

VSH Realty

v.

Town of Ashland

Docket No.: 12064-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$80,050 (land \$31,100; buildings \$48,950) on a convenience store (the Property). The Taxpayer 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 denied.

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

The Taxpayer argued the assessment was excessive because:

(1) the land assessment was based on 12,444 square feet and the Town's map listed the Property with 12,660 square feet, yet the Property has only 10,080 square feet;

(2) the Town purchased part of the lot in 1936 for widening the highway, yet the Town's maps were never corrected, i.e., the land was assessed with 100 feet of frontage on Pleasant Street, yet the frontage was only 98.6 feet before the highway taking;

(3) the Taxpayer's site plan, which is consistent with the highway site plan, shows the Property has a rounded corner at the Main and Pleasant Street intersection, yet the assessor's map shows a pointed corner;

(4) the Town assessed the Taxpayer's shared border with Lots 10 and 12 incorrectly, i.e., the Property was assessed with a 104-foot shared border with Lot 12, yet Lot 12 was assessed with a 100-foot border, and the Property was assessed with a 98-foot border with Lot 10, but Lot 10 was assessed with an 82-foot border; and

(5) the information from the abutting properties supports the Property's 10,080 square-foot area.

The Town argued the assessment was proper because the highway map does not show the Property's entire lot and the deed does not provide adequate information to warrant changing the Town's maps -- a registered survey is needed in order to change the maps.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

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Board's Rulings

The board finds the evidence submitted by the Taxpayer relative to the size of the lot reasonably supports the conclusion that the lot more closely approximates 10,000 square feet than the 12,444 square feet as used in the calculation of the land value by the Town. Ideally, such a determination could be made by a registered land-surveyor's survey of the Property. However, given the collective evidence submitted by the Taxpayer (the site plan, the several deeds, the copy of the 1937 highway plan, and the Taxpayer's photograph) it is reasonable to find the size of the lot is smaller than that used in the assessment calculation.

However, such a finding does not necessarily lead to a ruling of disproportionate assessment for the following reasons.

- 1) It appears as if the Town used a square-footage methodology on commercial properties (\$2.25 per-square-foot) with no adjustment for size.
- 2) This methodology does not necessarily follow the market and the straight-line application of \$2.25 per-square-foot could result in some properties being overassessed and some properties being underassessed. A reduction of approximately 2,500 square feet in this lot may reduce the Property's market value but definitely not in a straight-line relationship. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

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3) Even if the reduction in the size of the lot would result in a lower value for that component of the Taxpayer's Property, the Taxpayer did not show that the Property as a whole was disproportionately assessed. Edes v. Boardman, 58 N.H. 580, 588-589 (1879) (determining a taxpayer's share of the common tax burden is not determined by technical rules and an innocuous error on one portion of their estate does not necessarily prove disproportionate assessment of the whole where there could exist an offsetting undervaluation on another component).

4) The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

5) The board notes that the assessed value of \$80,050, if equalized by the Town's 1991 ratio of 50%, would indicate a market value of \$160,100; based on the review of the assessment-record card and photographs submitted, this market value does not appear to be unreasonable given the Property's location and commercial utility.

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

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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

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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 Mark Lutter, Northeast Property Tax Consultants, agent for VSH Realty, Taxpayer; and the Chairman, Selectmen of Ashland.

Dated: February 14, 1994

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Lynn M. Wheeler, Deputy Clerk