

Koehler Family Trust

v.

Town of Plainfield

Docket No.: 20122-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$189,300 (land \$53,300; buildings \$136,000) on a 2.20-acre lot with a single-family home and outbuildings (Map 7, Lot 35, the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); and Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show 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 “pole barn” has a dirt floor (with some crushed stone), hand-cut poles from trees with rough-sawed lumber, and a metal roof but is not enclosed with four walls, and is not a barn but a “lean-to” or shelter for cordwood and equipment and is admitted to be an “eyesore”;
- (2) the garage is very basic, with rotting sills and other problems which make it less desirable than comparables assessed by the Town’s contract assessor (“Avitar”);
- (3) the house was constructed in 1966 from a “pre-cut package” imported to the site from Pennsylvania and has thin walls, poor insulation, cracks and seepage in the cellar and other limitations;
- (4) a “dormer” was added over part of the main structure, but Avitar incorrectly described the addition as a second story;
- (5) the house has only two and one-half baths, not three baths, has leakage and water seepage problems, inferior door and other materials, and only electric heating on the second floor, with oil heat on the first floor;
- (6) the house deserves higher depreciation than the 15% applied by Avitar;
- (7) the land and fireplace assessments are not being contested;
- (8) review of the comparables included in Taxpayer Exhibit 1 indicates the Property is disproportionately assessed; and
- (9) the market value of the Property, when these factors are considered in detail, is no more than \$142,390, which is below the \$161,300 estimate made in the appeal document.

The Town argued the assessment, with the revision noted below, is proper because:

- (1) as explained in Municipality A, the Adams property (Map 10, Lot 701, 308 Stage Road) is most comparable to the Property and has a slightly lower cost per square foot of living space;

- (2) the Town has completed a revised proposed building assessment (shown on Municipality Exhibit B) of \$119,800 (reduced from \$122,700) by lowering the condition of the house;
- (3) this proposed change reduces the total assessment to \$186,400 for the Property, which is consistent with how comparable properties are assessed and is fair and equitable;
- (4) while the Property has two and one-half baths, the Avitar computer system multiplies fixtures (three per bath) and, due to additional bathroom fixtures, the notation of three baths was made on the assessment-record card;
- (5) a pole barn has a lower assessed value (\$8 per square foot) than barns (\$18 for one-story and \$15 for two-story) and the pole barn has an addition which accounts for the notation of two such structures on the assessment-record card;
- (6) a “lean-to” in comparison is typically three-sided and attached to another structure, rather than standing alone like a pole barn; and
- (7) except as revised above, the assessments on the comparable properties are consistent with each other and with the assessment of the Property and the Town’s sales analysis performed for the revaluation supports the assessment.

During the hearing, the parties agreed the board could take official notice of the testimony and evidence presented in an appeal of another property in the Town (BTLA Docket No. 20121-03 PT) owned by a related taxpayer and heard on the same date.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$180,100.

Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply

its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). The parties agreed the level of assessment for tax year 2003 was 100%, when the Town completed a revaluation.

With regard to the building assessment, the Town submitted a revised assessment-record card at the hearing (Municipality Exhibit B), that applies a 2% functional depreciation on the building value. The board finds an adjustment of 5% more accurately reflects the evidence presented, including the Taxpayer's arguments regarding the "dormer," the electric heating, low ceiling, construction materials and other factors. (The board further notes the Adams property comparable submitted by the Town shows a 2% functional depreciation for problems noted with a basement condition alone, whereas the evidence presented revealed more extensive issues with the building on the Property.) Increasing the functional depreciation on the building from 2% to 5% results in a revised depreciated value of \$115,400 (rounded).

The board heard extensive testimony pertaining to what was designated as two "pole barn" structures by the Town and assessed for a total of \$3,402. The Taxpayer presented photographs and other evidence to establish the structures are connected and should be assessed as a single unit. The board agrees. In addition, the Taxpayer is correct that, because of a lack of walls and other disutilities, the structure does not meet the definitions of a "pole barn," or "equipment shed," or "lean-to," the references made by the Town in Municipality Exhibit A, and is, in addition, unsightly (an "eyesore"). The proper assessment for this structure is therefore estimated to be \$1,480 (corrected square footage of 1,233 x \$4 per square foot times "size" and "condition" adjustments of 0.75 and 0.40, respectively).

With respect to the garage, however, the board finds the Taxpayer failed to prove it was disproportionately assessed. The board also considered each of the Taxpayer's remaining arguments before concluding that no further abatement is warranted.

In summary, the board grants the Taxpayer's appeal and finds an abatement to \$180,100 for tax year 2003, comprised as follows: building value - \$115,400; features value - \$11,400 (rounded -- with pole barns revised to a total of \$1,480, garage remaining at \$6,890 and fireplace remaining at \$3,000); and land value - \$53,300.

If the taxes have been paid, the amount paid on the value in excess of \$180,100 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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(f). 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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: George L. and Helen E. Koehler, 412 Stage Road, Plainfield, New Hampshire 03781, Taxpayer; Chairman, Board of Selectmen, Town of Plainfield, Post Office Box 380, Meriden, New Hampshire 03770; and Edward Tinker, Avitar Associates of New England, Inc., Post Office Box 981, Epsom, New Hampshire 03234, representative for the Town.

Date: March 3, 2005

Anne M. Stelmach, Deputy Clerk

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ORDER

The board has reviewed the Taxpayer's extensive submission (the "Rehearing Motion"). The Rehearing Motion is denied under the standards set forth in RSA 541:3 and TAX 201.37.

Rehearing motions are only granted in exceptional circumstances when the moving party establishes that "the board overlooked or misapprehended the facts or the law and such error affected the board's [D]ecision." TAX 201.37(d). While the Taxpayer clearly disagrees with the board's findings and conclusions, the board does not find the Taxpayer has met this burden in the Rehearing Motion. Consequently, the procedural remedy, if the Taxpayer is still dissatisfied, is an appeal to the supreme court, not a rehearing of the Taxpayer's arguments as to why a larger abatement should be granted.

TAX 201.37(f) requires a party "to submit all evidence and present all arguments at the hearing. Therefore, rehearing motions shall not be granted to consider evidence previously available . . . or to consider new arguments that could have been presented at the hearing." The

Taxpayer presented the same computations (in Taxpayer Exhibit 1 submitted at the hearing) to support a lower building assessment, based on a revision of the effective area of the “upper floor” component, so that the total effective area is reduced (2,031 rather than 2,283 square feet), As noted in the Decision at page 5, the board considered this and all of the Taxpayer’s “remaining arguments before concluding that no further abatement is warranted.”

Any appeal of the Decision is by petition to the supreme court made within 30 days of this Order. See RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: George L. and Helen E. Koehler, Trustees of Koehler Family Trust, 412 Stage Road, Plainfield, New Hampshire 03781, Taxpayer; Chairman, Board of Selectmen, Town of Plainfield, Post Office Box 380, Meriden, New Hampshire 03770; and Edward Tinker, Avitar Associates of New England, Inc., Post Office Box 981, Epsom, New Hampshire 03234, representative for the Town.

Date: April 4, 2005

Anne M. Stelmach, Clerk

