

David and Beth Petit

v.

Town of Stratham

Docket No.: 20326-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$282,100 (land \$163,600; buildings \$118,500) on Map 10, Lot 3, a single-family residence on 1.180 acres of land (the “Property”). For the reasons stated below, the appeal for further abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Town has overassessed the land by including a “125” condition factor;

- (2) this condition factor pertains to a pre-existing ('grandfathered') commercial use of the barn which is now being used for a seasonal antique business;
- (3) the Town originally denied any abatement but after an inspection requested by the Taxpayers reduced the assessment to the amount now under appeal;
- (4) the market value of the Property is approximately \$265,000 and a further abatement is therefore warranted (by reducing the condition factor to "100"); and
- (5) the filing fee and copying costs of the Taxpayer should be reimbursed by the Town.

The Town argued the assessment was proper because:

- (1) a revaluation was performed in 2003 which changed a number of factors from the prior 1994 revaluation;
- (2) the assessment-record card reflects a substantial depreciation adjustment of 43% which includes 15% for the incomplete nature of certain interior items mentioned by the Taxpayers in their documentation;
- (3) a pre-existing business use on land near to, and visible from, a main road adds value to the land, compared to other properties than do not have such features;
- (4) the Town was generally consistent in applying a "125" condition factor for land having these features (such as Map 11, Lot 51, 3 Chase Road, where there is a limited use antique business); and
- (5) no further abatement is warranted.

On April 27, 2006, subsequent to the hearing, the board took a view of the Property and several other ostensibly similar properties discussed by the parties at the hearing.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

After the board's view of the Property and various other properties identified by the parties during the hearing, the board finds the Town has generally applied the land condition factors in a consistent manner and appropriately applied a "125" land condition factor to the Taxpayers' land.

The Taxpayers argued the property located on Map 12, Lot 4, which has a land condition factor of "100", should have the same condition factor as the Property. Map 12, Lot 4 has a hot-tub business operated from a single-family residence. The board viewed this property and finds its exposure (visibility and probably traffic count) to be less than that enjoyed by the Property. For these reasons the board finds the Town's recognition of the more limited exposure of the hot-tub business through the application of a "100" land condition factor to be reasonable.

Similarly, the Taxpayers' argued the property located at Map 10, Lot 27, which has a lawnmower repair business, should also have the same land condition factor as the Property. During the board's view, it looked at the lawnmower repair business site and found, while it was similar to the Property in that it was operated from a residential structure, it did not have the same level of exposure as the Property. The board finds the Town appropriately applied the "100" land condition factor to this property

Further, the board viewed the property at Map 11, Lot 51 where a limited-use antique business is operated. Given this property's exposure, the Town appropriately applied a "125" land condition factor to recognize its location, which is similar to the Property's.

The Taxpayers' testified the Property should not be assessed above its \$265,000 market value. The Taxpayers, however, provided no probative evidence of how the \$265,000 market value estimate was calculated. Without some supporting documentation, such as an appraisal with a comparable sales analysis, the board can give little weight to the Taxpayers' market value estimate.

Therefore, for all the above reasons, the board finds the Taxpayers failed to prove the Property was disproportionately assessed and the appeal is therefore denied.

The Taxpayers requested the board order the Town to return their filing fee and any copying costs incurred. The board's procedures for granting requests for costs and filing fees are governed by the board's rules under Tax 201.39. The board finds the Town did not frivolously defend the appeal and denies the Taxpayers' request.

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(f). 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David and Beth Petit, 12 Emery's Lane, Stratham, NH 03885, Taxpayers; and Chairman, Board of Selectmen, Town of Stratham, 10 Bunker Hill Avenue, Stratham, NH 03885.

Date: May 16, 2006

Anne M. Stelmach, Clerk