STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED – JANUARY 12, 2012)

STEPHEN TOLIAS AND JANICE STRODE, Plaintiffs	:	
V.	:	**C.A. No. PC 10-0263**
THOMAS J. CASH, in his capacity as the Chairman of the Board of Assessment Review for the Town of Glocester, Rhode Island, Defendant	:	

DECISION

KRAUSE, J. Plaintiffs Stephen Tolias and Janice Strode claim that Defendant Thomas J. Cash, in his capacity as Chairman of the Board of Assessment Review for the Town of Glocester, Rhode Island, impermissibly affirmed a tax assessment on property they own at 0 Spring Grove Road in the Town of Glocester, Rhode Island ("the Spring Grove Plot").[1] The Court disagrees.

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The Spring Grove Plot is a vacant parcel of approximately forty-two acres, forty of which consist of a pond. In 2003, Plaintiffs considered building a home on the remaining two acres, and on November 14, 2003, they applied for permission to install a requisite individual sewage disposal system ("ISDS"). The Rhode Island Department of Environmental Management ("DEM") approved that application on September 8, 2004.

Plaintiffs also sought relief from the Town's zoning ordinances, and on November 19, 2003, they requested a special use permit along with a dimensional variance from the

[1] The Spring Grove Plot is legally described as Tax Assessor's Plat 13, Lot 21 in the Town of Glocester, Rhode Island.

Town's Zoning Board of Review. On January 2, 2004, the Zoning Board denied Plaintiffs' petition, as town zoning laws at that time did not authorize the issuance of special use permits in conjunction with dimensional variances.[2] Although town zoning ordinances have since been amended to permit the Zoning Board to grant both forms of relief simultaneously, Plaintiffs have never reapplied for them, and they apparently lost interest in building on the land for the next several years.

In 2009, however, Town Tax Assessor Viviane L. Valentine classified the two acres of the Spring Grove Plot that were not underwater as buildable for residential purposes. She valued the property at $160,200 and established its annual tax at $2,880.40. Plaintiffs' appeal of that assessment was denied on October 26, 2009.

They appealed that denial to the Board of Assessment Review. At a December 1, 2009 hearing, the Defendant indicated that the Spring Grove Plot was a buildable lot, as an ISDS permit had already been issued and a building permit had not thereafter been requested or denied. On December 16, 2009, the Defendant formally denied Plaintiffs' appeal. They seek review of that denial in this Court.

Statutory Review

R.I.G.L. § 44-5-26 provides that "[a]ny person aggrieved on any ground whatsoever by any assessment of taxes against him or her in any city or town" may appeal the assessment to the tax assessor, the local tax board of review, and ultimately to the Superior Court. See Narragansett Elec. Co. v. Minardi, 21 A.3d 274, 278 (R.I. 2011). In a tax assessment challenge, the assessor must first present his or her conclusion as to

[2] See Newton v. Zoning Bd. of Review of the City of Warwick, 713 A.2d 239, 241–42 (R.I. 1998) (Warwick Zoning Board exceeded its authority when it issued a special use permit together with dimensional variances when the city's zoning laws did not specifically allow the board to approve such dual relief).

the fair market value of the property and the procedure used to arrive at that figure. DeBourgknecht v. Rossi, 798 A.2d 934, 937 (R.I. 2002). If the taxpayer challenges either the legality of the assessment or claims that the assessor used an inappropriate fair market value, the burden is on the taxpayer to present evidence of fair market value. Id.

Plaintiffs mistakenly assert that this Court should review the assessment under the standard provided in § 44-27-6. Chapter 27 is reserved, however, for "Taxation of Farm, Forest, and Open Space Land." It provides special tax treatment for limited classes of property and charges the Department of Revenue with collecting and publishing information "that relates to land values for different types of farm, forest, or open space lands" and distributing such data to local tax assessors for reference when valuating these types of real estate. Sec. 44-27-8. Although the Superior Court reviews tax challenges relating to farmland, forest and open space or changes to such land classifications pursuant to § 44-27-6, the Superior Court will consider tax reviews of other types of land in accordance with § 44-5-26. See Nunes v. Marino, 707 A.2d 1239, 1244 (R.I. 1998) (a tax on land not classified as farmland, forest land, or open space land must be appealed to the Superior Court pursuant to § 44-5-26, not § 44-27-6).

To obtain review pursuant to § 44-27-6, a property owner "must first apply to the DEM for designation by its director of the property as either farmland, forest, or open space" and then apply to the appropriate city or town for the same classification. Nunes, 707 A.2d at 1242. Further, the "appeals contemplated in [§ 44-27-6] pertain only to decisions made by a board of assessment review concerning the cancellation of the previous designation of property as farmland," forest, or open space, or relating to "the use-value assessment placed on land classified as either farmland, forest land, or open-

space land." Id. at 1244. Since Plaintiffs' land is not classified as farmland, forest, or open space, the review they request from this Court cannot be considered in the context of § 44-27-6.

Their effort to seek recalibration of a property tax assessment is limned by § 44-5-26. Their petition is virtually identical to the sample form "Application for Appeal of Property Tax" set forth in § 44-5-26. The General Assembly has made it clear that, subject to very narrow exceptions, § 44-5-26 provides the exclusive remedy to challenge a property tax assessment, and only occasionally may a taxpayer obtain equity jurisdiction of the Superior Court under § 44-5-27. Narragansett Elec. Co., 21 A.3d at 278 (the remedy provided in § 44-5-26 is exclusive); Wickes Asset Mgmt., Inc. v. Dupuis, 679 A.2d 314, 322 (R.I. 1996) (§ 44-5-26 represents an adequate remedy at law and taxpayer could not invoke equity jurisdiction of Superior Court pursuant to § 44-5-27). No compelling reason exists in this case to depart from that general rule and Plaintiffs' avenue of review in this Court is confined to the procedures in § 44-5-26.[3]

Failure to Exhaust Remedies

At its core, Plaintiffs' contention is that their property has been improperly considered buildable. It is true that they cannot readily build on the Spring Grove Plot because they do not have a special use permit and a dimensional variance. They previously applied for and were denied such relief, but that was when the Town's zoning laws did not expressly allow the issuance of such dual relaxations of zoning restrictions contemporaneously. Now they do. Plaintiffs, however, have made no other application

[3] Plaintiffs' reliance on Superior Court case Fiske v. Town of Westerly Board of Tax Assessment, No. WC-2006-0246, 2009 WL 3552788 (R.I. Super. Ct. Oct. 28, 2009), is unavailing. In Fiske, the subject property, unlike the Spring Grove Plot, was classified as farmland by the DEM.

to the Zoning Board for the requisite relief. Instead, they argue that their previous inability in 2003 to secure both types of relief necessarily renders their property unbuildable today. The Court does not concur.

Plaintiffs must at least make an effort to ask the Zoning Board to revisit an issue which, if resolved in their favor, would thereby obviate the matter raised before this Court. Plaintiffs have, in effect, failed to exhaust their administrative remedies. See Doe v. East Greenwich Sch. Dep't, 899 A.2d 1258, 1266 (R.I. 2006) (discussing the importance of obtaining administrative resolution of issues before filing court action); Langton v. Brady Elec. Co., 100 R.I. 366, 370–71, 216 A.2d 134, 136–37 (1966) (same). Where, as here, zoning relief may be available but has not been sought, tax assessors may classify a property as buildable and tax it accordingly. Cf. Hill v. Town of Chester, 771 A.2d 559, 561 (N.H. 2001) ("[T]he method by which a town taxes its land is not dispositive in determining zoning questions."). [4]

Assessment Presumed Correct

Quite apart from their failure to exhaust other remedies, Plaintiffs cannot overcome the presumption of correctness that attaches to a tax assessment. Plaintiffs' principal complaint is that Tax Assessor Valentine improperly classified the Spring

[4] Following procedures within § 44-5-26 does not obviate a party's precedent obligation to exhaust administrative remedies on an issue that may ultimately bear upon a tax assessment appeal. See Langton, 100 R.I. at 370–71, 216 A.2d at 136–37 ("[T]he doctrine of exhaustion of remedies 'is a product of judicial self-limitation resembling the requirement of equity jurisdiction—that a litigant has no standing in equity where he has an adequate remedy at law—although matters of comity and need for orderly administrative procedure helped shape the doctrine.'" (citation omitted)). A court will not take it upon itself—in the context of a property tax appeal—to resolve a town zoning issue that the Zoning Board may yet address. Nothing in this Court's Decision, however, should be somehow construed as a signal to the Zoning Board to approve or deny any future petition Plaintiffs may file.

Grove Plot as "buildable," resulting in an overvaluation of the property. "Real estate should be valued in terms of its highest and best use. Highest and best use is normally defined as the most probable possible and permissible use for which the property may be used and is capable of being used." Douglas J. Emanuel, et al., Property Tax Law in Rhode Island 53 (2000) (emphasis removed); see Woodmansee v. State, 609 A.2d 952, 954 n.3 (R.I. 1992) ("[H]ighest and best use is a term used in real estate to explain the highest and best utility of a particular piece of real estate." (internal quotation marks omitted)). An owner of a buildable residential lot may utilize his property in more ways than the owner of a non-buildable lot. The buildable lot therefore has a greater "highest and best use" than the non-buildable lot. Woodmansee, 609 A.2d at 954 n.3.

Tax assessors are charged with assessing all taxable property "at its full and fair cash value." Sec. 44-5-12; see Wickes Asset Mgmt., 679 A.2d at 321. "Full and fair cash value" means "fair market value." Harvard Pilgrim Health Care of New Eng., Inc. v. Gelati, 865 A.2d 1028, 1035 (R.I. 2004). In determining fair market value, the assessor "'is not bound by any particular formula, rule or method . . . to ascertain the fair market value of real estate.'" Id. (quoting Ferland Corp. v. Bouchard, 626 A.2d 210, 215 (R.I. 1993)). Moreover, tax assessors are "entitled to the presumption that their official acts have been properly performed, until the contrary is proved." Burrillville Racing Assn. v. Tellier, 574 A.2d 749, 754 (R.I. 1990) (quoting Greenough v. Bd. of Canvassers, 33 R.I. 559, 571, 82 A. 406, 411 (1912)). Accordingly, the taxpayer bears the significant burden of demonstrating that the assessor's valuation exceeds fair market value. Harvard Pilgrim Health Care of New Eng., 865 A.2d at 1035. Nothing in the record demonstrates that Plaintiffs have surmounted that burden.

Plaintiffs' ancillary claim, that the assessment of their property constitutes an illegal tax, is also without basis. Even if, arguendo, an assessment is not on target, it does not automatically become an "illegal" tax. Narragansett Elec. Co., 21 A.3d at 278 (mere fact that assessing officers have proceeded on an erroneous basis or that the assessment is excessive is not of itself sufficient to justify the intervention of the courts at the instance of the taxpayer). A tax is illegal when it is assessed on an exempt property or "is so palpably exorbitant and excessive as to amount to constructive fraud or to violate some constitutional principle." Id.

Tax assessors' valuations are entitled to a presumption of correctness. Burrillville Racing Assn., 574 A.2d at 754. Plaintiffs have failed to rebut that presumption. They have not suggested that the Spring Grove Plot is exempt from taxation or that the assessments were so "palpably exorbitant and excessive as to amount to constructive fraud or to violate some constitutional principle." Narragansett Elec. Co., 21 A.3d at 278. Barren conclusions, unsupported by fact or law, that a tax assessment is somehow "illegal" are insufficient.

Conclusion

The Spring Grove Plot is taxable, whether buildable or not. The Plaintiffs have not made a persuasive showing that the parcel is not buildable, much less an adequate demonstration to rebut the tax assessor and the Defendant's presumptively correct conclusions that it is buildable. In any event, they have failed to exhaust available administrative remedies to pursue their claim in this forum. Accordingly, the instant appeal is denied, and judgment shall enter in favor of the Defendant.