

Roderick B. Cyr and Cynthia C. Cyr

v.

City of Concord

Docket No.: 17805-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1998 assessment of \$97,100 (land \$36,800; buildings \$60,300) on a 17,860-square-foot lot (the Property) with a single-family home. 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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property is in the 100-year flood plain and cannot be rebuilt for any reason if more than 75% of the improvements are lost;
- (2) the zoning setback requirements, in conjunction with the flood plain and river setback

constraints, make the Property unbuildable if vacant;

(3) the City has taken by adverse possession all the development rights to the Property, reducing the value of the land by approximately 90%; and

(4) the land portion of the assessment should be \$3,000.

The City argued the assessment was proper because:

(1) the Property must be valued at its highest and best use;

(2) letters from the City's code administrator indicate the Property would most likely receive some reasonable relief in the form of a variance if the need to rebuild or replace occurs in the future; and

(3) the Taxpayers have not provided any evidence to support their opinion of the Property's market value.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately or illegally assessed.

The Taxpayers' primary argument is that the Property is located in the 100-year flood plain and, for this reason, many of the development rights are extinguished. They testified that zoning regulations have the greatest affect on land value, with demand being the next most important factor. The Taxpayers state the City's zoning regulations for properties in the 100-year flood plain preclude any new structures or rebuilding of old structures if more than 75% of the value of the improvements is lost for any reason. The loss of more than 75% of the improvements' value would cause the land to be undevelopable and, therefore, much less valuable. The Taxpayers asserted the City has taken their development rights through adverse

possession to the extent the land is reduced in value by approximately 90%. They estimated the land portion of the assessment should contain only a \$3,000 value, reflecting the remaining 10% of the land's value due to the loss of the development rights.

The board finds the Taxpayers did not show their Property was disproportionately or illegally assessed. Assessments must be based on market value. See RSA 75:1. To prove overassessment, the Taxpayers would have to show the Property was worth less than the \$104,409 equalized value ($\$97,100 \div .93$). Such a showing would indicate the Property was assessed higher than the general level of assessment in the City. Upon questioning by the board, the Taxpayers did not have an estimate of market value; however, Mr. Cyr did testify the Property would be worth something more than \$68,000 but, given his limited real estate experience, he could not give a definitive final value.

The board finds the City's statement that all property should be appraised at its highest and best use for assessment purposes to be correct. Highest and best use can be described as the foundation on which market value rests. Appraisal Institute, The Appraisal of Real Estate 298 (11th ed. 1996). Appraisal theory holds that as the value of a property as improved is greater than the value of the site as unimproved, the highest and best use is use of the property as improved. Id. The Taxpayers' Property as improved has a greater value than the site would have if vacant. The Taxpayers concurred with this through their statements concerning the impact of the flood plain and other zoning restrictions if the Property were vacant. The board finds the two letters, dated July 2, 1998, and August 19, 1998, to the Taxpayers from C. Hamilton Rice, Code Administrator for the City of Concord (Municipality Exhibit A), reflect the City's position that even if the Property is subject to some event in the future that would

necessitate or warrant the replacement or rebuilding of some of the improvements, the opportunity for some type of relief in the form of a variance from the City would be justified and likely available. The board intimates from those statements that the City would most likely grant the Taxpayers a variance to rebuild their Property. The board finds the statements in these letters, along with the City's highest-and-best-use analysis, indicate the City has not disproportionately or illegally assessed the Property. If the Property were to change due to the removal, destruction or partial destruction of the improvements, then the City would be obligated to revise the assessment to reflect any changes. However, in the instant case, the City is merely fulfilling its obligation to appraise all property at its full and true value. RSA 75:1.

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(a). 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(f). 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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Roderick B. Cyr, Trustee, Representative for Roderick B. Cyr and Cynthia C. Cyr, Taxpayers; and Chairman, Board of Assessors of Concord.

Date: May 3, 2000

Lynn M. Wheeler, Clerk

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