

Nancy T. Lockhart

v.

City of Concord

Docket No.: 9332-90PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1990 adjusted assessment of \$52,000 on a vacant, 22,400 square-foot 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 her burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the lot was purchased in April of 1990 for \$28,000 from New Hampshire Savings Bank because it abutted an improved lot owned by the Taxpayer;
- (2) the lot is below grade from the road and would require drainage work to develop the Property and needs a pump-up system to get the sewage to the City sewer line;
- (3) the lot is one of the least desirable lots in the subdivision; and

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(4) an individual had inquired about the lot but were unwilling to pay \$35,000 for it but did pay \$55,000 for a better lot in the same subdivision indicating the diminished value of the Property.

The City argued the assessment was proper because:

- (1) its appraisal submitted at the hearing estimated the market value of the Property at \$55,000 supporting the assessment of \$52,000;
- (2) the Taxpayer purchased the lot from New Hampshire Savings Bank; it was not an arms-length transaction because the bank was dumping several lots in the subdivision on the market; the sales prices by the bank did not follow a pattern relative to the topography of the lots;
- (3) the lot is in a desirable neighborhood; and
- (4) the slope of the lot affords the development of a house with a walk-out basement.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$40,900. This assessment is ordered because:

- (1) the below-road-grade nature of the lot and its resulting diminished utility and desirability are factors that would affect market value; Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (All relevant factors affecting market value must be considered in the assessment);
- (2) despite the fact that the New Hampshire Savings Bank sales are not necessarily arms-length transactions, the relative range of those sales and the refusal of the Benoits to purchase the Property for \$35,000 and yet pay

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\$55,000 for a better lot in the same subdivision is adequate market data to support a lower assessment; and

(3) an additional -15% adjustment to the condition factor to reflect the lot's reduced desirability due to its topography is reasonable based on the evidence and results in the revised assessment of \$40,900.

If the taxes have been paid, the amount paid on the value in excess of \$40,900 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 Nancy T. Lockhart, Taxpayer; and Chairman, Board of Assessors, City of Concord.

Dated: January 11, 1994

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Valerie B. Lanigan, Clerk