

William F. Hopkins, Jr.

v.

Town of Northwood

Docket No.: 7230-89

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$198,550 (land, \$98,950; buildings, \$99,600) on his real estate known as the "Ridge General Store", consisting of the store building, shed and paving on a .72 acre lot on Rte. 4 and Ridge Road (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer[s] 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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the actual frontage by deed and survey is 82 feet not the 95 feet as assessed;
- (2) the property should receive the same adjustment for groundwater contamination from a leaking gasoline tank as other properties in the water

district despite it being a commercial property and the source of the contamination;

(3) the Property should receive some functional depreciation for the style of the building (it would be more expensive to renovate) and the town's refusal to accept the taxpayer's lessee's application to expand the commercial use to include a U-Haul drop-off site due to the taxpayer's additional paving without a site plan review; and

(4) the difficulty that any prospective buyer would have had in 1989 in obtaining financing due to the contamination issue.

The Town argued the assessment was proper because:

(1) the Taxpayer's corrected lot dimensions would actually lead to a higher land value due to triangulation of the frontage and an actual greater depth;

(2) the impact of the contamination on the commercial utility of the property was viewed as less than the contamination on residential uses;

(3) the limited residential sales of residential property in the contaminated or possibly contaminated areas showed no actual market recognition of the problem; and

(4) the Property was appraised for its actual use not some speculative or additional use.

We find the Taxpayer failed to prove the Property's assessment was disproportional.

There are two reasonable indications of market value in this case:

(1) The Taxpayer purchased the Property in February of 1987 for \$295,000 with

\$85,000 of the price allocated towards inventory, personal property and

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business value. Even if one agrees the \$85,000 is a conservative figure negotiated by the parties to provide them with some income tax advantage, the residual real estate value is still in the \$200,000 neighborhood.

The Taxpayer stated the purchase and sales agreement was already signed when the contamination was discovered and thus the purchase price was higher than if the problem had been known. The board finds that apparently both the Taxpayer and his lending institution must have been reasonably assured that the former oil company's cleanup operations were properly financed and the contamination problem would not interfere with the existing use of the property. Otherwise, the sale and/or financing of the property would not have occurred.

(2) The Taxpayer in 1988 leased the Property to a third party for 10 years with two subsequent five year options of renewal at an annual gross rent of \$30,000. The Taxpayer stated the lessee assumed all expenses except insurance and physical maintenance of the landlord improvements. Assuming a 10% reduction for those annual expenses and a capitalization rate of 12%, the indicated market value by the income approach is \$225,000 ( $\$30,000 \times .90 = \$27,000 / .12$ ). This lease is an excellent indication of what two individuals, the Taxpayer and lessee, felt the Property was worth in 1988 and 1989, even while the contamination issue and cleanup solutions were occurring.

Therefore, not only did the Taxpayer fail to present any market evidence that the contamination issue or any other contention raised by the Taxpayer

negatively affected market value, the market evidence that does exist for the Taxpayer's property supports the Town's contention of no negative effect.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William F. Hopkins, Jr., taxpayer; and the Chairman, Selectmen of Northwood.

Dated: April 28, 1992

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Valerie B. Lanigan, Clerk