STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: September 12, 2018)

CHRISTOPHER ROBERTS AND JESSICA ROBERTS	:	
v.	:	**C.A. No. PC-2017-2410**
ELYSE M. PARE, IN HER CAPACITY AS TAX ASSESSOR OF THE CITY OF WOONSOCKET, AND THE WOONSOCKET TAX BOARD OF ASSESSMENT REVIEW	:	

DECISION

GALLO, J. This matter is before the Court on Plaintiffs Christopher and Jessica Roberts' (the Roberts' or Plaintiffs) Petition for Relief from Assessment, in which they challenge the assessment levied by the Woonsocket Tax Assessor Elyse M. Pare (the Assessor or Ms. Pare) regarding their residential real estate at 507 Rhodes Avenue in Woonsocket, Rhode Island and designated as Plat 1, Lot 6 (the Property) on the records of the Tax Assessor. More specifically, Plaintiffs claim that the Assessor and the Woonsocket Board of Assessment Review (the Board) erred in refusing to take into account the homestead exemption for single-family homes. Instead, the Assessor and the Board applied the lesser exemption available to two-family homes. Plaintiffs' complaint also seeks a declaration of their eligibility for the single-family homestead exemption. Additionally, Plaintiffs allege a violation of the Open Meetings Act (the OMA), G.L. 1956 §§ 42-46-1 *et seq.*, by the Board. This matter was tried on August 6, 2018. Jurisdiction is pursuant to G.L. 1956 § 9-30-1 and § 42-46-8.

I

Fact and Travel

Plaintiffs own residential real property at 507 Rhodes Avenue, also known as Plat 1, Lot 6, in Woonsocket, Rhode Island. The Property is approximately 1.79 acres in size and has situated thereon two structures: a principal, single-family residence occupied by Plaintiffs (the Principal Residence), and a much smaller, 600 square foot, one-bedroom residence occupied by Mr. Roberts' grandparents (the Accessory Residence).

The Accessory Residence was originally used as a barn in which farm equipment and horses were kept and later converted into living space. The Property has been in Mr. Roberts' family for more than a century, and Plaintiffs purchased the Property from Mr. Roberts' grandparents several years ago.

In late 2013, shortly after purchasing the Property, Plaintiffs contacted Christopher Celeste (Mr. Celeste), who was the City Tax Assessor at the time, to learn what they would need to do to obtain a homestead exemption for the Property. Mr. Celeste advised Plaintiffs that they would need to seek a special use permit for an accessory dwelling unit, and that if the Zoning Board of Review of the City of Woonsocket (Zoning Board) approved, Plaintiffs would qualify for the single-family exemption. Plaintiffs sought a special use permit from the Zoning Board for the Accessory Residence to be used as an accessory family dwelling. Plaintiffs' application was approved by the Zoning Board, and Mr. Celeste applied the single-family exemption to Plaintiffs' property taxes.

As a matter of practice in Rhode Island, each structure on a piece of land is assessed separately for purposes of property taxes, and then added to the value of the land on which the structures sit. Here, the Principal Residence is assessed at a value of $84,400, the Accessory

Residence is assessed at a value of $27,200, and the land is assessed at a value of $49,500, for a total property value of $161,100. (Property Record Card.) These valuations are not disputed in this case. Mr. Celeste applied the 30% single-family homestead exemption[1] to the total value of the Property, *i.e.*, the exemption was applied to the sum of the Primary Residence's assessed value, the Accessory Residence's assessed value, and the land's assessed value.

Thereafter, a new Tax Assessor was appointed by the City—Ms. Pare. In the course of a general review of homestead exemptions within the City, Ms. Pare disagreed with Mr. Celeste's decision to apply the single-family exemption to the Property, and instead applied the 10%, two-family exemption to the total value of the Property. Plaintiffs appealed her decision to the Woonsocket Tax Board of Assessment Review (the Board). The Board conducted a public meeting on March 21, 2017, during which it heard Plaintiffs' appeal. At that meeting, there were no deliberations or discussion by the Board's members as to the merits of Plaintiffs' appeal, nor was a vote taken. The Assessor testified that it was common practice for the Board to hear an appeal one month and then deliberate and vote at the following meeting to allow the members the opportunity to view the subject property in person. She testified that there was "probably" another meeting sometime in April at which the Board voted on Plaintiffs' appeal. The Assessor testified that she believed that if there were minutes kept that they would have been submitted to the Secretary of State and posted on the website. No minutes from that meeting were posted on

[1] At trial, the Assessor testified that at the time Plaintiffs received the single-family exemption, the rates for the single-family and two-family exemptions were 30% and 9%, respectively. The following year—the year at issue in this appeal—the percentages changed to 25% and 10%, respectively.

the Secretary of State's website, nor was the meeting noticed on the Secretary of State's website as required by law.[2] No minutes were produced at the trial.

On April 25, 2017, the Board mailed a two-sentence decision to Plaintiffs denying their appeal after purporting to give the matter its "full consideration[.]" (Board Decision, Apr. 25, 2017.) The Board's decision does not articulate the basis of its conclusion, nor does it note the votes of its members or when—or even if—deliberations occurred. *Id.* Mr. Roberts unsuccessfully attempted to obtain minutes of any April 2017 meeting, and he also checked the Secretary of State's website for same to no avail. Mr. Roberts also attended the Board's next regularly-scheduled meeting, which was several months later, and the Board did not discuss Plaintiffs' appeal or the action the Board took thereon at that time.

In their Petition for Relief from Assessment, Plaintiffs allege that by failing to apply the single-family homestead exemption, the City levied an illegal tax on the Property. Plaintiffs also seek a declaration that the Property is subject to the single-family exemption. Finally, Plaintiffs allege an OMA violation because the Board did not publicly deliberate or vote on their appeal, but instead appears to have conducted a non-public meeting for that purpose, and failed to maintain minutes of that meeting as required by the OMA.

II

Standard of Review

Under the Uniform Declaratory Judgments Act (UDJA), the Superior Court possesses "the power to declare rights, status, and other legal relations whether or not further relief is or

[2] "All minutes and unofficial minutes required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state." Sec. 42-46-7(e).

could be claimed." Sec. 9-30-1; *see also P.J.C. Realty, Inc. v. Barry*, 811 A.2d 1202, 1207 (R.I. 2002) (quoting § 9-30-1). The UDJA provides in pertinent part:

> "[t]he validity or applicability of any rule may be determined in an action for declaratory judgment in the superior court of Providence County, when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question." Sec. 42-35-7.

The Court's power under the UDJA is broadly construed, and allows the trial justice to "facilitate the termination of controversies." *Malachowski v. State*, 877 A.2d 649, 656 (R.I. 2005). Further, it is well-established that a trial court's "decision to grant or to deny declaratory relief under the [UDJA] is purely discretionary." *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997).

III

Analysis

As an initial matter, this Court notes that Plaintiffs' three-count petition in this case seeks both declaratory relief as well as relief from the assessment of taxes they claim are illegal. In their pretrial memorandum, Plaintiffs reference only two counts and focus largely on their request for a declaration of rights as to the Property's eligibility for a single-family exemption. Given this Court's view of the issues presented, either vehicle appropriately responds to the core inquiry in this case, and a ruling on either procedural mechanism will have the same effect. As such, this Court need not discuss the statutory remedy provided in G.L. 1956 § 44-5-26,[3] as the better-articulated claim for declaratory relief is dispositive of the case.

[3] This Court does find, however, that all of the requirements of § 44-5-26 have been met, and none preclude this action.

A

Property Tax Homestead Exemption

Section 44-5-75 authorizes a special homestead exemption in the City. It provides in pertinent part:

> "(a) The mayor, upon approval of the city council of the city of Woonsocket, is authorized to annually fix the amount, if any, of a homestead exemption with respect to assessed value from local taxation on taxable real property used for residential purposes in the city of Woonsocket and to grant homestead exemptions to the owner(s) of that residential real estate in amounts not to exceed the following percentages:
> "(1) Single family and condominiums: forty-five percent (45%) exemption;
> "(2) Two (2) family: twenty-five percent (25%) exemption;
> "(3) Three (3) family: fifteen percent (15%) exemption;
> "(4) Four (4) to ten (10) family: no homestead exemption.
>
> "(b) Any homestead exemption only applies to residential property improved with a dwelling house. There shall be no homestead exemption granted for vacant land or for the residential portion of mixed-use property in the city of Woonsocket, regardless of the number of units used for residential purposes. In order to determine compliance with the homestead exemption as outlined in this section, the city council shall provide, by resolution or ordinance, rules and regulations governing eligibility for the exemption established by this section." Sec. 44-5-75.

Plaintiffs contend that the Property should be classified as a single-family home and, therefore, receive the highest exemption. The City maintains, however, that the Accessory Residence makes the Property a two-family property.

The terms "single family" and "two family" are not specially defined within the statute, nor are they defined within the ordinance that discusses the homestead exemption. *See* § 44-5-75; Woonsocket City Code ch. 2, § 2-14. The City's homestead exemption ordinance provides in pertinent part:

> "The City of Woonsocket shall adopt a system of property tax classification and annually fix the amount of a homestead exemption from local taxation on taxable real property used for residential purposes, as authorized by the General Assembly of the State of Rhode Island.
>
> "1. The homestead exemption only applies to residential property improved with a dwelling house. There shall be no homestead exemption granted for vacant land or for the residential portion of mixed-use property, regardless of the number of units used for residential purposes.
>
> "2. In addition to other requirements, the homestead exemption shall apply only to those properties that are owner-occupied. . . .
>
> "6. The Tax Assessor shall have the authority to make adjustments to the homestead exemption if he receives information that the property no longer meets the eligibility requirements." Woonsocket City Code ch. 2, § 2-14.

When a statute is clear and unambiguous, this Court's mandate is to '"give the words of the enactment their plain and ordinary meaning.'" *State v. Morrice*, 58 A.3d 156, 160 (R.I. 2013) (quoting *Mendes v. Factor*, 41 A.3d 994, 1002 (R.I. 2012)). Moreover, this Court "must 'consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.'" *Id.* (quoting *Mendes*, 41 A.3d at 1002). Finally, "under no circumstances will this Court 'construe a statute to reach an absurd result.'" *Id.* (quoting *Generation Realty, LLC v. Catanzaro*, 21 A.3d 253, 259 (R.I. 2011)).

When interpreting this statute, it is noteworthy that the General Assembly granted considerable discretion to the City, and the City's zoning ordinance's definitional section does offer some guidance as to the meaning of a single-family and two-family dwelling, at least in the zoning context:

> "*Dwelling unit.* A structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including

> permanent provisions for living, sleeping, eating, cooking, and sanitation and containing a separate means of ingress and egress.
>
> "(a) Single-family dwelling. A building containing one (1) dwelling unit.
>
> "(b) Two-family dwelling. A building containing two (2) dwelling units.
>
> "(c) Multifamily dwelling. A building containing more than two (2) dwelling units.
>
> "(d) Accessory family dwelling. An accessory dwelling unit for the sole use of one (1) or more members of the family of the occupant or occupants of the principal residence, but not needing to have a separate means of ingress and egress." Woonsocket City Code Appendix C, § 18.1.

By this definition, the Primary Residence is a single-family dwelling in that it is "a building containing one dwelling unit." *See id.* Likewise, the Accessory Residence is also a single-family dwelling. *See id.* As they are separate, unconnected buildings, the Property cannot be described as a "two-family dwelling" under the ordinance. *See id.*

Moreover, the plain and ordinary meaning of the term "single-family" in this context relates to a building in which a single, shared, livable unit exists and that unit is used to house members of one family. *See* 83 Am. Jur. 2d *Zoning and Planning* § 145. Most other courts called upon to interpret the term "single-family" home or dwelling have found that the term relates not to the use of the property, but the physical nature of the structure itself. *See, e.g., Deep E. Texas Reg'l Mental Health & Mental Retardation Servs. v. Kinnear*, 877 S.W.2d 550, 554 (Tex. App. 1994) ("[T]he term 'single family residence' deals with the design or form of the residence in an architectural, structural sense."); *Double D Manor, Inc. v. Evergreen Meadows Homeowners' Ass'n*, 773 P.2d 1046, 1050 (Colo. 1989) (holding that the plain meaning of the term "single-family dwelling" in a covenant was a structural restriction not a use restriction);

Brady v. The Superior Court of San Mateo Cty., 200 Cal. App. 2d 69, 77 (Cal. App. 1962) ("'Single family dwelling' must mean, in our judgment, an individual or a group of persons living on the premises as a single housekeeping unit.").

This Court finds that both the Primary Residence and Accessory Residence fit the plain meaning of a "single-family" dwelling because of the physical characteristics of their structure. The fact that there are multiple single-family dwellings on the same plot of land is of no significance to the issue posed by this litigation. As each structure contains a single-family dwelling unit, each is a "single-family" residence.

The most significant distinction to draw between the Principal Residence and Accessory Residence is that the Accessory Residence is not owner-occupied—it is occupied by Mr. Roberts' grandparents, who have not owned the Property since 2013. The City's homestead exemption ordinance provides in pertinent part that "[i]n addition to other requirements, the homestead exemption shall apply only to those properties that are owner-occupied." Woonsocket City Code ch. 2, § 2-14. As the Accessory Residence is not owner-occupied, but is instead occupied by one of the owners' grandparents, it does not qualify for any homestead exemption under the ordinance. *See id.*

The Principal Residence is, however, a single-family, owner-occupied residence, and, therefore, qualifies for the single-family exemption. Accordingly, with respect to the assessed value of each structure, this Court concludes that residence is entitled to the single-family exemption and the Accessory Residence is entitled to no exemption at all.

The land on which the two residences sit consists of a single lot which, the Court finds, primarily supports the Principal Residence and, thus, should be considered attached to the Principal Residence for tax assessment purposes. The Accessory Residence is an accessory use

on the Property. (Zoning Board Decision, December 2, 2013.) The City's zoning ordinance defines an accessory use as:

> "A use of land or of a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building. Such accessory use shall be restricted to the same lot as the principal use, and shall not be permitted without the principal use to which it is related." Woonsocket City Code Appendix C, § 18.1(2).

As the Accessory Residence is merely "incidental and subordinate" to the Primary Residence with respect to the Property, this Court finds that the single family exemption applies to the assessed value of the land and Principal Residence.

B

Open Meetings Act

Our Supreme Court has noted that "[t]he Legislature enacted the OMA to ensure that 'public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.'" *Tanner v. Town Council of Town of E. Greenwich*, 880 A.2d 784, 795 (R.I. 2005) (quoting § 42-46-1). The OMA mandates that "'[a]ll public bodies shall give written notice of their regularly scheduled meetings at the beginning of each calendar year,' § 42–46–6(a), and 'supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date.'" *Id.* (quoting Sec. 42–46–6(b)). Said supplemental notice "shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed." *Id.* The OMA mandates that each public body maintain minutes of its meetings. Sec. 42-46-7. Those minutes must include the vote of each member as to all issues voted upon. *Id.* Minutes must be made available to the public and filed with the Secretary of State. *Id.*

Plaintiffs argue that the Board violated the OMA by not deliberating or discussing their appeal publicly, by presumably conducting a non-public meeting for this purpose, and by failing to maintain minutes and record the votes of the Board's members during that non-public meeting. The Board argues that this count was filed after the applicable statute of limitations passed.

The OMA provides in pertinent part that:

> "Any citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general. . . . Nothing within this section shall prohibit any individual from retaining private counsel for the purpose of filing a complaint in the superior court within the time specified by this section against the public body which has allegedly violated the provisions of this chapter; provided, however, that if the individual has first filed a complaint with the attorney general pursuant to this section, and the attorney general declines to take legal action, the individual may file suit in superior court within ninety (90) days of the attorney general's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later." Sec. 42-46-8.

Here, Plaintiffs did not file a complaint with the Attorney General before filing this action. Accordingly, § 42-46-8 provides them a 180-day window to file their complaint in the Superior Court. *Id.* The alleged OMA violation occurred sometime between the public meeting conducted on March 21, 2017, and the date of the written decision mailed to Plaintiffs dated April 25, 2017. The instant complaint was filed in this Court on May 24, 2017, well within the 180-day period. Accordingly, this Court finds the complaint to be timely filed.

It is similarly clear that there are no minutes reflecting any deliberations or votes as to the merits of Plaintiffs' appeal. Presumably, a vote was conducted, but without minutes it is impossible for the Court to know the circumstances surrounding that vote. Assuming, as the Tax Assessor speculated at trial, that a meeting occurred in April 2017 at which the Plaintiffs' appeal

was decided, the Court can only conclude from the facts presented at trial that the April 2017 meeting was a non-public meeting and no minutes kept of that meeting, all in violation of the OMA. *See Walton v. Baird*, 433 A.2d 963, 964 (R.I. 1981) ("It is also the province of the trial justice [when sitting without a jury] as part of the factfinding process to draw inferences from the testimony of witnesses[.]"). Accordingly, this Court finds for Plaintiffs on their OMA violation claim.

The OMA provides in pertinent part that:

> "The court shall award reasonable attorney fees and costs to a prevailing plaintiff . . . except where special circumstances would render such an award unjust. The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter. In addition, the court may impose a civil fine not exceeding five thousand dollars ($5,000) against a public body or any of its members found to have committed a willful or knowing violation of this chapter." Sec. 42-46-8(d)

The Court is cognizant of no circumstances in the case at bar that would render a fee award unjust. Therefore, the Court awards Plaintiffs their reasonable attorney's fees associated with bringing their OMA claim.[4] *See Tanner*, 880 A.2d at 800 (holding that the award of attorney's fees, after a finding of an OMA violation, is mandatory). This Court declines, however, to subject the Board to a civil fine in this instance as there is insufficient evidence to support a finding that the violation was knowing or willful. *See* § 42-46-8(d); *see also Tanner*, 880 A.2d

[4] The Court notes that, while the award of fees is mandatory, the Court has broad discretion in fixing the amount of the fee award. *See Tanner*, 880 A.2d at 801 ("[T]he award of attorney's fees is a mandatory remedy for a violation of the OMA. In fashioning this remedy, however, the court is required to consider inherent tenets of justice and fairness, thus ensuring that the remedy is 'proportional to the breach and the effect thereof.'"). Our Supreme Court reviews awards of fees under the OMA under an abuse-of-discretion standard. *Id.* at 800. Plaintiffs' counsel is instructed to submit an itemized affidavit of attorney's fees focusing on services to Plaintiffs in redressing the violation of the OMA. If there is a dispute as to the amount claimed, this Court will schedule an evidentiary hearing for purposes of determining a reasonable fee in light of the nature of the violation and the interests of justice and fairness.

at 794 n.11 ("The structure of the OMA grants the trial court discretion to determine which form of relief is best suited, in the particular case, to abate current violations and deter future ones."). Finally, given this Court's declaration in this case, injunctive and other types of relief are unnecessary.

IV

Conclusion

It is the judgment of this Court that the assessed value of the Plaintiffs' Principal Residence, and the land comprising the Property, is subject to the City's single-family homestead exemption, and that the assessed value of the Accessory Residence is subject to no homestead exemption. This Court also finds that the Board violated the OMA by deliberating and voting while not in a public meeting and by failing to keep minutes and record the votes of its members.

Counsel shall prepare the appropriate order for entry.