

Peter and Marcia Thompson

v.

Town of Plymouth

Docket No.: 11073-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$213,900 (land, \$56,500; building, \$157,400) on 1.32 acres with building (the Property). The Taxpayers own, but did not appeal the following assessments.

Lot 7, Map 4-9	\$ 23,968
Lot 7, Map 4-28	\$ 20,300
Lot 21, Map 3-2	\$163,900
Lot 3, Map 2-50	\$179,500

The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a);

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Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- 1) the land assessment was disproportionate to similar properties in the area, i.e., a condition factor of 2 was applied on the homesite increasing the land assessment to \$40,000, which is more than any other residential lot;
- 2) comparables submitted demonstrated similar properties on the same road had land assessments that were one-half the Property's land assessment (\$20,000); and
- 3) a reduction of \$20,000 would be appropriate and equitable with similar properties.

The Town failed to submit a brief and was placed in final default.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. Here, the board did not give the report any weight.

Board Findings

Based on the evidence, the board finds the Taxpayers did not show overassessment. The Taxpayers focused on the land assessment only. Specifically, the Taxpayers focused on the 2.00 condition factor that was used

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to multiply the \$20,000 basic-site value, resulting in the basic-site value of \$40,000. The Taxpayers presented other property-record cards that only had a 1.0 condition factor. While this evidence may have been persuasive, the board could not rely upon it because the Taxpayers did not include a map showing the location of the property and the comparables. Thus, the board could not determine whether the 2.00 condition factor was appropriate or not. The board notes the Taxpayers used comparable properties that had greatly different lot and subplot numbers from the Property, except for the comparable map 0007, lot 0004, subplot 0028, which apparently is in the Property's vicinity. However, that was an undeveloped lot, and therefore cannot be used as a comparison to the Property, which was developed. Additionally, the Taxpayers did not provide any photographs of the Property or the comparables, and the Taxpayers did not provide any information indicating that the resulting assessment was inconsistent with the Property's market value.

The Taxpayers also did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within

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twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Christopher J. Kelly, Taxpayers' representative; and Chairman, Selectmen of Plymouth.

Dated: April 5, 1994

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Melanie J. Ekstrom, Deputy Clerk