

Herbert E. Dick
v.
City of Laconia

Docket No. 4982-88

DECISION

The lessee of the property, Raymond Bertholet ("Taxpayer") appeals, pursuant to RSA 76:16-a, the "City's" 1988 assessment of \$236,300 (land, \$178,700; buildings, \$57,600) on a go-kart race track on 2.7 acres on Winnepesaukee Shore Road, consisting of his real estate (the Property). 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 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

We find the Taxpayer carried his burden and proved he was disproportionately taxed.

The Taxpayer argued the assessment was excessive because:

- 1) the land assessment equaled \$66,186 per acre;
- 2) three other commercial properties had an average acre assessment of \$34,380;
- 3) the southeasterly portion of the frontage was below road grade;
- 4) two of the three comparables were on Rte. 3 west of Weirs Beach where there is more traffic; and
- 5) the building cost \$24,000 to build in 1986 and as of 1988 it is estimated to be worth \$30,000.

The City presented the assessment card for a comparable sale on Rte. 3. The City also showed on a city map the location of the comparables and the Property.

Docket No. 4982-88

Herbert E. Dick

v. City of Laconia

Page 2

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) the higher condition factor of 300 in the Taxpayer's area was proper as the area has both City sewer and water and has been more commercially developed than further west in the area of the Taxpayer's comparables; and
- 4) the owner's net operating income of \$12,700 from the Taxpayer's lease of the land indicates, assuming a capitalization rate of 8.5% for the land alone, a value for the land in an undeveloped state of approximately \$150,000.

The City did agree with the Taxpayer that, given the construction costs and simplicity of the building, a \$30,000 assessment for the building was reasonable.

Based on the evidence, we find the correct assessment should be \$217,000, (land, \$167,800 and building, \$49,200). This assessment is ordered because:

- 1)the City and the Taxpayer agreed the value of the building was \$30,000; and
- 2)the topography and further utility of the southeast portion of the lot warrants a 50% (rather than a 40%) reduction on the expansion land portion of the land valuation.

The Taxpayer did not further carry his burden of proof by attempting to show the land value was disproportional to other commercial properties. The City showed that these properties were different enough by fact of location or development so as not to be directly comparable. Further, the estimated value just for the land as undeveloped of approximately \$150,000, as indicated by the income approach, sets a floor for the land portion of the assessment.

Therefore, if the taxes have been paid, the amount paid on the value in excess of \$217,000 shall be refunded with interest at six percent per annum from date paid to refund date.

Docket No. 4982-88

Herbert E. Dick

v. City of Laconia

Page 3

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

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

Brenda L. Tibbetts, Clerk

Date: December 2, 1991

0007

Docket No. 4982-88

Herbert E. Dick

v. City of Laconia

Page 4

Herbert E. Dick

v.

City of Laconia

Docket No. 4982-88

RE: MOTION FOR REHEARING

On December 27, 1991, the Board of Tax & Land Appeals (Board) received a motion for rehearing from Raymond Bertholet (Petitioner), lessee of the owner's, Herbert E. Dick, property. The Board's decision was dated December 2, 1991.

The Petitioner requests that the Board accept his motion as timely since the Board's decision was mailed only to the owner, Herbert E. Dick, and not to the Petitioner.

The Petitioner stated the Board's decision was contrary to the Board's appraiser's report and that the rental figure used by the Board in the decision was for 1991 and not for 1988.

As to the first issue, the Boards finds that since the Petitioner paid the taxes per the lease agreement and appeared and testified at the hearing, the Petitioner had standing and should have received a copy of the Board's decision. Once the Petitioner learned about the decision from the owner on December 24, 1991, he promptly filed his motion with the Board. Given these facts, the Board rules the Petitioner's motion for rehearing is timely filed.

The Board, however, denies the Petitioner's motion for rehearing. The Board's appraiser's report is not binding on the Board; the Board in making its decision relies

Docket No. 4982-88

Herbert E. Dick

v. City of Laconia

Page 5

on its own technical knowledge and experience in weighing all the evidence before it.

Docket No. 4982-88

Herbert E. Dick

v. City of Laconia

Motion of Rehearing

Page 6

The evidence and arguments the Taxpayer wishes to submit dealing with the income indication of value existed but was not presented at the hearing. The Board does not grant rehearings for that purpose (Tax 201.05(d)).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Herbert E. Dick, Taxpayer; Raymond Bertholet, Petitioner; the Chairman, Board of Assessors of Laconia; and Scott W. Bartlett, Appraiser for M.M.C., Inc.

Brenda L. Tibbetts, Clerk

Date: January 15, 1992

0007