

Michael Shalek and Peter Engel

v.

Town of Plymouth

Docket No.: 11112-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$112,900 (land, \$15,900; building, \$97,000) on .222 acres a with building (the Property). 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 granted.

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); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property was purchased for \$85,000 in 1988;
- 2) the Property is in poor physical condition with functional set backs (i.e.,

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going through one bedroom to get to another, physically run down inside and outside);

3) an error was made on the property-record card, i.e., the card listed three bathrooms when the Property only has two bathrooms;

4) the property-record card assessed the fireplace for \$1,500; however, the fireplace cannot be used per the fire marshall;

5) two neighboring properties have more square feet, more land, garage, extra bathrooms and received reductions between \$32,200 and \$55,800; and

6) the Property has been on the market for \$99,900 with no offers.

The Town failed to submit any written submittals 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. This report concluded the assessment should be further reduced for physical and functional depreciation to address the age, condition and layout. 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.

Board Findings

Based on the evidence, especially the photographs, the board inspector's report and the property-record card, we find the correct

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assessment should be \$88,000 (land \$15,900; building \$72,100). This assessment calculation is shown on the inspector's report, indicating a total of 45% physical and 5% functional depreciations should be given to the building's assessment. The Property was assessed as having a quality adjustment "A3," which indicates average +30%. The Town then calculated the replacement cost new and depreciated the building by 30%. Based on the photographs, it appears either the Property is not an average +30% Property or if it is an average +30% Property additional depreciation is warranted.

If the taxes have been paid, the amount paid on the value in excess of \$88,000 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, the Town shall also refund any overpayment for 1992 and 1993. 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 "reconsideration motion") of this decision must be filed within 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

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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,

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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 Michael Shalek and Peter Engel, Taxpayers; and Chairman, Selectmen of Plymouth.

Dated: April 5, 1994

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Melanie J. Ekstrom, Deputy Clerk