

Paul and Margaret Phelan

v.

Town of Hollis

Docket No.: 9581-90

DECISION

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$135,500 (land \$54,200; buildings \$81,300) on Lot 11, a .63-acre lot with a house (the Property). The Taxpayers also own a vacant lot across the street from the Property known as Lot 35-001 and assessed at \$2,000. The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

1) the abutting lot went from a simple farm stand to a retail operation open seven days a week;

2) the operation of the abutting pie factory, including noise levels, delivery and supply traffic, garbage and debris, and commercial signs has a negative impact on the potential to sell the Property; and

3) to adequately address the negative impacts of the abutting parcel, the Property's assessment should be \$119,175.

The Taxpayers also made arguments for a lower assessment on their other lot. However, they did not appeal the lot, and thus, the board has no jurisdiction over it. Id.

The Town argued the assessment was proper because corrections were made to the assessment-record card, and the Property's assessment was reduced from \$158,900 to the current \$135,500 to address the pie factory.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$127,370 (land \$54,200; building \$73,170). The board orders this assessment because we concur with the Town's additional -10% adjustment for the adverse affect the pie factory has on the Property. However, the board concluded this adjustment should be made for the 1990 tax year and not just the 1991 tax year. The board's inspector, who reviewed the file, concurred with the board's conclusion that this -10% should be included in the 1990 tax year. The board did not accept the Taxpayers' argument that a -25% adjustment was warranted because they did not submit any data to support such an adjustment.

If the taxes have been paid, the amount paid on the value in excess of \$127,370 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul and Margaret Phelan, Taxpayers; and Chairman, Selectmen of Hollis.

Dated: April 20, 1993

Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order relates to the "Taxpayers'" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

Motion denied.

The board agreed some adjustment was warranted due to the abutters' operation. However, without evidence on value, the board could not make a further adjustment.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

Chairman

George Twigg, III,

MacLellan, Esq., Member

Ignatius

I certify that copies of the within Order have this date been mailed, postage prepaid, to Paul and Margaret Phelan; and Chairman, Selectmen of Hollis.

Lanigan, Clerk

Valerie B.

Date: May 13, 1993

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