

Ralph J. Rosen
v.
City of Laconia

Docket No. 4333-88

DECISION

A hearing in this appeal was held, as scheduled, on August 3, 1990. The Taxpayer represented himself. The City was represented by David W. Bolton, Appraiser, of M.M.C., Inc., and by John J. Ashey, City Building Inspector.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$230,400 (land, \$90,700; buildings, \$139,700) placed on his real estate located on Old North Main Street, for the 1988 tax year. The property consists of a dwelling with two outbuildings on a 1.2-acre lot.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100 percent for the 1988 tax year for the City of Laconia.

Mr. Rosen testified that his lot size was 1.2 acres, not 1.28 acres, as assessed by the City. He argued that the City's assessing him for a second potential lot based on excess frontage was not valid due to the siting of the buildings on the lot and due to the prevailing size of the lots in the neighborhood.

Mr. Rosen also stated that the base price for frontage along Old North Main Street varied from \$150 to \$250 for no apparent reason.

Mr. Bolton stated that the City agreed the lot size should be corrected to 1.2 acres and that several properties along Old North Main Street were incorrectly assessed at the lower \$150 frontage price and were being corrected. He argued that the Rosen property had value above the minimum site value due to the excess frontage and area above the minimum zoning dimension requirements that would allow for one and possibly two additional lots to be created. Mr. Ashey presented sketches of how one or two more lots could be feasible.

On rebuttal, Mr. Rosen stated that he would have to relocate an outbuilding or the drive accessing it to conform to the City's potential subdivision scenario. Further, he testified that his lot did not front on Tanny Lane, as the person who subdivided and caused the private lane to be created still owned a strip of land between the lane and the Taxpayer's lot.

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.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 that the correct lot size is 1.2 acres. The Board finds that the correct frontage unit price is \$250.

The Board rules that while it is theoretically and legally possible to subdivide an additional lot from the Taxpayer's property, it is not the norm of the neighborhood development to do that. The neighborhood tends to be above-average dwellings on larger than minimum lot sizes.

On the other hand, the Board does not agree with the Taxpayer's contention that this additional frontage does not contribute any value to the property as a whole. The Board finds that this area of the lot does provide some privacy, protection, and spaciousness to the lot as a whole.

Therefore, the Board rules that the proper assessment should be \$214,235 and is calculated as follows:

Land

1st acre as assessed	\$57,935
.1 acre	600
80 feet excess frontage x 250 (unit price) x 160 (influence factor) x 50 (condition factor)	<u>16,000</u>
Total land value	\$ 74,535
Total building value	<u>139,700</u>
Total assessed value	\$214,235

If the taxes have been paid, the amount paid on the value in excess of \$214,235 is to be refunded with interest at six percent per annum interest from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

August 24, 1990

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Ralph J. Rosen, the Taxpayer, to the Chairman, Board of Assessors, City of Laconia, and to David W. Bolton, Appraiser, M.M. C., Inc.

Michele E. LeBrun, Clerk

August 24, 1990