

Westville Enterprise, Inc.

v.

Town of Plaistow

Docket Nos.: 9463-90 and 11540-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$1,022,400 (land \$689,000; buildings \$333,400) and 1991 assessment of \$746,150 (land \$379,650; building \$366,500) on a 5.5-acre lot with a commercial building containing a market, an apartment, and a retail store (the Property). For the reasons stated below, the appeals for abatement are granted.

The Taxpayer has the burden of showing the assessments were 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 assessments were excessive because:

- (1) a portion of the lot was taken by eminent domain before April 1, 1990, which split the lot;
- (2) an May 10, 1990 appraisal estimated a land value of \$210,000;
- (3) the Town assessed the land at \$150,000/acre;
- (4) the buildings were over assessed due to contamination from a leaking gas tank which has affected the use, expansion and value of the Property; and

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(5) the Property was worth approximately \$550,000 on April 1, 1990, and April 1, 1991.

The Town initially argued the assessment was proper because:

(1) it was calculated using the cost approach, which was the methodology used throughout the Town; and

(2) the land assessment was consistent with other land assessments on similar properties. Under board questioning, the Town admitted the 1990 land assessment should have been reduced to the 1991 assessment because the land was taken by the state before April 1, 1990. The Town also admitted no adjustment was made for the contamination, but a 30% reduction would be appropriate.

Board's Rulings

Based on the evidence, we find the correct assessment should be 1990 -- \$499,135 (land \$265,755; building \$233,380) and 1991 -- \$522,305 (land \$265,755; building \$256,550). This assessment is ordered because the Town should have adjusted the 1990 assessment to reflect the loss of land area due to the state's taking, and both assessments should have been reduced by 30% due to the contamination.

If the taxes have been paid, the amount paid on the value in excess of \$499,135 -- 1990 and \$522,305 -- 1991 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

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reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Westville Enterprise, Inc., Taxpayer; and Chairman, Selectmen of Plaistow.

Dated: January 24, 1994

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Valerie B. Lanigan, Clerk