

Douglas M. Joseph and Sandra L. Helve

v.

City of Nashua

Docket No.: 21143-04PT

ORDER

This “Order” responds to the “City’s” January 9, 2008 Motion to Dismiss (“Motion”) which the board grants.

In a July 25, 2007 hearing notice, a hearing in this appeal was scheduled for January 23, 2008 at 9:00 a.m. at the board’s offices in Concord, New Hampshire. Fourteen days prior to the hearing date, accompanying the City’s submission of its summary appraisal, the City submitted the Motion asserting the “Taxpayers” appeal should be dismissed “because the Taxpayers have refuse[d] to allow an inspection of the property in accordance with RSA 74:17, II.” The documentation attached to the Motion indicates that, in addition to two earlier phone conversations with one of the Taxpayers, Ms. Sandra L. Helve, the City had requested in writing on December 6, 2007, December 14, 2007 and January 3, 2008 to arrange a time for inspection of the “Property”. All three letters referenced RSA 74:17 and In re Walsh (Bd. of Tax and Land Appeals), ___ N.H. ___, (October 18, 2007).

After being prompted by a telephone conversation from the board's clerk on January 15, 2008, the Taxpayers responded to the Motion in a January 19, 2008 letter (received by the board on January 22, 2008). The letter stated: [the Taxpayers'] "schedules are such that we have not been able to schedule an inspection of our property. Both of us are out for 12 hours each day and often out of town, so it has been impossible to schedule."

On the afternoon of January 22, 2008 the board reviewed the Motion, the Taxpayers' letter and the summary appraisal submitted by the City. The board noted the summary appraisal stated "[n]o inspection has been done since April 7, 2000 due to the owner's refusal." Since the parties had reserved time for the January 23, 2008 hearing, the board concluded that time could be more productively used for the City to inspect the Taxpayers' Property. The board's clerk, through a series of phone messages and telephone conversations with Ms. Helve and Mr. Gary Turgiss of the City (documented in the board's communication history report attached), apprised the parties they should use the time scheduled for the hearing for an inspection of the Property. Ms. Helve indicated to the board's clerk and later in her telephone conversation with Mr. Turgiss that she could not keep the appointment.

Here, as in Walsh, the board concludes the Taxpayers have been "unresponsive" to the City's request for inspection and the board's effort to have the inspection occur on the hearing date and time. Consequently, the board concludes the Taxpayers have lost their right to appeal their assessment pursuant to RSA 74:17, II.

The board notes the Motion only referenced Docket No.: 21143-04PT. However, pending in the board's docket are subsequent appeals for the Property (Docket Nos.: 21928-05PT and 22993-06PT) which also contain the same multiple requests by the City for inspection of the Property. Unless the facts are different relative to the 2005 and 2006 appeals, the board will entertain a motion from the City to dismiss these appeals.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this Order must be filed within thirty (30) days of the clerk's date below, not the date this Order is received. RSA 541:3; Tax 201.37(a). 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 Order needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's Order 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.

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has been mailed this date, postage prepaid, to: Douglas M. Joseph and Sandra L. Helve, 11 Federal Hill Road, Nashua, NH 03062, Taxpayers; and Gary W. Turgiss, City of Nashua, Assessing Department, 229 Main Street, Nashua, NH 03060, Municipality.

Dated: 1/23/08

Anne M. Stelmach, Clerk