

Richard Gillis and Toni Jane Gillis v. City of Laconia
Docket No. 4804-88
Thomas Shipko v. City of Laconia
Docket No. 4826-88
Alcide H. Lefebvre and Janice E. Lefebvre v. City of Laconia
Docket No. 4813-88
Wendy Tarricone and Anthony Tarricone v. City of Laconia
Docket No. 4829-88
John F. O'Callaghan and Mary Ann O'Callaghan v. City of Laconia
Docket No. 4954-88
Robert E. Connors, Jr., and Patricia Connors v. City of Laconia
Docket No. 4792-88
Roland Audet, Jr., v. City of Laconia
Docket No. 4787-88
Francis F. Kingsley and Gail P. Kingsley v. City of Laconia
Docket No. 4812-88
Gerard A. DeBiasi and Patricia L. DeBiasi v. City of Laconia
Docket No. 4953-88
Mahesh N. Shroff and Nayana M. Shroff v. City of Laconia
Docket No. 4955-88
Diane M. Caban and David J. Caban v. City of Laconia
Docket No. 4791-88
Douglas W. Eaton and Margaret M. Eaton v. City of Laconia
Docket No. 4801-88
Jaime T. Lopez and Maureen Tully Lopez v. City of Laconia
Docket No. 4814-88
Robert W. Curran and Catharine G. Curran v. City of Laconia
Docket No. 4795-88
Louis Tomasello, Jr., and Marie Tomasello v. City of Laconia
Docket No. 4832-88
Alvin J. Maillet and Huberte Maillet v. City of Laconia
Docket No. 4816-88
Raymond R. Ouellette and Carole M. Ouellette v. City of Laconia
Docket No. 4822-88

DECISION

Introduction

These cases were consolidated for hearing purposes and, due to the similar issues, are consolidated for the purpose of this order.

Facts

Before addressing specific facts, it is important to describe South Down. South Down is a multi-layered, condominium development with a potential total of 831 living units composed of condominium units in multi-family dwellings and single-family lots. There is a master condominium that covers the entire development. Appellant Laconia Investment Properties was the condominium declarant, i.e., the owner who submitted the property to the condominium form of ownership. There is a homeowners association, South Down Recreation Association (SDRA), to which all South Down owners must belong. The South Down development is broken down into several subcondominiums, and the subcondominiums are owned by subdevelopers.

South Down includes a boat storage and launching area adjacent to Lake Winnepesaukee. The dryberths are on South Down common land, and the boatslips are adjacent to common land but located on state land. This boating facility consists of 41 boatslips, 30 moorings and 218 dryberths. (The moorings are not at issue here.)

This order is limited to the dryberths owned by these taxpayers, located at the South Down Shore development on Paugus Bay. The appeals of any other property owned by these taxpayers were either addressed in a separate order or were withdrawn by the taxpayers.

Issues

Two issues were raised by the parties:

- 1) Are the dry berths real or personal property?
- 2) If real property, what is the proper market value of the dryberths?

Board's Rulings

1) Dryberths - realty or personalty

The appellants argued the dryberths should not have been taxed because the berths are not real estate. We reject this argument, finding the berths taxable under RSA 72:6.

The dryberths consist of a physical structure and certain rights in the land upon which the structure sits. The berth owner, therefore, holds:

- 1) an undivided interest in the boat storage rack itself, which includes the right to place the structure on the land;
- 2) the exclusive right to use one berth; and
- 3) the right to access the lake from the berth.

RSA 72:6 states: "All real estate, whether improved or unimproved, shall be taxed except as otherwise provided." This statute is to be broadly interpreted. King Ridge, Inc. v. Sutton, 115 N.H. 294, 298-99 (1975). "The words 'land,' 'lands' or 'real estate' shall include lands, tenements, and hereditaments, and all rights thereto and interests therein." RSA 21:21 (emphasis added).

In addition to these statutory criteria, the caselaw on fixtures must be examined--fixtures being taxable as realty. As stated in The Saver's Bank v.

Anderson, 125 N.H. 193, 195 (1984):

A chattel loses its character as personalty and becomes part of the realty when there exists "an actual or constructive annexation to the realty **with the intention of making it a permanent accession to the freehold**, and an appropriation or adaptation to the use or purpose of that part of the realty with which it is connected." However, if a chattel becomes an intrinsic, inseparable and untraceable part of the realty, it is deemed a fixture regardless of the intent of the parties. (Citations omitted.)

Black's Law Dictionary defines "fixture," in part, as "an article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the land. . . . Goods are fixtures when they become so related to particular real estate that an interest in them arises under real estate law."

The berths are fixtures exhibiting all the elements of real estate, and the rights appurtenant to the berths make the berths taxable.

1) The dryberths are real estate taxable as such pursuant to RSA 72:6. The berths are fixtures exhibiting all the elements of real estate.

A) While one could argue the metal frame alone of the dry berths may be personalty, the berths lose that nature and acquire all the rights and interests of real estate by being affixed with bolts to the concrete footings.

B) Each berth has a distinct fixed location, as does all real estate. By the mere affixing of the racks to the concrete footings, the berths acquire the transferable real estate right of storing a boat at that distinct location. This right has caused the berths to be sold for \$6,500 to \$9,000 more than the approximate \$1,000 cost of construction for each berth.

C) The berths and their use are "intimately intertwined" with the primary recreational use of the boatslips and surrounding real estate, making the berths taxable for similar reasons that the ski lifts were found to be taxable in Kings Ridge, Inc. v. Town of Sutton, 115 N.H. 294, 299 (1975).

D) The land was specifically adapted, though minimally, to accommodate the racks. Holes were dug for the footings. Gravel was placed to provide a firm travel surface for shuttling the boats between the berths and the slips. Landscaping was provided to visually screen the facility.

E) Finally, the approximately 2-acre site for the berths was brought to its highest and best use by the improvements that were done or affixed to it.

2) Value

Dryberths

The Taxpayers submitted a list of 48 sales with 46 of them occurring in 1986 and 1987 and two in 1988. Forty-four of the sales were for \$7,500 and four were for \$9,000. They argued that the preponderance of the sales were for \$7,500, indicating the City's assessment of \$10,000 per berth was excessive. They further testified that the berths were presently selling for \$3,000 to \$6,000 each.

In support of its assessment, the City submitted two sales in 1987 and seven in 1988, with three of them selling for \$10,000 and the balance from \$9,000 to \$9,640. Five sales in 1989 were submitted, three at \$10,000 and the other two at \$9,000 and \$9,500. Three sales in 1990 were submitted, all for \$10,000.

The board rules the Taxpayers fell short of their burden of proof. Their sales may establish that the market value of the berths in 1987 was \$7,500 but that is not conclusive evidence of their value for the year under appeal. The City's evidence indicates the market value of the berths peaked in 1988 - 1990 at \$9,500 to \$10,000. The limited testimony, given that sales prices dropped in 1991 again, may have bearing on determining market value for 1991 but has limited value for establishing market value for 1989-90.

Since RSA 75:8 requires the assessors to review assessments on an annual basis, the board rules the most probative evidence of determining market value is the sales that occur in the respective tax year. Therefore, the board rules that the \$10,000 assessment was a reasonable estimate of value for determining the Taxpayers' proportionate share of the tax burden.

Therefore, we find the taxpayers failed to prove their assessment was disproportional.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul Franklin

Ignatius MacLellan, Esq.

Michele E. LeBrun

I certify that copies of the within decision have been mailed this date, postage prepaid, to Kevin F. McCormick, representing the Taxpayers, and to the Chairman, Board of Assessors, City of Laconia.

May 6, 1992

Valerie B. Lanigan, Clerk