

Louise Famolare

v.

Town of Deering

Docket No.: 19560-02PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$136,000 (land \$63,300; building \$72,700) on Map 229, Lot 55, formerly designated as Map 5, Lot 632 (the “Property”). For the reasons stated below, and by stipulation of the representatives of the Town and the Taxpayer, the appeal for abatement is granted.

The Taxpayer, represented by Michael Famolare, argued the assessment was excessive because it was based on an incorrect acreage of 25 acres and the actual acreage determined by a new tax map is 17 acres.

The Town, represented by Craig Olson, Planning and Zoning Administrator, confirmed that new tax maps had been prepared in 2002 by Cartographic Assoc. Inc. for the Town and the new tax map for the Property (Municipality Exhibit C) reflects 17 acres. The Property, formerly identified as Map 5, Lot 632 on the assessment appealed by the Taxpayer, is designated on the new tax map as Map 229, Lot 55.

The Town also submitted a letter from its contract assessing company, Avitar Associates of New England, Inc., dated March 16, 2004 (Municipality Exhibit B), recommending to the selectmen an abatement, based on this corrected acreage, from \$136,000 to \$129,500 for tax year 2002 and an abatement from \$150,450 to \$143,950 for tax year 2003. When the selectmen wrote to the Taxpayer on May 6, 2004 (Municipality Exhibit A) to effect a settlement based upon this recommendation, however, the Town confused the tax years and inadvertently referred to an assessment of “\$143,950 for tax year 2002.” The Taxpayer did not respond to this letter.

After some clarifications regarding this misunderstanding, the parties agreed at the hearing to a corrected assessment of \$129,500 (land \$56,800, building \$72,700) for tax year 2002 for the Property. They further agreed the tax year 2003 assessment should be abated to \$143,950 (land \$56,800, building \$87,150), which again reflects the corrected acreage and further improvements to the building.

Based on these representations, the board finds the proper assessment to be \$129,500 for tax year 2002, the year under appeal.

If the taxes have been paid, the amount paid on the value in excess of \$129,500 for tax year 2002 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. For tax year 2003, the Town, pursuant to the above agreement, should abate the assessment to \$143,950 and, if the taxes have been paid, the amount paid by the Taxpayer in excess of \$143,950 should be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. The Town is undergoing a reassessment for tax year 2004 and a reassessment may result in adjustments to both the land and building values. See 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(f). 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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Michael Famolare, Post Office Box 1706, Hillsboro, New Hampshire 03244, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Deering, 762 Deering Center Road, Deering, New Hampshire 03244.

Date: August 6, 2004

Anne M. Stelmach, Deputy Clerk