

Laconia Investment Properties, Inc.

v.

City of Laconia

Docket No. 4839-88, 7391-89, 9946-90

DECISION

A hearing was held on the 1988 appeal on October 1, 1991. A subsequent hearing on the 1989 and 1990 tax years was held on November 19, 1991.

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1988, 1989 and 1990 assessments on two properties:

House and Office on Meredith Parade Road

Map 23E Block 155 Lot 7 - \$559,700 (land \$90,200; building \$469,500). This Property consists of a gutted house and a former dairy barn and milk house converted to a sales office for South Down Farms development all situated on 7.9 acres.

Village 10

Map 23E Block 272 Lot 10 - \$477,700 (land only). This Property consists of 15.65 total acres of unimproved land on Outerbridge Lane that was designated as a separate village in the South Down Farms planned unit development.

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 76:160a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

We find the Taxpayer carried this burden and proved it was disproportionately taxed.

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The Taxpayer's arguments are as follows:

House and Office on Meredith Parade Road

The office is a renovated barn and milk room, and its use is restricted by a zoning permit to sales purposes for South Down Shores only.

The barn still has a shallow unfinished basement.

The house can be used only for storage as it is entirely gutted and not suited for habitation.

In short the house and barn are white elephants by virtue of the zoning limiting their commercial use to only sales of the South Down Shores project.

Village 10

The City's estimate of the number of potential units at 39 is in error as it is based upon an incorrect developable acreage of 15.65. The correct acreage is shown on documents from the City Planning Office as 4.47 acres which, with a density of 3.2 units per acre, would allow for only 14 units. Fourteen units multiplied by the City's value per unit of \$12,250 results in a proper assessment of \$171,500. Further, the market in 1989 and 1990 has deteriorated for this type of property.

The City presented:

- (a) a list of comparable properties used in the revaluation;
- (b) a spread sheet showing the comparable and various units of comparison, e.g., price per acre and number of 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 assessments were proper or should be adjusted as follows:

House and Office on Meredith Parade Road

The City argued it recognized the Property's limited commercial nature by assessing the land at only residential values.

The barn was remodeled in 1986 and 1987 for a sales office, and its

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assessment received a 10% functional depreciation to reflect its remaining barn features (e.g. basement, etc.).

The house received a 55% depreciation for its unfinished interior.

Village 10

The City stated the only official document establishing the area of Future Village was a plan entitled "Subdivision of Land "South Down Farm" Laconia N.H." dated July 1983 and revised on February 27, 1987. The "overview" showing the same area comprised of a "Natural Preserve" and "Future Village" was a promotional map prepared by South Down Shores and has no official validity.

The City did concede that 9.74 acres of the 15.65 acres are considered wetlands and thus must be subtracted to arrive at 5.91 developable acres. Then by applying the overall density for South Down Shores of 3.14 units per acre, the resulting potential units is estimated at 19. The City recommended revising the estimated site value from \$12,250 to \$15,750 to account for the lesser development costs associated with the smaller area with better soils. The City's recommended assessment was \$299,300.

The Board rules as follows:

House and Office on Meredith Parade Road

The City's overly specific zoning permit is of questionable enforcement. It is the Board's experience that use permits must be for a general use (e.g. real estate sales office) rather than for a specific owner or project as testified to in this case. Consequently, the Board rules that the zoning permit is not as controlling of value as the Taxpayer would have us believe. This is also reinforced by the City's testimony that the new owner (after bank foreclosure and sale) has obtained a new zoning permit.

However, based on the evidence, the office replacement value should be further reduced by ten percent (10%) for the building's layout (cathedral ceiling), original construction and size (barn) and its location.

The Board finds that the City's reduction of house's replacement cost by

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\$98,829 ($\$179,689 \times .55$) reasonably reflects the cost that would be incurred to

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bring the house back to a renovated habitable condition, and thus no further adjustment is warranted.

Therefore, the Board rules the proper assessment for the house and office property is \$501,400 (land \$90,200; buildings \$411,200).

Village 10

The only evidence that probatively fixes the size of Village 10 is the plan entitled "Subdivision of Land "South Down Farm" Laconia, N.H." dated July 1983 and revised on February 27, 1987. This survey was part of South Down's planned unit development (P.U.D.) approval by the Laconia Planning Board. This survey indicated the area of Village 10 at 15.65 acres.

The document submitted by the Taxpayer that is a breakdown of the South Down P.U.D.'s as prepared by the City Planning Office and which shows Village 10 (Future Village) being 4.47 acres in size is not conclusive evidence of the developable acres as the calculations were apparently done by the City Planning Officer and a regional planner, neither of whom were present at the hearings for questions.

The "overview" submitted by the Taxpayer showing Village 10 as both a "nature preserve" and a "future village" is a promotional depiction of South Down Shores and thus of little probative value.

The City's recognition in their recommended assessment of 9.74 acres of wetland or "Nature Preserve" is consistent with the evidence of the topography of the lot and the remaining usable area. Thus, until a final site plan for Village 10 is available, the original area of 15.65 acres minus the 9.74 acres of wetland results in the best evidence available in estimating the developable area.

Therefore, the Board rules that the proper assessment for Future Village is \$266,000. This assessment is based upon the estimate of 5.91 acres of developable land, a density of 3.14 potential units per acre, an estimated value per site of \$14,000 (which reflects slightly lower development costs on the remaining acres) and a declining market during the appeal years.

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In determining this value for Village 10 for the respective tax years in question, the Board is aware, from the testimony and from its own experience, the market for this type of property had generally declined. However, lacking any specific evidence as to the degree of market deterioration during the three appeal years, the Board rules it is appropriate to determine one assessment for all three years that falls within a reasonable range of the market value of the Property.

This approach is reasonable for several reasons:

- (1) this decision is made with the benefit of hind sight;
- (2) the equalization ratios in 1988 and 1989 were 100% and then in 1990 was 110%, indicating a general decline in the real estate market in Laconia;
- (3) during the three years in question, the City had not begun any general review and adjustments of assessments for the changing market;
- (4) there is never one perfect assessment of a property; rather, there is an acceptable range in which an individual assessment may fall;
- (5) this value of \$266,000 stays within a reasonable range of the Property's market value for the three years in question; and
- (6) this approach has some similarities to the averaging of the estimates of sale prices of lots in the "development analysis" or "discounted cash flow analysis" method of estimating market value of vacant but developable land.

Therefore, if the taxes have been paid, the amount paid on the value in excess of \$767,400 (house and office: \$501,400 and Village 10: \$266,000) shall be refunded with interest at six percent (6%) per annum from date paid to refund date.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

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

Brenda L. Tibbetts, Clerk

Date: January 3, 1992

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