

Margaret and Daniel J. Redhouse, Jr.

v.

Town of Lee

Docket No.: 21410-04PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2004 assessment of \$166,162 (land \$84,862; buildings \$81,300) on Map 8/Lot 5/Sub 000300, a single-family home on a 5.53-acre lot (the “Property”). The Taxpayers also own, but did not appeal, four lots with a combined assessment of \$1,165 after current-use deductions. 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 located next to a building used as an industrial, chemical research facility;
- (2) sounds emanating from the neighboring property 24 hours a day have affected the Taxpayers’ health;

(3) the building next door at 34 Sheep Road (the “neighboring property”) was struck by lightning in May, 2004, resulting in a fire which “burned like a torch” and destroyed the structure, however, the Town is permitting the neighboring property to be rebuilt; and

(4) the Town should not allow the industrial usage of residential properties such as happened in this neighborhood.

The Town argued the assessment was proper and the appeal should be denied because:

- (1) the neighboring property was granted a special exception to be used as a professional office and chemical research lab on November 20, 1986 and all neighbors were notified of the public hearing; for a brief period, it was used for engineering research and development of products not related to chemical research and in October 2000 the manufacturing activity and personnel were moved to another location (See Municipality Exhibit No. A);
- (2) the neighboring property was inspected on several occasions in 2003 and was being used as a scooter business with an office and storage of scooter parts (tires, etc.);
- (3) there has been little activity on the neighboring property since the fire, the structure is being rebuilt and all prior approvals on the site are still valid; and
- (4) the Taxpayers did not present any market value evidence to support their contention that the Property was disproportionately assessed.

Board’s Rulings

The board finds the Taxpayers failed to prove the Property was disproportionately assessed.

The Taxpayers testified there is a continuous sound emanating from the neighboring property. They testified the sound is approximately 30 decibels in strength and has caused sleep deprivation and other harmful, health related affects. The Taxpayers further testified the usage of the neighboring

property has been an inappropriate use in this residential neighborhood, the Town should not have allowed it to occur and its continuous activity/use has negatively affected the value of the Property.

The neighboring property was struck by lightning in May 2004 and “burned like a torch” even though the lightning strike occurred during a strong thunderstorm which produced copious amounts of rain. The resulting fire destroyed the building. According to the Taxpayers, at the time of the fire, the building was being used for industrial, chemical research along with a scooter repair business. The Taxpayers questioned why there was no smell of burning rubber during the fire and whether or not any chemicals that may be hazardous to their health were in the building during the fire causing it to burn with such intensity. The Taxpayers submitted Taxpayer Exhibit No. 2, a copy of the Town fire department’s activity log (the “report”) documenting the fire, to verify the fire’s occurrence. However, after a thorough review of all the information contained in the report, the board did not find anything to indicate any unusual circumstances or conditions associated with the fire. For example, the fire department found no hazardous materials release and the cause of ignition to be an “act of nature” rather than for some manmade reason. Nowhere on the five page report does the fire department indicate any industrial usage, any presence of hazardous materials or any unusual circumstances surrounding the fire and its suppression.

The Town submitted a letter (the “Letter”) (Municipality Exhibit No. A) from Mr. Allan Dennis of the Town’s Code Enforcement & Health Department. The Letter outlined the usage of the neighboring property from the time its owner, Mr. Gail Ulrich, was granted a special exception in November 1986, for a professional office and chemical research lab, until May 2006 when the structure was in the process of being rebuilt after the May 2004 fire. The Letter indicates the owner’s son “took over” the neighboring property in the late 1990’s “for engineering research and development of products that were not related to the chemical research lab.” In October 2000 the son notified the Town he would

be relocating his business and personnel to another location. Further, the Letter states “[v]ery little activity continued on the site after the move....” As of May 2006 the son was still in the process of rebuilding the structure.

Assessments must be based on market value. See RSA 75:1. To carry their burden of proof, the Taxpayers should have made a showing of the Property’s market value as of the date of the assessment which, in this appeal, is April 1, 2004. The Taxpayers did not present any credible evidence 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 board finds the Taxpayers failed to provide a market value estimate for the Property as of April 1, 2004 that was supported with any market data and failed to show any of the neighboring property’s uses adversely impacted the Property’s market value.

For all these reasons, the board finds the Taxpayers failed to prove the Property was disproportionately assessed and 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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Margaret and Daniel J. Redhouse, Jr., 20 Sheep Road, Lee, NH 03824, Taxpayers; Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway Chichester, NH 03258, representative for the Town; and Chairman, Board of Selectmen, Town of Lee, 7 Mast Road Lee, NH 03824.

Date: APRIL 4, 2007

Anne M. Stelmach, Clerk