

Susan J. Klements/  
Susan J. Klements Family Trust

v.

Town of Plaistow

Docket No.: 9341-90

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$885,050 (land \$380,100; buildings \$504,950) on a 3.06-acre lot with a commercial building containing retail stores (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 the burden of proof.

The Taxpayer argued the assessment was excessive because:

- (1) an appraisal estimated the market value by the market and income approach at \$616,300 and \$550,500 respectively;
- (2) the Town did not apply the proper adjustments to the land calculation;
- (3) the Town assessed all the building area as retail but 2625 square feet is actually used as a service garage;

(4) the basement adds little value to the Property; a similar basement in an adjoining property received a 50% functional depreciation; and

(5) other nearby property had a lower rear acre base price used in the assessment.

The Town acknowledged that an adjustment for the service garage area and the basement area should be made.

The Town argued the assessment, after adjustments, was proper because:

(1) comparable sales support the adjusted assessment; and

(2) the Property was assessed by the same methodology as similar property in town.

#### Board's Rulings

Based on the evidence, we find the correct assessment should be \$844,000 (land \$363,500; building \$480,500). This assessment is ordered because the board finds a -10% adjustment should be made to the basement (\$30,250 - \$3,025 = \$27,225). The rear acreage base price is reduced to \$20,000 per acre. A portion of the retail area is adjusted to service garage (\$75,125). basement

\$ 27,225

retail            \$378,169

service garage    \$ 75,125

**\$480,500** buildings

\$363,500 land

**\$844,000 Total**

The board denies the Taxpayer's request for costs based on "some of the evidence is straight forward mechanical errors." The board finds enough issues of "reasonable judgement" to require a hearing, notwithstanding certain factual errors.

If the taxes have been paid, the amount paid on the value in excess of \$844,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 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.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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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, Agent for Susan J. Klements, Taxpayer; and Chairman, Selectmen of Plaistow.

Dated: February 11, 1994

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Valerie B. Lanigan, Clerk

Susan J. Klements Family Trust

v.

Town of Plaistow

Docket No.: 9341-90PT

**ORDER**

On July 9, 1994 the Taxpayer's "Agent" filed a motion for enforcement of the board's decision of February 11, 1994 stating the Town had incorrectly applied the interest on the abatement, had not calculated interest to the date of refund and further, did not issue an abatement or refund for 1992 or 1993. 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 owed 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.

Docket No.: 9341-90PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing order was mailed this date, postage prepaid, to the Mark Lutter, representative for Susan J. Klements Family Trust, Taxpayer; and Chairman, Board of Selectmen of Plaistow.

Dated: December 6, 1994

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Valerie B. Lanigan, Clerk

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