

Richard T. Bois
v.
City of Laconia

Docket No. 4495-88

DECISION

A hearing in this appeal was held, as scheduled, on June 13, 1990. The Taxpayer was represented by his father, Maurice P. Bois, Esq., of Manchester. The City was represented by Kathryn Temchack, Assessor and David W. Bolton, M.M.C., Inc..

The Taxpayer appeals, pursuant to RSA 76:16-a, the 1988 assessment of land (only) on parcel M-25-220-9B valued at \$21,900 and parcel M-22-152-2A valued at \$800.

The parties agreed that the equalization ratio for the City of Laconia for the 1988 tax year was 100%.

The subject parcels are contiguous, non-conforming lots of record, less than three acres (combined), accessed from Union Avenue via a 575 foot long (10 foot wide) right of way. The smaller lot is slightly more than 1/2 acre in size (24,394 sq. ft.).

The Taxpayer's representative, Mr. Bois, requested that the Board take a view of the subject parcels, "because they are unique." The Board explained that owing to the dramatic increase in the number of appeals it was no longer possible for the Board to take time to view properties under appeal. It is true, however, that the Board does view each eminent domain 'taking', as required by statute (RSA 498-A). Mr. Bois objected to the Board's ruling and the Board noted his exception.

On April 10, 1990 the Board of Tax and Land Appeals' Investigator, Mr. Robert Quinn, walked the subject property in the company of the appellant's representative, Maurice Bois.

In Mr. Quinn's written report he concluded, "no adjustments" to valuation. Some of his topographical comments were, "lot access difficult to negotiate, up on top side of steep hill via a 10 foot right of way on the north side of a radio tower. Topo and access adjustments have already been made according to assessment record cards. It also appears, judging from what I could get in far enough to see with the owner (which was the lower steeper area); that there may be some lakeview potential from the top side."

According to the Taxpayers representative, he purchased the subject property 30 years ago for \$400 and gave it to his son in November of 1978. The property was surveyed by Walter O'Neil, of Manchester, in 1967.

Mr. Bois testified, "the property is 2 or 3 acres. I have trouble finding it, 575 feet long, circuitous right of way, 10 feet wide, commercial business on right hand side of right of way, to east, a little cabin or shack. Union Ave. is very commercial. Right of way starts behind Hounsell Real Estate. I don't know what it could be used for. No sewerage, I don't know if there is any sewerage on Union Ave., no water, no utilities. I have no sales or comparables to offer. I had hoped to hear from the city about theirs."

The Board reminded the appellant that "the burden of proof is on the Taxpayer to show unfair, unequal, illegal or disproportionate assessment."

Mr. Bois renewed his request that the Board take a view of the property. The request was again denied and Mr. Bois' objection and exception were noted accordingly.

The City's representative, Mr. David W. Bolton, of M.M.C., Inc., testified that he had personally inspected the property and found substantially the same topographic features as the appellant and Mr. Quinn, the Boards Investigator; i.e. steep, circuitous access by right-of-way, high elevations overlooking the Bay. He estimated the two contiguous lots were 2.25 acres combined.

The City offered a three parcel sale (24-152-9; 25-152-3; and 22-152-2) on May 5, 1986, in close proximity to the subject (total combined acreage 7.09 acres), Mr. Bolton said, "it was far easier to get to the subject than these comparables." Further, he noted that the comparables had no frontage and no deeded access. The sale price was \$8,500. Mr. Bois took exception and said, "I don't know where these properties are. I never walked the road, but I'd bet

you some dough that there is access to those lots."

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Mr. Bolton testified the highest and best use of the subject lots were merged as a site for single family dwelling with a nice view, . . . (not as residual or supplemental land to an abuttor).

The City's assessor said she gave the subject lot a 30% minus adjustment for access and minus 20% for lack of well or septic. Mrs. Temchack also testified that she consulted with the Laconia Building Department and was told that they would issue a building permit for a single family dwelling, if requested by the owner.

The Board inquired of the City Assessor what the tax assessment difference in value would be if the "Nighswander Rule" were applied and these non-conforming, unimproved, contiguous, grandfathered lots in the same ownership were merged into one parcel. The answer was a contributory additional \$840 in value as compared with the single lot value of \$800 for the 24,394 sq. feet.

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, Bois v. Laconia, Docket No. 4495-88 -4-

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 Taxpayer failed to provide any opinion of value or any comparable properties that had sold. Further the Board finds, based on the City's testimony, that a building permit could reasonably have been obtained for a single family dwelling on the parcels.

The Board therefore 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

George Twigg, III, Member

Peter J. Donahue, Member

Paul B. Franklin, Member

Date: August 1, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Richard T. Bois, taxpayer; Maurice P. Bois, Taxpayer's representative; Chairman, Board of Assessors of Laconia; and David W. Bolton, Senior Appraiser, M.M.C., Inc.

Michele E. LeBrun, Clerk

Date: August 1, 1990

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