

**Cornelia Lewis and Marlynn P. Lewis**

**v.**

**Town of Plaistow**

**Docket No. 4063-87**

**DECISION**

A hearing in this appeal was held, as scheduled, on March 10, 1989. The Taxpayers were represented by themselves. The Town was represented by Mary Pinkham, Associate Appraiser of the Department of Revenue Administration.

The Taxpayers appeal pursuant to RSA 76:16-a, the assessment of \$292,650 (land, \$137,000; buildings, \$155,650) placed on their real estate, located at Eight Mankill Brook Road for the 1987 tax year.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100 percent for the 1987 tax year.

Mr. Lewis testified that he and his wife purchased the property in December, 1985, from Mary A. Downing for \$220,900. He stated that he felt it was an "arms length transaction" as Mrs. Downing is no relationship to the Lewises. Mr. Lewis argued that the land portion of the value was excessive and that it was really worth nearly one half its assessed value.

Mr. Lewis then described Mankill Brook Road as a one lane wide paved road maintained only to his drive. The road continues past his drive as an unmaintained, dirt, Class VI road, sloping down from his lot towards an old "ice" pond. Said pond is located south of his lot by about 20-30 feet on an adjacent parcel presently owned by Mary A. Downing.

The Taxpayer presented four tax cards of nearby properties. He compared the unit front foot price and the topography, excess frontage and undeveloped

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adjustments of these properties with his property. He testified that in many cases the other properties received greater adjustments than his. He further testified that the Plaistow Planning Board allowed the creation of a substandard lot (Map 70-5, Lot 24) abutting his property on the north by allowing an averaging of the front and rear line to meet the minimum road frontage requirement of 150'. The Taxpayer argued that the creation of this substandard lot diminished the value of his property.

The Taxpayer testified that the house is saltbox in style and that the second floor living area was 90 percent of the first floor not 95 percent as appraised. He also questioned the basic square foot replacement cost figures when compared with other nearby houses. The Taxpayer stated that he felt the house had appreciated at about five percent per year from December, 1985, when they purchased it until, April 1, 1987, the date of the revaluation, and thus that it was worth as of April 1, 1987 approximately \$235,000. The five percent per annum figure was based on the inflation adjustment of the Taxpayer's home owners insurance.

Upon questioning the Taxpayer stated that the property was purchased directly from the previous owners and that it was not listed with any real estate agent at that time.

The Taxpayer further stated that they had looked at and were interested in the property seven years earlier, and that finally in 1985, after selling property in Haverhill, MA, they called the owner and after one counter offer the selling price of \$220,900 was agreed upon.

The Taxpayer testified that based on his measurements only 102' of his frontage was on the Class V portion of Mankill Brook Road, with the balance being on the unmaintained Class VI portion.

Representing the Town, Mary Pinkham, of the Department of Revenue Administration, testified that the sale of the Lewis property was used in the sales survey during the revaluation. She described the lot as level and rolling with the rear portion wooded. She explained that the land excess frontage and undeveloped factors and the building square foot costs used during

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revaluation all reflect the principle that as size or area increases, the unit costs or value decreases and vice versa. She further testified that the Town had recognized in the appraisal the deed restriction that the lot could not be subdivided by using excess and undeveloped factors for the entire frontage and by not calculating the depth of the lot to its fullest extent. She stated that there had been a two percent per month increase in real estate values in Plaistow prior to the revaluation that was determined from the analysis of sales in Town during the period of May, 1985 to December, 1986. She further stated that since the end of 1986 or about the time of the revaluation (April 1, 1987), increases in real estate values have slowed to the point that they are presently level.

The Town presented the tax card and sale of 70-5, Lot 14, 3.55 acres (abutting on the north side of the Lewis property) which sold on December 22, 1987, for \$100,000 while being assessed for \$125,300. The Town was uncertain as to the subdivision status and recording inconsistencies of the parcel and how these factors might have affected the sale price. However, Ms. Pinkham noted that a 1.58 acre portion of this parcel was sold on June 27, 1987, for \$80,000, while being assessed for \$64,900 (an error in the undeveloped adjustment, as admitted by the Town, if corrected would have yielded a correct assessment of \$71,750). She argued that this sale supports the assessment of land values in this area of Town.

The Board appraiser's report recommended "no adjustment" for the building and for land "adjusted residual rear and yard acres value . . . also adjusted topo dep. and undev.-economic depreciation".

The Board rules that the Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same . . . .



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and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

The Board finds that the Taxpayer and Town are in agreement as to the size and general physical description of the land.

The Board finds that the creation of the "sub-standard" lot (Map 70-5, Lot 24) does not diminish the value of the Lewis property as it is generally of the norm of the minimum lot size in the area and as evidenced by the reasonable sale of its "sister" lot for \$80,000 on June 27, 1987.

The Board also finds that the Town's trending factor of two percent per month (24 percent per year) is a more accurate measurement of the inflation rate in Plaistow preceding the revaluation than a general five percent per year inflation rate used by the Taxpayers insurance company, since it was determined from actual sales of land and buildings in Plaistow thereby reflecting the cumulative effect of increasing building costs and escalating land values.

The Board finds that the five percent functional adjustment applied by the Town for the second floor area for the "saltbox" style of the house is reasonable.

The Board also finds that while the topography, excess frontage and undeveloped factors applied to the Lewises frontage calculation at first glance appear appropriate, they do not go far enough in recognizing the net diminution of land value caused by the deed restriction prohibiting subdivision and the fact that two thirds of the frontage is on the unmaintained portion of Mankill Brook Road. While the Board recognizes some possible enhancement in value from the privacy by being at the end of the road, it finds that such value is more than offset by the deed restriction and unmaintained portion of road.

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Thus the Board finds that an additional 10 percent adjustment is appropriate on the frontage calculation to arrive at the following correct assessment.

Rear Land	Same		
\$12,650			
Frontage			
312' x 550 = 171,600 x 90(topo) x 83(excess front) x 90(undev. dep.) x			
90(add. 10 percent adj.) =			
\$103,850			
Paving	Same	\$ 2,000	
Water & Septic	Same		\$
<u>7,000</u>			
		Total	Value
\$125,500			

Thus the Board finds the proper assessment for 1987 is:

Land	\$125,500
Buildings	<u>\$155,650</u>
Total	\$281,150

If the taxes have been paid, the amount paid on the value in excess of \$281,150 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Anne S. Richmond, Esquire, Chairman

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(Mr. Twigg did not sit.)  
George Twigg, III, Member

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Peter J. Donahue, Member

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Paul B. Franklin, Member

Date:

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I certify that copies of the within Decision have this date been mailed, postage prepaid, to Cornelia & Marlynn P. Lewis, taxpayers; and the Chairman, Selectmen of Plaistow.

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Michele E. LeBrun, Clerk

Date:

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