Marilyn and Mark K. McDonough

v.

Town of Raymond

Docket No.: 18278-99PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1999 assessment of $79,800 (land $26,200; buildings $53,600) on a 5.03-acre lot with a single-family home (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, 38 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) there is an automobile repair garage being operated illegally on an abutting property. The Taxpayers are regularly subjected to excessive amounts of noise and light coming from this inappropriate use of the neighboring property;

(2) the Property is located in a Town aquifer area that supplies the Town's wells and the illegal garage operation next door may be adversely affecting the groundwater quality;

(3) the garage on the abutting property is approximately 300 feet from the road and hard to see without actually going onto the property next door; and

(4) the assessment should be reduced by $3,650 ($10/day x 365 days) to reflect the current use of the abutting property.

The Town argued the assessment was proper because:

(1) the assessor has driven by the abutting property between eight and ten times and has made an effort to observe any illegal uses of the abutting property that may be going on;

(2) the Taxpayer agrees the current assessment would be accurate if the automobile repair activity was not taking place on the abutting property; and

(3) the relief sought by the Taxpayers is a zoning ordinance enforcement action rather than an assessment valuation reduction and this relief is outside the duties of the assessor or the jurisdiction of the board.

Board's Rulings

The board finds the Taxpayers did not carry their burden to show the Property was disproportionally assessed.

The Taxpayers testified the value of their Property was diminished due to an illegal automobile repair business taking place on an abutting property. They testified their neighbor

was operating an auto body and mechanical repair business in conflict with the Town's zoning ordinance and this produced noise and smells that were disturbing. In addition, they stated this business operated at all hours of the day on weekdays and weekends. The Taxpayers have met with town officials, including the local police, to find a remedy for the situation, but, to date, the issue is still unresolved.

When questioned about the affect of the use of the abutting property on the Property's value, the Taxpayers testified that because of the noise and activity going on next door, there has been a loss in value of the Property equating to $10 per day, or $3,650 per year, which should be the reduction in the assessment. However, assessments must be based on market value. See RSA 75:1. The Taxpayers presented no market data to support the adjustment they requested. To carry their burden the Taxpayers would have had to show the basis in the real estate market for the $3,650 reduction request. Having been provided no basis, the board must deny the Taxpayer's abatement request.

The board's jurisdiction and authority is outlined in RSA 71-B:5 which does not give the board any jurisdiction over civil matters such as this. In this case, the Taxpayers are asking the board to enforce compliance with the Town's zoning ordinance which they submitted, in pertinent part, at the hearing. As the board stated from the bench at the hearing, the recourse the Taxpayers request would have to be ordered by the Town or the superior court. The board has no jurisdiction or authority to hear such civil matters.

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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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Marilyn and Mark K. McDonough, Taxpayers; and Chairman, Board of Selectmen of Raymond.

Date: June 27, 2001

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Lisa M. Moquin, Temporary Clerk