

**Newport Shopping Plaza Associates**

**v.**

**Town of Newport**

**Docket No. 5723-88**

**DECISION**

Newport Shopping Plaza Associates (the Taxpayer) appeals, pursuant to RSA 76:16-a, the Town of Newport's (the Town) 1988 assessment of two parcels: 1) map 55, lot 1237--a 1.3 acre site with a 36,485 square-foot shopping center assessed at \$1,024,400.00 (land \$117,400.00 and buildings \$907,000.00); and 2) map 55, lot 477--a 3.93 acre site with a 7,272 square-foot shopping center assessed at \$279,000.00 (land \$84,300.00 and buildings \$194,700.00). (The term the "Property" shall refer to both lots, and the lots shall be individually referred to as "Lot 1237" and "Lot 477.") The Property's total assessment was \$1,303,400.00 (land \$201,700.00 and buildings \$1,101,700,600.00).

A hearing was held on September 6, 1990. The Taxpayer, a partnership, was represented by William C. Greene, a general partner, Wesley J. Ewell, a consultant, and Andrew G. Lemay, an appraiser. The Town was represented by George W. Hildum, an appraiser with Avitar Associates of New England, Inc., the firm that performed the municipal-wide revaluation for the 1988 tax year. Neither party challenged the 100% equalization rate set by the department of revenue administration for the 1988 tax year. For the reasons stated below, the Taxpayer has been granted an abatement.

The Taxpayer argued the Town erred: 1) in using economic rent and not actual rent in calculating the income available from the Property; 2) in determining the replacement costs of the buildings, especially in setting the depreciation percentages; 3) in valuing the paving, especially as compared to a nearby property; and 4) in valuing the outbuildings.

**Economic Rents Versus Actual Rent**

The Taxpayer focussed its argument on the Town's use of economic rents rather than the actual rents being paid by the tenants at the Property. The Taxpayer presented evidence of the long-term and low-rent nature of the tenancies. The Town argued its valuation was supported by the income approach using economic rent. The Town also presented evidence to support the economic rents it used. The actual rents averaged \$3.30 per square foot (s.f.) while the economic rents were \$6.00 per s.f. for units under 2,500 s.f. and \$4.00 per s.f. for units over 5,000 s.f.

In assessing property values, economic rent, not the actual rent, will be used unless the taxpayer demonstrates that the actual rent is consistent with market rent or is more accurate reflection of market rent than economic rent. E.g., Coliseum Vickerry Realty Co., Trust v. City of Nashua, 126 N.H. 368, 369-70 (1985). This rule emanates from Gowen v. Swain, 90 N.H. 383, 387-88 (1939), in which the court eloquently stated that a taxpayer who executes a long-term lease for one dollar rent per year cannot claim the property should be assessed based on rent of one dollar a year. For assessing purposes, the question is what is the property's true value, not what is the property's value when badly managed or where changes in the economy decrease the profitability of leases. See Demoulas v. Town of Salem, 116 N.H. 775, 782 (1976).

The Taxpayer did not present sufficient evidence to refute the Town's economic rents. Rather, the Taxpayer only argued the actual rents should be used. Given the rule of law stated above and the Taxpayer's failure to challenge the Town's economic rents, we find the economic rents were properly used to support the assessments.

The assessments, however, have other errors, some of which could have used to refute the correlation between the economic rents and the actual rents.

This was not done. Nonetheless, the Taxpayer did raise these errors, and we are obligated to review these errors. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 800-01 (1986); Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). Because of the errors to be discussed, we find the assessments must be reduced.

**Functional Depreciation**

The Taxpayer challenged the functional utility of Lot 1237's largest unit--a 12,000 s.f. unit being used as a bowling alley (the Alley Unit). The Taxpayer testified that the configuration of the Alley Unit was not attractive to major tenants because there is only a small amount of store frontage as compared to a substantial amount of space in the back of the unit. The Taxpayer testified that chain stores, and other tenants with large space needs, want large storefronts to attract customers. Given the disproportionate amount of backspace to storefront, the Taxpayer testified the Alley Unit was not as valuable as it would be with more store frontage.

The assessment card did not reflect this functional deficiency. The card included 21% physical depreciation but no functional depreciation. This was an error. The Alley Unit comprises 12,000 s.f. of the 36,485 total s.f. of Lot 1237 or 33 % of the total s.f. Dividing the Lot 1237's building assessment (\$792,900) by 33%, the value attributed to the Alley Unit would be \$261,657.00.

Based on our review of the record, including the Taxpayer's unrefuted testimony, we conclude the Alley Unit should have received functional depreciation of 25 %. This additional depreciation reduces the assessment attributable to the Alley Unit by \$65,414.00, leaving a revised assessment for the building on Lot 1237 at \$727,486.00.

**The Paving**

The City assessed the Property's paving at \$44,363.00 (Lot 1237--\$31,200 and Lot 477--\$13,163). The City arrived at this assessment by using a replacement cost figure and then applying a condition factor to reflect the actual condition of the paving as compared to new paving.

The Taxpayer submitted photographs of the Property's paving, and the Taxpayer compared the condition factor used on the Property (1.20 and 1.30) with the factor used on the adjacent McDonald's property (1.35). The City admitted the McDonald's paving was in better condition than the Property's paving. Furthermore, the board's inspector reported that the cost factor used by the City was accurate, but the City's condition factor for the Property was inaccurate.

Based on this, we find the City applied the wrong condition factor to the Property's paving. The paving therefore shall be assessed as follows:

**Lot 1237** 40,000 s.f. x .65 = \$26,000.00  
less 40% physical depreciation  
Value of paving = \$15,600.00

**Lot 477** 15,000 s.f. x .65 = \$9,750.00  
less 40% physical depreciation  
Value of paving = \$ 5,850.00

Total = \$ 21,450.00

Reduction in assessment = \$ 22,913.00

**The Additional Buildings**

The City assessed the Taxpayer \$18,701.00 for two garages ("Garage A"--\$7,096.00, the blue garage, and "Garage B"--\$10,725.00, the brown garage) and a shed (\$880.00). The Taxpayer challenged these assessments and submitted photographs of the additional buildings. Additionally, the board's inspector inspected the outbuildings and recommended a change in their assessment. Based on the review of the record, we find that there should be no adjustment to Garage A, but adjustments should be made to the shed and Garage B. Photographs of the shed support the conclusion that the shed has only a nominal value of \$100.00.

Likewise, the photographs and the Taxpayer's testimony, which was reviewed, indicated that Garage B is in bad repair. In revising the assessment on Garage B, two approaches could be taken: 1) treat the garage as shed, which would be supported by the evidence; or 2) increase the amount of depreciation on Garage B. No evidence was presented about the proper rate to be used if this garage were assessed as a shed. Therefore, we will treat the building as a garage.

From the testimony and the photographs, it is clear that Garage B is both physically in poor shape and functionally deficient. Thus, Garage B should have been depreciated at 80%. Applying this depreciation rate to the City's assessment, we find \$3,064.00 to be the proper assessment for Garage B.



**Summary**

In summary, the following assessments shall be used for the 1988 tax year:

**Lot 1237**

Land	\$117,400.00
Building	\$727,486.00
Extras	
freezer	\$ 6,601.00
garage	\$ 7,096.00
garage	\$ 3,064.00
shed	\$ 100.00
paving	\$ 15,600.00
TOTAL	\$877,347.00

**Lot 477**

Land	\$ 84,300.00
Building	\$181,500.00
Extras	\$ 5,850.00
TOTAL	\$271,650.00

If taxes have been paid, the amount paid on the value in excess of \$880,953.00 for Lot 1237 and \$271,650.00 for Lot 477 shall be refunded to the Taxpayer with interest at six percent per annum from the date of payment of the tax to the date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Ignatius MacLellan, Member

Date: October 2, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Newport Shopping Plaza Associates, taxpayer; and Chairman, Selectmen of Newport.

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Michele E. LeBrun, Clerk

Date: October 2, 1990