

Scribellita Trust

v.

Town of Gilford

Docket No.: 21117-04PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2004 abated assessment of \$67,900 on Map 266/Lot 102-014, a manufactured home at 14 Pine Hill (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 parties stipulated the level of assessment in the Town was 94%. The parties further agreed to consolidate for hearing with two other appeals (Docket No. 21039-04PT and Docket No. 21128-04PT) also involving manufactured homes within the “Diamond View” park (the “Park”). The board therefore heard evidence pertaining to all three appeals in one hearing on

August 16, 2007. The parties, who were also present during the hearing of the Diamond View Associates, Inc., Docket No. 21127-04PT hearing, agreed the board could take official notice of the evidence and testimony of both hearings.

The Taxpayers argued the assessment was excessive because:

- (1) there is a lack of market sales to support the assessment because most exchanges occur through non market transfers within families and each manufactured home is purchased along with one share of stock in Diamond View Associates, Inc. (the "Association"), which entitles the owner to the use of the lot;
- (2) each owner pays annual dues to the Association and a portion of the dues is applied to the real estate taxes on the land, which are separately billed to the Association, and to maintenance of the Park;
- (3) the Park has community well and septic which is shut down from November to April and electricity is billed separately to each owner;
- (4) the Town should modify its assessment-record (property) cards because they are confusing in referring to "replacement cost new," for example, and what the Town is actually doing with assessments is not reflected in the cards; and
- (5) a true replacement cost approach is appropriate for properties located in Diamond View because the remaining value is reflected in the common ownership of the underlying land, which is assessed separately and has also been appealed (in Docket No. 21127-04PT).

The Town argued the assessment was proper because:

- (1) assessments must be based at "full" (market) value as prescribed in RSA 75:1 and it is this value, rather than the Town's methodology in arriving at assessments, that is relevant;

(2) the Taxpayer has the burden of proof and has not provided any evidence of market value as of the assessment date; and

(3) the Town has presented sufficient information (in Municipality Exhibit No. A) to show the Property is proportionately assessed.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed for tax year 2004. The appeal is therefore denied.

The parties agree that there are some "unique" aspects to the Property, including a seasonal use restriction and common ownership (through the Association, a corporation) of the underlying land. The land value is assessed separately to the Association (see Docket No. 21127-04PT). Thus, the only issue in this appeal is whether the manufactured home has been disproportionately assessed. No appraisal or other market evidence was presented by the Taxpayer to support such a finding.

The Property is located in a manufactured home park which consists of 20 acres of land with 249 feet of water frontage. The Town testified when a unit sold or transferred, it was "shielded" from any sale prices. They stated questionnaires were routinely sent to every taxpayer who has purchased property in the Town and consistently the assessed value was indicated as the sale price for properties in the Park, as well as similar manufactured housing parks. Further, the information provided to the department of revenue administration ("DRA") on its PA-34 form also indicated the sale price was an arm's length transaction.

The Taxpayer argued Diamond View was unique in that it does not directly own or lease space in the Park, but rather acquired the right to place a manufactured home on a designated site by purchasing stock (a membership) in the Association. They further argued the assessed value

should be based on the manufactured home's value as determined by the National Automotive Dealers Association ("N.A.D.A."), not the value of the land which is separately assessed to the Association. The board notes a copy of a three-page form entitled N.A.D.A. Appraisal Guides was submitted as part of the Parsons, Docket No. 21039-04PT, appeal. This form specifically states it is not an appraisal form but is a book value form.

The board disagrees with the Taxpayer's conclusions that N.A.D.A. should be utilized in determining the assessed value of the Property and finds the Taxpayers failed to submit any probative evidence of the Property's market value which could 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 legislature has stated all real estate is taxable, unless otherwise provided (see RSA 72:6 and 72:7) and such real estate, unless otherwise provided, shall be assessed at market value (see RSA 75:1). RSA 21:21¹ defines real estate as including all tangible and intangible rights associated with real property. While they vary from property to property, these ownership rights are often viewed as a "bundle of rights." Ownership rights include the right to use real estate, to sell it, to lease it, to enter it, to exclude others, to give it away, or to choose to exercise all or none of these rights. The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest. IAAO, Appraisal of Real Estate, at 7 (11th ed. 1996).

¹ "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.'"

By virtue of their ownership of stock and membership in the Association, the Taxpayer enjoys all of these rights, not simply to the manufactured home itself (which could be transported elsewhere) but also to its location and the other amenities in the Park which positively influence the value of the Property that is being assessed. An analogy can be drawn to a condominium development, where market value is determined not simply by estimating the depreciated actual cost, or even the insurance replacement cost, of each physical housing unit, but rather the value to a potential buyer who wishes to occupy it in that location and with all of the amenities associated with it.

The legislature has defined manufactured housing in RSA 674:31 as any “structure” which is “built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein.” The Taxpayer has real property rights to certain physical areas where the manufactured home is sited and through its interests (“share of stock”) in the Diamond View common areas. Those transmissible² property rights (sticks in the bundle of rights) include situs, occupancy, ability of ingress and egress, right to sell, etc. In this case, situs includes the Property’s access to Lake Winnepesaukee and all common areas of the Association. See the Association By-Laws, Article II (“The purpose of the corporation shall be to provide recreational and residential facilities for the shareholder members of said corporation;”) and Article III (B) (“Each share shall be the control of one site and fractional control of the common property....”).

² The value of transmissible property rights is material in the determination of an assessment. 590 Realty Co., Ltd v. City of Keene, 122 N.H. 284, 287 (1982); Public Service of New Hampshire v. Town of New Hampton, 101 N.H. 142, 147 (1957).

The Town submitted convincing testimony through the use of sales of similar manufacturing housing units and adjusted those sales for time, location, age, living area and bathrooms. Applying these adjusted sales to the Property yielded a reasonable estimate of the Property's market value which, when adjusted by the 2004 equalization ratio, was supportive of the Town's assessment.

Based on all of the above, the board finds the Taxpayer failed to present any evidence to prove the Property was disproportionately assessed and denies the appeal.

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

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Grace Bogusz, 25 Bolic Street, Nashua, NH 03062, Taxpayer Representative; and Chairman, Board of Selectmen, Town of Gilford, 47 Cherry Valley Road, Route 11A, Gilford, NH 03249.

Date: September 28, 2007

Anne M. Stelmach, Clerk