

Estate of Allan A. Lamond & Nancy K. Lamond

v.

Town of Plaistow

Docket No.: 12353-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$354,850 (land \$78,300; buildings \$276,550) on a retail shop on .76 acres of land (the Property). 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 their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in 1990 for \$125,000;
- (2) at time of purchase, it was the Taxpayers understanding that the Property was grandfathered, however the Planning Board limited the use of the building to 60% because of lack of appropriate parking;
- (3) an in-ground swimming pool on the Property was found to be not functional and required either removal or replacement;

(4) the Property was placed on the market for \$180,000 and sold in February, 1994 for \$135,000; and

(5) the fair market value as of April, 1991 was between \$125,000 and \$135,000.

The Town concurred with the Taxpayer's comments about the Property but stated any assessment must be equalized by the 1991 ratio of 135%.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$168,750. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.

The Taxpayer testified the Property's purchase price was \$125,000 in 1990. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). The Taxpayer purchased the Property with the understanding that its use would be grandfathered but was only allowed 60%

because of a limited number of parking spaces available. The Property was placed on the market for one and one-half years and finally sold for \$135,000 in 1994. The board finds the fair market value as of April 1, 1991 to be \$125,000 (or \$168,750 assessed value - \$125,000 X 1.35).

If the taxes have been paid, the amount paid on the value in excess of \$168,750 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 "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Nancy K. Lamond, Taxpayer; and Chairman, Board of Selectmen of Plaistow.

Dated: May 11, 1995

Valerie B. Lanigan, Clerk

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