

Verner R. Fitts Sr.

v.

City of Laconia

Docket No.: 17444-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1997 assessment of \$66,000 (land \$17,100; buildings \$48,900) on a single-family home on a .24-acre lot (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 for the following reasons:

- (1) the Taxpayers' appraiser, John H. Kelly, estimated a Market value of \$54,000.00 as of July, 1997;
- (2) the Property is overassessed compared to other similar properties; and
- (3) the Property has numerous negative factors, including ledge, handicap bath and ramps.

The City argued the assessment was proper because:

- (1) the Town's comparables support the assessment;

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(2) the Taxpayer's appraisal is flawed; and

(3) the Taxpayer's comparables are not adjusted properly in the appraisal.

Board's Rulings

Based on the evidence presented, the board finds the proper assessment to be \$66,000. Assessments must be based on market value. See RSA 75:1. Due to market fluctuations assessments may not always be at market value. The assessment on a specific property must be proportional to the general level of assessment in the community. In this municipality, the 1997 level of assessment was 98% as determined by the Department of Revenue Administration's equalization ratio.

The subject Property is a modified cape with approximately 1,400 square feet of gross living area located on Woodland Avenue, a relatively quiet urban street with a mixture of residential homes. The building itself was built around 1952 and is of average-to-good construction with a detached garage. The subject is located on Woodland Avenue adjacent to a practice area of Laconia High School's football field. It is noted that the subject sits on approximately one-quarter acre of land and has six rooms including three bedrooms and one and three-quarter baths. One of the bathrooms is handicapped accessible.

The City's comparable sales were persuasive in supporting the Property's assessment of \$66,000. The City's first comparable as shown on the Comparable Sales Adjustment Grid, is a property located on the southerly side of the high school practice area on Isabella Street. Comparable #1 has similar land area and gross living area as the subject and is approximately the same age. Comparable #1 sold in August 1996 for \$71,000 and has one and one-half stories. With adjustments, the indicated value of the subject Property would be \$72,100.

The City's comparable #2 is also located on Isabella Street, has approximately the same

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amount of land area but only 768 square feet of gross living area. The September 1996 sale price of \$59,900 supports the subject's assessment when adjustments for size, condition and lack of garage are factored in.

Comparable #6 is located on Lincoln Street, sits on less land and has about the same gross living area as the subject. Comparable #6 is approximately 48 years old, has a square-foot unit value of \$48.90. Comparable #6 sold for \$67,000 in February 1996 and has a time adjustment factor of 6%. When other factors are considered it indicates a market value for the Property of \$72,700.

In addition to presenting six comparable sales, the City argued that the Taxpayer's comparables were not accurate. The City aggressively argued that the Taxpayer's Butler Street comparable was not superior to the subject. The City further argued that the Taxpayer's comparable #2 on Champagne Street was a distressed sale and that comparable #3 on Crescent Street had inaccurate location site and condition deductions.

The City further argued convincingly that the Taxpayer's comparables were sufficiently flawed that the appraisal submitted by Taxpayer's appraiser, John H. Kelly, with an estimated market value of \$54,000 on July 21, 1997, cannot be relied upon.

The board agrees that the Taxpayer's appraisal is flawed and cannot be relied on to provide a true estimate of value for the subject Property. Likewise, based on all the evidence, the Taxpayer's claim that the Property is overassessed compared to other similar properties is unfounded. The assertions that the Property has numerous negative factors including ledge, handicapped bath and ramps, have all been taken into consideration by the City in determining their assessment. It is noted that the subject Property has new siding and windows.

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Furthermore, some of the factors cited by the Taxpayer as negatives, including noise and lack of privacy due to the high school practice field being adjacent, similarly impact the Isabella and Shepard Street comparables.

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

Paul B. Franklin, Chairman

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Steven H. Slovenski, Esq.

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Verner R. Fitts Sr., Taxpayer; and Chairman, Board of Assessors of Laconia.

Date: December 27, 1999

Lynn M. Wheeler, Clerk

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ORDER

The board has received a copy of a letter from the “Taxpayer’s” representative, John H. Kelly of Plymouth, New Hampshire, to Thomas A. Sargent of the City of Laconia’s assessor’s office, indicating that he does not represent the Taxpayer in this case. The original letter was not forwarded to the board as required by board rule TAX 201.14.

According to the board’s records, the appeal document filed on August 21, 1998, by the Taxpayer, Verner R. Fitts, Sr. of Laconia, indicated John Kelly was the Taxpayer’s representative and was signed in Section J by John Kelly. As of this date the board has not received a formal withdrawal of appearance motion as required by board rule TAX 201.11.

Since the City of Laconia’s August 6, 1999 motion to continue the August 26, 1999 hearing was granted, the board has continued the said hearing to November 12, 1999, at 9:00 a.m. in the board’s Concord hearing room. The board expects all parties to be present at said hearing. If any party believes they do not need to be present, they must file a written motion

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with this board within five days of the clerk's date on this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Lynn M. Wheeler, Clerk

Certification

I hereby certify that the foregoing order has been mailed this date, postage prepaid, to Verner R. Fitts, Sr., Taxpayer; John Kelly, Taxpayer's representative; and Chairman, Board of Assessors, Laconia.

Date: December 27, 1999 _____

Lynn M. Wheeler, Clerk

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