

Edward F. Weiner

v.

Town of Plaistow

Docket Nos.: 9064-90 and 11718-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessment of \$2,313,850 on an 11.54-acre lot with a commercial condominium containing a retail showroom, offices, and a warehouse (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) an appraisal using the market and income approaches estimated the market value at \$1,796,600 and \$1,862,200 respectively;
- (2) the Town used an incorrect replacement cost for the warehouse section;
- (3) the Town used lower front-foot prices on nearby properties;
- (4) the wetland in the rear of the Property was assessed higher than other similar wetland in Plaistow; and

(5) the site value was assessed based on the front-foot price for Rte. 125 without applying any excess frontage or undeveloped adjustments.

The Town agreed that the wetlands base rate should be reduced to \$20,000 and the adjustment of the 90% reduction for quality of land should be applied to make it consistent with other properties in the area. The Town then argued that the assessment adjusted for the wetlands was proper because:

(1) the Taxpayer's comparables supporting a lower front-foot price were not applicable to the Property because the comparables were less visible and less accessible than the Property; and

(2) the Taxpayer acquired a mortgage in 1992 for \$1,800,000 which was presumably based on an appraisal for at least that amount.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$2,010,700.

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 official notice of 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 .59 factor for Weiner's interest in the total Property to the new correct land value and building value result in the proper assessment of \$2,010,700 (land; \$1,013,550, building; \$2,394,385 = \$3,407,935 x .59).

(6) The board reviewed, but gave little weight, to the Taxpayer's 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 denies the Taxpayer's 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 necessary for the balance of the reasons for the abatement.

If the taxes have been paid, the amount paid on the value in excess of \$2,010,700 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.

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

Paul B. Franklin, 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, Edward F. Weiner, Taxpayer; and Chairman, Selectmen of Plaistow.

Dated: April 13, 1994

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Valerie B. Lanigan, Clerk

Edward F. Winer

v.

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ORDER

On June 18, 1994 the Taxpayer's "Agent" filed a motion for enforcement of the board's decision of April 13, 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, 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

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, representative for Edward F. Winer, Taxpayer; and Chairman, Selectmen of Plaistow.

Dated: December 6, 1994

Valerie B. Lanigan, Clerk

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