

Robert T. Bacon, Sr.

v.

City of Concord

Docket No.: 12123-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$528,900 (land \$514,600; buildings \$14,300) on a ranch-style home on a 3.91 acre lot (the Property). The Taxpayer owns two other properties that were not appealed. 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 reassessment of the Property in 1991 resulted from the rezoning of the area to "Gateway Business District";
- (2) the improvement to Loudon Rd. as the result of the Steeplegate Mall and Toy's 'R Us store diminished access to property on the westbound lane of Loudon Rd. with the installation of median strips;

(3) the City's -10% adjustment for access was not adequate for the actual effect of the median strips;

(4) generally, property located on the westbound side of Loudon Rd. is not as desirable as property on the east side due to the commuting and shopping patterns of the traffic;

(5) if the City's appraisal is corrected to reflect an additional -40% for access, -10% for being on the westbound side of Loudon Rd. and -7% for the lesser traffic, a proper market value is estimated at \$227,427;

The City argued the assessment was proper because:

(1) the Property was reassessed in 1991 based on a change in the zoning from industrial to commercial (Gateway Business District) in May 1990;

(2) there existed a purchase and sales agreement in April 1991 with a potential sales price for the Property of \$910,000 as part of an assemblage;

(3) a second purchase and sales agreement was signed in April 1992 for \$600,000;

(4) the Property was listed in 1994 for \$450,000;

(5) while these purchase and sale agreements existed, the City did not base its assessment on them;

(6) an appraisal prepared by the City estimated the 1991 market value of the Property at \$586,500;

Board's Rulings

Based on the evidence, we find the correct assessment should be \$435,900 (land \$421,600; buildings \$14,300). This assessment is ordered because:

1) the City's reassessment methodology of the Property in 1991 is proper due to the zoning of the neighborhood to commercial uses;

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2) the City's appraisal (Municipality A) provides a proper starting point for supporting the assessment;

3) however, both the City's assessment methodology and the City's appraisal needs to be adjusted further to reflect the topography and access problems testified to during the hearing;

4) the Property has its access limited to traffic on the westbound side of Loudon Road due to the installation of median strips in Loudon Road and guard rails along a significant portion of the Property's frontage;

5) the topography of the Property drops off below grade from Loudon Road and would be a factor to be considered in any potential use of the Property; and

6) the condition factor on the City's assessment record card on the first land line should be adjusted -10% for the parcel's undeveloped (commercial) state, -10% for topography and -15% for access resulting in proper total land assessment of \$421,600.

During the hearing there was extensive testimony about two purchase and sales agreements relative to this Property as part of an assemblage of adjoining properties to facilitate larger development. The board gives some weight that the market would recognize this ability to maximize value by assemblage. However the board has approached valuing this Property as a "stand alone" property as that is what both parties indicated was the most likely use of the Property. However the board in making adjustments to the City's assessment has tempered its total adjustments by 5% to recognize any prospective purchaser in 1991 would have considered the distinct possibility of assembling the Property with other parcels to maximize market value.

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If the taxes have been paid, the amount paid on the value in excess of \$435,900 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the City shall also refund any overpayment for 1992, 1993 and 1994. 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 thirty (30) 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 in 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

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 David E. Tardif, Esq., counsel for the Taxpayer; and Chairman, Board of Assessors of Concord.

Dated: May 2, 1995

Valerie B. Lanigan, Clerk

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