

M. Patricia Hilsinger

v.

City of Laconia

Docket No.: 9257-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1990 assessment of \$472,700 (land \$392,800; buildings \$79,900) on a one-story home with a 1.21 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property consists of two lots created by subdivision (Lot 3 and 3A), is an existing non-conforming lot and structure with three easements (sewer, water line, Public Service) through the Property;
- (2) the commercial property abutting the subject is a major drawback to the Property and shares the waterfront removing the privacy factor;

Page 2

Hilsinger v. City of Laconia

Docket No.: 9257-90PT

(3) comparable sales support the Taxpayer's contention that the Property is overassessed;

(4) the Truell Family Real Estate Agency indicated an opinion of value for the subject Property to be \$275,000 to \$300,000 as of April 20, 1990;

(5) the board's inspector inspected the Property and reviewed the assessment-record card in 1988 and recommended an assessment of \$312,500 for the 1988 tax year; and

(6) the fair market value as of April 1, 1990 is \$275,000.

The City argued the assessment was proper because:

(1) the City considers the Property as one lot, not two separate parcels and it is not being assessed as having potential to subdivide;

(2) the City has no control over what moorings are approved or disapproved but rather is dealt with by the Conservation Commission or Wetlands Board;

(3) the sewer easement is along the Property's edge and would fall within zoning setback requirements therefore would not affect the value of the Property;

(4) the Taxpayer's comparables are not relevant to the 1990 assessment as all occurred after April, 1990; further, all are much smaller in area as well as frontage and the Irwin property was a non-conforming lot with no mainland access and was purchased by an abuttor;

(5) the Taxpayer has not shown that similar type properties adjacent to commercial properties have sold for less thus showing an affect on the market; and

(6) the City has made no direct adjustments to the lot or frontage for the abutting commercial property.

Page 3

Hilsinger v. City of Laconia

Docket No.: 9257-90PT

Board's Rulings

Based on the evidence, we find the correct assessment should be \$427,700 (land \$347,800; building \$79,900). This assessment is ordered because the board finds the abutting commercial property to be a negative influence not compatible with the private use of the subject Property. The board finds a condition factor of 600 more appropriately reflects the impact the commercial property has on market value. The board finds no further adjustments are warranted because:

(1) the Property is assessed as one lot;

(2) the Taxpayer submitted a realtor's letter suggesting a value between \$275,000 to \$3000,000 but the letter did not include the basis for the value conclusion.

Specifically, the realtor's letter did not indicate what sales were used or what adjustments were made to the sales to arrive at the value conclusion. Without such information, the board and the municipality are unable to review the soundness of the value conclusions;

(3) the Taxpayer provided no evidence of the effect, if any, the easements have on the Property; and

(4) the board's appraiser (Mr. Quinn) did not perform an appraisal for the 1988 tax appeal, but merely made remarks to the board based on his inspection of the Property and a review of the 1988 appeal. The report is not an appraisal and the board treats it as it would other evidence, giving it the weight it deserves.

If the taxes have been paid, the amount paid on the value in excess of \$427,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05,

Page 4

Hilsinger v. City of Laconia

Docket No.: 9257-90PT

the City shall also refund any overpayment for 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 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

George Twigg, III, Chairman

Michele E. LeBrun, Member

Page 5

Hilsinger v. City of Laconia

Docket No.: 9257-90PT

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to M. Patricia Hilsinger, Taxpayer; and Chairman, Board of Assessors of Laconia.

Dated: April 6, 1994

Valerie B. Lanigan, Clerk

0008