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JANNICELLI  
C.P.

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-188717

**DATE:** January 25, 1978

**MATTER OF:** Harold J. Geary - Pro Rata Reimbursement of  
- Real Estate Expenses for Sale of House

**DIGEST:** In order to expedite sale, transferred civilian employee sold property at old duty station in two parcels to two separate buyers. Claim for real estate expenses of parcel containing house was paid but expenses associated with parcel not containing house were disallowed by Navy. Reclaim voucher for real estate expenses of parcel without house may not be paid since parcel of land other than that upon which house is located does not reasonably relate to residence site as required by para. 2-6.1f, FPMR 101-7 (May 1973) and 54 Comp. Gen. 597 (1975).

This decision is in response to a request for an advance decision dated March 7, 1977, from R. J. Brown, CWO 3, SC, USN, a disbursing officer at the Naval Air Station, Department of the Navy, Lakehurst, New Jersey, as to whether a reclaim voucher submitted by Mr. Harold J. Geary, an employee of the Naval Air Engineering Center (NAEC), may be paid. The reclaim voucher is for reimbursement of expenses incurred in the sale of land in connection with the change of Mr. Geary's permanent duty station.

The record shows that Mr. Geary was transferred from his duty station at the NAEC in Philadelphia, Pennsylvania, to the NAEC in Lakehurst, New Jersey. He reported for duty at his new duty station on September 29, 1974. At the time of his transfer, Mr. Geary owned a house which was situated on six lots of land. Mr. Geary subdivided the property and sold it to two different buyers. According to the disbursing officer, the land was subdivided in order to expedite sale of the property. The house and two of the lots were sold at a price of \$33,400 under a contract of sale dated March 21, 1975. The remaining four lots were sold to a different buyer for \$10,000 under a contract of

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sale dated February 4, 1975. Informal discussions with Navy personnel familiar with the case revealed that the sale of the property was made in this manner in order to subdivide the property without the necessity of obtaining a zoning variance. Apparently, if either buyer had purchased all six lots, no subdivision would have been allowed without first obtaining a zoning variance. By having the six lots broken up into two parcels prior to the sale, the need for a zoning variance was avoided. Apparently, the prospective purchasers would not buy unless the land was first subdivided in this manner.

Mr. Geary submitted a claim with the Department of the Navy for real estate expenses incurred in connection with both of the sales. His original claim was for \$3,338 in brokerage fees, \$149 in legal and related costs, \$50 in escrow agents' fees, and \$44 in sale or transfer taxes. Before certifying the voucher for payment, the certifying officer reduced the amount allowed for each of these claimed expenses on a pro rata basis in accordance with our decision in 54 Comp. Gen. 597 (1975). Accordingly, Mr. Geary was reimbursed by the Navy for only \$2,338 for brokerage fees, \$72.50 for legal and related costs, \$25 for escrow agents' fees, and \$34 for sale or transfer taxes relating to the sale of the two lots containing his house. The expenses which were disallowed by the Department of the Navy were those expenses which were clearly related to the sale of the four lots which did not contain the house. Mr. Geary submitted a reclaim voucher for those expenses, and, pursuant to our decision in 54 Comp. Gen. 597, supra, the claim was submitted to our Office for review and disposition.

Paragraph 2-6.1f of the Federal Travel Regulations (FPMR 101-7, May 1973) provides in pertinent part as follows:

"f. Payment of expenses by employee - pro rata entitlement. \* \* \* The employee shall also be limited to pro rata reimbursement when he sells or purchases land in excess of that which reasonably relates to the residence site."

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In construing the above-quoted regulation, we stated in 54 Comp. Gen. 597, 598, supra: "The crucial point in this directive is the determination of how much land 'reasonably relates to the residence site' and how much land of the purchase or sale is 'in excess.'" We further stated that a determination should generally be made by the agency concerned, and we set forth examples of the kinds of considerations which agencies should take into consideration in arriving at such determination.

Mr. Geary contends that the parcel of land which did not contain the house was reasonably related to the residence site since the zoning regulations in effect at the time he purchased the property required 20,000 square feet of land per family unit while his six lots equaled 27,000 square feet, only 7,000 square feet over the minimum land requirement. Although the zoning regulations have not changed, the amount of land required per family unit has been reduced to 10,000 square feet due to improvements in public water and sewage facilities. Mr. Geary also points out that he has maintained the six lots with house as one parcel used solely for residential purposes for the entire period of his ownership. The administrative report also indicates that the total amount received by Mr. Geary for the two separate sales did not exceed the reasonable market value of the property if it were sold as one parcel.

We have examined the record and do not agree that the land which was sold separately from the house was reasonably related to the residence site as required by the above-quoted regulation. In B-171493, February 2, 1971, we ruled upon a claim involving a sale in a similar factual situation. We held that where the employee has divided his property into separate parcels for sale purposes, it must be concluded that parcels other than that upon which the house is located do not relate to the residence site. Therefore, the certifying officer in the present case was correct in reducing reimbursement of real estate expenses on a pro rata basis in accord with the ruling in 54 Comp. Gen. 597, supra.

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For the reasons stated above, payment upon the reclaim voucher submitted by Mr. Harold J. Geary for \$1,111.50 in additional real estate expenses is not authorized.

  
Deputy Comptroller General  
of the United States