

Leo LaFlamme and Sharon E. Tetreault

v.

Town of Plaistow

Docket No.: 7414-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$715,700 (land, \$235,050; buildings, \$480,650) on 1.33 acres with a 2-story 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 disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the building was under construction in April, 1989 and evidence submitted as an exhibit shows that it was only 30 percent complete;
- (2) the Town has assessed the building as being 75 percent complete;
- (3) besides the \$250,000 loan advanced for construction and payment of the existing

mortgage, the Taxpayers spent approximately \$11,000 to finish closing the building in prior to the winter of 1988-89; and

(4) the building should be assessed at \$213,200 which is based on the original construction loan less the mortgage pay off.

Leo LaFlamme and Sharon E. Tetreault

v. Town of Plaistow

Docket No.: 7414-89

Page 3

The Town argued the assessment was proper because:

- (1) between 1989 and 1990 there was a house on the Property that was removed;
and
- (2) at a September 7, 1989 conversation with the Taxpayer and the building inspector, the Town was advised that the building was 75 percent complete as of April 1, 1989; the Town appraised it as being only 65 percent complete.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$475,050 (land \$235,050 and building \$240,000). This assessment is ordered because:

- 1) the photographic evidence and financial records clearly show that as of April 1, 1989 the building was a completely enclosed shell with no basement floor, no insulation, no plumbing, heating or wiring and no interior finish;
- 2) based on the physical completion and the financial records, the building was about 35% complete; and
- 3) applying the 35% complete factor to the Town's estimated total replacement cost of \$685,750 results in a reasonable estimate of the building's contributory value of \$240,000 for April 1, 1989.

If the taxes have been paid, the amount paid on the value in excess of \$475,050 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

Paul B. Franklin, Member

Leo LaFlamme and Sharon E. Tetreault

v. Town of Plaistow

Docket No.: 7414-89

Page 4

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Representative for the Taxpayers; and Chairman, Selectmen of Plaistow.

Dated: September 8, 1992

Melanie J. Ekstrom, Deputy Clerk

0007