

Robert R. Lemire
v.
City of Laconia

Docket No. 5006-88

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1988 assessment of \$334,800 (land, \$272,700; buildings, \$62,100) on a seasonal cottage on Lot 4, Birch Haven, Paugus Bay (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 this burden and proved he was disproportionately taxed.

The Taxpayer submitted several lengthy exhibits; his main arguments are set forth in Taxpayer's Exhibit 3 and are too numerous and lengthy to be set forth here. Basically, the Taxpayer challenged both the City's overall methodology and the City's assessment on his Property.

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.

The City also presented arguments to refute to the Taxpayer's many arguments.

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 taxpayer 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.

In here, the board looked at the following City comparables: FED Realty; Filion; Scharin; and Cahill. The sales of these properties demonstrate the market values of a small cottage (1,200 sq. ft. - 1,900 sq. ft.) with a small lot (6,600 - 9,300 sq. ft.) and with 60 feet of lake frontage to be \$265,000 - \$330,000. These sales resulted in assessments of \$291,300 - \$310,400 on the comparables.

Despite the City's emphasis on the Property's more northerly location, the market would not pay \$334,800 for the Property, which is approximately 2 miles north and with more concentrated boat traffic. Rather the market would consider the Property to be in the comparables' market. The Property has the smallest cottage (only 1,175 usable sq. ft.), but a larger lot (11,376 sq. ft.) and more frontage (72 ft.). Given this, we find the correct assessment should be \$305,000. 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 Taxpayer's position that the correct assessment should be \$231,460. 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 \$305,000 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

Ignatius MacLellan, Esq., Member

Date: October 23, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Mr. Robert R. Lemire, taxpayer; the Chairman, Board of Assessors of Laconia; and Scott W. Bartlett, Appraiser for M.M.C., Inc.

Brenda L. Tibbetts, Clerk

Date: October 23, 1991

0009