

John H. and Janice M. O'Hearn

v.

City of Laconia

Docket No.: 16057-95PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1995 assessment of \$95,300 (land \$36,700; buildings \$58,600) on a 4.31-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) the lot is non-conforming with no road frontage (except on a right-of-way), has no lake access and has only sewer and seasonal water;

- (2) the sale prices of abutting subdividable lots indicate a sale cost of \$10,000 per lot;
- (3) the City's comparable sales are all conforming lots with deeded lake access; and
- (4) the proper assessment should be \$70,000 to \$75,000.

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The City argued the assessment was proper because:

- (1) the only reason the lot is considered a non-conforming lot is because it does not have frontage on a city street;
- (2) the Taxpayers' home is not considered a non-conforming structure and should the home burn down, the Town would have to give the Taxpayers a building permit to rebuild;
- (3) one of the Taxpayers' comparable sales (Rousset) sold unimproved for \$25,000 and the property is accessed through the same private right-of-way as the subject Property;
- (4) the Taxpayers' three comparable sales were assessed an added value for their potential of having at least one additional lot; two of the comparable sales also have a restriction that any approved subdivision would also have to be approved by the Pendleton Beach Association which affects the properties' values;
- (5) the City is not assessing the Property for beach rights; and
- (6) comparable sales of improved lots with large acreage and properties improved with smaller lots in the neighborhood support the assessment.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to show that

the assessment was disproportionate.

The only market evidence submitted by the Taxpayers were the sales of three nearby vacant lots to support their argument of a lower land value. The board finds these sales are not conclusive evidence as to the Property's market value because: (1) the lots were unimproved lots as opposed to the Taxpayers' improved lot; (2) the sales related to only a portion of the Taxpayers' Property i.e., the Taxpayers presented no market evidence of the Property's total value (land and buildings); and (3) the Taxpayers' make an incorrect assumption that due to the potential subdividability of the lots,

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the sale price should be apportioned between the number of potential lots (the Taxpayers presented no evidence that the lots were purchased with the intent to be developed into separate lots).

The board finds, based on the zoning evidence submitted by the parties, that the building is conforming to zoning requirements but that the lot is non-conforming due to lack of legal frontage. Because the structure is conforming, if the Property were to burn down, a building permit could be obtained without going to the zoning board of adjustment to reconstruct substantially the same structure. Further, the board concludes the Property's market value is not significantly impacted by the non-conformity of the lot.

The City's five comparable sales support the assessment of the Property. The board recognizes the Taxpayers' criticism that some of the City's sales include properties that have water access. However, if adjustments are made based on the differential in assessments for water access versus no access,

the adjusted values still support the 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 John H. and Janice M. O'Hearn, Taxpayers; and Chairman, Board of Assessors, City of Laconia.

Date: August 20, 1997

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Valerie B. Lanigan, Clerk

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