

Chester Kelly
v.
City of Laconia

Docket No. 5874-89

DECISION

A hearing in this appeal was held, as scheduled, on August 3, 1990. The Taxpayer was represented by himself and by Julia M. Nye, Esquire. The City was represented by David W. Bolton, Appraiser of M.M.C., Inc., and by John J. Ashey, Building Inspector.

As indicated on the hearing notice, the Board initially received testimony and evidence on the issue of the Taxpayer's timely filing the appeal with the Town per RSA 76:16. Based on the testimony and evidence, the Board ruled that the Taxpayer had timely filed with the Town and then proceeded to the merits of the case.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$396,500 (land, \$246,100; buildings, \$150,400) placed on his real estate located on Prescott Avenue and Lake Winnepesaukee, for the 1988 tax year. The property consists of a dwelling on a small lot with frontage on Lake Winnepesaukee.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100 percent for the 1988 tax year for the City of Laconia.

The Taxpayer argued that the ledgy condition of the lot was not recognized by the City in its appraisal. Mr. Kelly stated that only 18 feet of the frontage was a sandy beach with the balance of it being ledge. He further stated that there had been no changes in the property done since the property was inspected by a lister of M.M.C., Inc., in July of 1987. He argued that he was not being fairly assessed in comparison with his abutting property, the Giroux property, which had 194 feet of frontage and had received an adjustment for steep waterfront.

Mr. Bolton, on behalf of the Town, stated that most if not all of the physical problems of the lot had been overcome by the building of decks that almost completely cover the ledge area. Mr. Bolton stated that based on an interior inspection in July of 1990, the City was revising the assessment for 1990 based primarily on omitted items in the original listing (primarily areas previously described as garage areas finished off for living area and an outdoor hot tub or pool) and on a plan dated October 1988 showing a smaller lot with only 100 feet of frontage. Mr. Bolton submitted several waterfront sales that had sold in a range of \$300,000 to \$460,000 within 14 months of the assessment date.

The Board finds as follows.

The Taxpayer's appeal is based on The Constitution of New Hampshire,

Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same

and RSA 75:1 (supp) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R.R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board rules that the market would recognize little remaining reduction in utility to the lot due to its underlying ledge since the Taxpayer has decked over almost all the ledge (see photographs - Exhibit Cty-B and Tp-2).

The Board finds, based on the testimony and evidence, that substantially all the improvements that the City discovered on its inspection in 1990 existed at the time of the original listing of the property in 1987 and on the

assessment date of April 1, 1990. While the City apparently overstated the

size and frontage of the lot based on a survey plan subsequent to the assessment date, the City also understated some of the improvements, namely, the "garage" area and pool. The City's revised assessment in 1990 with these corrections is \$402,100, or less than 2 percent difference from the 1988 assessment. The Board rules that the Taxpayer is not entitled to an abatement if overassessment of one portion of his estate is offset or neutralized by the underassessment of another portion.

. . . [A] taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. Bemis & c. Bag Co. v. Claremont 98 N.H. 446, 449, 102 A.2d 512, 516 (1954). "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899). Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Board rules that an abatement is not warranted by the Taxpayer's comparison to the Giroux property as it cannot be determined from the record whether the Giroux property was properly or possibly underassessed.

The Board finds that the Taxpayer presented little evidence as to his property's market value as of April 1, 1988. The Board gives some weight to the sales submitted by the City because while they are not comparable in all respects, they do indicate that several somewhat similar properties fronting on Lake Winnepesaukee were selling around the Taxpayer's assessed value.

"To show that an abatement is justified, the plaintiff must prove by a preponderance of the evidence that the assessment placed on its property was disproportionately higher in relation to its true value than as to other property in general in the taxing district." Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 701, 406 A.2d 720, 722 (1979)

The Board therefore rules the Taxpayer has failed to prove that the

assessment is unfair, improper, or inequitable or that it represents a tax in

excess of the Taxpayer's just share of the common tax burden. The ruling is, therefore:

Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Chester Kelly, the Taxpayer, to the Chairman, Board of Assessors, City of Laconia, and to David W. Bolton, Appraiser, M.M.C., Inc.

Michele E. LeBrun, Clerk