

Michael M. Mills, Jr.  
v.  
City of Laconia

Docket No. 4577-88

### DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1988 assessments as follows: "House Lot" - \$99,100 (land \$54,000; buildings \$45,100); "Back Land" parcel - \$171,500 (land only); "Lake Lot" - \$89,500 (land \$85,200; buildings \$4,300) (the Property). The House Lot consists of a dwelling on a one acre lot fronting on Scenic Road, identified as Map 23P, block 234, 1 of 2. The Back Land parcel consists of 9.09 acres with no frontage, but abutting the House Lot parcel and is identified as Map 23P, block 234, lot 2H. The Lake Lot consists of a 3,707 square foot lot between Scenic Road and Boston and Maine Railroad land along Lake Winnepesaukee and is identified as Map 102, block 234, lot 5A. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved he was disproportionately taxed.

The Taxpayer argued the assessment was excessive because:

- 1)the Back Land parcel is very steep and landlocked;
- 2)the preliminary approval given by the Planning Board for 36 condominium units on both the House Lot and the Back Land parcel had ten conditions that the Taxpayer was never able to fulfill;
- 3)the Lake Lot was denied a building permit and a variance in 1989 because it could not meet the setback requirements of the City's zoning ordinance;

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- 4)the docks assessed to the Taxpayer are not owned by him; and
- 5)the access to the lake that the Lake Lot provides is shared with two other families, and the lot also provides water to two other developed lots.

The City presented:

- a)a list of comparable properties used in the revaluation;
- b)a spread sheet showing the comparables and various units of comparison, e.g., sale price per acre and sale price per approved units;
- c)a spread sheet showing the Property; and
- d)the assessment cards for the comparables. The City also showed on a city map the location of the comparables and the Property.

The City argued the assessment was proper because:

- 1)it was based on sales data of comparable properties with adequate adjustments made to reflect the Property's value;
- 2)the same methodology was used for these types of properties;
- 3)the Back Land parcel and the House Lot had received a preliminary approval for 36 condominium units which was still in effect on April 1, 1988;
- 4)the Back Land parcel and the House Lot, while appraised on two separate cards, were considered as one property and appraised accordingly; and
- 5)the Lake Lot, accessing the water and three docks, has a value similar to that of three condominium docks at \$30,000 a piece.

The Board finds and rules as follows:

### Facts

All three parcels were acquired by the Taxpayer in one deed recorded in the Belknap County Register at Book 953, page 967. Tract 1 of the deed describes the Back Land parcel and the House Lot while tract II describes the Lake Lot.

The Taxpayer did receive preliminary approval for 36 condominium units in December 1986, and received a 6 month extension until April 30, 1988 to meet ten conditions attached to the approval. Among other things, the conditions required the Taxpayer to provide public water and sewer to the site, submit detailed architectural and landscaping plans and an accumulative economic impact analysis.

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The Taxpayer's testimony that the docks accessed by the Lake Lot are not owned by him is supported by the various easements in the deed to several individuals for accessing the lake and boat moorings.

The size of the Lake Lot, the City's minimum lot dimensional requirements, and the various easements precluded the lot from being built upon in 1988.

#### Law

RSA 75:9 requires properties that are distinct estates to be assessed separately and vice versa.

#### **"Separate Tracts**

Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory."

Further, Article 4.11 of the Laconia zoning ordinance in part states, "a non-conforming lot shall not be further reduced in area or frontage, and if it is contiguous with property in the same ownership shall be developed in conjunction with said adjacent property."

#### Rulings

On April 1, 1988, the Back Land parcel and the House Lot were contiguous and in the same ownership. The Back Land parcel was, by itself, a non-conforming lot. Therefore, the Board rules those two lots should be assessed as one estate pursuant to RSA 75:9.

As to their value, the Board determines that the conditions of the preliminary condominium approval were so unattainable and the uncertainty and risk so great in proceeding with such a development plan, that the market would not recognize condominium development as being the highest and best use of the property. Rather, the highest and best use is its existing residential use with

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supplemental land for subdivision potential. Therefore, the proper assessment for this one property (formerly lots 2 and 2H) is:

1 acre homesite	\$ 54,000
1.5 acre supplemental land	67,500
7.59 acres rear land	45,540
buildings	<u>45,100</u>
Total	\$212,140

Due to the fact the Taxpayer does not have an existing dock, the Lake Lot is so burdened with various easements and is unbuildable due to size, its highest and best use is to provide access to the lake for property such as the Taxpayer's improved lot. For these limitations, the land assessment should be reduced by 50 percent with the proper assessment being \$42,600.

If the taxes have been paid, the amount paid on the value in excess of \$254,740 shall be refunded with interest at six percent per annum from date paid to refund date.  
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Michael M. Mills, Jr., Taxpayer; the Chairman, Board of Assessors of Laconia; and Scott W. Bartlett, Appraiser for M.M.C., Inc.

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Brenda L. Tibbetts, Clerk

Date: November 15, 1991

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**DECISION**

The "City's" rehearing motion is denied. The documents presented by the City with the rehearing motion could have been submitted at the hearing. Therefore, under TAX 201.05(d), no "good reason" for a rehearing has been presented. Additionally, the documents do not clearly establish a factual error was made. While the B&M Railroad document states the "Taxpayer" owns a dock or docks, the Taxpayer's representative testified the Taxpayer did not own any docks.

Finally, the deeds support the board's decision. The 1980 Langsten affidavit shows that the Taxpayer's "Tract II" is the community lot for the subdivision.

Concerning paragraph 2, the City did not present any "good reasons" for a rehearing.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Michael M. Mills, Jr., Taxpayer; and Chairman, Board of Assessors.

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Brenda L. Tibbetts, Clerk

Date: January 13, 1992

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