

Stratham/TPN Trust

v.

Town of Stratham

Docket No.: 17079-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 adjusted assessment of \$1,490,200 (land \$483,200; buildings \$1,007,000) on a 4.0-acre lot with a retail plaza (the "Property"). 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 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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property was purchased for \$675,000 in August 1995, from Bonham, a property management firm;

- (2) a 1993 appraisal estimated the Property's market value at \$700,000. Trending this estimate for time appreciation to April 1, 1996 yields a value of \$834,000;
- (3) the Property's actual income and expenses for subsequent years demonstrates the Property has some ongoing problems and for the year under appeal the income level is not an anomaly but reflective of these problems;
- (4) comparable assessments of comparable sales show the Property is overassessed;
- (5) the Property has limited visibility from the highway due to a raised septic system leach field between the improvements and the street; and
- (6) the septic system is undersized and in poor condition, restricting potential tenants.

The Town argued the revised assessment was proper because:

- (1) the Taxpayer's January 1993 appraisal is irrelevant for this case as it uses data from earlier years when the region was in an economic depression; and
- (2) the Town has made a good faith effort based on an earlier board decision in making the revisions.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The Taxpayer did not present any credible evidence of the Property's market value. To carry its burden, the Taxpayer should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty

Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container

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Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18

(1985). The Taxpayer's representative stated there were four basic components to its argument for a reduction of the assessment and an abatement. The board will address each of these

components individually.

First, the Taxpayer's representative testified that the Taxpayer purchased the Property in August 1995, for \$675,000. Ordinarily, when a sale is a verifiable, arm's-length transaction, then the selling price is a good indicator of value. However, in this instance, the grantor in the transaction was Bonham which was an asset management company, Bonham being an acronym for Bank One New Hampshire Asset Management. The purpose for forming Bonham was to have an asset management company to handle the assets of the banks that were failing during the economic depression in this area in the early 1990s. During the course of business, Bonham occasionally did put some of the better assets on the market through realtors. However, many of the properties were removed from the banks' portfolios through auctions and the Taxpayer's representative did not provide sufficient information concerning this transaction to give the board confidence this was an arm's-length transaction.

Second, the Taxpayer's representative submitted a January 1993 appraisal which estimated the market value of the Property to be \$700,000. The board finds this appraisal is not relevant to the 1996 appeal date in this case. As pointed out by the Town, the information used in the appraisal would have to have been gathered during 1992 and possibly 1991 making the data outdated for an accurate estimate of value for the 1996 time period. The Taxpayer's representative stated that the \$700,000 appraised value in 1993 had been time trended for

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appreciation at the rate of 6% per year and indicated a 1996 value of \$834,000. However, the Taxpayer's representative did not supply the board with sufficient factual data to establish the basis for the appreciation rate employed. Even with this data, the board finds that an appraisal with data from four to five years prior to the appeal date would usually not be relevant and a good indicator of value.

The third point the Taxpayer's representative discussed was the actual income and

expense history for the Property during 1996, 1997 and 1998. The representative testified this data was reflective of the history of the Property and its ongoing problems and that the figures were not an anomaly but typical for this Property and were separated by less than 3% from the appraiser's net income for 1996, 1997 and 1998 in his discounted cash flow analysis (page 52 of Taxpayer's Exhibit 2). The board finds these figures, especially the 1997 and 1998 data, to not be relevant for April 1, 1996. Additionally, by themselves they are not sufficient data to convince the board the Property was overassessed. While the net operating income in the Taxpayer's 1993 appraisal is within 3% plus or minus of the Property's actual income submitted by the Taxpayer's representative, the board finds there are several factors that make the income reported not representative of the market. Some of these factors reflect Bonham's involvement with the Property. These include renting to tenants at below market rates, deferring maintenance longer than is typical for the market and not improving the unrented space generally. Further, the Taxpayer's representative did not discuss market vacancy rates or capitalization rates to show how they compare to those used in the 1993 appraisal. Additionally, the Taxpayer's representative submitted a voluminous amount of lease data with no accompanying analysis.

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Taxpayer is reminded of its burden of proof. The board will not make any party's case by dissecting copious amounts of paper submitted without purpose.

The last point was that some of the comparable sales, when compared to their assessments, showed the Property was overassessed. However, during rebuttal, the Town indicated that, collectively, the commercial properties within the municipality may be underassessed. Once again, the board does not rely on other assessments as a gauge to judge the proportionality of the appealed Property's assessment. For the board to agree with the Taxpayer's representative that this methodology for determining overassessment was accurate,

the board would have to assume that all the other assessments were accurate or that the comparable sales were all arm's-length transactions and sufficient evidence was not provided by the Taxpayer's representative to carry this burden.

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

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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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Christopher Snow, Agent for Stratham/TPN Trust, Taxpayer; Andrew L. Blais of Avitar Associates, Agent for the Town of Stratham; and Chairman, Selectmen of Stratham.

Date: April 22, 1999

Lynn M. Wheeler, Clerk