

Leonard D. Koehler

v.

Town of Plainfield

Docket No.: 17462-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$114,800 (land \$58,800; buildings \$56,000) on a single-family home on a 7.45-acre lot (the "Property"). The Taxpayer also owns, but did not appeal, a single-family home on a 2.3-acre lot assessed for \$94,600. 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) based on an appraisal, the market value of the Property with 7.44 acres was \$81,000 on April 1, 1997;

- (2) after the Property was surveyed, the Town corrected the acreage but failed to properly adjust the value;
- (3) the area's density negatively impacts the Property's value;
- (4) no additional hookups to the water precinct's supply system are allowed, reducing the development potential for the Property; and
- (5) the Property is disproportionately assessed when compared to the Longacre property (map 2, lot 5050).

The Town recommended revising the assessment to \$98,550 and argued the revised assessment is proper because:

- (1) the land valuation takes into account the Property's corrected area and topographical features and is based on vacant land transactions that occurred along Route 12A;
- (2) seven comparable sales and two offers, all located in the same zone, support the land value; and
- (3) the revised assessment increases the depreciation of the home from 20% to 40% for its physical condition and from 20% to 30% for functional depreciation, reduces the 14' x 16' shed to \$500, the 12' x 18' shed to \$500, and the 12' x 12' shed and the field priced shed are considered to have no value.

Board's Rulings

Based on the evidence, the board finds the correct assessment to be the Town's revised assessment of \$98,550. This figure is based on a land value of \$58,800 and a value for the improvements of \$39,750. This value, when adjusted by the department of revenue

Page 3
Koehler v. Town of Plainfield
Docket No.: 17462-97PT

administration's (DRA) 1997 equalization ratio of 92%, indicates an approximate market value of \$107,100 ($\$98,550 \div .92 = \$107,100$ rounded.)

At the hearing, the Taxpayer's representative (Mr. George Koehler, son, "Taxpayer") presented an appraisal and had the appraiser ("Mr. Sweet") present to testify as to his methodology and conclusions. Upon cross examination by the Town, Mr. Sweet admitted he had not appropriately verified the comparable sales used in his appraisal and given the terms and conditions of the sales as explained by the Town's assessor, two of the comparable sales were not arm's-length transactions. Additionally, Mr. Sweet testified that he had not inspected the interior of any of the comparable sales. The Town's assessor (Mr. Hildum), however, had inspected the interior of one of the comparable sales on the same day he had inspected the Property and observed the quality/condition of the comparable sale was significantly worse than the Property. Mr. Sweet, unaware of the condition of the interior, made no quality adjustments to the comparable sale, further reducing the validity of his value conclusion. Upon further questioning by the Town, Mr. Sweet opined that his conclusion of value would have been higher had these facts been known to him at the time he performed the appraisal and that his \$81,000 original value conclusion would be at the low end of the range given the new data brought to light during the hearing. Further, Mr. Sweet's appraisal did not correctly address the Property's subdivision potential. During cross examination, he conceded that the Property has the potential of being divided into three lots (the house lot plus two additional) rather than the two he considered and based on sales data a value of \$35,000 per lot would not be excessive. Due to the number of

inaccuracies it contained, the board gave little weight to this appraisal. Other than the appraisal, the Taxpayer produced no additional evidence of market value.

The Taxpayer further argued that when the Town corrected the acreage for the land

portion of the assessment from approximately 10 acres to 7.54 acres and consequently reduced the land assessment from \$67,800 to \$58,800 it had, in essence, said that the 2.46 acres were worth \$9,000 and that this would equate to approximately \$3,658 per acre ($\$9,000 \div 2.46 = \$3,658$). The Taxpayer argued this “benchmark” unit value should then have been applied to the corrected area of 7.54 acres to determine the new land assessment. Mr. Hildum testified that in valuing the revised area of 7.54 acres no consideration was given to the previous value. He merely assessed the 7.54 acres and determined its correct value. The board finds the assessor’s methodology for assessing the land is more appropriate than the Taxpayer’s understanding of how the revised land assessment was estimated.

The Taxpayer also argued that the Longacre property located on Route 12A, south of the Property, at map 2, lot 5050, which has 7 acres of level land and more than 1,100 feet of road frontage is underassessed if the Taxpayer’s land assessment is correct because it could be subdivided into more potential lots than the Property given the Property’s smaller amount of frontage and reduced amount of usable area. To compare a property whose assessment may or may not be correct without any evidence of its market value is not a valid comparison. Assessments must be based on market value. The municipality’s equalization ratio then compares the relationship between market value and the general level of assessment in the town. The Town provided and used market evidence to support its market value conclusions. The

Page 5
Koehler v. Town of Plainfield
Docket No.: 17462-97PT

Taxpayer did not provide any market evidence relating to the market value of the Longacre property. Therefore, the board cannot make any comparison between the assessment of the Property and the Longacre property.

In support of the assessment the Town gave several comparable sales that had occurred along NH Route 12A (in the Village Residential Zoning District) in the Property’s

neighborhood. Town Exhibit B is a listing of the Town's comparable sales and two offerings. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with market value and the general level of assessment in the municipality. The board finds these sales and the two offerings that were included support the Town's assessed value of \$58,800 for the land portion. This assessment,

when adjusted by the 92% ratio, indicates an approximate market value of \$64,000 ($\$58,800 \div .92 = \$64,000$ rounded) and is reasonable given the Property's potential for subdivision and the sales evidence in the immediate neighborhood. The board considered the Taxpayer's arguments that density and questionable access to water restricts the subdivision potential but the Taxpayer's evidence was inconclusive. The Town revised the assessment of the improvements based on a reinspection of the Property to reflect their overall condition. As the Town states on page 3 of Municipality Exhibit "A":

"The additional reduction of \$16,250 to the 1997 assessment is accomplished by increasing depreciation on the home from 20 to 40 percent for physical condition and increasing the functional depreciation from 20 to 30 percent. In addition, the assessment of the 12' x 18' shed was reduced from \$1,000 to \$500, the 14' x 16' shed was reduced from \$1,050 to \$500, and the 12' x 12' shed and \$50 field priced shed have been reconsidered as having no value."

Page 6

Koehler v. Town of Plainfield

Docket No.: 17462-97PT

The board finds these adjustments reasonably consider the condition of the improvements based on the evidence. As the board states in paragraph one of Board's Rulings, the assessment indicates an approximate market value of \$107,100. The board finds this value is reasonable given the location of the improvements, the possibility of subdivision and the numerous sales in the area.

The Taxpayer complained about the high amount of taxes he must pay due to the revaluation. The amount of property taxes paid by the Taxpayer was determined by two factors:

(1) the Property's assessment; and (2) the municipality's budget. See generally International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor, i.e., the board decides if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See The Bretton Woods Company v. Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

If the taxes have been paid, the amount paid on the value in excess of \$98,550 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 1998. Until the Town

Page 7
Koehler v. Town of Plainfield
Docket No.: 17462-97PT

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Page 8
Koehler v. Town of Plainfield
Docket No.: 17462-97PT

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to George L. Koehler, Representative for Leonard D. Koehler, Taxpayer; and Chairman, Board of Selectmen of Plainfield.

Date: July 9, 1999

Lynn M. Wheeler, Clerk

0006