

Ferwerda Development Company, Inc.

v.

Town of Raymond

Docket No.: 25275-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$294,900 (land only) on Map 024/Lot 000-004, a 6.25 acre lot (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 a comparison of the Property’s assessment to the assessed values of other industrial properties, the Property’s assessment is disproportionately high;

(2) the Property was approved for the development of industrial condominiums but the Taxpayer allowed those approvals to lapse as there is no demand for industrial property in Town;

(3) the Property is located on a back road approximately five miles from Route 101 which provides primary access to the Town; and

(4) the Property development potential is restricted somewhat as it does not have public water and sewer.

The Town argued the assessment was proper because:

(1) the Taxpayer's argument that the Property is disproportionately assessed is based on an analysis of the average assessed value per acre of other industrial land, which is improper as averaging does not take into consideration the differences between the Property and the other industrial sites;

(2) the Town acknowledged the Property's location is a secondary industrial location which has been adjusted for in the assessment; and

(3) the Taxpayer failed to meet his burden of proving his assessment was disproportionate.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to carry its burden to show the assessed value was disproportionate. The appeal is therefore denied.

In any property tax appeal, the burden is on the taxpayer to prove its assessed value is disproportionate and is entitled to an abatement. The test of proportionality is a comparison of the Property's market value to its assessed value adjusted by Town's level of assessment. "In an abatement case, the taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town." Appeal of Sokolow, 137 N.H. 642, 643 (1993).

The Taxpayer testified the Property differs from other industrial properties in Town, but he did not present any evidence as to how those differences may affect its market value. The Taxpayer stated he knew of no sales of industrial properties in Town and had not researched sales of industrial sites in other towns. The Taxpayer presented no market evidence as to the Property's market value, and his opinion of market value was based solely on the averaging of assessed values of other properties.

In closing, the Taxpayer did not present any credible evidence of the Property's market value. To carry this 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); 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 appeal is therefore 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

Michele E. LeBrun, Chair

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Martin Ferwerda, 37 Tarah Way, Fremont, NH 03044, representative for Ferwerda Development Company, Inc., Taxpayer; and Chairman, Board of Selectmen, Town of Raymond, 4 Epping Street, Raymond, NH 03077.

Date: February 16, 2012

Anne M. Stelmach, Clerk