

**Harold L. and Claire S. Lotto**

**v.**

**City of Laconia**

**Docket No.: 9553-90**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990 assessment of \$284,000 (land \$121,200; buildings \$162,800) on Lot 29, a 20,0376 square-foot lot with a house in a development known as Long Bay (the Property).

The Taxpayers also own a dry berth in the South Down Shores condominium complex which was also appealed. However, at the hearing, the Taxpayers indicated they were withdrawing the appeal of the dry berth and the 1991 appeal of Lot 29. For the reasons stated below, the appeal for a 1990 property tax 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 this burden and prove disproportionality.

The Taxpayers argued Lot 29's assessment was excessive because:  
(1) the reduction in the land value in 1991 should also apply to the 1990,

because the lack of completion of the roads and infrastructure in the development affected the value of the Property as much in 1990 as in 1991;

(2) bonds and bank books held by the City to ensure the completion of the infrastructure disappeared;

(3) the unfinished components of the house should be based on the actual costs to construct, not the 10% reduction applied by the City; and

(4) the vacant lot was purchased in September, 1988 for \$100,000.

The City argued Lot 29's assessment was proper because:

(1) in 1990, 10% was allowed for trim work unfinished as of April 1, 1990;

(2) up until the summer of 1990, purchasers were still under the understanding that the roads and all other amenities and infrastructure would be completed and financed from the sales of the lots; it wasn't until 1991 that the public would have had knowledge that the development was in financial trouble and that the infrastructure wouldn't have been completed; in December, 1991 the development was foreclosed by the lending institution; the property association will now be responsible for the completion of the infrastructure;

(3) sales indicate the market did not recognize any problems with the development prior to 1991; and

(4) the lot value reflects the water and sewer connection value added as the lot was developed; thus, the purchase price in 1988, as vacant, would need to be adjusted for the utilities and the enhanced lot value thus created.

### Board's Rulings

The Board finds the 10% reduction allowed by the City for the subject property (house) was reasonable based on the evidence. The Taxpayer, who was his own general contractor and builder, was unable to present actual expenses in excess of the 10% incomplete factor.

The Taxpayer conceded that as of April 1, 1990, no information had come to light which would have alerted prospective buyers (the market) that problems existed with the developer's ability to deliver on the obligation to provide an amenities package, as well as completion of the "infrastructure."

The question raised by the Taxpayer concerning what happened to the contractor bonds and bank books pledged to support the unfinished work was never answered by the City. The Board's jurisdiction is limited to determining what the market value of the Property was on April 1, 1990, and not ruling on allegations of fraud or negligence committed by the developer or the City.

We find the Taxpayers failed to prove the Properties' assessments were disproportional based on the information available to prospective buyers on April 1, 1990. We also find the City supported the Properties' assessments based on comparable properties submitted for tax year 1990.

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 Page 4  
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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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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date,  
postage prepaid, to Harold L. and Claire S. Lotto, Taxpayers; and Chairman, Board of  
Assessors, City of Laconia.

Dated: March 31, 1994

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Valerie B. Lanigan, Clerk