

Lawrence Baldi

v.

City of Laconia

Docket Nos.: 13973-93PT and 15339-94PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1993 assessment of \$824,200 and 1994 assessment of \$653,700 on Lot 252-2, a 12.59-acre lot with a drive-in theater and 11-site mobile home park. The Taxpayer owned other properties in the City, but the City considered those properties to be fairly assessed. For the reasons stated below, the appeals for abatement are granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

(1) the Property has minimal frontage, poor visibility, and is encumbered by a right-of-way;

- (2) the Property's development potential is limited by its seasonal location;
- (3) the Town used a replacement cost approach to value the Property; and

(4) an appraisal estimated the Property's market value to be \$430,000 as of April 1993 and April 1994.

The City argued the assessments were proper because:

- (1) the Property's current use is an interim use, and the Property's highest and best use would be as residential or commercial development;
- (2) there are improvements in proximity of the right-of-way, the easement is not in active use, and therefore, the easement does not adversely affect the site;
- (3) the Property's value is in the land, and 90% of the lot is cleared and utilities are already available; and
- (4) an appraisal estimated the market value to be \$645,000 as of April 1993 and April 1994.

Board's Rulings

Based on the evidence, the board finds the Property had a 1993 and 1994 market value of \$430,000, resulting in a \$567,600 1993 assessment ( $\$430,000 \times 1.32$  ratio) and a \$421,400 1994 assessment ( $\$430,000 \times .98$  ratio).

The board was presented with two qualified and competent appraisers, but in the final analysis, the board concluded the Taxpayer's appraiser, Mr. Blumenthal, presented a more reasonable analysis and conclusion.

The Property has an interesting mixture of positive value factors and negative value factors.

The positive factors include:

- 1) large overall site (12.59 acres);
- 2) the Property is located in a busy commercial, retail and recreational area;
- 3) the Property is serviced by municipal water and sewer; and

4) the Property has been generally cleared, which could lower development costs.

The negative value factors include:

- 1) there is only 50 feet of frontage for this large parcel;
- 2) development of the site would probably require a traffic study, which could limit full development;
- 3) an easement for an abutting property legally exists on the Property and would have to be accommodated in any development;
- 4) while the lot is generally cleared, any development would require demolition costs, including removal of the paving; and
- 5) the Property includes a manufactured housing park as defined by RSA 205-A:1 II, which subjects the Property to the provisions of RSA chapter 205-A, especially RSA 205-A:3 and 4 (eviction allowed for change in use but 18 months notice required).

The City's appraiser focused on the Property's positive attributes. The Taxpayer's appraiser more realistically considered the Property's negative attributes. The board concludes the Property's negative attributes create a substantial cloud over the Property's developability for intense commercial use, warranting a \$430,000 value.

The board also finds the Taxpayer's appraiser used properties that were more comparable to the Property whereas the City's appraiser used less comparable properties. Finally, the board agrees with the Taxpayer's appraiser that any prospective purchaser of the Property would probably continue its present use as an interim use until the Property could be utilized for a more substantial use.

Concerning residential use, the zoning requires only 50 feet of frontage for commercial development but requires 80 feet of frontage for residential

development. There is a significant question about whether the Property could be residentially developed. Such development would require a variance, and given the available commercial use, the Property would probably not be entitled to a frontage variance.

If the taxes have been paid, the amount paid on the value in excess of \$567,600 in 1993 and \$421,400 in 1994 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, unless the City has undergone a general reassessment, the City shall also refund any overpayment for 1995. 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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for Lawrence Baldi, Taxpayer; and Chairman, Board of Assessors, City of Laconia.

Dated: December 20, 1996

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Valerie B. Lanigan, Clerk

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