

Donald and Raymond Baron

v.

Town of Plaistow

Docket Nos.: 8371-90 and 11637-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" assessments as follows.

Tax Year 1990

\$1,607,950 on Lot 4D, a condominium warehouse (Warehouse); and

\$1,262,050 (land \$444,900; buildings \$817,150) on Lot 10, a 1.31-acre lot with a retail store and warehouse (Retail Building).

Tax Year 1991

\$1,519,850 on the Warehouse; and

\$1,262,050 (land \$444,900; buildings \$817,150) on the Retail Building.

For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); 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 assessments on the Warehouse were excessive because:

- (1) based on a submitted report, the Warehouse was worth approximately \$1,250,000 on April 1, 1990;
- (2) the lot has limited frontage and is set back from the road; and
- (3) lots on Railroad Avenue were assessed at \$600/front foot while this lot was assessed at \$1,500/front foot;

The Taxpayers argued the assessments on the Retail Building were excessive because:

- (1) there were errors on the property-record cards as shown on the submitted and highlighted card; and
- (2) the correct assessment should be \$1,186,500 (\$392,650 land; \$793,850 building).

The Town argued the assessments on the Warehouse were proper because:

- (1) the Railroad Avenue land is not in the same type of area as the subject lot because Railroad Avenue development is not similar to the subject area--the subject lot being more valuable for commercial use; and
- (2) the assessment was arrived at using the cost approach, which was used throughout the Town.

The Town argued the assessment on the Retail Building was proper because:

- (1) the Town agreed the building assessment should be as stated by the Taxpayers;
- (2) the lot is fully developed thus no undeveloped factor or excess frontage should be given; and
- (3) the assessment was arrived at using the cost approach, which was used throughout the Town.

Board's Rulings

Based on the evidence, we find the correct assessment for 1990 and 1991 on the Warehouse should be \$1,397,250. This assessment is ordered for the following

reasons.

(1) The wetland base rate and adjustment factor should be corrected to \$20,000 and .1 respectively.

(2) Based on the evidence, the board's experience and the board's decision in Docket No. 5185-88 (Donald and Raymond Baron v. Town of Plaistow), the 3-acre site-value should be reduced by 10% for the limited frontage of the Property. These adjustments result in a total land value of both the Baron and Weiner interests of \$1,013,550 calculated as follows.

3-acre site-value	\$980,100	x	.90	=	\$882,100
5 acres rear land	x	\$20,000	x	.6	= \$ 60,000
3.54 acres (wetland)	x	\$20,000	x	.10	= \$ 7,100
paving					\$ 43,850
well					\$ 2,500
septic					<u>\$ 18,000</u>
					\$1,013,550

(3) The Town listed the Warehouse section of the Property as average steel construction, but the Town apparently when calculating the replacement costs, used the good quality square foot price.

(4) Using the same manual as used by the Town during the reassessment and for the other sections of the building, the proper base square-foot price for an average steel warehouse is \$16.04. Applying the same various adjustments as utilized by the Town in its original calculation, the correct total replacement cost, less depreciation is \$2,394,385.

(5) Applying the .41 factor for the Taxpayers' interest in the total Property to the new correct land value and building value results in the proper assessment of \$1,397,160 (land; \$1,013,550, building; \$2,394,385 = \$3,407,935 x .41).

(6) The board reviewed, but gave little weight, to the Taxpayers' agent's income and market approaches to value because several of the key adjustments and or factors were unsubstantiated or not shown to be based on relevant market data.

The board finds the correct assessment for 1990 and 1991 on the Retail Building should be \$1,238,750 (land \$444,900; building \$793,850). This assessment is ordered for the following reasons.

(1) The Town's building cost: a) included a section that had been torn down before the April 1 assessment date; and b) included an incorrect measurement as shown on the Taxpayers' exhibit 3.

(2) The board does not accept the Taxpayers' asserted recalculations of the land. The board finds the Taxpayers did not show how any asserted error in following the standard land table resulted in overassessment. The board finds the Retail Building's location on a corner lot with assessments on both Wentworth Avenue and Route 125, enhances the lot's value -- a factor not reflected in the land assessment.

If the taxes have been paid, the amount paid on the value in excess of \$2,636,000 (Warehouse -- \$1,397,250; and Retail -- \$1,238,750) shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

The board denies the Taxpayers' request for reimbursement of filing fees pursuant to RSA 76:17-b. The board finds that while some of the appeal was based on an error as provided for in RSA 76:17-b, some of the basis for the abatement was judgmental. Thus, even if the Town had made the corrections for the wetland and the Warehouse square footage price, the appeal would still have been necessitated for the balance of the reasons for the abatement.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing

motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter of Northeast Property Tax Consultants, Agent for Donald and Raymond Baron, Taxpayers; and Chairman, Selectmen of Plaistow.

Dated: April 6, 1994

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Valerie B. Lanigan, Clerk

Donald & Raymond Baron

v.

Town of Plaistow

Docket No.: 08371-90PT

ORDER

On July 11, 1994 the Taxpayers' "Agent" filed a motion for enforcement of the board's decision of April 6, 1994 stating that the Town had incorrectly applied the interest on the abatement and had not calculated it to the date of refund. The board held a hearing on the motion for enforcement on July 11, 1994. On August 16, 1994 the Agent informed the board that the appropriate interest had been paid by the Town. Therefore, the board considers this matter closed.

If there are any outstanding issues to be addressed by the board, the parties must notify the board, in writing, with specificity, within ten (10) days of the date of this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Baron v. Town of Plaistow
Docket No.: 8371-90PT

CERTIFICATION

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

Dated: December 6, 1994

Valerie B. Lanigan, Clerk

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