

A Gerard O'Neil and Pauline O'Neil
v.
City of Laconia

Docket No. 4949-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1988 assessment of \$304,800 (land, \$196,200; buildings, \$108,600) consisting of a dwelling on a 7200 sq. foot lot at 94 Whipple Ave. (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) a sewer easement restricted further development of the lot;
- 2) a large retaining wall along the entire frontage of the lot precludes direct access to the water;
- 3) the retaining wall has been under washed and is leaning towards the lake;
and
- 4) the cost to repair the wall is estimated at \$18,000 to \$20,000.

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 recommended a 20 percent adjustment to the frontage calculation for the retaining wall and a 5 percent adjustment to the land area calculation for the shape of the lot.

The City argued a revised assessment of \$286,600 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) no specific adjustment was justified for the sewer easement as the lot was already developed.

Based on the evidence, we find the correct assessment should be \$286,600.

This assessment is ordered because:

1) the adjustments recommended by the City properly address the Taxpayers concerns with the retaining wall and access to the water;

2) the sewer easement was not proven to have a significant effect on the utility and enjoyment of the property, especially as would be perceived by a prospective purchaser; and

3) the two most comparable sales submitted, Lafferty and Middlemiss, bracket the adjusted assessment of \$286,600.

If the taxes have been paid, the amount paid on the value in excess of \$286,600 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 A. Gerard O'Neil, Esq., counsel for A. Gerard & Pauline O'Neil, taxpayers; the Chairman, Board of Assessors of Laconia; and Scott W. Bartlett, Appraiser for M.M.C., Inc.

Brenda L. Tibbetts, Clerk

Date: November 15, 1991

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