

David E. Newell and Carol A. Newell

v.

City of Laconia

Docket No. 4564-88

DECISION

A hearing in this appeal was held, as scheduled, on December 27, 1990. The "Taxpayers" represented themselves. The "City" was represented by Kathryn H. Temchack, City Assessor, and Scott W. Bartlett, M.M.C., Inc.

The Taxpayers appeal, pursuant to RSA 76:16-a, the City's 1988 assessment of \$263,100 (land, \$183,400; buildings, \$79,700) placed on their real estate located on Loughton Avenue, consisting of a dwelling on 1.09 acres of land with 264 feet of frontage on Lake Winnisquam (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden and proved they were disproportionally taxed.

The Taxpayers argued:

- (1) that the pier foundation was unstable due to soil conditions,
resulting in cracks in the sheetrock interior;
- (2) that the property was at the end of a private unmaintained road that

limited its accessibility during a substantial portion of the year;
and

- (3) that the sale of the nearby Hackett lot in 1984 indicates that their land portion of the assessment in 1988 is twice what the sale indicates.

The City argued:

- (1) that based on a comparison with six sales, the Taxpayers' property was correctly assessed;
- (2) that the topography and access problems with the lot were each adjusted 10 percent in the land calculation; and
- (3) that the building value had been adjusted 5 percent for shifting and settling.

The Board finds that the Taxpayers' reliance on a 1984 sale to be too removed in time from the 1988 assessment date to be probative evidence and that their claim of a 25 percent total appreciation rate from 1984 to 1988 to be unsubstantiated.

The Board further finds that the City reasonably accounted for the topography and accessibility aspects of the Property in the adjustments to land value.

Finally, the Board finds that an additional 5 percent depreciation needs to be applied to the dwelling so that the total depreciation reflects the cost to cure the foundation problems.

Based on the above findings, the Board rules the correct assessment should be \$258,400 (land, \$183,400; buildings, \$75,000).

If the taxes have been paid, the amount paid on the value in excess of \$258,400 is to be refunded with interest at six percent per annum from payment date to refund date.

January 9, 1991

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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 David E. and Carol A. Newell, the Taxpayers, and to the Chairman, Board of Assessors, City of Laconia.

January 9, 1991

Michele E. LeBrun, Clerk