

Hancock Cash Market

v.

Town of Hancock

Docket Nos. 5608-88, 6785-89, and 8592-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$151,200 (land, \$69,600; buildings, \$82,200) on a grandfathered commercial building in a residential zone, being a small market (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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved it was disproportionally taxed.

The Taxpayer argued the assessment was excessive because:

1) the Town adjusted the 1987 land assessment without adjusting other land values on similar properties;

2) a "tax-abatement analysis" demonstrated the Property's land assessment was excessive; and

3) as a grandfathered use, assessing the land as commercial was erroneous.

The Town argued the assessment was proper because:

- 1) viewed as a whole, the Property was fairly assessed; and
- 2) the grandfathered commercial use makes this a valuable property.

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. Based on the evidence, we find the correct assessment should be \$136,250 (land \$54,050 and building \$82,200). While the Property's use is grandfathered, preventing expansion of the use, the market would value the Property as a commercial property, not as a residential property. Therefore, the Town was correct in assessing the Property as a commercial property.

However, the board concludes the Property's land value must be adjusted for the right-of-way that substantially and adversely affects the Property's value. Therefore, the board has given the land a total adjustment of 25 percent. We have recalculated the land as follows:

$\$2.39$ (unit price) \times 1.20 (influence factor) \times 2.50 (condition factor)
= $\$7.17$ /square foot (adjusted unit price) \times $10,049$ square feet = $\$72,050$ times
75 percent = $54,037$.

If the taxes have been paid, the amount paid on the value in excess of $\$136,250$ shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Date: October 7, 1991

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Michael E. Cass, President, representing the Taxpayer, and to the Chairman, Board of Selectmen, Town of Hancock.

Brenda L. Tibbetts, Clerk

Date: October 7, 1991

1002 and 0009