State of New York
UNIFIED COURT SYSTEM
SENECA COUNTY COURT CHAMBERS
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Dennis F. Bender
County Judge
Family Court Judge
and
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May 21, 2015

Ted H. Williams, Esq.
333 West Washington Street, Suite 200
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Steven J. Getman, Esq.
PO Box 333
Interlaken, New York 14847

RE: Lakeshore Landing vs Morgan
Seneca County Index No. 48493

Dear Counsel:

Enclosed herewith is a copy of a Decision in the above-referenced matter. The originals will be filed with the court clerk.

Sincerely,

Dennis F. Bender
Supreme Court Judge

DFB/jr
Enclosures

STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

LAKESHORE LANDING HOMEOWNERS ASSOC.,

Plaintiff DECISION

-VS- Index No. 48493

ANNE MORGAN, ASSESSOR AND THE BOARD OF ASSESSMENT REVIEW OF THE TOWN OF ROMULUS, NEW YORK,

Respondents

Appearances:

Ted H. Williams, Esq.
Harris Beach, PLLC
On Behalf of the Petitioner

Steven J. Getman, Esq.,
On Behalf of the Respondents

Bender, J.

The Court has before it cross motions for summary judgment. The petitioner is a taxpayer and owner of real property in the Town of Romulus, County of Seneca, consisting of individual homes and common areas used by the homeowners therein. The properties are located at Lake Hill Drive, Colonels Drive, Lake Road East, and 5850 East Lake Road in Romulus.

The petitioner commenced four proceedings contesting the taxation of parcels that are the "common" parcels of the Homeowner's Association. (Exhibit A, Petitioner's motion)

The petitioner submits the common areas, identified as the Pavilion, boat launch and parking lot, are available only to the Petitioner's members and guests by virtue of their ownership of their respective lots, each of which is taxed separately. They further argue the common areas are not available for rent and have no substantial value apart from their purpose. They allege the

value of the common areas are reflected in the sale price of the individual properties and are already included in the assessments of those properties. Basically, they submit the separate taxation of the common areas is double taxation.

In opposition and in support of its cross motion for summary judgment, the Town of Romulus (hereinafter "the Town") submits that the common areas do indeed have a separate value and that they were not included in the individual assessments of the homeowners. They note there is a presumption that tax assessments are valid and that the petitioner has not presented any evidence in the form of appraisals or other factual data to indicate that the assessments are excessive. They further submit that the petitioner presented no such factual evidence before the Board of Assessment Review and has continued to fail to present factual evidence to the Court.

Pursuant to the affidavit of Anna Morgan, the Town Assessor, the dominant parcels owned by the members of the petitioner Homeowners Association are assessed under the market approach in which the assessor compares the subject property to similar or comparable properties recently sold. (Paragraph 12, Morgan affidavit) She submits the assessment of the dominant estates (i.e., individual homes) in the Lakeshore development, as calculated by her office under the market approach, do not include the value of the common parcels owned by Lakeshore Landing Homeowners Association. (Paragraph 13, Morgan affidavit).

The Town relies on Radisson Community Association, Inc. v. Long, 28 A.D. 3d 88 (4th Dept., 2006). The Radisson Community Development in Onondaga County consists of several parcels of land with common areas within a planned living community. Like the petitioner herein, the petitioner in Radisson argued the common areas had no significant value independent of the dominant estates (the homes). The Court noted,

> "The common parcels herein can be said to have either no value or a nominal value for tax purposes only if they have little or no beneficial use for their owner" (Citations omitted) Thus,"{t}he ultimate question in each case is not whether the

land taken is burdened by servitude, but rather [the issue is] the value of the land for any use consistent with the burden upon it." (Citations omitted)" Radisson, *supra,* at page 93-94.

The subject properties and the issues herein have characteristics very similar to the characteristics of the Homeowners Association in the Radisson case, including the right to promulgate rules and regulations relating to the use, operation, and maintenance of the association property; to grant easements or rights of way to any public or private utility corporation, governmental agency, or political subdivision; to dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as maybe agreed to by the association and the transferee; to enter into agreements, reciprocal or otherwise, with other homeowners and resident associations, condominiums and cooperatives for use of or sharing of facilities. (Exhibit F, Petitioner's motion, page 7); Radisson *supra* at page 94-95 and as further particularized in the trial court level decision in Radisson, 2004 WL 5487826 (Onondaga County Supreme Court, 2004).

The petitioner must make a showing that its property is over-valued by substantial evidence. The Court of Appeals has stated, however, that the standard is a minimal one.

"In the context of tax assessment cases, the "substantial evidence" standard merely requires that petitioner demonstrate the existence of a valid and credible dispute regarding valuation. The ultimate strength, credibility or persuasiveness of petitioner's arguments are not germane during this threshold inquiry. Similarly, the weight to be given to either party's evidence is not a relevant consideration at this juncture. Instead, in answering the question whether substantial evidence exists, a court should simply determine whether the documentary and testimonial evidence proffered by petitioner is based on "sound theory and objective data" (citation omitted) rather than on mere wishful thinking. Though the substantial evidence standard is low, it "does not rise from bare surmise, conjecture, speculation or rumor"(citation omitted.)" FMC Corp. V Unmack, 92 NY 2d 179, 188(1998).

Here, in moving for summary judgment on this issue, the petitioner has failed to provide any appraisal or shown any evidence that the property has been overvalued, beyond their belief the Town has done so. In the "...absence of "substantial evidence" to the contrary, the tax

assessment should be upheld as presumptively valid." FMC Corp. V Unmack, *supra,* at page 188.

The petition is dismissed and the cross motion by the Respondents for summary judgment in its favor is granted. Counsel for the Respondents to submit judgment in accordance with this decision.

DATED: May 21, 2015

HON. DENNIS F. BENDER
Acting J.S.C.