

Nicolas and Jill Bosonetto

v.

Town of Richmond

Docket No.: 26769-12PT

ORDER

The board has reviewed the September 22, 2014 Motion for Rehearing (“Motion”) filed by the “Taxpayers” with respect to the August 29, 2014 Decision. The Motion seeks “clarification” of one issue in the Decision and argues denial of a tax abatement on the “Property” for 2012 was “erroneous.” The suspension Order issued on September 29, 2014 is hereby dissolved and the Motion is denied for the following reasons.

First, the board does not agree with the Motion (see p. 1) that the Decision “needs clarification” on the issue of whether the Taxpayers’ “bundle of rights” changed or were the same (“the exact same”) in “2006” (when they purchased the Property) as they was in 2009, when their application for “the building permit” was denied. While the Taxpayers may have assumed any building permit application would be granted by the “Town” at the time they purchased the Property, there is no evidence to suggest this assumption was either valid or realistic. Evidence that earlier building permits were granted by the Town (between 1966 and

1988) does not prove the Taxpayers' unfounded assertion that "in 2006 there was no limitation as to the type of building permits to be issued [sic] for the Property." (Id.)

The board notes this appeal is for an abatement of a tax year 2012 assessment, some six years after the Taxpayers purchased the Property and three years after an application for a specific building permit was denied. The Decision (p. 4) makes reference to the purchase price of the Property in 2006, but only as "some indication of the reasonableness of the abated assessment" and in light of "the absence of compelling market evidence to the contrary." The only market evidence presented by the Taxpayers was the Wells Appraisal and this appraiser did not make any statements comparing the "bundle of rights" in 2006 versus 2012 (or 2009 for that matter).¹

Second, the Motion contends the board "erred" in denying "Request for Finding of Fact #7." Not only is this a multiple request, contrary to the requirements of Tax 201.36(b), but the statement in this request that "no building permits would be issued" is contrary to the evidence presented. The record reflects the Taxpayers made a specific building permit application on May 18, 2009: this application was for "a new three-bedroom residence at a different location on the property," as noted on page 2 of the supreme court decision² reviewing the Town's denial of that application. (See Municipality Exhibit B, p. 2; and Decision, p. 6.) There is nothing in the record to support the Taxpayers' contention that the market value of the Property was affected by an imagined Town policy of denying any and all building permit applications pertaining to the Property. As stated in the Decision (p. 6): "there is no evidence before the board that would

¹ The Taxpayers' argument their "bundle of rights" was substantially changed with the Town's denial of their application for building permit in 2009 is contradicted by a review of the relevant provisions of the Zoning Ordinance, which were in place since well before they purchased the Property. Furthermore, the statute the Taxpayers focus upon (RSA 674:41) was enacted in 1983 and last amended in 2005, also prior to the purchase of the Property.

² This decision is published: see Bosonetto v. Town of Richmond, 163 N.H. 736 (2012).

allow it to find the Town would not issue permits in any circumstances. In fact, such a finding would be in direct contradiction to the testimony of Sandra Gillis, a Town Selectman.”

Third, the Motion makes repetitious arguments regarding the proper interpretation of RSA 674:41. The board does not agree with those arguments and finds many of them fall outside the purview of this tax abatement appeal. To the extent the Motion argues (erroneously) that the Town has no authority to grant any building permit because of the provisions in RSA 674:41 (rather than that the Town improperly denied the Taxpayers’ specific building permit application in 2009), this alleged lack of authority would have been just as true in 2006 (when they purchased the Property), as it was in 2009 (when the building permit was denied) or in tax year 2012 (the time period of this appeal). [Cf. fn. 1.]

The appeal was denied on the basis of a lack of market value evidence the Property was disproportionately assessed in tax year 2012. Mr. Wells, the Taxpayers’ appraiser, simply estimated a value for the Property (\$55,000) as if it were an “unimproved” lot or “undeveloped vacant land.” (Decision, pp. 6-7.) This is contrary to the undisputed facts presented which establish the Property has been developed with four separate residential structures (a 1½ story ‘stick built’ home and three mobile homes) and was assessed by the Town on this basis. (Id., pp. 4 and 7.) The board therefore could give the Wells Appraisal no weight and found the Taxpayers, who placed sole reliance on this appraisal for estimating market value, did not meet their burden of proving “the Property was disproportionately assessed in tax year 2012.” (Id., pp. 3 and 7.)

For all of these reasons, the Motion is denied.

Pursuant to RSA 541:6, any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of the Clerk's date shown below, with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Albert F. Shamash, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Nicolas and Jill Bosonetto, 71 Prospect Hill Road, Richmond, NH 03470, Taxpayers; Chairman, Board of Selectmen, Town of Richmond, 105 Old Homestead Highway, Richmond, NH 03470; and Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 10/21/14

Anne M. Stelmach, Clerk