

Fleet Bank - NH

v.

Town of Plaistow

Docket No.: 11537-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

Map 60-2/Lot 24 - \$49,800 (land only) on a .73 acre lot;

Map 60-2/Lot 25 - \$399,700 (land \$109,900; buildings \$289,800) on a warehouse and retail store on a 1.5 acre lot; and

Map 60-2/Lot 26 - \$4,100 (land only) on a .75 acre lot (the Property). For the reasons stated below, the appeal for abatement is 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 its burden and proved disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) there are four buildings on the Property which was used for light industrial manufacturing (a grandfathered use in a residential zone);

- (2) the Property was appraised by Frank Bredice in October 1990 for \$350,000 and again in December 1991 for \$185,000;
- (3) the Property was vacant for two years at the time of the December 1991 appraisal and is still vacant; the grandfathered rights ceased when the Property became vacant and now requires zoning board approval to regain its industrial use;
- (4) the roof on the metal manufacturing building was in poor condition and collapsed in late 1991;
- (5) the Property sold in 1992 for \$75,000;
- (6) the Town assessed the Property at \$188,950 in 1992; and
- (7) an assessment of \$250,000 (1992 assessment equalized for 1991) is proper.

The Town argued the assessments were proper because:

- (1) the same front foot price was used throughout different areas on Main Street;
- (2) Marshall and Swift cost manual was used for all properties in the Town;
- (3) the Town adjusted the value of the Property in 1992 due to the collapse of the metal building; and
- (4) the assessment is appropriate.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$415,800. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee,

existing assessment process allocates the total value between land and buildings. The board has not allocated the value between land and buildings, and the Town shall make this allocation in accordance with its assessing practices. This assessment is ordered based on the following:

- 1) the October 1990 and December 1991 Bredice appraisals;
- 2) the overall change in the market as determined by the equalization ratios for tax years 1990 and 1991; and
- 3) the 1992 assessment.

Neither party challenged the department of revenue administration's (DRA) equalization ratio of 135% for the 1991 tax year for the Town of Plaistow. The 1990 ratio was 103%. This calculates to an overall change in the market in the Town of Plaistow of -24% from April 1990 to April 1991 or -2% per month. The board has reviewed the two Bredice appraisal reports and finds them to be the best evidence of value for the Property. The board further finds that the reports support the ratio change as determined by DRA. Mr. Bredice's November 1990 estimate of fair market value was \$350,000. His estimate of the fair market value as of December 1991 was \$185,000 or an approximate 47% adjustment for the 26 month period between the two appraisals. The board finds the appraiser prepared a thorough market analysis of the Property and has determined the proper assessment by applying the indicated ratio change from October 1990 to the date of assessment, April 1991. The change indicated is -12% for the 6 month period for a fair market value as of April 1991 of \$308,000 and a proper assessed value of \$415,800 ($\$308,000 \times 1.35$).

The board also notes that the Town did a general update in 1992 and the

assessment was revised to \$188,950 which is further support that property values had decreased. The board does not agree with the Taxpayer, however, that the 1992 assessment equalized at the 1991 ratio is proper because the Taxpayer's appraiser did a thorough review and analysis of the Property, its condition and the market on two separate occasions and the board finds this evidence to be the best evidence presented.

If the taxes have been paid, the amount paid on the value in excess of \$415,800 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. This assessment applies only to tax year 1991 because the Town did a general update for tax year 1992.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 in 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John M. O'Connor, representative for the Taxpayer; and Chairman, Board of Selectmen of Plaistow.

Dated: July 11, 1995

Valerie B. Lanigan, Clerk

0006