

Michael Emanuel

v.

City of Laconia

Docket No.: 10002-90PT

DECISION

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

\$110,300 (land \$64,700; buildings \$45,600) on "Lot 12," a 2,850 square-foot lot with 2 barber shops and a retail store; and

\$143,500 (land \$81,200; buildings \$62,300) on "Lot 4," an 11,873 square-foot lot with a house (the Properties).

For the reasons stated below, the appeal for abatement is granted to the City's recommended assessment on Lot 12 and denied on Lot 4.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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).

The Taxpayer argued the assessment on Lot 12 was excessive because:

- (1) the second and third floor have been condemned since an explosion on the third floor in 1986 made them unusable;
- (2) the second and third floor, even if in usable shape, would have limited utility due

to the rooming-house layout; and

(3) in 1990, the property would only have been worth approximately \$30,000 to \$40,000.

The Taxpayer argued the assessment on Lot 4 was excessive because:

(1) the house was built at the turn of the century and converted to 4 one-bedroom apartments in the 1950's and the plumbing, bathrooms and kitchens have not been renovated;

(2) the house was listed for sale for three months in 1993 for \$100,000;

(3) the income stream from the property would not support the assessment;

(4) the property was worth only approximately \$70,000 in 1990;

(5) the land available for parking could limit the commercial potential of the property; and

(6) the City's Chestnut Street comparable is superior because it is off Union Avenue - - a much more active commercial area than Main Street.

The City recommended adjusting the land condition factor on Lot 12 to 480, resulting in a revised land value of \$51,800, and argued the revised assessment was proper because:

(1) the second and third floors have been listed as unfinished areas and a further 25% functional depreciation was applied to account for the lack of utility of the upper floors;

(2) in 1990, three businesses were operating on the first floor -- two barber shops and one retail store; and

(3) two sales of commercial property support the assessment.

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The City argued the assessment on Lot 4 was proper because:

- (1) several sales of multi-unit buildings generally support the assessment; and
- (2) the highest and best use of the property is a mix of commercial and residential uses due to the commercial zoning.

Board's Rulings

Based on the evidence, we find the following.

Lot 12

The correct assessment should be \$97,400 (land \$51,800; building \$45,600). The board finds the City's recommended adjustment to the land condition factor to be proper based on the lack of on-site parking. The board found no additional adjustments were warranted because the Taxpayer did not present any credible evidence of the property's fair market value. To carry this burden, the Taxpayer should have made a showing of the property's fair market value. This value would then have been compared to the property's assessment and the level of assessments generally in the City. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. Further, the revised assessment, when equalized by the department of revenue administration's equalization ratio of 110% for 1990, suggests a fair market value of \$88,550 and the City's sales, when appropriately adjusted, support the revised assessment.

Lot 4

The board finds the Taxpayer failed to prove the Lot was disproportionately assessed. The Taxpayer stated he listed the property for sale for 90 days in 1993 for

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\$100,000. The Taxpayer did not present any credible evidence of the property's fair market value in April, 1990, or how the market in 1993 differed from 1990. The City testified the property's assessment was arrived at using the same methodology used in assessing other properties in the City. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Further, the City's comparable sales supported the assessment.

The board denies the City's request for costs, finding that while the Taxpayer did not have sufficient evidence, his appeal was not an abuse of the appeal's process.

If the taxes have been paid, the amount paid on the value in excess of \$97,400 on Lot 12 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

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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.

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 Emanuel, Taxpayer; and Chairman, Board of Assessors, City of Laconia.

Dated: May 12, 1994

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Valerie B. Lanigan, Clerk