

Donna L Latulippe Trust

v.

Town of Rumney

Docket No.: 19943-02PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$55,900 (land \$33,700; building \$22,200) on a 0.44-acre lot with a storage building, Map 13-06-03 at 240 School Street (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) based on its small size and because abutting properties contain fuel tanks and a junk yard, the land portion of the assessment is too high;

- (2) the Property is used only for personal storage and not for any commercial purposes;
- (3) there is no well or septic system on the Property; and
- (4) the Taxpayer feels the land (without the steel storage building which can be removed) would sell for no more than \$20,000.

The Town argued the assessment was proper because:

- (1) the highest and best use of the Property is as a commercial lot and commercial lots can sell for twice what residential lots sell for;
- (2) the Property has the lowest assessed value of any commercial lot in the Town; and
- (3) the neighborhood is in transition and has a mix of residential and commercial uses.

The Taxpayer owns another property in the Town; however, the parties stipulated that assessment was not in dispute.

Board's Rulings

Based on the evidence and testimony presented, the board finds the Taxpayer did not carry its burden to prove the Property was disproportionately assessed.

The Property consists of 0.44 acres of land with a metal garage building. The Taxpayer testified the Property is incorrectly assessed as a commercial property because it is not being used for any commercial purposes. The building is only used to house the personal belongings of the Taxpayer, including some tools and a truck. For these reasons, the Taxpayer feels the land portion of the assessment is overstated and should be reduced to reflect its noncommercial use. The Taxpayer stated \$20,000 is a more appropriate value for the land; however, no market data was given to support this estimate.

Assessments must be based on market value. RSA 75:1. The Taxpayer did not present any credible evidence of the Property's market value. In making a decision on value, the board

looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views 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 general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986). Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Town testified the Property's neighborhood is a transitional one with a mix of commercial and residential properties. Although the Property was being assessed as a commercial property, the Town stated the value assigned to the land portion of the assessment was the lowest value of any commercial property in the Town. This was done to account for the fact the Property's use was not an "intense" or "full blown" commercial use. Further, the Town stated this was a consistent process it used to analyze commercial properties and assign them base land values. The board finds this consistent methodology to be some evidence the Town has not disproportionately assessed the Property.

Lacking any market data supported evidence to the contrary, the board finds the Property is not disproportionately assessed, no abatement is warranted and, therefore, the appeal is denied.

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 Donna L. Latulippe, Trustee of the Donna L. Latulippe Trust, 536 School Street, Rumney, New Hampshire 03266, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Rumney, Post Office Box 220, Rumney, New Hampshire 03266.

Date: April 11, 2005

Anne M. Stelmach, Clerk