

Michael S. and Rita Emanuel

v.

City of Laconia

Docket No.: 10001-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990 assessments of:

\$111,700 (land \$28,200; buildings \$83,500) on "Lot 6", a 6,000 square-foot lot with a house at 36 - 38 Whipple Avenue; and

\$148,600 (land \$90,500; buildings \$58,100) on "Lot 5", a 9,380 square-foot lot with a house at 743 Union Avenue (the Properties).

For the reasons stated below, the appeal for abatements is granted.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment on Lot 6 was excessive because:

(1) the Property has been on the market subsequent to 1990 and listed as low as \$60,000 without any offers;

(2) the income stream from the property would not support the assessed value;

- (3) the market value of the property would only be approximately \$70,000;
- (4) the units have not been renovated since the mid-1960's and the basic 1900 structure remains essentially unchanged; and
- (5) the dwelling has no insulation, resulting in high heating costs for the tenants.

The Taxpayers argued the assessment on Lot 5 was excessive because:

- (1) it is one of the older houses in the city; minimal renovations have been done to the bathrooms and the kitchen;
- (2) the lot is in the commercial zone and is being assessed as such, yet due to the small size of the lot and the house occupying most of the lot, the lot has little commercial value;
- (3) the house is not insulated and has only a partial dirt cellar and, thus, is costly to heat;
- (4) the property would have more value to the abutters than to the general public, yet neither abutter is presently interested;
- (5) the property was worth only approximately \$60,000 in 1990;
- (6) the small size of the lot would limit the parking available to meet the potential commercial uses of the property and the area required by City zoning; and
- (7) the high-rise residential building on one side and the auto part's store on the other limits the utility of the subject property.

The City argued the assessment on Lot 6 was proper because three sales of similar, two-family units that occurred in 1989 and 1990 with adjustments for differences generally support the assessed value of the property.

The City argued the assessment on Lot 5 was proper because:

- (1) a 20% economic depreciation was applied to the building due to its residential use in a commercial zone;
- (2) in subsequent years, the Taxpayers have requested and received a residential assessment in a commercial zone pursuant to RSA 75:10, but for 1990 the exemption was not applied for and granted;
- (3) a comparable sale and two comparably assessed properties of residential property in a commercial zone support the assessment; and
- (4) the lack of insulation is accounted for in the normal depreciation of the building.

Board's Rulings

Based on the evidence, the board finds as follows.

Lot 6

The correct assessment should be \$96,400 (land \$25,400; buildings \$71,000) for the following reasons:

- (1) an additional 10% functional depreciation is warranted to account for the building's lack of insulation and outdated utilities; and
- (2) a depreciation of 10% to the condition factor is warranted to account for the size of the lot and its limited parking.

Lot 5

The correct assessment should be \$133,800 (land \$81,450; buildings \$52,350) for the following reasons:

- (1) an additional 5% functional depreciation to the building is warranted for its lack of insulation; and

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(2) the board finds the property would have problems converting to commercial use sandwiched between a nursing home and an auto parts store and finds a 10% depreciation to the condition factor (to 450) is in order due to the lot's lesser utility.

If the taxes have been paid, the amount paid on the value in excess of \$96,400 on Lot 6 and \$133,800 on Lot 5 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the City shall also refund any overpayment for 1991, 1992 and 1993. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael and Rita Emanuel, Taxpayers; and Chairman, Board of Assessors, City of Laconia.

Dated: May 5, 1994

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Valerie B. Lanigan, Clerk