

Christine DeCamp

v.

Town of Plymouth

Docket No.: 17091-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$246,600 (land \$42,000; buildings \$204,600) on a 2.10-acre lot with a single-family home (the Property). 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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the equalized assessment is not indicative of the Property's market value which is in the range of \$180,000 to \$200,000 for the land and buildings

(excluding furniture, fixtures and equipment (FFE));

(2) the Property was purchased in 1994 for \$260,000 which included FFE;

(3) the Town's description of the square footage of the contemporary addition is inaccurate and only approximately one-half of the land is usable;

(4) the Town did not use adequate comparable sales to determine the

assessment; and

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(5) comparable bed and breakfast (B&B) sales in neighboring towns and the assessment of the only other bed and breakfast in Town show the Property is overassessed.

The Town argued the assessment was proper because:

(1) the only sale of the Taxpayer's that is comparable is the sale of Pressed Petals Inn which sold for \$224,000 after FFE was deducted; the other two comparables were not purchased as B&B's;

(2) the Taxpayer's comparable assessment was given a location adjustment for its location in a commercial neighborhood and is not of the same quality and condition as the Property and has about 60% of the living area of the subject;

(3) the Taxpayer made improvements to the Property after its purchase which enhanced its value;

(4) the price paid for the FFE in the Pressed Petals Inn sale indicates an FFE value per room of \$3,300 and when related to the Property's assessed value, the difference of approximately \$13,000 from the purchase price is reasonable; and

(5) most B&B's are former residences that have been converted and layout, number of bedrooms and bathrooms and location are all pertinent to their value.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$235,800 (land, \$42,000; buildings \$193,800). This assessment is based on applying 5% functional depreciation to account for the cathedral ceiling areas in the contemporary portion of the dwelling. Both the floor plans submitted as part of Exhibit 1 and the photographs clearly indicate that a significant portion of the second floor is not living space due to the sloping cathedral ceiling. The assessment-record card had incorrectly calculated the cathedral ceiling area as actually second floor living space. It is not possible to actually calculate the square footage this area comprises because neither the Taxpayer's floor plans nor the assessment-record card, while showing the

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areas, detailed the dimensions.

The board finds this approximate \$10,000 reduction in value makes the assessment more reasonable compared to the limited sales evidence submitted and the differing estimates of FFE.

The board finds the sale of the Pressed Petals Inn in Holderness for \$224,000 in April 1996 supports the revised assessment for several reasons:

- 1) the sale was exclusive of FFE which the Town verified transferred for an additional \$36,000;
- 2) the quality of the Property versus the Pressed Petals Inn is superior based both on the photographs and the grade adjustments contained on the assessment-record cards; and
- 3) the portion of the Property used as the owner's residence is larger than that in the Pressed Petals Inn.

If these differences are taken into account, the revised assessment of the

real estate interest of the Property is reasonable at \$235,800.

Also, the board did not find the two other sales submitted by the Taxpayer to warrant a further abatement because they were properties that were generally smaller, not used as a B&B's in conjunction with the residence, and in less desirable locations.

Lastly, the Taxpayer's purchase of the Property for \$260,000 in June 1994 also supports the revised assessment. The Taxpayer's testimony of the FFE at the time of the purchase was not substantiated. Both her description of the personalty and the amount of FFE in the Pressed Petals Inn sale supports a conclusion of a lesser value for FFE.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$235,800 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1997. Until the

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Christine DeCamp, Taxpayer; Joseph Lessard, Assessor for the Town; and Chairman, Selectmen of Plymouth.

Date: November 10, 1998

Valerie B. Lanigan, Clerk

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