

James P. and Catherine C. Landry

v.

City of Concord

Docket No.: 17464-97PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1997 assessment of \$162,600 (land \$44,200; buildings \$118,400) on a colonial-style home on a 12,632 square-foot lot (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) too much attic space is assigned to the Property;
- (2) the construction grade is inaccurate for the Property and was inappropriately raised from 5 to 6;

- (3) the land value was arbitrarily raised with no supporting documentation;
- (4) sales of other properties in the south end show that many residential properties are disproportionately assessed in this area;
- (5) two market value estimates given by appraisal companies show the Property is overassessed;
- (6) two of the three comparable sales used by the City are far from the neighborhood and are not comparable; and
- (7) the market value of the Property was \$141,000 on April 1,1997.

The City argued the assessment was proper because:

- (1) the Taxpayers purchased the Property in 1992 for \$152,900 and property values in the south end of the city have appreciated between the date of the purchase and the assessment date of April 1,1997; and
- (2) a summary appraisal report prepared by the City indicates the Property is not overassessed.

Subsequent to the hearing, the board directed its review appraiser, Mr. Scott Bartlett, to review the file, inspect the Property and prepare an appraisal report to estimate the market value of the Property. Mr. Bartlett's report is considered one piece of evidence which the board may either adopt or reject or use in part during its deliberations. The parties were given a copy of the report and an appropriate period of time to comment on it. After the comments were received, the board took an exterior view of the Property and the comparables sales.

Board's Rulings

Based on the evidence, the board finds the correct assessment to be \$159,600 based on a market value finding of \$166,200 and the department of revenue administration's (DRA)

equalization ratio for the City of .96 ($\$166,200 \times .96 = \$159,600$ (rounded)). This assessment is based on the sales comparison approach contained in Mr. Bartlett's report. The board finds Mr. Bartlett's report draws upon the best of the comparables submitted in both parties' appraisals. Further, the board finds the sales comparison approach is the most appropriate approach because of the existence of similar nearby sales.

Although the Taxpayers had several concerns with the assessment that were itemized earlier in this decision, the board will not address them individually. Both parties submitted appraisals to support their position and the board finds these appraisals considered all the relevant issues associated with the Property.

For the following reasons, while the board considered (and Mr. Bartlett drew his comparables from) the parties' appraisals, we do not find their value estimates conclusive.

The Taxpayers submitted two real estate appraisals of the Property that had been performed for lending institutions. One concluded an estimated value of \$164,000 as of June 26, 1998, and the other concluded a value of \$158,500 as of August 22, 1997. The City performed an independent appraisal estimating the market value of the Property at \$175,000 as of April 1, 1997. The Taxpayers' two appraisals should be adjusted for time appreciation to reflect an April 1, 1997 valuation date. Using the City's 5% appreciation factor after April 1997 and applying that to the two estimates of value determined in the Taxpayers' appraisals, yields a value of

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\$155,330 for the August 1997 appraisal ($\$158,500 - 2\%$) and \$154,160 for the June 1998 appraisal ($\$164,000 - 6\%$). Applying the DRA's equalization ratio of .96 to these values would indicate assessments of \$149,100 and \$148,000 respectively for the assessed values as of April 1, 1997. The board finds these assessments and the time-adjusted market values to be inconsistent with the Taxpayers' purchase price of \$152,900 in 1992.

The City submitted an appraisal estimating the market value of the Property at \$175,000 on April 1, 1997. The board finds some of the City's comparable sales selections to be questionable. Comparable sales #2 and #3 were outside the Property's neighborhood and were not the best sales available. The "south end" of Concord had sufficient sales activity to allow for a better selection of more comparable properties.

If the taxes have been paid, the amount paid on the value in excess of \$159,600 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 1998. 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

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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

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to James P. and Catherine C. Landry, Taxpayers; and Chairman, Board of Assessors of Concord.

Date: July 20, 1999

Lynn M. Wheeler, Clerk

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