

Richard M. and Karen A. Gerry

v.

City of Concord

Docket No.: 10430-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990 assessment of \$190,600 (land \$41,400; buildings \$149,200) on an 11,761, square-foot lot with a house (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was 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 was excessive because:

- (1) the Property was sold at arms length for \$150,000 in June, 1993;
- (2) the lack of a back yard and the 20 foot proximity of the house to the neighbor's house have a negative effect on the total value of the Property;
- (3) the house overlooks Concord Meadows, a large apartment complex;
- (4) eight comparable sales, that all sold in 1990, support a market value estimate of \$170,000 to \$175,000;

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(5) two of the City's comparables sold in 1988 and 1989 and thus are not as comparable as the Taxpayers' comparables; and

(6) two of the City's comparables (#1 and #2) have more regular shaped lots.

The City argued the assessment was proper because:

(1) the sale of the Property in June, 1993 for \$150,000, if adjusted by an estimated 1993 equalization ratio of 125% ($\$150,000 \times 125\% = \$187,500$), supports the \$190,600 assessment; and

(2) most of the Taxpayers' comparables are in an inferior location, of lesser quality and generally smaller in size.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$178,100 (land, \$37,200; building, \$140,900). This assessment is ordered because:

1) based on all the evidence submitted by both parties, the positioning of the house and the lack of the rear yard had a significant impact on the Property's market value and is a factor that the City should have considered more than it did in its assessment;

2) a 10% functional depreciation should be applied to the building and the land condition factor should be reduced by 10% to account for the diminished utility of the Property;

3) the City's argument of the Property's 1993 sale, if adjusted by an estimated equalization ratio, does not necessarily prove that the Property was properly assessed in 1990 (the appeal year), because such a finding is based on an assumption that the Property changed in value at a similar rate as all

property generally did within the City during that time period;

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4) while neither party submitted any analysis of the change in value for this Property or the general neighborhood, the board notes one of the sales submitted by the City of a property (4 New Castle Street) that initially sold in 1986, resold in 1988 and in 1992;

5) analyzing the sale prices indicates that the 4 New Castle Street property appreciated from 1986 to 1988 at approximately 1.6% per month and declined from 1988 to 1992 at only .25% per month; and

6) this sale indicates that property in the Taxpayers' neighborhood declined at a slower rate since 1988 than the balance of the City.

If the taxes have been paid, the amount paid on the value in excess of \$178,100 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 Richard M. and Karen A. Gerry, Taxpayers; and Chairman, Board of Assessors, City of Concord.

Dated: January 18, 1994

Valerie B. Lanigan, Clerk

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