

Bruce E. & Patricia A. Hodsdon

v.

Town of Plymouth

Docket No.: 12881-92PT

DECISION

The Taxpayers appeal, pursuant to RSA 76:16-a, the Town's 1992 assessment of \$80,600 on three condominium units (the Property). The Town and the Taxpayers 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 assessment was excessive because a January 1992 appraisal determined the fair market value to be \$65,000.

The Town agreed with the market value presented by the Taxpayers and recommended an adjusted assessment of \$72,800 which is the market value

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equalized by the ratio of 112% as determined by the department of revenue administration (DRA).

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$72,800. The board concurs with the Taxpayers and the Town that the best evidence of market value was the appraiser's report.

Neither party challenged the DRA's equalization ratio of 112% for the 1992 tax year for the Town of Plymouth. The ratio is determined by the DRA to reflect how the Town's assessments compare to market value. The appraiser's \$65,000 estimate of fair market value must be adjusted by the ratio to bring it in line with all other properties in the Town. Therefore, the assessed value is calculated by multiplying the fair market value by the equalization ratio ($\$65,000 \times 1.12 = \$72,800$).

If the taxes have been paid, the amount paid on the value in excess of \$72,800 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

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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

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Bruce E. & Patricia A. Hodsdon, Taxpayers; Joseph Lessard, Esq., counsel for the Town; and Chairman, Selectmen of Plymouth.

Dated: February 22, 1995

Melanie J. Ekstrom, Deputy Clerk

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