

James P. and Joanne A. Koermer

v.

Town of Plymouth

Docket No.: 11479-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$159,700 (land \$26,300; buildings \$133,400) on a 2.7-acre lot with a house (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 to the Town's recommended assessment.

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 prove disproportionality, but we accept the Town's adjusted assessment.

The Taxpayers submitted voluminous material to support their main contention that a comparable property (Maxwell) was built with numerous

upgrades, yet was assessed much lower than the Property. Included in the material was a statement from Mr. Lester Gilpatric, the construction foreman for both the Property and the Maxwell property, which attested to the Property's inferior-quality construction. The Taxpayers then argued the assessment was excessive because:

- (1) the Maxwell's house included such upgrades as superior siding, a fireplace, a deck, and tiling throughout, yet the Property's building value, which had no upgrades, was \$22,700 more than the Maxwell's building value;
- (2) the Maxwell property was originally listed for sale in 1989 for \$190,000, and finally sold in the late 1990's for only \$130,000;
- (3) the Property was purchased in July, 1988 for \$158,900 during the real-estate boom and the assessment failed to reflect the decline in market values since that time;
- (4) a 1991 appraisal estimated a \$152,000 value, but the appraisal was not a true reflection of the Property's market value because bank appraisals tend to exaggerate values; and
- (5) even if the assessment were adjusted to \$149,500, it would still be excessive because the building value should be \$105,700.

The Town recommended adjusting the assessment to \$149,500 to address the Taxpayers' concerns. The Town argued the adjusted assessment was proper because:

- (1) the Taxpayers only compared the Property to one other property in the Town;
- (2) the Taxpayers' comparable was not comparable because the Taxpayers' Property sold for \$28,900 more than the comparable property; and
- (3) a 1991 appraisal estimated a \$152,000 value for refinancing purposes.

Board's Rulings

Page 3

Koermer v. Town of Plymouth

Docket No.: 11479-91PT

Based on the evidence, the board accepts the Town's recommended adjusted assessment of \$149,500, and the board finds the Taxpayers failed to prove any additional overassessment. The board will discuss below the Taxpayers' specific arguments, but the board would first indicate the main reason for denying the Taxpayers' appeal. Determining whether an assessment is proper or not requires estimating the Property's value and comparing that value to the general level of assessment in the community. 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. The Taxpayers did not present any credible evidence of the Property's fair market value and how that value compared to the general level of assessment in the community. To the extent the Taxpayers provided the board with comparable properties, the Taxpayers did not indicate what specific adjustments were warranted in the market for the differences between the Property and the comparables.

The Taxpayers' main reliance was on the Maxwell property. Even if we were to assume that a comparison between the Property and the Maxwell property indicated an inconsistency in assessing these two buildings, the board cannot assume that the Property was incorrectly assessed relative to the general level of assessment, i.e., other buildings in the Town. Based on the evidence, the board could have just as easily concluded the Maxwell building was under assessed and the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Canata, 129, N.H. 399, 401

Page 4

Koermer v. Town of Plymouth

Docket No.: 11479-91PT

(1987). Additionally, we note that for some reason, the market valued the Property higher than the Maxwell property. This may have something to do with the location or the lot, but the board does not know because the Taxpayers did not present any market data on the Property's value as a whole or on the Maxwell's property value as a whole.

Concerning the Swope and Fisteks 1988 and later sales, the board was unable to draw any conclusions from those sales. First, the 1988 sales occurred in a totally different market than the year under appeal, rendering those sales unreliable in the 1991 market. Additionally, the Taxpayers did not indicate how the Swope and Fisteks properties compared to the Property and what adjustments were required to compare the Property with the comparables.

The Taxpayers also raised the argument that newer homes were assessed higher than older homes. The Taxpayers, however, did not introduce any evidence to support this assertion.

While not provided to the board, the Taxpayers obtained a \$152,000 appraisal in 1991. The Taxpayers tried to distance themselves from that figure, but without having a copy of that appraisal to review, the board is unable to determine whether it accurately estimated the Property's value. Needless to say, an appraiser, after considering the market and Property, concluded the Property was worth \$152,000 in 1991.

The board is not sure whether the Town has refunded the taxes based on the Town's recommended assessment reduction. If the Town has not already issued an abatement and if the taxes have been paid, the amount paid on the

Page 5

Koermer v. Town of Plymouth

Docket No.: 11479-91PT

value in excess of \$149,500 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 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

Page 6

Koermer v. Town of Plymouth

Docket No.: 11479-91PT

Ignatius MacLellan, Esq., Member

Page 7

Koermer v. Town of Plymouth

Docket No.: 11479-91PT

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James P. and Joanne A. Koermer, Taxpayers; and Apple Appraisal, Inc., Agent for the Town of Plymouth.

Dated: 4/21/94

0008

Lynn M. Wheeler, Deputy Clerk