

Richard G. and Irene S. Graham

v.

City of Concord

Docket No.: 17542-97PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1997 assessments of: Map/Lot 9C/1/14 and - \$76,500 (land \$22,100; buildings \$54,400), and Map/Lot 9C/1/14A - \$76,500 (land \$22,100; buildings \$54,400) on a colonial-style home on a 12,632 square-foot lot (the "Property"). Each Taxpayer owns a half-interest in the Property located at 8 Rolinda Avenue. The Taxpayers also each own a half-interest in, but did not appeal, a mobile-home on a 24,000-square foot lot with an assessment of \$39,800. 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) a property at 21 Wilson Avenue, which abuts the Property at the rear has a substantially lower assessment than the Property although it is very similar to the Property having the same style and materials and being built by the same builder during the 1960s;
- (2) some of the comparable sales used by the City are not comparable given their location away from the Property's neighborhood;
- (3) the City should have considered the sale at 12 Rolinda Avenue even though it does not have the exact same style as the Property;
- (4) the land value changes made to the Rolinda Avenue properties are discriminatory and do not reflect the entire neighborhood;
- (5) there is some inaccurate physical data on the assessment record card;
- (6) the grade of the house construction should be grade 5 not grade 6; and
- (7) an appropriate assessment would be \$146,600.

The City argued the assessment was proper because:

- (1) an appraisal done by the City assessor shows the Property may be underassessed; and
- (2) the property at 12 Rolinda Avenue is a ranch with an unfinished attic which is not the same design as the Property and, therefore, not a good comparable sale.

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

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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 \$148,800 based on a market value finding of \$155,000 and the department of revenue administration's equalization ratio of .96 ($\$155,000 \times .96 = \$148,800$).

The board reviewed the data submitted by the parties as well as the revenue appraiser's report and found the review appraiser's report provided the best analysis.

In defense of the assessment, the City's assessor did an independent appraisal to estimate the Property's market value. The assessor claimed the appraised value was evidence that the Property may be underassessed. The board finds the City's appraisal to be less convincing given its selection of two comparables sales a significant distance from the Property. Sale #2 at 17 Millstone Drive and Sale #3 at 38 North Curtisville Road, both in Concord, are not located in similar neighborhoods. For this reason, the board gave less weight to the City's conclusion of value given the selection of those sales as the best comparables.

Similarly, the Taxpayers made comparisons to other properties in the neighborhood, especially the sale at 12 Rolinda Avenue and a similarly constructed house at 21 Wilson Avenue which abuts the rear of the Property. The board finds the sale at 12 Rolinda Avenue to be less comparable than those used by the board's review appraiser, although the sale property is located on the same street as the Property. The property at 21 Wilson Avenue was built by the same contractor that built the Property. However, the effective area of the 21 Wilson Avenue

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improvements (2,380 square feet) is substantially less than the Property's effective area (2,919 square feet). Further, no testimony was given concerning any other similarities or dissimilarities between these abutting properties. Without these comparisons, no findings can be made about the appropriateness of their assessments.

The review appraiser's report contained an appraisal which estimated the market value of the Property at \$155,000 by the sales comparison approach. The board finds the selection of

comparables sales and the adjustments made to them by the review appraiser to be the best evidence submitted and has adopted the appraiser's conclusion of value as the appropriate market value to determine the proper assessment for the Property. The board concurs with the City's comments that the sales comparisons approach is the best indicator of value for this Property. In this case, the board's review appraiser's analysis is the most conclusive.

If the taxes have been paid, the amount paid on the value in excess of \$148,800 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

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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

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Richard G. and Irene S. Graham, Taxpayers; and Chairman, Board of Assessors of Concord.

Date: July 20, 1999

Lynn M. Wheeler, Clerk

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