Kirlin Place LLP

v.

Town of Pelham

Docket No.: 17784-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of $897,000 (land $254,100; buildings $642,900) on a 15.8-acre lot with a two-building elderly housing project (the "Property"). The Taxpayer also owns, but did not appeal, a single-family home at 25 Old Lawrence Road, and a single-family home at 133 Mammoth Road. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; 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) the level of services required from the Town is low; only fire service and road maintenance

are provided;

(2) Pelham Terrace, a similar elderly housing facility in the Town, pays substantially less property taxes while charging significantly more rent for similar accommodations;

(3) the Property provides a community service for which the Town should grant an abatement and consider a payment in lieu of taxes;

(4) the Taxpayer is being penalized for “doing good”; and

(5) there is no law preventing the Town from granting an abatement.

The Town argued the assessment was proper because:

(1) the Taxpayer has provided no market evidence of overassessment;

(2) the taxes for the Property and Pelham Terrace should not be comparable based on RSA 72:23-k;

(3) the Property was appraised at $1,300,000 in 1999;

(4) there may be some unfairness in state laws, but the Town is enforcing them consistently; and

(5) the Town is not forcing the Taxpayer to become a nonprofit corporation.

The Taxpayer owned, but did not appeal, two other properties in the municipality and both parties stipulated the other properties were not disproportionately assessed, therefore, this decision addresses only the appealed Property.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was

disproportionately assessed.

The Taxpayer's primary argument is that it should be entitled to an abatement for the community service it performs. The Taxpayer's principal testified the Taxpayer provides a service to elderly residents of the Town because it rents units at significantly lower-than-market rates. The Taxpayer is of the opinion it is entitled to an abatement under RSA 72:23-k as a charitable organization and offered to make a payment in lieu of taxes. The board, however, finds the Property does not qualify under RSA 72:23-k as it is not a charitable organization by definition, but a for-profit organization.

RSA 72:23-k, I states:

> **Charitable, Nonprofit Housing Projects.**
> I. The real estate and personal property of charitable, nonprofit community housing and community health care facilities for elderly and disabled persons, if none of the income or profits is used for any purpose other than community housing or community health care, shall be exempt from taxation. This exemption shall apply to housing and health care facilities situated within New Hampshire which are sponsored or owned by nonprofit, charitable corporations or organizations, located within or outside of the state, and to projects organized, operated, or assisted under state law or pursuant to rules and regulations of the United States Department of Housing and Urban Development, the United States Department of Health and Human Services, or any successor agency. For the purposes of this section an elderly person is one who is 62 years or more of age. The age of the head of the family determines the eligibility of the family unit in the project. For the purposes of this section, the term "charitable" shall have the meaning set forth in RSA 72:23-l.

RSA 23:23-l states:

> **Definition of "Charitable".**
> The term "charitable" as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k,

> shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization "charitable" for purposes of this chapter, nor shall the organization's treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of "charitable" under the common law of New Hampshire.

The Town's representative testified, and the board concurs, that the Property does not qualify for an RSA 23:23-k exemption and should be taxed as real property.

The Taxpayer argued there is 'no law' that says the municipality cannot grant an abatement. The Town is obligated to assess all real property at its full and true value. This value is frequently referred to as market value. See RSA 75:1. However, the Town is authorized to abate any tax assessed by it for "good cause" shown under RSA 76:16. Likewise, the board of tax and land appeals under RSA 76:16-a is allowed to grant abatements "as justice requires." The board, in this case, finds the Town was correct in not granting an abatement as no abatement was warranted. The Taxpayer admitted the Property was a for-profit business and there are no restrictions on the income or profit derived from the business' operation. Further, the Taxpayer's principal testified expansion of the Property is being considered which should increase revenues and presumably profit. No pecuniary profit or benefit can accrue to the officers or members of an organization for it to be considered "charitable." See RSA 72:23-l.

The Taxpayer stated it did not dispute the Property's assessed value and did have an

appraisal performed that estimated the Property's market value at $1,300,000; the Taxpayer felt, however, it was paying more than its fair share of taxes. The Taxpayer used a comparison with another elderly housing complex, Pelham Terrace, located within the Town. The Town rebutted this argument and testified that Pelham Terrace was a subsidized elderly housing facility and was not organized or operated in the same fashion as the Property and, therefore, was not comparable.

Additionally, the Taxpayer argued that because the Property requires very minimal municipal services, it has a disproportionate tax burden when compared to other properties in the Town. The only municipal services the Property requires are occasional fire department trips and some road maintenance. For this reason, the Taxpayer reasons it is entitled to an abatement. Lack of municipal services is not grounds for an abatement. The basis of assessing property is market value. See RSA 75:1. Any effect on value due to lack of or use of municipal services would be reflected in the selling prices of comparables and consequently in the resulting assessments. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

As noted above, the Taxpayer stated an appraisal with an estimate of value of $1,300,000 had been performed on the Property. This is significantly higher than the Town's equalized assessed value ($897,000 ÷ .92 = $975,000) for the Property.

For all of these reasons, the board finds the Taxpayer is not entitled to an abatement.

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(e). 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

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Leo Rush, Representative for Kirlin Place LLP, Taxpayer; and Chairman, Board of Selectmen of Pelham.

Date: August 2, 2000

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Lynn M. Wheeler, Clerk