

Charles Italiano

v.

Town of Stratham

Docket No.: 15482-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$284,900 (land \$152,400; buildings \$132,500) on a 1.47-acre lot with a residential, multi-unit home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that 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) there are problems with the condition of the Property;
 - (2) the close proximity of the highway to the building restricts its appeal;
- and

(3) an appraisal estimated a market value of \$175,000.

At the hearing the Town recommended adjusting the assessment to \$236,200 to reflect the close proximity of the highway to the buildings, the topography of the rear land and the deteriorating condition of the dwelling, garage and bakery.

Page 2
Italiano v. Town of Stratham
Docket No.: 15482-94PT

The Town argued the adjusted assessment was proper because:

- (1) a comparable sale across the street from the Property supports the assessment although there may be indeterminable factors due to the fire;
- (2) comparable sale 1 in the Taxpayer's appraisal is the best comparable, and if more weight is given it, the corrected value is similar to the adjusted value; and
- (3) the revised assessment of \$236,200 addresses the issues raised by the Taxpayer.

Board's Rulings

Based on the evidence, the board finds the new assessment should be \$236,200 (land \$121,200, buildings \$115,000). Using the 1994 equalization ratio of .97 for the Town of Stratham results in a market value for the Property of approximately \$243,500.

The board finds the adjustments made by the Town to the assessment address the concerns of the Taxpayer. The adjustments were to:

- . change the condition factor of the primary site from 1.25 to 1.00, the same as other neighborhood properties;

1.00 . change the adjustment for the topography of the rear land from
to .50 to reflect the sloping terrain;
by . increase the functional depreciation of the two-family dwelling
8% to compensate for the building's close proximity to Portsmouth
Avenue and some structural problems;
. adjust the condition factor for the garage from .60 to .25; and
. change the functional depreciation factor for the bakery to
reflect the low quality of the building.

The board was unable to place much weight on the Taxpayer's appraisal because of several incorrect assumptions. The appraiser performed all three approaches to value (cost \$228,000; sales \$200,000; income \$175,000) but relied solely on the income approach as the best indicator of value. Because this is not investment type property and is more apt to be partially owner-occupied,

the Page 3
Italiano v. Town of Stratham
Docket No.: 15482-94PT

income approach may not fully capture the Property's entire value. The appraiser should have given the sales approach more consideration. In the appraisal's sales approach, more weight should have been placed on sale #1 because it abuts the Property and the differences in condition and size were adequately adjusted. Also the three comparable sales were of rental residential properties and were compared to only the two-family rental building of the Property. No adjustment was made for the presence of the bakery. If the parties' cost estimate of \$21,000 to \$24,700 for the bakery were added to the market approach and more weight given to sale # 1, the correlated value would support the Town's revised assessment.

If the taxes have been paid, the amount paid on the value in excess of

\$236,200 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995 and 1996. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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(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. 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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, Charles Italiano, Taxpayer; and Chairman, Selectmen of Stratham.

Date: January 24, 1997

Valerie B. Lanigan, Clerk

0006