

**George DeHullu  
v.  
Town of Plaistow**

**Docket No. 4122-87**

**DECISION**

A hearing in this appeal was held, as scheduled, on September 8, 1989. The Taxpayers, in addition to themselves, were represented by Elizabeth Bear Collins, Appraiser and Scott LaPointe, Attorney. The Town was represented by John W. McSorley, Appraiser from the Department of Revenue Administration.

The Taxpayer's appeal, pursuant to RSA 76-16:a, the assessment of \$608,850 (land, \$424,150; buildings, \$184,700) placed on their real estate located on Old Danville Road for the 1987 tax year. The property consists of a .90 acre lot with a florist shop and a 5 unit apartment building.

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

The Taxpayers argued that they were overassessed on the land because the Town had used the same front foot price of \$2,000 on Old Danville Road as was used on Rte. 125. They argued that their property was not as visible and accessible as land along Rte. 125 and thus did not have as much commercial potential as land on Rte. 125.

The Taxpayers presented recent sales of properties on Rte. 125 that they alleged were superior to the Taxpayers that sold for less than their assessments. The Taxpayers argued that these sales supported their contention that the \$2,000 front foot price was excessive.

The Taxpayers further argued that the buildings were of such a nature and in such close proximity to each other on the small lot so as to render the conversion of the site to a more profitable use impractical at this time.

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Ms. Collins testified that based on the income and cost approaches to value, the property was worth \$425,000 on April 1, 1987.

The Town testified that the \$2,000 front foot price was derived from 5 sales along Rte. 125 from the railroad bridge to the Massachusetts line during July, 1985 to December, 1986. The Town argued that while the Taxpayers' property was on the Old Danville Road, it was at least partially visible from Rte. 125 (especially from the northly direction) and was no less visible than some recent plaza developments.

The Town testified that due to the size of the lot and the close juxtaposition of the buildings, the property could not easily be converted to a different commercial use. However, the Town stated that the present use was its highest and best use and the buildings did contribute value to the property.

The Town did, however, recommend a reduction in the contributory values of the basements of both the florist shop and the multifamily dwelling.

In regard to the Taxpayer's allegation the Board rules as follows.

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 . . . .

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.

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"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).to the hearing by Mr. DeHullu, that the property includes three septic systems as was assessed by the Town.

The Board finds based on correspondence submitted subsequent to the hearing by Mr. DeHullu, that the property includes three septic systems as was assessed by the Town.

Based on the testimony and the evidence before it, the Board finds that the Taxpayers property is not as visible, accessible or desirable as most locations on Rte. 125 in that area. Further, as none of the sales establishing the \$2,000 front foot price occurred on Old Danville Road, the Board finds that a front foot price of \$1,500 is appropriate. The Board rules that the correct land value based on the \$1,500 front foot price is \$324,000.

The Board finds that the basement values of the florist shop and the multifamily dwelling should be adjusted by 20% and 30% functional depreciation, respectively, to more accurately reflect their contributory value. The Board rules that the correct building value is \$157,150.

For the above stated reasons the Board rules that the proper assessment for the 1987 tax year is \$481,150.

If the taxes have been paid, the amount paid on the value in excess of \$481,150 is to be refunded with interest at six percent per annum from date of

payment to date of refund.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

(Ms. Richmond did not sit.)

Anne S. Richmond, Esq., Chairman

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George Twigg, III, Member

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Peter J. Donahue, Member

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Paul B. Franklin, Member  
Acting Chairman

Date: September 26, 1989

I certify that copies of the within Decision have this date been mailed, postage prepaid, to George DeHullu, taxpayer; Chairman, Selectmen of Plaistow; and Richard Young, Director of Property Appraisal Division, Department of Revenue Administration.

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Michele E. LeBrun, Clerk

Date: September 26, 1989

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