

**Center One Service Corp.**

**v.**

**Town of Stratham**

**Docket No.: 18652-00PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$308,400 (land \$91,700; buildings \$216,700) on a 1.34-acre lot with a bank building (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) an income approach, employed by the Taxpayer's representative (Mark Lutter), indicates the market value, adjusted by the cost of a new roof and updated heating system, is \$28,000, far less than the Town's equalized value [ $\$308,400$  assessment divided by  $0.68$  equalization ratio =  $\$453,500$  (rounded) equalized value];

(2) the Taxpayer's comparable sales include two properties that are much more similar than the Town's comparables because they are banks with equivalent layouts (such as employee bathrooms in the basement) and these sales support a lower market value and assessment;

(3) the Town's assessment fails to adjust for several other undesirable aspects of the Property, including electric heat and lack of compliance with "ADA" (the federal Americans With Disabilities Act) requirements for the basement bathrooms; and

(4) the Town's assessment is based on insufficient physical, functional and economic depreciation and contains several measurement errors.

The Town argued the assessment was proper because:

(1) the cost approach has more relevance to a bank, especially when it is 'owner occupied,' than an income approach;

(2) use of an updated cost approach reflects the Property was underassessed rather than overassessed in tax year 2000;

(3) the Town's four land comparables indicate the land value of the Property is much higher than reflected by the assessment;

(4) the Property is not overassessed in comparison to two other bank properties (Citizens and Bank of New Hampshire) located in the Town and the Town used consistent assessment

methodology;

(5) the Property has a forced hot air heating system with an electric pump, which is more efficient than a conventional electric heat system, reducing the negative aspect of this component of value, and has no public bathrooms which mandate stricter ADA requirements; and

(6) the Taxpayer failed to meet its burden of proof.

### **Board's Rulings**

Based on the evidence presented, the board finds the Taxpayer failed to prove the Property was disproportionately assessed in relation to its market value, after applying the Town's equalization ratio of 0.68 in tax year 2000. In other words, the Taxpayer failed to meet its burden of proving the market value of the Property was less than \$453,500.

While there are three approaches to determining market value – the cost approach, the income approach and the sales comparison approach – not all three are of equal applicability in any given appraisal or assessment situation. See Nash Family Inv. Properties v. Town of Hudson, 147 N.H. 233, 237 (2001), quoting from Town of Croydon v. Current Use Advisory Bd., 121 N.H. 442, 446 (1981).

In this case, the Town's assessing agent (Andrew L. Blais of Avitar Associates of New England, Inc.) focused on the cost approach to determine value over the other two recognized approaches. In contrast, the Taxpayer's representative relied on the income approach. Upon review of the evidence, the board finds the Taxpayer's use of income approach is deficient in several respects and the cost approach is a more reliable indicator of value in this case.

During the hearing, Mr. Lutter acknowledged several significant computational errors in

the income analysis presented (Taxpayer Exhibit 3). The most noteworthy error concerned calculation of market capitalization rates for each of four comparable sales. When these errors are corrected, the rates fall significantly (from 12.84, 11.12, 12.36 and 11.41 to 7.78, 8.99, 8.08, 8.76, respectively). An average of these corrected rates is 8.4%. Applying an 8.4% capitalization rate (rather than the 11.3% Mr. Lutter used in the income approach) to the Taxpayer's annual net income estimate (\$33,817), increases the market value estimate of the Property by over \$100,000 [to \$402,600 (rounded) from \$299,300].

In addition, other questionable assumptions were part of the Taxpayer's income approach. The Town submitted evidence (Municipality Exhibit A) that market interest rates in the relevant time period were lower than reflected in the Taxpayer's analysis (9% rather than 10%). It can also be questioned whether the assumptions of a relatively short (5 year) holding period and zero percent appreciation per annum were overly conservative and favorable to the Taxpayer. See Taxpayer Exhibit 3, page 4. The Taxpayer also relied on several comparable sales which were sale/leaseback transactions involving Citizens Bank as the grantor and the lessee. Id. at pp. 5-6. Without additional information regarding the lease terms, it is problematical to rely on the stated sales prices as value indicators.

The Town's argument that the Property was not disproportionately assessed was supported by the cost approach, using an "Appraisal Analysis" prepared by Mr. Blais (Municipality Exhibit C, as updated by his letter dated December 2, 2002). This analysis utilizes updated Marshall & Swift cost information (rather than the data and methodology employed in the 1994 base year, the year of the Town's last revaluation) and applies substantial additional depreciation (to account for the roof, heating system, ADA non-compliant basement bathrooms

and basement disutility arguments raised by the Taxpayer) to conclude the Property had a value of \$603,200, well above the indicated equalized value (\$453,500). Even if, as the Taxpayer argues, this approach overstates the land value somewhat (due to allegedly inappropriate land sales comparables), the result still is supportive of the Town's assessment by a substantial margin.

The board has also reviewed the Town's "revised" assessment-record card (contained in Municipality Exhibit C). This document uses the 1994 land value and building value, adjusted for additional depreciation (pertaining to the roof, heating system and handicap accessibility), but also updates for other improvements pertaining to the bank facilities (ATM, drive-up system, etc.) omitted from the original card. The board finds this revised card more accurately portrays the attributes of the building and is supportive of the Town's tax year 2000 assessment. The Town Administrator (Paul R. Deschaine) testified the Town is scheduled to complete a revaluation in tax year 2003, which will give the Town an additional opportunity to update its assessment-record cards to the extent further corrections or adjustments are indicated. The Town is scheduled for certification by the DRA in 2005.

In summary, the Taxpayer failed to present persuasive evidence that the Property was overassessed in tax year 2000.

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

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Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax, 37 Crystal Avenue, PMB 290, Derry, New Hampshire, 03038, representative for the Taxpayer; and Chairman, Selectmen of Stratham, 10 Bunker Hill Avenue, Stratham, New Hampshire, 03885.

Date: January 3, 2003

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Anne M. Bourque, Deputy Clerk