

Michael L. Emmons

v.

Town of Plaistow

Docket No.: 13339-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessment of \$170,850 (land \$53,250; buildings \$117,600) on a .93-acre lot with a house (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) a September 1992 appraisal estimated a \$146,000 value;
- (2) comparable properties in the appraisal support overassessment; and

(3) a larger, abutting property was assessed at \$200,350 and sold for \$170,000 in December, 1993.

Page 2

Emmons v. Town of Plaistow

Docket No.: 13339-92PT

The Town argued the assessment was proper because:

(1) one of the Taxpayer's appraiser's comparables was located out of town and on a busy street and the Property is located on a dead-end street, yet the appraiser failed to make an adjustment to address this;

(2) the Property is in a superior neighborhood compared to the Taxpayer's comparables; and

(3) comparable properties in the Town sold well within range of their assessed values.

Board's Rulings

Based on the evidence, the board finds the proper value to be \$162,300. 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 board has reviewed the evidence submitted by both parties and finds a 5% reduction to the assessment is proper for the following reasons:

1) The Taxpayer's appraiser used an incorrect square footage in determining the value of the Property. The board finds the actual size to be 1,976 square feet. It appears the appraiser did not include the 8 X 13 area

between the house and garage in his calculations and inaccurately calculated the first and second floor areas (26' X 36' = 936 per floor or 1,872 square feet).

Page 3

Emmons v. Town of Plaistow

Docket No.: 13339-92PT

The board has recalculated the appraiser's cost approach based on a square footage of 1,976 square feet and arrived at a depreciated value of the improvements of \$117,896. The Town's assessment of the improvements was \$117,600, within \$300 of the recalculated value.

2) The appraiser used three comparable sales to determine his estimate of market value. Comparables 1 (10 Timberlane Road) and 2 (6 Mankill Brook Road) were also used by the Town. Comparable 3 (346 Emerson Avenue) is smaller than the subject, located in another town (Hampstead), and has a different tax base.

The Town also stated that this comparable is located on a very busy primary street and the subject is on a dead-end street.

3) The appraiser offered no documentation or support of the adjustments used in the comparable sales approach. Without such information, the board and the municipality are unable to review the soundness of the value conclusions. However, it appears that the main difference in value is in the Property's location. The Town considered the subject Property to be in a superior location to the comparables and the Taxpayer's appraiser considered the Mankill Road location to be slightly superior.

4) A review of all the evidence and the Town's assessment record cards generally supports the assessment. However, the 1993 sale of 2 Country Club Lane, a larger home on a larger lot, on the market for several years, is some indication that the subject may be slightly overassessed. Therefore, the board has determined a 5% adjustment to be appropriate.

If the taxes have been paid, the amount paid on the value in excess of \$162,300 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 Page 4
Emmons v. Town of Plaistow
Docket No.: 13339-92PT

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

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael L. Emmons, Taxpayer; and Chairman, Selectmen of Plaistow.

Date: July 11, 1995

Melanie J. Ekstrom, Deputy Clerk

0006