

Philip P. Asack

v.

City of Laconia

Docket No.: 15962-95PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1995 assessment of \$143,400 (land \$99,700; buildings \$43,700) on a .25-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or 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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the lot is bisected by a railroad easement and the Scenic Railroad train goes by the Property once an hour;

- (2) in the winter, snowmobiles use the track as a "highway";
- (3) the house is restricted to the deck because of the railroad running through the Property;
- (4) poor maintenance with railroad ties left on the Property has affected the Property's value;

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- (5) a neighboring lot, although unbuildable, is assessed significantly less than the Property; and
- (6) the City has not appropriately adjusted for the railroad easement and the proper assessment should be \$125,000.

The City argued the assessment was proper because:

- (1) the deed describes one parcel of land with an easement through it; the two uses could not be separately sold;
- (2) the City has not included the land area encompassed within the easement in the assessment and the site has received a further adjustment for the easement; and
- (3) the Property is unique; however, sales of properties on other water bodies some with and some without waterfront access, with railroad easements, support the land's assessed value.

#### **Board's Rulings**

The board finds the Property is reasonably assessed based on the evidence submitted. The board acknowledges the Property is uniquely impacted by the Scenic Railroad bisecting the dwelling from the water frontage on Lake Winnepesaukee and, consequently, it is difficult to value with any certainty. However, the burden is with the Taxpayer to show the assessment is

unreasonable, and based on the evidence submitted by the Taxpayer, the board does not find a basis to order an abatement.

The Taxpayer supplied limited market/assessment information. The two comparably assessed properties were an adjoining vacant lot (Reera) and an 1850 brick cape (Popa) on Lakeside Ave. We find the comparison of these assessments does not show disproportionality. The Reera lot is vacant, much smaller (3,707 feet) and not buildable as opposed to the Property that is approximately .25-of an acre (excluding area of railroad easement) and improved with a dwelling. The City adjusted the Reera lot for being vacant, its small size and the railroad easement. The Popa property is not comparable because it has no water frontage or access, just a view across the railroad

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of the lake. However, despite the lack of water frontage, the Popa property sold for \$112,000 in 1997. The board finds the Property enjoys significantly more rights (water frontage), notwithstanding the impact of the railroad right-of-way, than the Popa property, and thus, should be assessed more than the additional \$13,000 argued by the Taxpayer.

The Taxpayer also stated that he had purchased the Property in 1985 for \$125,000 and a realtor indicated he "would not lose his money" on the Property. The board finds this testimony to be too vague to justify an abatement.

The City acknowledged the uniqueness of the Property and submitted what sales it could locate in Laconia and adjoining municipalities of properties that were impacted in some fashion by a railroad right-of-way. While none of these properties are impacted to the extent of the Property, the sale prices

do in a general manner support the Town's assessment.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

**Certification**

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

Date: August 27, 1997

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Valerie B. Lanigan, Clerk

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**Recertification**

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

Date: August 29, 1997

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Valerie B. Lanigan, Clerk

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