

Peter and Kathryn Drexel

v.

Town of Plymouth

Docket No.: 11123-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$155,000 (land, \$17,500; building, \$137,500) on .716 acres with a 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 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); 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) after an informal review the assessment was increased by \$23,100 with no explanation;
- 2) the depreciation factor went from 45% to 26% when no changes had been made to the building;

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- 3) only 11 sales occurred in the Town in 1990, yet the assessment increased between 1990 and 1991 from \$140,000 to \$155,000; and
- 4) a proper assessment would be \$120,000.

The Town argued the assessment was proper because:

- 1) the best evidence of market value would be the sale of the Property to the current Taxpayers which occurred in August, 1989 for \$170,200;
- 2) applying -0.5%/month adjustment in market value for the 20 months and applying the Department of Revenue Administration's 1991 ratio and not taking into account the improvements made following the sale, indicated an assessment of \$157,775 which exceeded the actual assessment;
- 3) three sales of nearby properties, Taxpayers' Property being 34% larger, indicated the assessment was proper;
- 4) value estimates in the 1991 revaluation were identified from sales within the two-year period before April 1, 1991. An average time adjustment over this period of one-half to one percent per month was incorporated into the methodology used throughout the Town; and
- 5) the Taxpayers' Property was properly assessed relative to the sale and the balance of the Town's tax base.

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 was proper. Note: The inspector's report is not an appraisal. The board reviews the report and

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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, the board finds the Taxpayers did not prove overassessment. The Taxpayers' arguments focused on the assessment and the process through which the assessment was calculated. However, the Taxpayers did not submit any data that demonstrated that the Town's changes to the assessment were not appropriate.

The Taxpayers also did not introduce any evidence concerning the Property's market value. To carry their 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. Finally, the Town's analysis of the Taxpayers' purchase price supported the assessment.

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

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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