

**Jean and Ralph F. Pynn, Jr.**

**v.**

**Town of Stratham**

**Docket No.: 24897-09PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$799,700 (land \$654,800; buildings \$144,900) on Map 4/Lot 15, a 0.75 acre site improved with a commercial garage and a single-family residence (the “Property”). For the reasons stated below, the appeal for 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 Property is 0.75 acres in size, abuts a brook and is impacted by a small area of wetlands;
- (2) after an eminent domain condemnation in 2000, the size of the Property was reduced to its current size, and the permitted number of parking spaces was reduced from 35 to 21;

- (3) the Property flooded in 1996 and the buildings were damaged by 18” of standing water;
- (4) the Property is improved with a small commercial garage (which the Taxpayers utilized for their automotive business for 19 years and is now leased to another automotive use) and a small, out-dated single-family residence;
- (5) a restaurant chain considered purchasing the Property due to its corner location, but ultimately decided against the purchase as it does not have town water and sewer services;
- (6) a local realtor prepared an income approach to value and estimated the Property’s market value between \$495,000 and \$525,000;
- (7) due to the “restrictions, problems and wetlands” that impact the Property, its land condition code should be reduced from 97 to 50 (based on land uses of other properties on Portsmouth Avenue and Stratham Heights Road), which would reduce the assessed value of the land from \$654,800 to \$415,000 (see Taxpayer Exhibit 2); and
- (8) based on the rental income being received by the Taxpayers, the assessed value of the Property should be reduced to \$549,000.

The Town argued the assessment was proper because:

- (1) the Property is located at a heavily traveled, light controlled intersection of Portsmouth Avenue (Route 33) and Stratham Heights Road, in very close proximity to the Route 101 exchange at Exit 8;
- (2) the eminent domain taking in 2000 was the result of replacing drainage so as to prevent flooding as experienced in 1996, and the Property has not been flooded since;
- (3) the Taxpayers’ land condition factor is appropriate for its current development scheme (with two individual buildings), and there are distinct reasons why the comparable properties presented by the Taxpayers have lower land condition factors;

(4) the Town requested income and expense information from the Taxpayers in order to prepare an income approach to value but no information was provided;

(5) the Town, through its assessor Ms. Andrea Lewy, contacted the Taxpayers' former tenant of the commercial garage, who indicated his rent increased steadily through 2011 (\$4,470.60 per month), and offered \$550,000 to purchase the Property in 2011, but the Taxpayers were "insulted" by the offer and did not make a counter offer (see Municipality Exhibit A, Tab No. 3);

(6) the Taxpayers state the use of the Property is restricted to its current use (commercial garage and single-family residence) and the Town would not allow it to be redeveloped however; no redevelopment plans have ever been submitted to the Town for approval (see Municipality Exhibit A, Tab No. 2);

(7) the Town has made appropriate adjustments to the Property's land condition factor to account for its specific conditions, and in a manner consistent with all other commercial properties in the Town; and

(8) the Taxpayers have not met their burden of proving disproportionality and the appeal should be denied.

The parties agreed the level of assessment was 98.7%, the median ratio calculated by the department of revenue administration. To assist in its deliberations, the board viewed the exterior of the Property and several comparable properties on July 30, 2012.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers did not meet their burden of proving disproportionality and the appeal is therefore denied.

Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119

N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions).

This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

Using its judgment and experience, the board was not persuaded by the Taxpayers arguments its land condition factor was too high and should be adjusted from 97 to 50, the land condition factor assigned to an abutting property at 10 Stratham Heights Road. The board considered the Town's testimony regarding that property (which is further from Route 33, has no visibility from Route 33, all but one acre of the 4.24 total site size is wetlands and has no development potential) and finds its reasonable that it has a land condition factor significantly different than the Property.

The Taxpayers presented several additional comparable properties with land condition factors lower than the Property. For each of those properties, however, the Town presented credible information regarding the differences between the properties and how each land condition factor was arrived at. For example, the Taxpayers presented the assessment-record card ("ARC") for 56 Portsmouth Avenue, a 1.03 acre site improved with a chiropractor's office, which was assigned a land condition factor of 80 (see Taxpayer Exhibit No. 3, p. 4). The Town testified 56 Portsmouth Avenue is located significantly further from Route 101 than the Property, is set back some distance from Route 33 and is located behind an Audi/Porsche auto dealership and, cannot be used for any circular traffic pattern due to its shape, and for all these reasons it was assigned a lower land condition factor than the Property.

The board finds the information provided by the Town was credible and the land condition codes were generally well supported and consistently applied. This was further confirmed by the board's own view of the Property and the comparable properties. The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town, which is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayers presented evidence regarding physical issues associated with the Property, but did not present any market value evidence. To carry their burden, the Taxpayers 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 general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The Taxpayers indicated an income approach to valuation was completed by a local real estate broker; however, that opinion of value was not submitted into evidence and therefore the Town and the board were not able to review it and ascertain its credibility. Further, the Town asked for specific income and expense information for the Property which was not provided. That information may have been probative of market value.

Finally, the Town presented evidence from a former tenant regarding an offer made to purchase the property in 2011 for \$550,000 and the Taxpayers were "insulted." The board finds this information contradicts the Taxpayers' opinion of market value of \$549,000 as of April 1, 2009, when they refused an offer of roughly the same approximately two years later, in what was generally a declining real estate market.

For all these reasons, the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jean and Ralph F. Pynn, Jr., 2 Tide Mill Road, Hampton, NH 03842, Taxpayers; and Chairman, Board of Selectmen, Town of Stratham, 10 Bunker Hill Avenue, Stratham, NH 03885.

Date: 12/11/12

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Anne M. Stelmach, Clerk