

**Pattee-Ann Nowell**

**v.**

**Town of Hillsborough**

**Docket No.: 22110-05PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2005 assessment of \$550,900 (land \$189,600; building \$361,300) on Map 10/Lot 45, a restaurant/convenience store and dwelling on a 3.4-acre lot (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality.

Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the site value has a condition factor of 250 different from other similar commercial or mixed use properties that are in better locations and with flatter, more usable land;

- (2) the Property is in the Rural District zone on Rt. 9 beyond the Village Residential and Commercial Districts of the Hillsborough Lower Village;
- (3) the dwelling, the convenience store and the restaurant use the same well;
- (4) the dwelling is located behind the commercial uses on the Rt. 9 frontage and, at times, those uses interfere with the access to the dwelling;
- (5) because of the mixed uses of the Property, two attempts to obtain a home equity loan were denied;
- (6) there is a limited market for mixed use properties because of the commitment to running the business and the inconvenience to the enjoyment of the residence; this is evidenced by the “Corner Store” being on the market for a number of years; and
- (7) the Property could not be sold for the amount of the assessment, but rather has a value between \$438,400 and \$482,400 based on revising the site value to either one residential lot value (\$75,000) or one commercial lot value (\$106,000).

The Town argued the assessment was proper because:

- (1) the Property was abated from an assessed value of \$670,000 to \$550,900 by correcting a number of the features of the improvements and by revising the site value from the assessment of two commercial sites with a base rate of \$106,000 per site to a two acre rural residential site with a condition factor of 250 to reflect its mixed uses;
- (2) while in the Rural District, the Property is on the cusp of the commercial zone and has good exposure with its more than 1000 feet of frontage on Rt. 9; and
- (3) many of the comparables submitted by the Taxpayer are of properties located in the commercial zone which was assessed at the higher land base rate and thus no condition factor, similar to that applied to the Property, was applied to the comparables’ site values.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$494,700 (land, \$133,400; buildings, \$361,300).

This is a difficult Property to value definitively given its uniqueness and the lack of any truly comparable market sales. The Property is comprised of a convenience store/gasoline station, a restaurant with a seasonal ice cream take-out all located along the Rt. 9 frontage and a dwelling located on the treed knoll behind the commercial property. The Property is located in a residentially zoned section of Town just west of the Hillsborough Lower Village commercial area and opposite the Town's beach area on Franklin Pierce Lake.

The Town was reassessed in 2005 by Brett S. Purvis & Associates, Inc. utilizing Avitar Associates of New England Inc's software but was represented at hearing by David Marozoff, employed by Cross Country Appraisal Group which has recently assumed the contracted assessing responsibilities for the Town. As a consequence, while Mr. Marozoff had familiarized himself with the issues involved in the appeal, neither he nor his firm had been involved in the 2005 reassessment nor was he familiar with the exact reasoning behind the 250 condition factor applied to the Property other than that generally reflected the mixed use of the Property.

While mindful of the supreme court's holdings in Porter v. Sanbornton, 150 N.H. 363 (2003) that challenging a municipality's assessing methodology does not alone carry a taxpayer's burden of proving disproportionality, the board finds the land condition factor should be reduced to 175 to reflect a number of market related points raised during the hearing. On one hand, the Property contains more property rights based on its historical development of mixed commercial and residential uses than could be obtained under current zoning because it is less than four acres and thus cannot be subdivided into two lots to accommodate two primary uses. On the other

hand, however, the board agrees with a number of the observations presented by the Taxpayer that the mixed use does not result in a doubling or more of the contributory site value. The improvements share a well and the dwelling in the rear of the lot is accessed through the commercial frontage which does not provide as much privacy as a separate dwelling site normally does. Also, as the Taxpayer testified, because the Property includes both commercial and residential uses it was not possible to obtain a home equity loan that is available to a dwelling on its own separate lot. While indeed it may be possible to refinance the entire Property such rates for commercial properties are generally higher than that for residential properties and the process usually is more involved and takes longer.

The board appreciates the difficulty the Town is faced in trying to assess this unique Property; it is also difficult to glean much insight of the assessment methodology from the comparables presented by the Taxpayer. However, by considering the features and the assessed values of two of the comparables, the “Corner Store” (Map 11B, Lot 212) and the “1830 House” (Map 11B, Lot 402), the board concludes the Taxpayer’s land assessment would likely be bracketed by those two properties. The “Corner Store” with its second floor apartment is on a significantly smaller lot (0.700 of an acre) but, as the name implies, is in a good location at the corner of Route 9 and 2<sup>nd</sup> New Hampshire Turnpike (a/k/a Route 31) and is located in the Hillsborough Lower Village commercial district. The land (site) assessment for the “Corner Store” of \$104,100 reflects its smaller area but also its relatively intensive commercial use. The “1830 House” is on the opposite corner from the “Corner Store” and thus has a similar location as the “Corner Store” but has significantly more land with 5.670 acres with substantial frontage on both the 2<sup>nd</sup> New Hampshire Turnpike and Route 9. The land assessment for the “1830

House” of \$181,700 reflects its larger area and greater utility due to its size, configuration and flatter topography.

Revising the Property’s land condition factor to 175 recognizes both the positive aspects of the Property’s dual uses and the negative factors of its topography and the limited market and financing aspects of its mixed use. Thus, after considering all these factors that could potentially affect the value (see Paras v. Portsmouth, 115 N.H. 63 (1975)), the board finds the Taxpayer’s total revised assessment of \$494,700 is more proportional than the appealed assessment.

If the taxes have been paid, the amount paid on the value in excess of \$494,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years.

RSA 76:17-c, I and II.

A motion for rehearing, reconsideration or clarification (collectively “rehearing motion”) of this decision must be filed within thirty (30) 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 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 in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board’s denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Craig S. Donais, Esq., Bostock, Rogers & Donais, PLLC, 92 Portsmouth Street, Exeter, NH 03833, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Hillsborough, PO Box 7, Hillsborough, NH 03244; and Cross Country Appraisal Group, LLC, 210 N. State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: 7/18/08

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Anne M. Stelmach, Clerk