

Donald Baron and Raymond Baron

v.

Town of Plaistow

Docket No. 5185-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$1,607,950 on a 41 percent share on land and a commercial building (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 they were disproportionally taxed.

The Taxpayers argued the assessment was excessive because:

- (1) the Town erred in calculating the building's costs; and
 - (2) the Town erred in assessing the land because of the limited road frontage (100 ft. +/-) and the existence of wetlands (3.5 acres +/-).
- Specifically, the Taxpayers argued the Property has only 100 feet of frontage and the Town's use of the \$1,500 frontage value was in error.

The Town argued the assessment was proper because:

(1) the building's cost was properly calculated at \$2,789,050 (reduced to 41 percent of the Taxpayers' assessment); and

(2) the sales data supported the land assessment, including the \$1,500 frontage value.

The board's inspector did not value the land, but his costs calculation for the Taxpayers' portion of the building was \$1,025,700.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be \$1,519,850 (land \$389,500 and building \$1,130,350). This assessment is ordered because common sense and experienced judgment informs the board that the Property's limited frontage has an effect on the land's value. Thus, using comparables with substantially more frontage without any adjustment is incorrect methodology. The Town also erred in not making adequate adjustments for the wetlands. The land is recalculated as follows:

\$980,100 x .90 (reflects 10 percent adjustment for minimal frontage)	= \$882,090
3.54 acres (wetland) x \$20,000 x .10	= 7,000
5.0 acres x \$20,000 x .60	= <u>60,000</u>
Total	\$950,000 (rounded)
(x .41%)	= \$389,500

Concerning the building, both the board's inspector and the Taxpayers' representative arrived at costs' calculations for the building that indicate the Town's cost calculation was in error. The building's calculation should be \$1,130,350, the Taxpayers' figure.

If the taxes have been paid, the amount paid on the value in excess of \$1,519,850 is to be refunded with interest at six percent per annum from payment date to refund date.

SO ORDERED.

May 15, 1991

BOARD OF TAX AND LAND APPEALS

—

George Twigg, III, Chairman

Ignatius MacLellan

Michele E. LeBrun

I certify that copies of the within decision have been mailed this date, postage prepaid, to Mark Lutter, representing the Taxpayers, and to the Chairman, Board of Selectmen, Town of Plaistow.

May 15, 1991

Marjorie J. West, Clerk IV