

Raymond. R. Reed and William K. Reed

v.

City of Laconia

Docket No. 4493-88

DECISION

The "Taxpayers" appeal pursuant to RSA 76:16-a the "City's" assessment of \$163,300 (land \$62,700; buildings \$100,600) on a 3.6 acre site on Bean Road, consisting of a junkyard with appurtenant buildings and two residential buildings (the Property). For the reasons stated below, the appeal is denied, and a revised assessment of \$204,600 is ordered.

The Taxpayers have the burden of proving the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Appeal of the Town of Sunapee, 126 N.H. 214,216 (1985). We find the Taxpayers have failed to carry this burden.

The Taxpayers argued the City was incorrectly assessing the Property as one lot when there are two record lots. Thus the Taxpayers asked the board to order the City to assess the Property as two lots. This issue will be addressed below. The Taxpayers also argued the City was harassing them and attempting to limit the Property's use. This issue is beyond the board's jurisdiction and will not be addressed. See RSA ch. 71-B, RSA 76:16-a; see also Appeal of Gillin, 132 N.H. 311, 313 (1989) (Board's powers entirely statutory, and board cannot exceed the powers enunciated in the statutes.). Finally the Taxpayers argued the assessment was too high when the purchase price and the use restrictions are considered.

The first issue is whether the Property was properly assessed as one lot

or whether it should have been assessed as two lots. We find the City properly

assessed the Property as one lot.¹ Under RSA 75:9, as interpreted by the supreme court, the City was authorized to assess the Property as one lot, (i) provided there was unity of ownership of the lots and (ii) provided there were others factors to warrant merging the two lots for assessing purposes. See Appeal of Loudon Road Realty Trust, 128 N.H. 624, 627-28 (1986); Fearon v. Town of Amherst, 116 N.H. 393 (1976).

As of April 1, 1988, the Property was owned by the Taxpayers as joint tenants with rights of survivorship. Thus, unity of ownership existed. Furthermore, the following facts support merging the lots for assessing purposes: 1) the two lots were being used as one lot; 2) one of the garages was on the boundary line, making that lot nonconforming; 3) the lots were nonconforming pursuant to the Laconia Zoning Ordinance (the Ordinance) Article 7, Table 2 (minimum-lot size requirements where no public water or sewer); and 4) the City considered the lots merged pursuant Article 4, Section 4.11 of the Ordinance. The evidence established the Taxpayers used the lots as one lot, running their business on both lots without regard for the lot lines. Most importantly, there was only one gate through which cars were brought in and through which all business traffic flowed, and the cars were stored on both lots and on the boundary between the lots. Based on this, we find the City properly assessed the lots as one tax lot.²

The board also finds the Taxpayers failed to prove the assessment was improper, resulting in the Taxpayers paying a disproportionate share of taxes.

The Taxpayers did not present any credible evidence on the property's true value

¹ We note that even if we had reached a contrary result and had ordered the City to assess the Property as two lots, the same total assessment would be ordered. At the board's request, the City submitted two sets of revised property record cards--one with the Property assessed as one lot and one with the Property assessed as two lots. Each calculation resulted in a total assessment of \$205,500.

² The board is strictly limiting this decision to whether the lots are merged, pursuant to RSA 75:9, for assessing purposes. The board is not deciding whether there are two lots for land use purposes. Such issues are beyond the board's jurisdiction.

and mere protestations about the City's assessment do not satisfy the Taxpayers' burden. Moreover, subject to the adjustment discussed next, the City supported the assessment itself and the method used to arrive at the assessment.

At the hearing, the board discovered an error in the land area on the property record card. Thus, the City was ordered to recalculate the assessment using the correct land size to ensure the Property was properly assessed. After recalculating the land area, the City arrived at an assessment of \$205,500 (land, \$104,000; buildings, \$101,500). However, the board sees no reason for the revised building assessment. The board, therefore, orders the 1988 assessment to be \$204,600 (land, \$104,000; building, \$100,600). This higher assessment is made pursuant to the board's authority in RSA 71-B:16 II.

The City shall send the Taxpayers a revised tax bill for 1988. The Taxpayers shall have 30 days to pay, without interest or penalty, the amount of taxes attributable to the value in excess of \$163,300 (the original assessment). Thereafter, interest and tax collection shall be pursuant to the applicable statutes.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue, Member

Ignatius MacLellan, Member

Date:

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Raymond R. & William K. Reed, taxpayers; the Chairman, Board of Assessors of Laconia; and Scott Bartlett, Appraiser for M.M.C., Inc.

Michele E. LeBrun, Clerk

Date: