

**Moore Falls Corp.**

**v.**

**Town of Plaistow**

**Docket No.: 11686-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$2,923,650 (land \$976,750; buildings \$1,946,900) on a 25.2-acre lot with 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 and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the only access to the Property is a 40-foot access on Railroad Avenue, which is a long, narrow road with a predominance of residential properties. Just off Route 125, the location is poor and the visibility is almost non-existent from the highway;

(2) there is no access from the Cross Street frontage, which is along the 19-acre portion of the site that is low and wet;

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(3) the mill plant was built for production of modular homes, is unheated and has no interior finish; the overall condition of the improvements are fair to average;

(4) it is impossible to get a tractor-trailer truck in between the main plant and the railroad lines;

(5) a June 1990 appraisal estimated the fair market value to be \$760,000;

(6) the Property was purchased from a sister corporation in July 1990 for \$760,000;

(7) the subject had groundwater contamination from 5 fuel tanks on the site and the cleanup, which began late in 1991 (sign-off in 1994), cost over \$300,000; and

(8) a February 1993 appraisal estimated the fair market value to be \$510,000.

The Town argued the assessment was proper because:

(1) the land is adjacent to the Boston and Maine Railroad in an industrial zone, which parallels the New Hampshire and Massachusetts line;

(2) the industrial zone abuts the commercial zone that extends to a major roadway (Rte. 125); and

(3) the topography is level for the 7.29-acre industrial site and the balance of 17.19 acres is wet.

The board's inspector inspected the Property, reviewed the assessment-record card, the appraisals, and the parties' briefs and filed a report with the board (copy enclosed). This report concluded the Property would fall in a value range of \$692,000 to \$1,280,000. This range translates into an

equalized assessed value of \$934,200 to \$1,728,000 (as adjusted by the 1991

equalization ratio of 135%). Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$1,215,000. The board finds a fair market value of \$1,200,000 as of April 1991 minus an adjustment for the clean-up costs of \$300,000 or \$900,000. 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, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.

The board has thoroughly reviewed all of the evidence presented in this case and concurs with its inspector that due to the uniqueness of the location and configuration of the Property, it is a challenge to determine an appropriate value. The board notes that the parties requested our decision be withheld in the hopes that the Town and Taxpayer could reach an equitable settlement. However, the parties were not able to come to terms and asked the board to issue its decision.

This assessment is ordered for the following reasons.

1) The board finds the \$760,000 purchase price paid by the Taxpayer was not an arm's-length transaction since it was purchased from a sister company.

Although the purchase price was determined by a June 1990 appraisal by Brian Finnegan, the board again concurs with its inspector and finds that the appraiser used a very high amount of depreciation in his cost approach, a wide range of sizes and selling prices per-square-foot in the sales comparison approach, and gave most weight to the income approach with a high vacancy adjustment. Further, it was common knowledge to Moore's Falls Corporation that the Property had environmental problems because the contamination was first documented and was visible in late 1989 or early 1990. Therefore, one must assume that Moore's Falls Corporation paid significantly less for the Property given the fact that they would have to incur clean-up costs.

2) The Town reduced the 1992 assessment significantly. The 1991 equalized assessment was \$2,165,667 ( $\$2,923,650 \div 1.35$ ) and the 1992 equalized assessment was \$1,410,150 (1992 equalization ratio of 100%). Quite frankly, the board finds it difficult to understand how the Town could defend the 1991 assessment given the reductions made in 1992 without recommending some sort of an adjustment for 1991. Further, the Town did not consider any reduction in value for the contamination or clean-up costs.

3) The Hinkle appraisal was given little weight because it was prepared almost 2 years after the date of assessment (February 1993), made considerable location adjustments in the sales comparison approach, and although the appraiser was aware of the contamination on the Property, he chose to appraise it as if it were free and clear of hazardous materials.

4) The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the Taxpayer paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). Based on its judgment and expertise, the board has determined that a fair market value of \$1,200,000 is appropriate as of April 1991. This value must be reduced by the cost to clean up the contamination, which was in the amount of \$300,000. The board, therefore, finds the market value as of April 1991 to be \$900,000 for a proper assessment of \$1,215,000.

If the taxes have been paid, the amount paid on the value in excess of \$1,215,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1992, 1993 and 1994. 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur H. Richter, Agent for Moore's Falls Corp., Taxpayer; Chairman, Board of Selectmen of Plaistow; and Sumner F. Kalman, Esq., counsel for the Town of Plaistow.

Dated: October 13, 1995

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Valerie B. Lanigan, Clerk