

Corbett & Russell Realty Co., Inc.

v.

City of Laconia

Docket No. 3325-86

DECISION

A hearing in this appeal was held, as rescheduled, on August 10, 1989. The Taxpayer was not represented. The City was represented by Gregory A. Heyn, real estate appraiser.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$308,750 (land, \$27,900; buildings, \$280,850) placed on their real estate, located on Lexington Dr. for the 1986 tax year. The property consists of a racquet ball and health club located on 1.86 acres.

Neither party challenged the Department of Revenue Administration's equalization ratio of 45% for the 1986 tax year for the City of Laconia. Based on that ratio the Taxpayers assessment equates to a market value of \$686,111.

Based on correspondence in the Boards file, the Taxpayers basis for appeal is their contention that the property was acquired at auction in 1985 for \$385,000 and that the club lost money in 1986 and 1987.

Mr. Heyn stated that he was hired by the City to arrive at an independent estimate of value for the property as of April 1, 1986. Mr. Heyn submitted a narrative appraisal in which he utilized both the cost approach and income approach to value in arriving at a correlated value for 1986 of \$893,000 or an equalized assessment of \$401,850.

The Board's appraiser, in his valuation of the property, recommended no change in the 1986 assessment.

Corbett & Russell Realty Co., Inc. v. City of Laconia

In regard to the Taxpayer's allegation the Board rules as follows The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state, and upon all estates within the same

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board finds a disturbing paucity of conclusive evidence on which to determine if the assessment accurately reflects the Taxpayer's fair share of the tax burden.

Corbett & Russell Realty Co., Inc. v. City of Laconia

The sale at auction is suspect as being an arms length transaction as it resulted from a bankruptcy action and included the paying of taxes in arrears.

While the auction could set one of the parameters of market value, there are too many outstanding questions for it to be a probative piece of evidence.

The fact that the business appears to be improving raises unanswered questions as to why it recorded substantial losses in 1986 and 1987 and whether those years are truly representative of the income stream that could be produced from the property.

The Board also finds that the higher estimate of value presented by the Town at the hearing is less than conclusive. As noted by the Board's appraiser, the 1988 assessed value and market value of the property, as a result of a complete revaluation in 1988, is \$874,600, less than Mr. Heyn's estimated 1986 value of \$893,000. The Board also finds Mr. Heyn's lack of knowledge of the sale of a similar property in nearby Gilford and the incorrect technique in his income approach to value of adding a separate land value to a value already derived from the income potential of the property as a whole are facts that reduce the credibility of the higher estimate of value.

For the above mentioned reasons, the Board rules the Taxpayer has failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in excess of the Taxpayer's just share of the common tax burden. The ruling is, therefore: Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

(Ms. Richmond did not sit.)

Anne S. Richmond, Esquire, Chairman

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George Twigg, III, Member

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Peter J. Donahue, Member

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Paul B. Franklin, Member

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Date: August 25, 1989

Corbett & Russell Realty Co., Inc. v. City of Laconia

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Frank Kennedy, representative for Corbett & Russell Realty Co., Inc., taxpayer; and the Chairman, Board of Assessors of Laconia.

Michele E. LeBrun, Clerk

Date: August 25, 1989

0009