

Gail N. Mintken  
v.  
City of Concord

Docket No. 8778-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a and RSA 72:37-a, the "City's" 1990 assessment of \$172,300 (land, \$35,600; buildings, \$136,700) on her property at 123 Hoit Road, consisting of a one-story dwelling and garage on a 2.29-acre lot (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved she was disproportionately taxed.

The Taxpayer argued that the assessed value was excessive because:

- 1) the assessment contained errors so that it exceeded market value; and
- 2) the City had not fully exempted the value of the improvements made in the house to assist her disabled daughter (RSA 72:37-a).

Errors cited by the Taxpayer included: the square-foot base cost of a one-story dwelling being higher than equivalent living area in a two-story dwelling; dwelling only of average quality, not average plus 10 percent; prime

site value too high due to wetness; garage interior unfinished; and basement and utility-room unit costs too high.

Through various calculations, the Taxpayer estimated the building value should be reduced 20 percent to account for the value of the improvements made to the property to be accessible and adaptive for her disabled daughter. Such improvements included fill around the house, steel I-beams in the ceiling, wider doors and halls; adaptive kitchen and bathroom features; and entrance ramps.

At the hearing, the City recommended an additional 5 percent functional depreciation to account for the Property's special features, resulting in a lower assessment of \$165,300. The City argued the Taxpayer's comparables were all two-story houses and thus would have a lower unit cost per square foot than the Taxpayer's one-story house.

The Board rules as follows:

The necessity for the Taxpayer to revise her construction plans from a two-story house to a one-story house is not a basis for an abatement or an exemption under RSA 72:37-a. The cost and market approaches to value both generally indicate a slightly higher unit cost for a one-story dwelling than a two-story dwelling. The choice of whether to construct a one-story rather than a two-story house is not inextricably tied to meeting the needs of a disabled person and thus is not a specific improvement that is exemptible under RSA 72:37-a.

From the evidence submitted, the Board is unable to determine if the variation in basement and utility-room area base costs indicates either an overassessment of the Taxpayer, an underassessment of the comparable

properties, or variations that exhibit themselves in the market to which neither party testified.

While the lot may have been wet before filling and developing, the Taxpayer failed to prove that the value placed upon it by the City does not reasonably reflect its improved contributory value. As the condition factor used by M.M.C., Inc., can be less than or greater than 100, the 100 factor assigned to the Taxpayer's site does not necessarily indicate the site is the best in the area or of perfect topography.

It is clear from the evidence that the Taxpayer's garage has an unfinished interior and was appraised as if finished. Thus, the value of the garage should be reduced to \$8,654 (50.08 (base rate) x .30 (unfinished-garage factor) x 576).

Based on the evidence of construction improvements specifically done for the needs of a disabled person and not those design features that are desirable and recapturable in the general market, a total 15 percent functional depreciation should be applied to the building replacement cost. This adjustment accounts for: 1) an exemption for the value of very specific improvements designed to assist the Taxpayer's disabled daughter, such as I-beams, entrance ramps, additional fill and landscaping, etc.; and (2) the functional obsolescence of such design features as extra-wide doorways and halls for which the general market would not pay extra.

The proper 1990 assessment is calculated and summarized as follows:

Buildings:	
Replacement cost	\$144,922
Hearth	+ 700
Physical depreciation	- 3%
Functional depreciation	- 15%
	\$120,050
Land:	35,600
Total:	\$155,650

If the taxes have been paid, the amount paid on the value in excess of \$155,650 is to be refunded at six percent per annum from payment date to refund date.

April 18, 1991

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to Gail N. Mintken, the Taxpayer, and to the Chairman, Board of Assessors, City of Concord.

April 18, 1991

Michele E. LeBrun, Clerk

