

Harris Family Irrevocable Disc. Trust

v.

Town of Loudon

Docket No.: 23284-06PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 abated assessment of \$206,000 (land \$75,600; building \$130,400) on Map 53/Lot 008, 485 Lower Ridge Road, a single family home on 4.0 acres (the “Property”). (The Taxpayer also owned, but did not appeal, Map 53/Lot 29, 474 Lower Ridge Road, as of the assessment date, which the parties did not dispute was proportionally assessed.) 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 Taxpayer argued the abated assessment was still excessive because:

- (1) the Town values its own properties (shown in the “Schedule of Town Property” in Taxpayer Exhibit No. 1) differently than the assessed value of the Property;
- (2) the Property is not far and is “downwind” from a racetrack (the New Hampshire International Speedway);
- (3) this racetrack is a “fixed source” where hundreds of thousands of gallons of leaded gasoline are burned every year, causing the Town to have a “multi-dimensional” lead pollution problem;
- (4) the government has refused to recognize or correct this problem by prohibiting the use of leaded gasoline at the racetrack, as reflected in the other documents contained in Taxpayer Exhibit No. 1, which has caused lead contamination of the soil to occur, resulting in health issues and an adverse affect on the value of the Property;
- (5) according to an attorney, the Taxpayer has a legal obligation to disclose this issue to a potential buyer if the Taxpayer believes the Property has been contaminated by lead; and
- (6) an appraiser who was contacted could not estimate the market value of the Property because of this contamination problem.

The Town argued the assessment, as abated, was proper because:

- (1) the Town performed an update in tax year 2006;
- (2) the Taxpayer claims lead contamination has occurred on the Property, but has refused to provide the actual results of soil testing already performed, citing confidentiality concerns;
- (3) the Town nonetheless abated the assessment from \$233,300 to \$206,000, as shown in Municipality Exhibit A, after reviewing the Taxpayer’s abatement request;

(4) the many other documents presented in Municipality Exhibit A demonstrate the Town has not acted unreasonably in addressing the Taxpayer's concerns regarding the use of leaded gasoline at the racetrack and that the Town does not have the authority to prevent it;

(5) the Taxpayer was able to sell another property (Lot 29) directly across the same road in November, 2006 for \$137,533, even though it was only assessed for \$82,300; and

(6) no further abatement is warranted.

The level of assessment in the Town for tax year 2006 was 98.7%, the median ratio computed by the department of revenue administration.

Board's Rulings

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

Assessments must be based on market value. RSA 75:1. In order to obtain an abatement, the Taxpayer must meet its burden of showing the market value of the Property, adjusted by the level of assessment, is higher than the assessed value. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). The board's authority is limited by statute, see Appeal of Land Acquisition, 145 N.H. 492, 494 (2000), and in a tax abatement appeal extends no further in this appeal than deciding the issue of whether the Property was disproportionately assessed for tax year 2006.

In this appeal, however, the Taxpayer failed to present any market value evidence at all, either in the form of an appraisal, or an opinion or testimony from a real estate broker, or any comparable sales or assessments. What the Taxpayer did provide in this appeal is varied documentation regarding his ongoing efforts, at the Town, state and federal levels, to persuade government officials that the burning of leaded gasoline at the racetrack has created ongoing

contamination problems. The many documents included in Taxpayer Exhibit No. 1 attest to the fact the Taxpayer's representative, trustee Michael Harris, has expended great efforts to persuade both elected officials and government employees of his beliefs on this issue. As he stated at the hearing, Canada, unlike the U.S., has a complete ban on leaded gasoline. Thus far, however, his efforts have not affected the continuing use of leaded gasoline at the racetrack.

The board listened to Mr. Harris' presentation and also noted his explanations regarding why he did not submit any appraisal or other market evidence, based on his understanding of statements made to him by an appraiser (Barry Shea) and an attorney (Christopher Seufert) he contacted. Neither individual appeared at the hearing to testify on the Taxpayer's behalf or for cross-examination by the Town and the comments of these individuals related by the Taxpayer, even if accepted at face value, are not probative on the issue of whether the Property was disproportionately assessed because they are much too vague and conclusory in nature. For example, Mr. Seufert told Mr. Harris that if he had a belief the Property has been contaminated by lead, Mr. Harris would have then had an obligation to disclose this information to a potential purchaser. There is no evidence, however, regarding what the impact of disclosure of this belief might be, especially since the Taxpayer successfully sold another property (Lot 29, located directly across the street) in November, 2006 for substantially more than its assessed value, as noted above. It may be the potential hazard perceived by Mr. Harris is not shared by the market or the general public.

The Town presented a number of documents in Municipality Exhibit A to challenge the Taxpayer's assertions in this appeal. These documents include the assessment-record cards and a tax map showing five other properties in the immediate vicinity of the Property that sold in the relevant time period, including several on the same road, for prices ranging from \$169,934 (for a

mobile home on two acres) to a range of \$274,000 to \$475,000 for more conventional (stick-built) homes, well above the abated assessment on the Property. There is no indication the market conditions or sale prices of these other properties were adversely impacted by their similar proximity to the racetrack.

Also in Municipality Exhibit A are documents indicating concentrations of lead and other metals have been detected in many rural areas, as well as more urbanized areas of the state, from the Merrimack River to the seacoast and that the levels measured by the state are no higher in the area of the Property. In specific response to Mr. Harris' inquiries, the State's department of environmental resources ("DES") examined available data and concluded there were "no significant differences between measured pollutant values on race days and non-race days," "no indication that race events had any impact," and "measured pollutant[] . . . values were all below the applicable air quality standards, and were within the range of those measured at monitoring sites elsewhere in the state." These statements are contained in a DES report forwarded to Mr. Harris in November, 2004. While it is clear Mr. Harris does not accept these findings, the board has no scientific or other expertise that would allow it to substantiate his concerns in the face of this evidence to the contrary. In addition, the board finds the Town has a reasonable basis, because of the preemption doctrine and existing state and federal laws and on the advice of counsel, to conclude a Town warrant article prohibiting the use of leaded gasoline at the race tract would be "void, illegal and unenforceable" (as stated in the February 19, 2004 letter from the Town's attorney contained in Municipality Exhibit A).

Finally, the board does not agree with the Taxpayer's argument that the values the Town listed for its own properties (in a Town report as of June 30, 2008) is probative of the market value of the Property. The Property is a single-family residence on four acres and is not

reasonably comparable to the library, garage and diverse other facilities and property owned by the Town to provide municipal services. The Town's property is not subject to taxation and the value placed on it in that report cannot be assumed to be equivalent or even substantially similar to the assessed values on taxable property.

For all of these reasons, the appeal is denied.

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(g). 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

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Michael Harris, Trustee, Harris Family Irrevocable Disc. Trust, PO Box 483, Gilmanton, NH 03237, Taxpayer; Chairman, Board of Selectmen, Town of Loudon, PO Box 7837, Loudon, NH 03307; and David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: May 18, 2009

Anne M. Stelmach, Clerk

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v.

Town of Loudon

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ORDER

The board has reviewed the Motion for Reconsideration (“Motion”) filed by the “Taxpayer” on June 17, 2009 with respect to the board’s May 18, 2009 Decision. The Motion is denied for the reasons stated below.

The Motion contends “[t]his is a somewhat unusual situation” in that the Taxpayer did not file this tax abatement appeal “based upon claims of disproportionality,” but rather upon the belief the “Town” was required to investigate and act upon the “lead pollution issues” alleged “prior to taxation” of the “Property.” The attempts of Mr. Michael Harris, the Taxpayer’s trustee and representative, to get the Town, the State of New Hampshire and/or the federal government to address the issues he has raised to his satisfaction are many and well-documented and now include the June 1, 2009 letter attached to the Motion from his congressman to the Administrator of the U.S. Environmental Protection Agency.

These attempts, however, do not suspend the Town’s statutory obligation to assess the Property annually or for the board to consider and decide this tax year 2006 abatement appeal

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based upon its limited statutory authority to determine whether the assessment was disproportional. For the reasons stated in the Decision, the board did this, recognizing that, in a tax abatement appeal, the Taxpayer bore the burden of “prov(ing) the Property was disproportionately assessed” and had failed to do so. Decision at p. 3. The type of relief Mr. Harris ultimately seeks (cessation of burning leaded fuel at the New Hampshire International Speedway) is not within the jurisdiction of the board; nor does the board have the authority to order a property tax abatement simply because neither the Town nor any other governmental body has yet to act in the manner he would like on the leaded fuel issue.

Based upon these considerations and the Motion’s failure to meet the requirements for reconsideration/rehearing set forth in RSA 541:3 and Tax 201.37, the Motion is denied. Any appeal must be by petition to the supreme court filed within thirty (30) days of the Clerk’s date shown below. See RSA 541:6.

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 Order has this date been mailed, postage prepaid, to: Michael Harris, Trustee, Harris Family Irrevocable Disc. Trust, PO Box 483, Gilmanton, NH 03237, Taxpayer; Chairman, Board of Selectmen, Town of Loudon, PO Box 7837, Loudon, NH 03307; and David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: June 25, 2009

Melanie J. Ekstrom, Deputy Clerk