

**S & S Associates**

**v.**

**Town of Plymouth**

**DECISION**

**Docket No.: 6042-89**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$260,800 (land, \$41,850; buildings, \$218,950) on its real estate, consisting of a commercial building on a 3.86 acre lot on the south side (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 disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) an appraisal done by Capital Appraisal Associates indicated its market value at \$360,000 which, if equalized by the Town's ratio, indicated a proper assessment of \$151,200;

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- (2) the Town's appraisal allocated more square footage for the finished retail area than actually existed; and
- (3) similar type properties of better quality were assessed for about the same or for less.

The Town argued the assessment was proper because:

- (1) the same replacement cost manual was used for the Taxpayers' building as was used at the time of the revaluation;
- (2) the building has some special load-bearing construction features; and
- (3) the land's undervaluation, based on 1989 sales information, offsets any overassessment in the building.

Based on the evidence, we find the correct assessment should be \$189,000. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the [municipality] shall make this allocation in accordance with its assessing practices.)

The board arrived at this decision in two ways.

- (1) The Town presented evidence that the 1989 market value of the land was approximately \$250,000 and the building was approximately \$200,000. The parties agreed the equalization ratio for the Town of Plymouth for the

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1989 tax year was 42%. Equalizing the market value of \$450,000 indicates an assessment of \$189,000.

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The Taxpayers' appraisal had enough inconsistencies or raised enough unanswered questions that the board finds it not conclusive evidence of market value, although it was given some weight.

The Town's 1991 assessment of "around \$300,000" was likewise not considered conclusive evidence as the appraisal card was not presented and since there was evidence that the market from 1989 to 1991 had significantly declined at varying rates for different types of property.

- (2) Using the Town's land assessed value and making corrections in the parties' building replacement costs estimates arrived at an indicated assessed value of \$189,200.

Without actually detailing the calculations, the board's findings and corrections as to the replacement cost calculations are:

- (a) classing the building as a "C" to recognize its special load bearing features was done by the Town;
- (b) grading the quality of the building as "average" as done by the board's investigator's report and as indicated by the photographic evidence.
- (c) calculating the retail-office square footage and the warehouse square footage as done by the Taxpayers' appraiser;
- (d) using the 1989 Marshall Valuation Service manual with the appropriate heat, height, area-perimeter and local adjustments;
- (e) using the appropriate current cost regression factor to adjust the costs to the 1983 level; and

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(f)applying 5 percent physical depreciation as done by the Taxpayers'  
appraiser.

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If the taxes have been paid, the amount paid on the value in excess of \$189,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Glenn E. Shaw, Representative for the Taxpayers; and Chairman, Selectmen of Plymouth.

Dated: April 22, 1992

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Valerie B. Lanigan, Clerk

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