John and Shirleen Robertson

v.

Town of Epping

Docket No.: 23386-07PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2007 assessment of $133,000 (building $132,700; shed $300) on Map 023/Lot 039/005A, a manufactured home (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 Property's March, 2007 purchase was under "stress" and was not an arm's-length transaction;

(2) the Town did not perform a complete review of all strata and only targeted the manufactured homes, thus creating disproportionate assessments of the manufactured homes;

(3) the park owners are assessed for the land based on an income approach and park amenities are paid for by the owners of the rental lots thus creating "double taxation;"

(4) a May 9, 2008 market analysis prepared by Maria Prentice of Century 21 suggests a listing of $109,900; and

(5) the market value of the Property was between $115,000 and $120,000 as of April 1, 2007.

The Town argued the assessment was proper because:

(1) the Town last performed a full reassessment in 2005; in 2007, after performing a preliminary Town-wide analysis of assessment equity, the Town contracted with Municipal Resources, Inc. ("MRI") to perform a statistical update of both manufactured homes located in two mobile home parks and condominiums;

(2) there were 20 sales of units (out of a total of 125 manufactured home sites) or 15% similar to the Property in the Pine and Pond Park (the "Park") available to analyze and perform the 2007 update;

(3) the Town performed a sales comparison estimate of value (Municipality Exhibit A) indicating a proper assessment range of $119,000 to $148,000 which supports the $133,000 assessment;

(4) the Taxpayers' Century 21 market analysis does not result in an accurate value because it was prepared 13 months later than the assessment date in a declining market, utilized sales largely from other towns and units that are generally smaller in square footage; and

(5) the Taxpayers' evidence failed to carry their burden of proof.

Board's Rulings

The Town stipulated the level of assessment was 94% based on the 2007 median ratio determined by the department of revenue administration ("DRA"). The Taxpayers, represented by Ms. Harriet Cady, disagreed with the use of the DRA ratio but failed to present any conclusive evidence of a different level of assessment. See Appeal of City of Nashua, 138 N.H. 261, 265 (1994). (Taxpayers have the burden to prove an alternate level of assessment, if not relying on the DRA ratio, by submitting their own ratio study that contains sales representative of the taxing jurisdiction.) Ms. Cady presented no independent ratio study and only testified the DRA's inclusion of the Taxpayers' sale skewed the resulting ratio. As the 2007 equalization analysis performed by DRA utilized a total of 112 valid sales for all types of property, the board concludes that even if the Taxpayers purchase of the Property was determined not to be arm's-length, the resulting median ratio is not materially skewed by one sale. Consequently, the board concludes the best level of assessment is the DRA's median ratio of 94%.

The foundation for taxation in New Hampshire is found in Part I, Article 12 and Part II, Article 5 of the New Hampshire Constitution that require every member of society contribute their share in support of government and that taxes levied to do so must be "proportional and reasonable." Further, RSA 75:1 establishes the basis for achieving proportional assessment is market value. Consequently, for a taxpayer to carry their burden, they must present market value evidence to support their claim of disproportionate/over assessment. Applying the 2007 DRA ratio of 94% to the assessed value of $133,000 indicates a market value of $141,500 (rounded) that the Taxpayers must prove was disproportionate.

We find none of the evidence presented by the Taxpayers is of merit in meeting their burden of proof. First, the Taxpayers argument that double taxation is occurring because the

Park assessment and the individual unit assessments both capture the amenities of the Park is baseless. The sales of units in the Park presented both in the Taxpayers' and the Town's evidence reflect the transmissible real estate rights that individuals acquire through the purchase of a unit in the Park. The rights that are acquired include the tangible rights of a unit and the intangible rights, "but nonetheless transferable property rights or interest such as situs or location with any of its associated amenities." See Arnold v. Town of Epping, BTLA Docket No. 5241-88 (June 15, 1990) (interestingly, this same issue was argued by the Arnolds and other taxpayers in their 1988 appeals of units in the Park). On the other hand, while the assessment of the Park is not on appeal, the testimony presented indicates the Town assessed the Park on an income approach which capitalizes the net operating income of the rents received by the Park owner from the tenants less operating expenses. This income approach, if properly done, would reflect the transmissible real estate rights associated with the Park but not the units owned by individuals on leased spaces within the Park. Consequently, the board concludes the Town's general methodology used in assessing the individual units and the Park result in valuing only the rights embodied solely in each property and thus, there is no double taxation contained in the unit and Park assessments.

Second, the Taxpayers' market value estimate of $115,000 to $120,000 is not supported by the totality of the market evidence in the record. The board is unable to place any weight on the Century 21 market analysis for the reasons argued by the Town that it was as of a later date and utilized comparables that were generally smaller and all but one were located in other parks and taxing jurisdictions. The board is also unable to place any weight on the assessments of the building portion of properties presented by Ms. Cady of manufactured homes on their own land outside the Park. As the Town pointed out, the total assessed values of those three properties are all approximately $200,000 (not the $110,000 to $115,000 for the building only as presented by

Ms. Cady) and such comparison is as misleading and incorrect as comparing the assessments of condominiums to residential properties on their own lots. (In essence, such comparison is of little value because the sticks of the bundle of rights being transferred in either scenario are very different and must be assessed differently to reflect the manner by which those bundle of rights are sold.) The board finds the best evidence of market value was presented by the Town's comparative market analysis in Municipality Exhibit A. That exhibit included all the Park sales the Town utilized in its 2007 statistical update and, in particular, the three sales which the Town used as direct comparables to support the assessed value. Further, while some testimony was presented that the Taxpayers may have been under some pressure or duress to purchase their unit for $155,000, one month before the assessment date, the lower equalized assessed value of $141,500 indicates the Town's assessment accounted for any potential duress. There was also evidence in the record that competing new units the Taxpayers considered purchasing (if they had sold their existing house) were available also at $155,000.

In light of this compelling market evidence, the Taxpayers would be disproportionately underassessed if the board were to grant an abatement based on Ms. Cady's opinion of a market value range of $115,000 to $120,000.

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, <u>not the date this decision is received</u>. 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

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Harriet E. Cady, PO Box 149, Deerfield, NH 03037, representative for the Taxpayers; Chairman, Board of Selectmen, Town of Epping, 157 Main Street, Epping, NH 03042; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date:

_____
Melanie J. Ekstrom, Deputy Clerk