

Jan H. and Cecelia M. Van Loon

v.

Town of Plymouth

Docket No.: 11227-91PT

DECISION

The Taxpayers appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of \$140,863 on lot 2-9-1 (included a \$13,237 current-use "credit") consisting of a dwelling and outbuildings on 51 acres and \$46,900 on lot 2-2-4 consisting of 5.59 acres of unimproved land. 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 assessments were excessive because:

- 1) one of the sales used by the Town was not an arms-length transaction;
- 2) the building value was proper, but not the land value; and

3) the 1991 revaluation was approximately \$50,000 higher in relation to three independent appraisals.

The Town argued the assessment was proper because:

- 1) the Taxpayers failed to identify any comparables to support their case;
- 2) three comparables indicated consistency in valuing similar properties; and
- 3) the Taxpayers' assessment was correct and consistent with other properties throughout the Town.

During deliberation the board was uncertain whether the Town had assessed the Property properly relative to the size of lot 2-9-1, the amount of frontage, the road status and the location of the land in current use. The parties submitted further evidence on these issues including revised property-record cards.

Board Findings

Based on the evidence, the board finds the proper assessments to be the Town's revised assessments of \$123,510 (lot 2-9-1) and \$39,200 (lot 2-2-4). The Board finds the revised assessments reflect reasonable corrections and adjustments for the amount of frontage, the Class VI status of a portion of the frontage and the correct acreage.

No further abatement is warranted because:

- 1) the 1986 appraisal submitted by the Taxpayers is too dated to be probative evidence of the Property's 1991 market value;
- 2) no documentation was submitted for the 1988 and 1991 opinions of value; consequently, the board was unable to review the soundness of the value

conclusions and whether they were for one lot or both lots; and

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3) after the Town's revisions, the Town's evidence of its use of the same methodology as was used in assessing other properties in the Town is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

If the taxes have been paid, the amount paid on the value in excess of the assessments found above 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, 1993 and 1994. 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 thirty (30) 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Jan H. and Cecelia M. Van Loon, Taxpayers; and Chairman, Selectmen of Plymouth.

Dated: January 13, 1995

Melanie J. Ekstrom, Deputy Clerk

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ORDER

The board has reviewed this file and is unable to issue a final decision because of certain issues that need to be addressed by the parties. Therefore, the parties shall, within ten (10) days of the clerk's date below, file the information ordered below.

Town

The "Taxpayers" submitted a survey of the "Property" (copy attached). Based on the survey, there appear to be some errors on the assessment record card for lot 2-9-1. Specifically, the assessment record card shows a total of 50 acres and 2,100 excess front feet. However, the survey shows 51 acres, and the survey shows a total front feet of approximately 1,440. (The board calculated the total frontage by adding up the courses shown on the survey, checking that total by using the scale on the survey.) The acreage total is minor. The excess frontage issue, however, is major because the excess frontage itself is off by several hundred feet from the total frontage. Further, the excess frontage should not have included the frontage already captured in the prime site. Additionally, 20 acres of the

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property is in current-use. If this current-use land is located on the frontage, that frontage should not have been included in the excess frontage calculation. Finally, the Taxpayer indicated on the survey that approximately 710 feet of the road is unmaintained. If this is so, the excess frontage calculations on both lot 2-9-1 and lot 2-2-4 should be revised to reflect this unmaintained road frontage.

Therefore, the "Town" shall recalculate the land assessments on lots 2-2-4 and 2-9-1, taking into consideration the above factors. The Town shall submit with that recalculation a detailed explanation of its land calculation, including what base figures were used and what adjustments were used.

If the Town is unable to ascertain what land was in current-use in 1991, the Town shall have a ten (10) day extension to allow the Taxpayer an opportunity to provide the location of the current-use land.

Taxpayers

The Taxpayers shall file a marked copy of the survey, delineating the location of the 20 acres that were in current-use in 1991.

Both parties shall file the requested documentation with the board, and both parties shall copy the other party with any documentation filed with the board. Upon filing of the documentation, both parties shall have ten (10) days to respond to the other party's submission. Upon receipt of all documentation, the board will review it and issue a decision.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Jan H. and Cecelia M. Van Loon, Taxpayers; and Chairman, Selectmen of Plymouth.

Dated: December 13, 1994

Valerie B. Lanigan, Clerk

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