Donald M. and Lucy R. Plourde

v.

City of Laconia

Docket No.: 9433-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990 assessment of $520,700 (land $316,200; buildings $204,500) on a 31,799 square foot lot with a two-story home (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) an offer of $420,000 was made through the Employee Relocation Council which was based on three appraisals prepared for the Council;

(2) there are errors on the assessment-record card and the City has arbitrarily increased the assessment when no change has occurred since occupancy permit was issued;

(3) the existing dock has a removable panel cover top and was erroneously assessed as having a permanent cover; and

(4) the fair market value of the Property is $420,000.

The City argued the assessment was proper because:

(1) the Taxpayers' appraisers all utilized a time adjustment for the number of days the Property was anticipated to be on the market;

(2) when removing the days on the market adjustments to the Aldrich and Nichols comparables, and applying proper time adjustments and the Department of Revenue Administration's equalization ratio of 110%, the comparables support the assessment;

(3) comparable sales on Lake Winnipesaukee and comparables on Lake Winnisquam, adjusted for the water body, support the assessment; and

(4) an interior inspection of the Property has not been made in spite of numerous attempts to arrange a mutually convenient time with the Taxpayers to resolve allegations by the Taxpayer that no interior changes have been made since the previous revaluation.

Board's Rulings

The board continued its March 22, 1994 hearing in order for the City and the Taxpayers to arrange for an interior inspection of the house at a mutually convenient time. The board has since been notified by the Taxpayers' letter

dated March 31, 1994 that the City assessor will not be permitted by the Taxpayer to enter the subject Property to view the interior to ascertain that which should be properly assessed as of April 1, 1990. The board therefore closes the record and proceeds to issue the following ruling based on the evidence presented at the hearing on March 22, 1994. The board did not consider any additional information submitted in the Taxpayers' March 31, 1994 letter because the hearing was closed on March 22, 1994 with the exception of the production by the City of the assessment-record card to be prepared (based on the inspection of the Property) and an opportunity for the Taxpayers to respond to any changes made to the assessment-record card.

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionally assessed. With respect to the Taxpayers' Employee Relocation Council offer to purchase the Property for $420,000; the board finds this offer sets the lower limit of value and not necessarily the higher full market value, which could have been obtained had the Property been placed on the open market, properly advertised for a reasonable period of time. Further, upon review of the three appraisals submitted by the Taxpayers the board finds that all three appraisers used a different gross square foot living area for the subject (2,207; 2,021; 2,355), and all made adjustments to the comparables for "days on the market" (DOM). None of the appraisals were

dated; however, the Taxpayers stated the date of the appraisals was approximately February 1990. The date of assessment is April 1, 1990. The comparables should have been adjusted from the dates of sales to the date of assessment to determine a fair market value as of April 1, 1990. Further, if the DOM was a valid adjustment to make, the board finds the evidence contrary in that the three appraisers made substantially different adjustments to identical sales. For example:

SALE	APPRAISER	ADJUSTMENT	DOM
9 Birch Haven	Aldrich McLean Nichols	$30,000 $46,000 $46,000	329 329 329
Bartlett Landing	Aldrich McLean Nichols	$17,500 $35,000 $45,300	231 231 231
Long Point	Aldrich McLean	$40,000 $45,000	459 459

The appraisers also differed on the adjustments made for location, site/view, quality of construction, age, condition, room count, gross living area, basement/finished rooms, garage/carports, energy related items, special features and only one appraiser made an adjustment to the Bartlett Landing Road comparable because it was sold furnished. The board will use the Bartlett Landing Road comparable to show the discrepancies in the adjustments made by the appraisers. There were similar discrepancies on the Birch Haven Road and Long Point Road comparables.

BARTLETT LANDING	ALDRICH	MCLEAN	NICHOLS
Location	-15,000	-0-	+22,000
Site/View	-0-	+5,000	-0-
Quality of Construction	-0-	-0-	-0-
Age	-0-	-1,500	-0-
Condition	-5,000	-0-	-0-
Room Count	-0-	-1,500	-0-
Gross Living Area	-7,900 (2,606 sq. ft.)	+ 420 (2,000 sq. ft.)	+ 8,300 (1,524 sq. ft)
Basement/Finished Rooms	+5,000	-3,000	- 8,600
Garage/Carport	+4,000	+3,000	+ 5,000
Energy Related Items	-0-	+1,500	-0-
Special Features	-0-	-0-	+10,000
Other	-0-	-0-	-15,000

The board questions whether the appraisers verified and inspected the sales from which they relied on or whether the information was merely gathered from the MLS service.

Neither party challenged the Department of Revenue Administration's equalization ratio of 110% for the 1990 tax year. The Property's equalized value is $473,400 which the board finds to be proper based on all of the sales evidence submitted at the hearing.

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

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Donald M. & Lucy R. Plourde, Taxpayers; and Chairman, Board of Assessors of Laconia.

Dated: June 10, 1994

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Valerie B. Lanigan, Clerk