

**Magic Toto**

**v.**

**Town of Dalton**

**Docket Nos.: 21052-04EX and 21053-04PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a and RSA 76:16-a, the Town’s 2004 denial of the Taxpayer’s requests for a tax year 2004 deferral under RSA 72:38-a and an abatement due to poverty and inability to pay the 2004 taxes on the assessment of \$34,774 (land \$19,874; buildings \$14,900) on Map 410, Lot 004, a single-family residence on 15.080 acres (the “Property”). For the reasons stated below, a partial deferral is granted and an abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, he was entitled to a deferral under RSA 72:38-a and “good cause” exists for an abatement to be granted under RSA 76:16, due to poverty and inability to pay.

The Taxpayer argued the assessment was excessive and he was entitled to a tax deferral or, in the alternative, an abatement based on inability to pay because:

(1) he is disabled and his only income comes from “social security and SSDI” (social security disability income) totaling \$582.93 per month;

- (2) he presented the Town with evidence that his monthly expenses exceeded his monthly income;
- (3) he has substantial deferred expenses pertaining to the building, which is unfinished, and his teeth, which require additional dental care;
- (4) a tax deferral is a reasonable alternative to seeking welfare payments from the Town; and
- (5) the Town failed to grant even a partial deferral (as mentioned in the board's prior order for tax year 2003 -- a deferral for taxes above \$360 per year (\$30 per month), see BTLA Docket No. 20171-03EX), and the Taxpayer is entitled to a full (100%) RSA 72:38-a deferral or a full abatement under RSA 76:16-a based on inability to pay.

The Town argued the denial of the deferral and the denial of an abatement were proper because:

- (1) the Town has "suspicions" regarding whether the Taxpayer has adequately and accurately presented his income and expenses;
- (2) no other taxpayer in the Town has applied for a deferral in many years;
- (3) the Taxpayer can relocate or cause a subdivision of the Property to generate money to pay his taxes; and
- (4) the Taxpayer did not meet his burdens of proof.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to show an RSA 76:16 abatement should be granted due to poverty and inability to pay under the standards outlined in Ansara v. City of Nashua, 118 N.H. 879, 881 (1978). Further, no substantive financial changes have occurred to warrant granting the Taxpayer a greater RSA 72:38-a deferral than that ordered

by the board for the previous year (in Docket No.: 20171-03EX). The board's detailed findings follow in respective order.

RSA 76:16 Abatement Due to Poverty and Inability to Pay

Part I, Article 12 of the New Hampshire Constitution requires each member of society to contribute his or her share in paying for the government that in turn provides the protection for a civil society. Part I, Article 12 reads in part:

“Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary”

Municipalities, however, may abate taxes pursuant to RSA 76:16 upon a showing of poverty and inability to pay the taxes. See Barksdale v. Town of Epsom, 136 N.H., 511 (1992); and Briggs' Petition, 29 N.H., 547 (1854). The standards by which a determination of good cause exists due to poverty and inability to pay are contained in Ansara where the court stated:

“[w]e hold that plaintiffs who claim that they are entitled to an abatement because of poverty and inability to pay, and who have some equity in their homes, must show that it is not reasonable for them to relocate, refinance, or otherwise obtain additional public assistance. Without such a showing, the equities do not balance in the plaintiff's favor.” Ansara, 188 N.H. at 881.

The Taxpayer has substantial equity in his Property having only prior year RSA 72:38-a tax liens against the value of the Property, but no outstanding mortgage or other loans. The only evidence relative to an estimate of the Property's market value is equalizing the ad valorem value of the Town's 2004 assessment, providing an indicated market value of \$69,645 (ad valorem assessed value of \$49,100 divided by the 2004 weighted-mean ratio of 0.705). While the Town argued the Taxpayer could finance the Property or relocate to subsidized housing in the area, the board finds such options are not highly likely or practical. However, the board finds the taxpayer

can fulfill his constitutional responsibility to pay his taxes by 1) applying for additional public assistance such as Low and Moderate Income Homeowners Property Tax Relief (RSA 198:56); and 2) subdividing a portion of his Property to liquidate part of the equity that is available. No evidence was submitted that the Taxpayer or Elliott Berry, an attorney from New Hampshire Legal Assistance who was representing the Taxpayer, had investigated applying for Low and Moderate Income Homeowners Property Tax Relief. The board notes such statute appears to be specifically available for homeowners with limited income to provide relief relative to the amount of taxes related to the statewide enhanced education tax rate.

See RSA 198:57 IV(c).

Further the Taxpayer owns 15.08 acres and because the Town's minimum lot size requirement is one acre and 200 feet of road frontage, the Property has the potential of subdividing one or possibly two lots beyond that necessary to support the Taxpayer's dwelling. While this may not be the Taxpayer's desire, where equity exists in the Property and can be liquidated, the Taxpayer's constitutional responsibility to contribute "his share in the expense" of the Town is a primary responsibility to be met before asking for relief from other taxpayers through the form of an abatement.

RSA 72:38-a

The board finds the Taxpayer's financial situation has not deteriorated to the point where the commitment he made in 2003 to pay a total of \$360 of his annual tax liability should not be continued into 2004. While indeed the Taxpayer's income is modest and limited to social security disability benefits, through improved financial management and pursuing RSA ch. 198, Low and Moderate Income Homeowners Property Tax Relief, the Taxpayer should be able to continue that modest contribution of \$30.00 a month towards his taxes. The board would

encourage the New Hampshire Legal Assistance office to provide Mr. Toto with the appropriate financial counseling or assistance in applying for the Low and Moderate tax relief.

In closing, while it is obvious the parties do not have an amicable relationship, the board would strongly encourage the Taxpayer to comply with the board's order in future years and for the Town to continue to provide a partial tax deferral as ordered for 2003 and as ordered for 2004 here. As the board noted in its August 17, 2005 order, "the resources of all parties involved would be best served by the consistent predictable administration of the statute in the future so as to avoid the unnecessary use of everyone's time and resources and resulting confusion." If future appeals are filed that do not raise new factual or legal issues, the board would consider a motion from the municipality to dismiss.

In conclusion, the board denies the RSA 76:16 abatement request for poverty and inability to pay, but grants a partial deferral for taxes above \$360 from the 2004 tax liability on the property. Within twenty (20) days from the date of this decision, the Town shall submit copies to the board and the Taxpayer evidence of a 2004 tax deferral being recorded at the registry as required by RSA 72:38-a:V. The Taxpayer shall be subject to the 2004 tax liability of \$360 and the Town has remedy under RSA ch. 80 for the collection and ultimate lien of the Property if it is not paid.

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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Magic Toto, PO Box 55, Lancaster, NH 03584, Taxpayer; Elliot Barry, Esq., New Hampshire Legal Assistance, 1361 Elm Street, Suite 307, Manchester, NH 03101-1323, counsel for Taxpayer; and Chairman, Board of Selectmen, Town of Dalton, 741 Dalton Road, Dalton, NH 03598

Date: 5/17/06

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Anne M. Stelmach, Clerk