

David J. and Lisa Braiterman

v.

City of Concord

Docket No.: 10486-90

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990 assessment of \$279,800 (land \$78,200; buildings \$201,600) on a 31,800, square-foot lot with a single-family home (the Property). The Taxpayers also own, but did not appeal, a 7,150 square-foot lot with a three-family home assessed at \$153,100. 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 market value of the Property as of 1990 is \$250,000 based on a comparison of comparable sales and comparably assessed property;

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- (2) while the Property is in one of the most desirable residential neighborhoods in Concord, the land value is excessive compared to sales of lots in Governors Hill -- a new desirable residential subdivision in Concord;
- (3) the land sales indicate the land portion of the assessment is excessive by \$27,000;
- (4) the development costs of raw lots versus improved lots does not fully account for the difference in the City's assessments;
- (5) the City's comparables are further removed from Pleasant St. and in a generally better neighborhood; no adjustment was made for this difference;
- (6) the Property's lot is on the steep grade portion of Kensington Rd. and is not fully cleared or developed; and
- (7) the City's appraisal attributed too high a price (\$30 per square foot) for the additional square footage of the subject and the utility of one bathroom.

The City argued the assessment was proper because:

- (1) the City submitted an appraisal report estimating the market value as of April 1990 at \$265,000 which generally supports the assessment of \$279,800;
- (2) the neighborhood of the subject and the comparables is excellent and not so dissimilar to warrant an adjustment;
- (3) the \$30.00 per square foot for difference in living area is reasonable based on the quality of the building; and
- (4) the Taxpayers' land sales were all from N.H. Savings Bank and are not arms-length sales because the bank was liquidating some of its assets; this is borne out both by the resale at a higher price of one of the lots three years

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later in a declining market and by the development of the other lots.

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Board's Rulings

Based on the evidence, we find the correct assessment should be \$264,900

(land \$70,400; building \$194,500). This assessment is ordered because:

(1) the land condition factor should be reduced from 1.00 to .90 to reflect the utility of the lot based on its, topography and extent of improvement and the Property being located on the periphery of a desirable neighborhood; these are all factors that the market would consider in valuing this Property and thus the City must also consider these relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975);

(2) based on the evidence, the dwelling replacement cost should receive an additional 3% functional depreciation for the contributory value of the attic finish and the bathroom utility.

No further abatement is warranted because:

(1) the above findings are generally supported by the City's appraisal versus its assessment; and

(2) the Taxpayers' argument that the land component was excessive compared to the sale of undeveloped lots in the Governors Hill subdivision is given little weight because the Taxpayers did not establish what affect the grantor being the bank liquidating part of its portfolio may have had on an arm's-length nature of the sales and what the general value difference is between an undeveloped lot and a developed lot.

If the taxes have been paid, the amount paid on the value in excess of \$264,900 shall be refunded with interest at six percent per annum from date

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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

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David J. and Lisa Braiterman, Taxpayers; and Chairman, Board of Assessors of Concord.

Dated: December 21, 1993

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Valerie B. Lanigan, Clerk