STATE OF VERMONT
WINDSOR COUNTY

In re Norwich Taxpayer Appeals	WINDSOR SUPERIOR COURT Docket No. 780-11-08 Wrcv

DECISION ON MOTION FOR SUMMARY JUDGMENT

The taxpayers in these consolidated appeals each live on or near Bragg Hill Road in Norwich, Vermont. They contend that the town listers acted improperly in setting the 2008 grand list values of their properties by (1) selectively reappraising residential properties in a small geographic area of town instead of conducting a town-wide or rolling reappraisal; (2) listing their properties at 100% of their fair-market value rather than at the common level of appraisal for the rest of the town, which they believe to be less than 80%; and (3) arbitrarily increasing the listed value of their property by manipulating the data inputs in the town appraisal software.

The present matters before the court are two motions for summary judgment filed by defendant Town of Norwich. In the first motion, the Town contends that it is entitled to judgment as a matter of law since some of the taxpayer-appellants have not yet produced evidence of the fair market value of their properties. The Town argues that absent such evidence, the taxpayers will be unable to meet their burden of overcoming the presumption of validity that attaches to the appraisals. See *Poplaski v. Lamphere*, 152 Vt. 251, 254–55 (1989) (explaining that summary judgment is mandated where the moving party demonstrates that the non-moving party will be unable to produce evidence at trial on an element upon which it will bear the burden of proof). In the second motion, the Town seeks a ruling that the appellants lack standing to pursue their constitutional challenges. The Town argues that the appellants have failed to demonstrate that they have suffered any harm from the appraisals beyond a matter of speculation and conjecture. See *Hinesburg Sand & Gravel Co. v. State*, 166 Vt. 337, 341 (1997) (explaining that doctrine of standing is meant to prohibit plaintiffs from raising the constitutional rights of another, and requires proof of injury in fact, causation, and redressability).

The first question is whether summary judgment is mandated because the appellants have not yet produced any evidence of the fair market value of their properties. In property tax appeals brought under 32 V.S.A. § 4467, it is the responsibility of the town in the first instance to produce some evidence of the fair market value of the property. *Barrett v. Town of Warren*, 2005 VT 107, ¶ 7, 179 Vt. 134. Once the town introduces the appraisal or some other evidence of the property's fair market value, the town's valuation is presumed to be valid. *New England Power Co. v. Town of Barnet*, 134 Vt. 498, 507 (1976). It then becomes the burden of the taxpayer to overcome the presumption of validity by producing "credible evidence . . . fairly and reasonably

indicating that the property was assessed at more than the fair market value or that the listed value exceeded the percentage of fair market value applied generally to property within the community." *Rutland Country Club v. City of Rutland*, 140 Vt. 142, 145 (1981). Should the taxpayer introduce such evidence, the presumption "disappears and goes for naught," but the taxpayer nevertheless retains the burden of persuasion as to all of the contested issues in the case. *Id.* at 146.

Here, as the appellants point out, the burden of production is not yet upon them because the Town has not yet introduced any appraisals into evidence. The summary judgment record does not contain any evidence of the fair market values of the properties. It is therefore procedurally premature for the Town to contend that the appellants have not produced evidence sufficient to overcome the presumption of validity.

Beyond this procedural observation, however, there is a more fundamental concern: a challenge to the listers' assessments of the fair market values of the properties is not the only possible avenue for tax appeals. As the reported cases have shown, it is possible for taxpayers to concede the fair market value of their property but nevertheless demonstrate that they are entitled to relief because their listed value does not correspond to the listed value of other properties in the town, e.g., *Shaffer v. Town of Waitsfield*, 2008 VT 44, ¶ 12, 183 Vt. 428, or because the town listers conducted a selective reappraisal that had the effect of treating similarly-situated taxpayers differently, e.g., *Town of Castleton v. Parento*, 2009 VT 65, ¶¶ 8–9 (mem.). Indeed, it is these latter two arguments that the taxpayers are pressing in the instant appeals.

It therefore appears to the court that the Town's motions for summary judgment have somewhat missed the point. The taxpayers here are not contending that the listers erred in setting the fair market value of their properties, but rather that errors in the methodologies of the listers have resulted in their properties being listed at a value that is not comparable to the corresponding properties in town. See, e.g., *Alexander v. Town of Barton*, 152 Vt. 148, 155–56 (1989) (explaining that a difference between the listed and fair market values of property is permissible so long as the ratio is consistent among properties). The taxpayers are also challenging the reappraisals as improperly selective.

In support of these arguments, the taxpayers have submitted affidavits and other evidence. Included in the record are affidavits to the effect that the Bragg Hill area is not a unique or distinctive community such that selective reappraisal would be appropriate, and that the taxpayers' properties were listed at a higher value than the common level of appraisal in the town (at least according to the taxpayers' proffered expert). There are also affidavits to the effect that the listers did not physically inspect some of the properties, but rather made arbitrary estimations of property value. This is therefore not a case in which the taxpayers are merely relying upon the allegations in the complaint in response to a motion for summary judgment. *Boulton v. CLD Consulting Engineers, Inc.*, 2003 VT 72, ¶ 5, 172 Vt. 413. Rather, there is evidence in the record showing a genuine need for trial on the issues in the complaint.

Furthermore, the harms claimed by these taxpayers are not speculative. The equalization and selective-reappraisal claims are cognizable and redressable whether or not the fair market values of the properties are contested. *Allen v. Town of West Windsor*, 2004 VT 51, ¶ 9, 177 Vt. 1; *Parento*, 2009 VT 65, ¶¶ 22–23.

For these reasons, the motions for summary judgment are denied. To be clear, the court has not yet ruled upon the question of whether the taxpayers have produced sufficient credible evidence to meet their burden of production under *Rutland Country Club*. All such questions remain for trial.

ORDER

Defendant Town of Norwich's Motion for Summary Judgment (MPR #4) and Motion for Partial Summary Judgment (MPR #5), both filed August 12, 2009, are both ***denied***.

Dated at Woodstock, Vermont, this 24 day of December, 2009.

Hon. Harold E. Eaton, Jr.
Presiding Judge

FILED
DEC 24 2009
Windsor County Clerk