

Elmer W. Goodwin and Marilyn W. Goodwin
v.
City of Laconia

Docket Nos. 4847-88 and 7388-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1988 and 1989 assessments of \$306,000 (land, \$264,700; buildings, \$41,300) on their real estate, consisting of a seasonal cottage on a 10454 sq. ft. (Lot 6 at Birch Haven) on Paugus Bay (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 this burden and proved they were disproportionately taxed.

The Taxpayers argued the assessment was excessive because:

- 1) the City's use of a condition factor of 650 for property on Paugus Bay is excessive compared to the condition factor of 400 used on Lake Winnisquam;
- 2) Paugus Bay is less desirable than Lake Winnisquam, due to the overbuilding on shore and the boat congestion on the water;
- 3) properties on Paugus Bay have not sold due to the disproportionately high taxes;
- 4) Birch Haven properties have no city services except for city water in some cases; and
- 5) the Property has only 59 feet of frontage on Paugus Bay - not 80 feet, as stated on the assessment card.

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., square feet and lake frontage;
- 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; and
- 2) the same methodology was used for these types of properties.

Based on the evidence, we find the correct 1988 and 1989 assessments should be \$285,000.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. The board has not allocated the value between land and building, and the City shall make this allocation in accordance with its assessing practices. We note that in making a judgment of the proper assessment, the value of the entire property, i.e., land and building, must be established.

In making this decision, the board looked at the Cahill, Scharn, Filion and FED Realty comparables. The sales of these properties demonstrate the market values of a small cottage on a small lot with less than 100 feet of frontage to be in the \$265,000 to \$330,000 range. These sales resulted in assessments of \$291,300 - \$310,400 on the comparables.

The Taxpayers' property has a cottage of lesser value than any of the comparables on similar sized lots. Despite the City's emphasis on the Property's more northerly location, the market would not pay \$306,000 for the Property. Rather, the market would pay less in comparison to these comparables.

The Board does not accept the Taxpayers position that the correct condition factor should be 400 with a resulting in an assessment of

approximately \$220,000. To order such an assessment would be clearly contrary to the City's comparables.

Furthermore, the lack of city services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of city services is reflected in the selling price of comparables and consequently in the resulting assessments.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Date: October 29, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Elmer W. & Marilyn W. Goodwin, taxpayers; the Chairman, Board of Assessors of Laconia; and Scott W. Bartlett, Appraiser for M.M.C., Inc.

Brenda L. Tibbetts, Clerk

Date: October 29, 1991

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