

Robert H. Turner and Clara K. Turner
v.
City of Laconia

Docket No. 4853-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1988 assessment of \$268,600 (land, \$183,600; buildings, \$85,000) on their real estate, consisting of a dwelling on a 15,010 square foot lot at 41 Winnicooash Street (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 of Laconia has an easement across the Property which covers approximately 20 percent of the square footage of the land and the Taxpayers can only mow the lawn, rake the leaves and walk across the easement;
- 2) many of the City's comparables are located in a more desirable area of Town;
- 3) the Property is all rocks on built-up land, and the land slopes down to the water approximately 5 to 6 feet then drops 10 to 12 feet; and
- 4) the Property's value as of April 1, 1988 is in a range from \$175,000 to \$200,000.

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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;
- 2) the same methodology was used for these types of properties;
- 3) property was appreciating at 2 percent per month in 1986, 1 percent per month in 1987 and no appreciation in 1988;
- 4) the Lafferty and Middlemiss comparable sales have sewer easements on the properties and the existence of a sewer easement would not affect a potential buyer because the Property is already improved; and
- 5) the sales support the assessed value.

The Board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the Taxpayers paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This Board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

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 looked at the following City comparables: Patillo, Lafferty, Aranosian, Stein and Middlemiss. The sales of these properties demonstrate the

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market values of homes in the 2,268 to 3,750 square feet range with lots ranging

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from 15,120 square feet to 97,574 square feet and with 90 feet to 320 feet of lake frontage. These sales resulted in assessments of \$298,500 to \$547,800 on the comparables. The market would not pay \$268,600 for the Property which is significantly smaller than the comparables. Rather, the market would consider the Property to be below the range indicated by the comparable sales.

The Board finds Middlemiss and Aranosian to be the most reliable comparables to the Property. These comparables sold near the assessment date and are the closest in age, land size and building size, although the Property has the least amount of useable square feet, the smallest lot (15,010 square feet) and the least amount of water frontage (82 feet). Given this, we find the correct assessment should be \$255,000. The Board has not allocated the value between land and building, and the City shall make this allocation in accordance with its assessing practices.

The Board does not accept the Taxpayers' position that the correct assessment should be \$175,000 to \$200,000. To order such an assessment would be clearly contrary to the City's comparables.

If the taxes have been paid, the amount paid on the value in excess of \$255,000 shall be refunded with interest at six percent per annum from date paid to refund date.

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 Robert H. and Clara K. Turner, Taxpayers; the Chairman, Board of Assessors of Laconia; and Scott W. Bartlett, Appraiser for M.M.C., Inc.

Brenda L. Tibbetts, Clerk

Date: December 16, 1991

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