

Wayne G. Sargent

v.

City of Concord

Docket No.: 10310-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1990 assessments of \$29,800 on Lot 14, a vacant, 2.19-acre lot; and \$26,100 on Lot 4, a vacant, 2.97-acre lot (the Properties). For the reasons stated below, the appeal for abatements is granted for Lot 14 and denied for Lot 4. Reasons are discussed later in this decision.

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). We find the Taxpayer carried their burden of proof on Lot 14 but failed to meet that requirement on Lot 4.

The Taxpayer argued the assessments were excessive because:

Lot 4

- (1) the land is predominately ledge and would be costly to develop;
- (2) the lot is on a sharp corner on a fairly highly traveled road and the value of the lot should be discounted due to these hazardous conditions;

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(3) the City's comparables are on less traveled roads and should have received a 10% adjustment for the traffic condition;

(4) the title to the Property is by a quit claim deed which would affect the borrowing and transferability of the Property; part of this cloud on the title results from an old railroad right-of-way in the chain of title; and

(5) after adjustments are made for these factors, the estimated value of the lot is \$21,000 to \$22,000.

Lot 14

(6) the lot is quite narrow, limiting its utility and development potential due to 50 foot front and rear setbacks; the house that has been subsequently built had to be located at the northern portion of the lot and the cost to bring fill in to develop the lot was approximately \$20,000;

(7) the shape of the lot precludes adding a garage or other accessory buildings;

(8) the old railroad bed through the lot is a left over industrial use of the lot and would reduce the value of the lot; and

(9) after adjustments for these factors are made, the estimated value of the lot is \$14,000.

The City argued the assessments were proper because:

Lot 4

(1) an appraisal submitted by the City estimated the market value at \$28,000 supporting the assessment of \$26,100; and

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(2) the ledge on the lot is at the sharp corner of the lot where it would not be developed due to access; the eastern portion of the lot appears to be developable; a 20% adjustment was made to the appraisal and the assessment to account for the ledge.

lot 14

(3) the locational adjustment made by the Taxpayer's appraiser is not one that the typical purchaser would likely make;

(4) the topographic adjustment is a relative adjustment not necessarily directly related to the cost to cure the Taxpayer's lot and make it developable; and

(5) an appraisal submitted by the City estimated the market value for lot 14 at \$30,000 supporting the assessment of \$29,800.

Board's Rulings

Lot 14

Based on the evidence, the board finds that the condition factor on Lot 14 should be reduced from .8 to .6 to address the functional limitations caused by a narrow shaped lot as well as certain issues which make clear title to Lot 14 problematic. The correct 1990 assessment on Lot 14 should be \$22,800. The board also gave weight to the fact that the Taxpayer has only a quit claim deed and the availability of title insurance is uncertain.

Lot 4

The board also rules that Lot 4 is properly assessed at \$29,900 and may be a more desirable home site than lot 14 (without the negative impact of a

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railroad bed). We find the Taxpayer failed to prove the Property's assessment

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on Lot 4 was disproportional. We also find the City supported the Property's assessment on Lot 14.

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).

If the taxes have been paid, the amount paid on the value in excess of \$22,900 for Lot 14 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Wayne G. Sargent, Taxpayer; and Chairman, Board of Assessors, City of Concord.

Dated: January 7, 1994

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Valerie B. Lanigan, Clerk