Marcelle Carter

v.

Town of Plymouth

Docket No.: 12852-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $89,700 (land, $18,500; building, $71,200) on 1.9 acres consisting of a renovated mobile home (the Property). The Taxpayer 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 Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

1) the mobile home was taxed as a regular home;

2) there was incorrect data on the property-record card;

3) two comparable properties with the same type of renovations were assessed lower;

4) due to the sharp decline in property values, the increase seems excessive; and

5) an April 1993 market analysis indicated a market value in the mid-$60,000.

The Taxpayer in her rebuttal stated:

1) the Town did not take into consideration the two comparable properties (Tax Map 5, Lot 2-47 and Map 5, Lot 2-38); and

2) the Town has used comparables such as capes, saltboxes and ranches, all with foundations, which were not comparable.

The Town argued the assessment was proper because:

1) the Property can no longer be called a manufactured structure due to the improvements;

2) the assessment was classified as average quality and then depreciated for its layout;

3) the Taxpayer had focused her evidence on market value at the time the appeal was filed rather than April 1, 1992;

4) comparable properties indicated the assessed values were similar; and

5) it is not disproportionately or illegally assessed.

Board Findings

Based on the evidence, the board finds the proper assessment should be $76,360. The board arrived at this assessment by increasing the functional depreciation by an additional 15%. Our calculations are as follows.

building (new)	$89,151	
depreciation	11%	(physical)
	25%	(functional)
total depreciation	36%	
building depreciated	$57,060	
extra features	800	
land	18,500	
assessment	$76,360	
equalized value	$68,180	(assessment divided by 1.12 equalization ratio)

The Town erred by assessing this Property as an average home when it still suffers from many of the deficiencies of older manufactured housing. These deficiencies were outlined in the Taxpayer's brief. It is the board's judgement that the additional functional depreciation is warranted, especially given the $48.69 square-foot adjusted base rate used by the Town.

If the taxes have been paid, the amount paid on the value in excess of $76,360 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Marcelle Carter, Taxpayer; and Chairman, Selectmen of Plymouth.

Dated: January 13, 1995

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Melanie J. Ekstrom, Deputy Clerk