

Ralph J. Rosen

v.

City of Laconia

Docket No.: 12178-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$209,400 (land \$74,500; buildings \$134,900) on a 1.2-acre lot with a house (the Property). For the reasons stated below, the appeal for abatement is denied, but we order the City to use the \$204,800 adjusted assessment.

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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the prison that is located less than 1/4 mile from the Property decreases the Property's value;
- (2) April 1994 and July 1995 letters of opinions from realtors indicated the prison has had a negative influence on the values of properties in the neighborhood;

- (3) comparable sales of properties within one mile of the prison demonstrated overassessment;
- (4) the land value should reflect the prison's negative impact on the Property (influence factor should be 100 and site index should be 5); and
- (5) the house should be assessed at \$100,000.

The City recommended adjusting the assessment to \$204,800 and argued the adjusted assessment was proper because:

- (1) seven neighborhood sales from August 1990 to October 1991 indicated the properties in the neighborhood were probably underassessed in comparison to other properties in the City and this analysis for 1991 and 1992 did not show any diminution in this neighborhood when compared to the City as a whole;
- (2) approval to renovate the buildings and use the site for the prison did not come until July 1991 and no inmates moved onto the site until after March 1992;
- (3) the selling dates of the Taxpayer's comparables were several years beyond the assessment date (April 1991); and
- (4) the differences in selling prices of properties in the neighborhood from 1987 to 1994 were not more than what was found overall in the City.

Board's Rulings

Based on the evidence, we find the Taxpayer did not show overassessment. The Taxpayer's entire case rested on whether the prison adversely affected the Property's value. The board, however, must review all factors that affect (positively or negatively) the Property's value. Our analysis then concludes with the question about whether the assessment was excessive given the various factors. The board could not perform this review here because the Taxpayer

did not present any evidence concerning the Property and its value. For example, the board does not even know what the building looks like because photographs were not provided. Additionally, we do not know what the Property was worth because the Taxpayer did not provide any evidence on the Property's market value. This evidence is required to review the assessment. The equalized adjusted assessment was \$161,260 (\$204,800 divided by the 1.27 ratio). Was the Property, even given its location near the prison, worth \$161,260 in 1991? We do not know. Even if the Taxpayer showed the prison affected value, it would be erroneous for us to adjust the assessment without any sense of the Property's value.

Turning to the Taxpayer's analysis on the prison, we find the Taxpayer did not show the prison adversely affected value for the following reasons:

- (1) the Taxpayer used 1992 and 1993 sales but then used the 1991 ratio;
- (2) the Taxpayer did not verify the sales (at least one sale was a bank-related sale);
- (3) 1487 Old North Main, which the Property abuts, sold without showing any diminution due to the prison;
- (4) the Taxpayer did not present sufficient information concerning the days-on-the-market issue to draw any conclusions; and
- (5) the City's analysis, which used only verified arm's-length sales with dates corresponding to the ratio studies, did not indicate any diminution due to the prison.

Because the appeal has been denied, we deny the Taxpayer's request for refund/reimbursement of the filing fee.

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If the taxes have been paid, the amount paid on the value in excess of \$204,800 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ralph J. Rosen, Taxpayer; and Chairman, Board of Assessors, City of Laconia.

Dated: August 9, 1995

Valerie B. Lanigan, Clerk

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