

Leo P. LaRochelle and Robert J. LaRochelle

v.

Town of Plaistow

Docket No. 5186-88

DECISION

A hearing in this appeal was held on August 14, 1990 at which the Taxpayers appealed, pursuant to RSA 76:16-a, the 1988 assessment of \$3,905,000 (land, \$1,793,700; buildings, \$2,111,800) placed on their real estate located on Newton Road.

The Taxpayers were represented by Meg Nelson, Esq., Louis Minicucci, Jr., appraiser, Mark Henry, certified public accountant and by themselves.

The Town was represented by Earl E. Hall, Assessor.

The property consists of 32 apartment units in eight buildings on approximately 88 acres.

The parties agreed that the equalization ratio for the Town of Plaistow for the 1988 tax year was 100%.

With lengthy testimony and voluminous documentation, Mr. Minicucci submitted that the property's highest and best use in 1988 was to continue being utilized as an apartment complex and that its market value was best indicated by the income approach at \$1,770,000.

Mr. Hall stated that he had reviewed the assessment and had compared it with the assessments of condominiums in town and had found the value to be reasonable.

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.

"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. 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).

The Board finds that the total acreage of 88 acres in Plaistow is correct.

The Board finds that the highest and best use of the developed property is 1) as an apartment complex in the short term with the potential for condominium conversion in the future and 2) for the supplemental land having some potential for future low density development.

The Board finds that the Town's "good" grading of the buildings and its method of site valuation substantially overstate the value of the property.

The Board finds that the cost approach as calculated by Mr. Minicucci, best reflects the buildings' value with the exception that the replacement cost of the improvements does not need to be depreciated due to the buildings being only one year old in 1988 and in good condition. The Board further finds that Mr. Minicucci's site value of \$240,000 for the approximately 5 1/2 acres occupied by the improvements is more reflective of the actual market value of the appertaining land than the Town's attempt to make the land value comparable to the "site and other amenities" value of condominium property in town.

However, the Board finds that the Taxpayers failed in meeting their burden of proof as to the value of the "rear land". While the value of their land is largely speculative due to the zoning changes, past use and soil conditions, the Town did at least relie on several sales for its base prices, as opposed to the Taxpayers one sale, and adjustments were made for the quality of the land.

Further, the Board finds that, while Mr. Minicucci included in his replacement cost \$40,000 for appliances which are non taxable, his site improvement estimate of \$160,000 does not adequately account for the added value to the property from the \$7,500 annual income of sale of water. The Board rules these are off-setting values and no further adjustment is warranted for the sale of water.

Based upon the above findings, the Board rules the proper 1988 assessment is summarized as follows:

Value of 5.5 acre site	\$ 240,000
Value of Rear Land	\$ 387,700
Value of Improvements (244,900 x 8 buildings x .91 (time adj))	<u>\$1,782,850</u>
	\$2,410,550

If the taxes have been paid, the amount paid on the value in excess of \$2,410,550 is to be refunded with interest at six percent per annum from date of payment to date of refund.

FINDINGS OF FACT

1. Granted
2. Granted
3. Granted
4. Granted

5. Granted
6. Neither Granted nor Denied

7. Granted
8. Granted
9. Denied
10. Granted
11. Granted
12. Granted
13. Neither Granted nor Denied
14. Granted
15. Granted
16. Denied
17. Granted
18. Granted
19. Granted
20. Granted
21. Granted
22. Granted
23. Granted
24. Denied
25. Granted
26. Neither Granted nor Denied
27. Granted
28. Denied
29. Granted
30. Granted
31. Granted
32. Granted
33. Granted
34. Granted
35. Denied
36. Denied
37. Granted
38. Granted
39. Granted
40. Granted
41. Denied
42. Granted
43. Denied
44. Denied
45. Denied
46. Denied
47. Denied
48. Denied
49. Granted
50. Denied

RULINGS OF LAW

1. Granted
2. Granted
3. Granted

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Peter J. Donahue, Member

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Paul B. Franklin, Member

Date: December 31, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Leo F. & Robert J. LaRochelle, taxpayers; and Chairman, Selectmen of Plaistow.

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Michele E. LeBrun, Clerk

Date: December 31, 1990

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