

**Plaza 93, Inc.**  
**v.**  
**Town of Windham**

**Docket Nos. 4487-88 and 7137-89**

**DECISION**

These appeals were consolidated for hearing.

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1988 and 1989 assessment of \$313,010 (land, \$40,660; buildings, \$272,350) on the property consisting of a two level commercial building on 2.66 acres (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 an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved it was disproportionally taxed.

The Taxpayer argued that 1) only one acre was useable and the balance was wetland and that other larger properties were assessed disproportionately less; 2) that of the total 8,000 square feet of the building, 10% was used as a utility room and not rentable and the balance of the basement level, 3,600 square feet, is not visible from the road and is less valuable than the top level.

The Town argued 1) that only one acre was assessed as developed at 38,000 and the balance of 1.66 acres was drastically reduced to \$2,490 recognizing the wetland and 2) that the property as a whole was properly assessed.

Based on the evidence we find the correct assessment should be \$281,460 (land, \$40,490 and building \$240,970). The Board finds that the Town properly assessed the land. However, the Board finds that the evidence of the reduced

utility and rental income of the basement warrants a greater functional

depreciation. The Board rules the basement replacement cost should be adjusted by 40% to reflect its reduced utility, visibility and marketability. Therefore the Board rules the correct assessment for 1988 and 1989 is \$281,460.

If the taxes have been paid, the amount paid on the value in excess of \$281,460 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Peter J. Donahue, Member

---

Paul B. Franklin, Member

---

Ignatius MacLellan, Member

Date: March 22, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Donald J. Pucci and Victoria Wagtovciz, representatives of Plaza 93, Inc., taxpayer; and the Chairman, Selectmen of Windham.

---

Michele E. LeBrun, Clerk

Date: March 22, 1991

0009

Plaza 93, Inc.  
v.  
Town of Windham

Docket Nos. 4487-88 and 7137-89

ORDER RE MOTION FOR RECONSIDERATION

On April 3, 1991, Bernard H. Campbell, Esq., Counsel for the Town of Windham, filed a motion for reconsideration of the Board of Tax and Land Appeals' (Board) March 22, 1991 decision in these cases. The "Town" contends, since the Taxpayer raised only the issue of the assessment of the land and not the building with the selectmen, this Board is without appellate jurisdiction to decide the case on any component of the assessment other than the land portion.

The Taxpayer filed an objection to the motion stating that the Town does not present any new facts to warrant a reconsideration.

The Board rules as follows:

This Board is equally frustrated as many towns with the lack of specificity on the part of some taxpayers in filing a request for abatement with the local assessing officials and in presenting new arguments on appeal before the Board that were not raised locally. However, to require that taxpayers raise all issues at the local level or, as the Town would have us do in this case, limit the appeal to only the issues raised locally, would

constrict the tax appeal process more than the statutes provide for or caselaw has interpreted. (See Appeal of Gillin, 132 N.H. 311 (1989))

To dismiss cases where the taxpayer appeals overassessment for reasons not identical to those raised at the local level goes against the legislative reasoning in creating the Board as an administrative tribunal with less formal procedures (See RSA 71-B:5 and 7) than the superior courts and with broad authority in reviewing and correcting inequitable assessments.

RSA 71-B:16 (II.) states:

The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state. . . .

II. When it comes to the attention of the board from any source, except as provided in paragraph I, that a particular parcel of real estate or item of personal property has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed . . . .

Also see Appeal of Wood Flour, Inc., 121 N.H. 991 (1981).

Presently, RSA 76:16-a does not require the local assessing officials to even give the taxpayers an answer to their request for abatement before they appeal. RSA 76:16-a (I) states: "If the selectmen neglect or refuse to so abate, any person aggrieved . . . may . . . apply in writing to the board of tax and land appeals . . . ."

This procedure is strikingly different from the procedure for a rehearing request before zoning boards of adjustments, as cited as analogous by the Town.

Under RSA 677:3 and 677:4 the process for requesting a rehearing and the appeal from a decision on motion for rehearing is quite detailed. The tax

appeal statutes on the issue of subject specificity is silent.

The Town also relies on the Appeal of Sunapee, 126 N.H. 244 (1985) to support its contention that the Board has jurisdiction to order an abatement only on the land portion of the assessment. The case at bar differs from the Appeal of Sunapee in that here the Taxpayer has only one property in Town while the Taxpayer in the Appeal of Sunapee had multiple properties. To apply the same ruling to multiple components of a single property (eg., land, buildings, etc.) as was applied to multiple properties in the Appeal of Sunapee is inconsistent with the broad statutory powers given the Board as mentioned above. In this case the assessment of the tax under appeal was for one property in the amount of \$313,010. To determine if this one assessment is proportional, the Board must be able to review all the components of that assessment and to order an equitable remedy considering the whole property.

The Board therefore finds its Decision of March 22, 1991, proper and denies the Town's motion for reconsideration.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

April 19, 1991

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within order have been mailed this date, postage prepaid, to Donald J. Pucci and Victoria Wagtovciz, representing the Taxpayer, and to the Chairman, Board of Selectmen, Town of Windham.

Michele E. LeBrun, Clerk

April 19, 1991

1002