

Sherryland Park Inc.

v.

Town of Tilton

Docket No.: 17959-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of:

Map/Lot:

OR 13-0008 - \$487,148 (\$210,000
(mobile home sites); \$153,100 (buildings); \$124,048 (land);
OR 13-0008-0002 - \$12,600;
OR 13-0008-0004 - \$10,300;
OR 13-0008-0005 - \$16,300;
OR 13-0008-0007 - \$11,100;
OR 13-0008-0008 - \$11,200;
OR 13-0008-0015 - \$10,600;
OR 13-0008-0018 - \$16,100; and
OR 13-0008-0026 - \$11,000

on a mobile-home park with a single-family house and 8 mobile homes (the "Property").

For the reasons stated below, the appeal for abatement is granted.

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, 38 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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the mobile home sites are assessed disproportionately compared to sites in similar mobile home parks;
- (2) the mobile homes are assessed much higher than their appraised value according to the N.A.D.A. guidelines;
- (3) the manufactured housing park influence factor (“MHPIF”) assessment on the mobile homes is disproportionate compared to similar mobile homes in similar parks;
- (4) approximately one half the sites in the park are not fully improved and available to accept a mobile home;
- (5) many of the septic systems are old and near the end of their economic lives;
- (6) the house and outbuildings on the Property are in need of repair and the Town has not adequately considered an appropriate amount of depreciation to account for their age and condition; and
- (7) the Property’s market value on April 1, 1998, was estimated by Mr. Mark Lutter, Taxpayer’s representative, at approximately \$450,000.

The Town was not represented at the hearing.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$466,610.

Before addressing the specific findings, the board must express its frustration with the Town's lack of diligence in this case and lack of respect for the process before the board.

The appeal was filed on September 1, 1999. Structuring stipulations were sent to the Taxpayer on January 14, 2000,¹ and returned by the Taxpayer's representative, Mr. Mark Lutter, with a representation of settlement and hearing schedules based on his discussion with the Town. On July 20, 2000, the hearing was scheduled for January 3, 2001, and prehearing statements were sent to the parties with the hearing notice.

First, the Town was placed in conditional default after failing to respond to the Taxpayer's interrogatories. The conditional default required the Town to cure the default within ten days by providing answers to the Taxpayer's interrogatories and by moving to strike the conditional default. The conditional default also provided that if the Town failed to comply with the order, the board would subpoena the requested documents or an official to answer the interrogatories. The Town did not respond to the December 20, 2000 conditional default order.

¹ Accompanying the structuring stipulation was an order to the parties indicating the appeal was to be tracked as a pretrial control appeal due to the nature of the case and the issues involved. Such tracking establishes a discovery schedule, tentative prehearing and/or hearing schedule to facilitate an orderly preparation for either settlement discussions or a hearing in the case.

Second, the Town did not file its prehearing statement with the board as part of the pretrial preparation nor did it ask for leave to extend or not to submit a prehearing statement. Third, the Town did file a motion for continuance on December 29, 2000 (received by the board on January 2, 2001, the day before the scheduled hearing). The basis for the request was that the Town administrator, Alice MacKinnon, had been advised by her attorney prior to December 25, 2000, to withdraw from any matters involving the Taxpayer.

The Town's actions show a pattern of inattentiveness to the process. The Town could have requested additional time from the Taxpayer to respond to its interrogatories (in accordance with superior court rule 36, adopted by reference in TAX 201.19 (b)), but did not. The Town totally ignored the board's conditional default for lack of responding to the interrogatories. The Town also ignored the pretrial brief preparations without communicating to the board that it needed additional time or was not going to submit a prehearing brief. Additionally, the Town's motion for continuance was filed at the last minute, contrary to TAX 201.26, which requires that it be filed within 14 days of the hearing notice. In this case, the hearing notice was dated July 20, 2000, providing more than adequate time for the Town to determine if Ms. MacKinnon had conflicts with the Taxpayer which required her to recuse herself and to find alternate representation. Having a continuance motion received by the board the day before the hearing provides little opportunity for the Town to be properly represented. Apparently the Town and the Taxpayer have had a long history of disagreement; however, that does not justify the Town's lack of response to the interrogatories, the lack of filing a prehearing statement and the lack of timely filing its continuance motion given the adequate time available for doing so. All other

taxpayers in the Town deserve to have the Town's assessments properly defended, and in this case, no such defense was provided by the Town.

Effect of 1994 Settlement Agreement

With Ms. MacKinnon's answers to the board's January 2, 2001 order, the Town submitted a copy of the 1994 settlement agreement relative to tax years 1990 - 1993. The board reviewed the agreement and solicited testimony from the Taxpayer as to its relevance to the 1998 tax year.

While the Town was not present to argue the reasons for submitting a copy of the settlement agreement, the board, based on its reading of the agreement, presumed the Town may have submitted it with the thought that paragraph #3 controlled subsequent tax years including 1998. Paragraph 3 of that agreement reads as follows:

"3. For the 1993 tax year and ensuing tax years (barring (sic) the reassessment of the entire town, subdivision of the land owned by Sherryland Park, connection by the Park to town water and/or sewer or any other factor which might enhance or detract from the ad valorem value of the park), the parties (sic) agree that the market value assessment of Sherryland Park will be as follows:

Land and buildings	401,600
sites (35)	210,000
mobile homes	123,700
TOTAL	<u>735,300</u>

When the equalized current use credit is applied, the value is reduced by an additional \$50,409 bringing the 1993 total assessed value of all but one of the properties owned by Sherryland Park to \$684,891."

Based on the evidence submitted at hearing, the board concludes enough factors have

changed in the assessment of the Property since the signing of the settlement agreement, that the agreement no longer has any binding affect on the 1998 tax year. While there has not been a town-wide reassessment, a subdivision of Sherryland Park or any connection to water or sewer, there have been sufficient adjustments to the assessments and changes in the mobile homes owned by the Taxpayer in the intervening time, to conclude that circumstances have changed to have “detract[ed] from the ad valorem value of the park.” Indeed the Town’s assessment in the land and buildings and the mobile home components all have been reduced from the 1993 assessed value.

Again, the board must express frustration with the Town for submitting this agreement but not being present to argue its affect on the 1998 tax year. The board is left to draw its conclusion from the words of the agreement and the testimony of the Taxpayer.

Assessed Value

Mr. Lutter submitted a report which estimated the Property’s market value at \$450,000. The Town’s undisputed level of assessment for the 1998 tax year was estimated at 1.03 based on the department of revenue administration’s equalization ratio for that year. While the board’s ordered assessment of \$466,610 approximates Mr. Lutter’s equalized market value, the board has arrived at the assessment by applying the various factors testified to by the Taxpayer to the various components of the assessment. See Paras v City of Portsmouth, 115 N.H. 653, 67-68 (1975) (In arriving at a proper assessment, the town must look at all relevant factors).

The board’s specific findings are discussed by the various assessment components as follows.

Land

The board finds the proper land value to be \$113,598. This is based upon revising the condition factor for the three-acre site from 3.00 to 2.50. In determining whether an adjustment in the land component was appropriate, the board focused on the 30.12 acres not in current use (“NICU”) that comprise the first four lines of the land assessment. Those four lines have a total assessment of \$121,200 or approximately \$4,000 per acre. Based on the description of the land, the quality of the mobile home park and the residential sales submitted by the Taxpayer, the board concludes it is appropriate to revise the use condition factor downward to 2.50. Because of the unique mixed use of the Property, the Property is difficult to value with any absolute certainty; however, the Taxpayer presented reasonable arguments that the Town’s assessment overvalued the contributory value of the 30.12 acres to the Property as a whole.

Main Dwelling

Based on the testimony, photographs of the dwelling and comparing the Property to the property at 183 School Street², the board concludes that additional physical and functional depreciation is warranted. The board finds 10% additional physical depreciation is warranted based on the description and photographs and 10% functional depreciation for the layout, wet basement and story height (three-quarter story versus one-half story) of the ell portion of the dwelling. These additional depreciations result in the main dwelling having a total depreciation

² While Mr. Lutter utilized the sale of the property at 183 School Street to estimate a contributory value of the building, the board’s general knowledge of that property raises questions as to whether the sale price represents an arm’s-length transaction. Consequently, because of the unanswered questions as to the reliability of the sale price, the board has utilized the assessment of the 183 School Street property solely as an assessment comparison.

of 55% and a rounded assessment of \$77,000.

Extra Features

Other than the photographs submitted of the garage and free-standing barn, no specific testimony was provided as to the value of the first five outbuildings contained in this section of the Town's assessment-record card. The board has compared the assessments of the five buildings with the photographs and finds the assessments are reasonable. However, the board has revised the sixth extra feature (the attached barn) by reducing the depreciation from -35% (65% good) to -60% (40% good) to recognize the largely underutilized space of the upper stories. The photographs show the building is four to five stories high and was renovated for use as a chicken coop at some time in the past. The lower level of the structure can be utilized for storage and garage space, however, the extensive maintenance cost of the large structure tempers the value of this utility resulting in the board's increased depreciation.

Manufactured Home Park Sites

The Town assessed the 35 manufactured home sites at \$6,000 each. Based on the testimony, the board concludes it is more appropriate to assess 18 sites at \$6,000 and 17 sites at \$3,000 to reflect the lack of pads, the utilities within the pads and the additional driveway and

road improvements necessary to fully utilize those 17 sites. This revision is further supported by comparable assessments submitted by the Taxpayer of other mobile home sites in Town.³

Manufactured Homes

The eight manufactured homes were assessed by the Town on a replacement-cost-less-depreciation basis with \$2,500 added to each unit for MHPIF. Mr. Lutter submitted an estimated depreciated cost value based on the N.A.D.A. Manufactured Housing Appraisal Guide.

Based on the testimony and review of the photographs of the separate manufactured homes, the board concludes their value is higher than that estimated by Mr Lutter but should not include the MHPIF. While there were no good, recent sales of units within the park, the board finds, based on the quality, condition and age of the units and the vacancy rate within the park, it is unlikely the market would pay more for a unit due to its being located within the park, and thus, the MHPIF is not justified. Consequently, the collective assessment of the eight manufactured homes is reduced from \$99,200 to \$79,200.

³ While not a factor in the board's decision, the board does note that the \$210,000 assessed value for the sites in 1998 is the same as it was at the time of the settlement agreement in 1994. As pointed out by Mr. Lutter, the Town's equalization ratio between 1994 and 1995 dropped from 1.39 to 1.00 indicating some sort of assessment update or factoring had likely occurred. While other assessment components, land, building and mobile homes, dropped to some extent, no adjustment was made to the mobile home sites. Again, without the Town being present, the board does not have the benefit of the reasons why no adjustment was apparently made. But based on the evidence submitted by the Taxpayer, the board finds that the sites should be collectively assessed at a lower level.

Conclusion

The following is a summary of the assessments of the various components of the Property.

Land	\$113,598
Main Dwelling	\$ 77,000
Extra Features	\$ 37,812
Manufactured Housing Sites	\$159,000
Eight Manufactured Homes	<u>\$ 79,200</u>
Total	\$466,610

Finally, because the Town's actions in this appeal and the board's review of the submitted assessment-record cards raise questions as to the Town's assessing practices, the board in a separate order, is inquiring of the Town as to its plans for reassessment (copy enclosed). This separate order is a preliminary investigation of whether there exists a need for the board to order a reassessment pursuant to its authority in RSA 71-B:16.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$466,610 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1999 and 2000. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Rehearing

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Mark Lutter, Representative for Sherryland Park Inc., Taxpayer; and Chairman, Board of Selectmen of Tilton.

Date: January 25, 2001

Lynn M. Wheeler, Clerk

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ORDER

On June 6, 2001, the board notified the parties that unless it heard from either party within twenty days, the “Taxpayer’s” March 30, 2001 Motion for Enforcement (“Motion”) would be dismissed. Not having heard from either party, the board hereby dismisses the Motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has this date been mailed, postage prepaid, to Mark Lutter, Representative for Sherryland Park, Inc., Taxpayer; and Chairman, Board of Selectmen of Tilton.

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Dated: July 27, 2001
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Lisa M. Moquin, Clerk