

Devereux and Kim Davidson

v.

City of Laconia

Docket No.: 20025-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2003 assessment of \$14,000 (building \$14,000) on Map 161, Lot 107/2/092 a travel trailer located in Paugus Bay Campground (the “Property”). 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 travel trailer is not taxable as manufactured housing pursuant to RSA 72:7-a because it does not meet the dimensional requirements of RSA 674:31;

(2) the travel trailer is located in Paugus Bay Campground which has strict rules requiring seasonal occupancy;

(3) the travel trailer is not a building taxable under RSA 72:7 and does not meet the definitional requirements contained in Appeal of Town of Pelham, 143 N.H. 536 (1999); and

(4) the assessed value of \$14,000 is excessive for the age and condition of the 1989 travel trailer.

The City argued the assessment was proper because:

(1) the travel trailer does meet the provisions of a building as outlined in Pelham and is thus taxable pursuant to RSA 72:7; and

(2) sales of travel trailers in place at campgrounds support the amount of the assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayers' travel trailer, located in the Paugus Bay Campground, is taxable as a building pursuant to RSA 72:7 and Pelham and no evidence was submitted to show the City's assessed value of \$14,000 was disproportionate.

This appeal presents two general issues:

- 1) is the Taxpayers' travel trailer taxable real estate; and
- 2) if it is determined to be real estate, is the City's assessed value disproportionate.

Taxable as Real Estate

The Taxpayers' travel trailer is an 8' x 32' (256 square foot) travel trailer located adjacent to a deck, of a similar square footage, at the Paugus Bay Campground. The Taxpayers stated the travel trailer was moved to the site in 2001 and for the year in question (2003) was not registered as a motor vehicle. The Taxpayers stated the travel trailer stayed on the site year round with the exception of a single day when it was moved from the site to facilitate cleaning of

the travel trailer and the site. The travel trailer was occupied on a seasonal basis due to the seasonal nature of the campground and regulations of the Paugus Bay Campground.

The board finds the travel trailer is less than 320 square feet and thus does not meet the dimensional requirements contained in RSA 674:31 and is not therefore taxable as real estate under RSA 21:21 and RSA 72:6¹.

The board, however, finds it is taxable as a building pursuant to RSA 72:7² and Pelham. Pelham provides that a structure is taxable as a building if it: “(1) is intended to be more or less permanent, not a temporary structure; (2) is more or less completely enclosed; (3) is used as a dwelling, storehouse, or shelter; and (4) is intended to remain stationary.” Pelham at 539.

The travel trailer clearly meets the second and third requirements as being completely enclosed and being used for shelter on a seasonal basis. As to the first requirement, the board finds the fact the travel trailer is not registered as a motor vehicle and has remained on the campground site since 2001 is clear intention that its use is “more or less permanent” and not temporary in nature. Further, the fourth requirement is met because the travel trailer has remained on the site adjacent to a deck to facilitate its seasonal use indicating a clear intention for it to remain stationary as opposed to being mobile from site to site. Consequently, the board concludes the travel trailer meets the provisions in Pelham as a building and is thus taxable.

¹ RSA 21:21 provides:

I. The words ‘land,’ ‘lands’ or ‘real estate’ shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.

II. Manufactured housing as defined by RSA 674:31 shall be included in the term ‘real estate.’

RSA 72:6 provides:

All real estate, whether improved or unimproved, shall be taxed except as otherwise provided.

² RSA 72:7 provides:

Buildings, mills, wharves, ferries, toll bridges, locks and canals and aqueducts owned by private parties, any portion of the water of which is sold or rented for pay, are taxable as real estate.

Value

The City stated its assessed value of \$14,000 was based on sales of similar units that had sold in place within the Paugus Bay Campground. The Taxpayers argued the travel trailer had a book value of less than \$1,000, if it were to be sold, and submitted several photographs showing its physical condition. However, the Taxpayers presented no other evidence of its marketability or value. The City submitted a copy of the current rental agreement that individuals locating travel trailers at Paugus Bay Campground sign and agree to. Paragraph 10 provides that a travel trailer less than 15 years old can be sold on site if it has been located in the campground for at least one year with a fee from the buyer being paid to the campground owners at the time of sale. This agreement supports the City's contention (even though it submitted no sales supporting the contention) that the travel trailers at the campground have transmissible value above and beyond unit value as argued by the Taxpayers. Consequently, lacking other market evidence to the contrary, the board finds the Taxpayers failed in their burden of showing the assessed value was disproportionate.

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Devereux and Kim Davidson, 33 Park Street #10, Malden, Massachusetts 02148, Taxpayers; and Chairman, City Council, City of Laconia, 45 Beacon Street East, Laconia, New Hampshire 03246.

Date: December 7, 2005

Melanie J. Ekstrom, Deputy Clerk

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v.

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REHEARING ORDER

After granting the Taxpayers' motion for reconsideration of the board's December 7, 2005 "Decision", the board held a rehearing on April 19, 2006. The board's January 6, 2006 order and hearing notice limited the rehearing solely to "the question of the Property's value but not on the question of law as to whether or not it is taxable."

At the rehearing, the Taxpayers presented no evidence of market value but simply argued the travel trailer unit, in 2003, was 15 years old and thus under the rental agreement at the Paugus Bay Campground could not be sold in place. The City submitted limited market value evidence to support the 2003 assessment of \$14,000.

The Taxpayers have the burden of proof both in the initial appeal and at rehearing to show the assessment was disproportionate. For the following reasons, the board finds the Taxpayers did not carry their burden and did not submit any market evidence to show the travel trailer was disproportionately assessed for 2003. The Taxpayers had received, from the City, a copy of a list of travel trailer sales that were analyzed for the 2003 tax year (Municipality Exhibit

A) but presented no testimony as to how the sales relate to the Taxpayers' "Property." The board finds the Taxpayers' sole argument that the unit was 15 years old is not compelling. The Taxpayers submitted a rental agreement with the Paugus Bay Campground signed in the fall of 2004 for the 2005 season which indicated, as an example in paragraph 10, that a 1990 trailer would be 15 years old and thus could not be sold on site. The board finds this unconvincing because a similar rental agreement was submitted by the City at the original hearing (Municipality Exhibit C) which was a blank agreement for the 2006 season which had the identical example in paragraph 10. Further, one of the two properties the City did submit at hearing (Unit 70) at the Paugus Bay Campground indicated an actual year built of 1988 and yet sold on site in August of 2002 for \$12,000. This sale casts doubt on the validity of the Taxpayers' argument that the 15 years are calculated in the manner as the Taxpayers argue. The sale also provides some evidence, albeit only one sale, that the assessment is not disproportionate.

In closing, the board expresses frustration with both the Taxpayers' and the Municipality's presentations at the rehearing. Hearings and rehearings are important statutory due process proceedings. However, it is clear from the lack of any market evidence submitted by the Taxpayers and the limited market value evidence submitted by the City and its confusion as to the purpose of the rehearing (despite clear notice in the January 6, 2006 Order and Hearing Notice), the parties were not prepared to address the market value issue the board had specifically granted the rehearing for.

Because the Taxpayers failed in their burden, the appeal is denied and the board's findings in the Decision stand. If the Taxpayers wish to appeal, such appeal must be filed with New Hampshire Supreme Court within thirty (30) days of this order. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Rehearing Order has this date been mailed, postage prepaid, to: Devereux and Kim Davidson, 33 Park Street #10, Malden, Massachusetts 02148, Taxpayers; and Chairman, City Council, City of Laconia, 45 Beacon Street East, Laconia, New Hampshire 03246.

Date: April 25, 2006

Anne M. Stelmach, Clerk