

Frederick L. and Mary E. Kennedy

v.

City of Concord

Docket No.: 15931-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1995 assessment of \$106,700 (land \$30,300; buildings \$76,400) on an 11,610 square-foot lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Property is abutted on two sides by apartment complexes and a parking garage;

- (2) the City has a driveway easement on a portion of the Property which adversely affects the value; and
- (3) the Property should be valued at \$96,000.

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The City argued the assessment was proper because:

- (1) the Taxpayers' purchase price plus the additional construction costs incurred subsequent to the purchase supported the assessment; and
- (2) the Taxpayers did not provide evidence to warrant a change in the assessment.

Board's Rulings

Based on the information available to the board, the board finds the proper assessment to be \$103,700 (land \$27,300; buildings \$76,400).

Following the hearing, the board viewed the Property. The view confirmed the Taxpayers' contention that the Property suffers from some detrimental market conditions. Specifically, a substantial portion of what appears to be the Property's driveway is actually the hammerhead of Eastern Avenue and is owned by the City. The hammerhead is used by the City for turning snowplows around and is available to the general public for turning around because Eastern Avenue dead ends at the Property. Certainly, having part of your driveway being the hammerhead would be a factor that a prospective purchaser would consider. The Taxpayers stated that they did not know about this situation until after they purchased the Property.

The second detrimental factor is that the Property is surrounded on two sides by two separate apartment complexes. During the view, the board observed one of the complex's dumpster right next to the Property's easterly boundary. The Property is in a unique situation because two of its four sides are adjacent to the complexes. During the view, the board drove around the neighborhood. While some of the neighborhood properties abut the apartment complexes on one side, most properties enjoy being located near either more treed sections or other single-family homes. Despite the Property's inferior location, the Property's land assessment was calculated in the same way as neighborhood properties with superior locations.

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Given these two factors -- the hammerhead's location and the Property being abutted on two sides by the apartment complexes as compared to other homes in the neighborhood -- the board concluded some adjustment was appropriate, and thus, the board made a downward 10% adjustment to the land assessment. The ordered assessment results in a \$105,800 equalized assessment ($\$103,700 \text{ assessment} \div .98 \text{ ratio}$), approximates the total of the Taxpayers' purchase price and additions without any depreciation.

The board understands that this was a close case, but given the unique location of this Property and the two factors that adversely affect value, the board concluded some adjustment was warranted.

If the taxes have been paid, the amount paid on the value in excess of \$103,700 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 Town has undergone a general reassessment, the Town shall also refund any overpayment for 1996. Until the Town undergoes a general reassessment, the Town 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

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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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frederick L. and Mary E. Kennedy, Taxpayers; and Chairman, Board of Assessors, City of Concord.

Date: June 6, 1997

Valerie B. Lanigan, Clerk

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