

**Martin and Doris Kashulines**

**v.**

**Town of Hopkinton**

**Docket No.: 11520-91-PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of \$278,650 (land \$102,800; buildings \$175,850) on a .28-acre lot with a store known as The Cracker Barrel (the Property). The Taxpayers also own, but did not appeal, a 38-acre lot (36 acres are in current use) assessed at \$193,750. For the reasons stated below, the appeal for abatement is denied.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the building is an assemblage of several buildings and roofed over in the 1800's resulting in varying floor and ceiling heights;
- (2) the former apartment areas on the second floor are no longer functional and the space is used for storage and office space for the store;

(3) based on an opinion of value by R.J. Cutting, the Property is approximately overassessed by 20% and has a value of \$234,000;

(4) the majority of the overvaluation is contained in the land portion of the assessment; the front parking is very limited and is actually on the highway right of way; a right of way to a neighboring lot across the rear of the Property interferes with deliveries and additional parking;

(5) the front foot price used by the Town (\$900) was used only on one other commercial property in Town; the balance of the properties on Main St. have a front foot price of \$600;

(6) the commercial use of the lot does not enhance the front foot price by the 50% used by the Town; and

(7) the Town's convenience store comparables are generally in superior locations relative to traffic and commercial potential.

The Town argued the assessment was proper because:

(1) initially the Town used a commercial front foot price of twice the residential rate but on review reduced the rate to 150% of the residential price;

(2) the values in the Contoocook area of town were generally lower than the Hopkinton Village area of town;

(3) because the lot sizes nearer the Property were generally smaller, the front foot price was increased to result in a more consistent site value;

(4) the Cutting opinion of value essentially relied on the Town's assessment numbers and revised them without documentation;

(5) Cutting's building measurements and current cost multiplier are incorrect;

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(6) sales of convenience stores in other towns in the state support the assessment;

and

(7) the Property is the only convenience store in the general area.

Subsequent to the hearing the board viewed the Property.

#### Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The Property is unique because it is the only store in the Hopkinton Village area and because it is made up of a conglomeration of building components assembled over many years. Because of its uniqueness, there is a dearth of market data comparable to the Property. The board finds, however, the Town made reasonable assumptions in arriving at the \$900 front foot price for the Property. Both the relative values of commercial and residential properties in the Contoocook portion of Town and the general relationship of commercial and residential values support the Town's estimate of a 50% higher value for the commercial nature of the Property.

The parking limitations as testified to by the Taxpayer are real, however, they are not unusual for this type of property. The board on its view noted that in addition to the area in front of the store, there was room for parking on the South Street side of the store and on the opposite side of South Street. While two of these areas (in front of the store and on the other side of South Street) are not on the Taxpayer's property, their existence and utility enhance the value of the Property. The board

also finds

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the Town's 5% adjustment for the right-of-way on the rear of the lot is reasonable based on the relatively minimal interference with the use of the Property as a whole.

The board finds the Town's evidence, as to the dimensions of the building, to be the best evidence submitted. The Town testified that they had double checked the measurements and, in fact the differences that do exist were so minimal so as to be insignificant. Further, upon review of Marshall Valuation Service, the board finds the Town's current cost multipliers to be correct. The board also finds the Town's physical and functional depreciations for the various portions of the buildings to be reasonable based on the board's view.

While neither party submitted any evidence of value by the income approach, the board notes the Property, despite all its physical and functional problems, is in a good location and does appear to generate reasonable trade, both which are factors that would positively influence the Property's value.

The Taxpayer stated that the Property's lack of expansion potential limited its value. The board agrees that there is very limited expansion potential. However, the offsetting factors of location and exclusivity support the Town's total assessed value.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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

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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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Martin and Doris Kashulines, Taxpayers; Mary E. Pinkham-Langer, Agent for Town of Hopkinton; and the Chairman, Selectmen of Hopkinton.

Dated: December 29, 1994

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Valerie B. Lanigan, 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

**Certification**

I certify that copies of the foregoing Order have this date been mailed, postage prepaid, to Martin & Doris Kashulines, Taxpayers; Mary E. Pinkham-Langer, Department of Revenue Administration; and Chairman, Selectmen of Hopkinton.

Dated: February 2, 1995

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Valerie B. Lanigan, Clerk

