

Edith and Thomas Tardif

v.

City of Laconia

Docket Nos.: 18587-00PT and 19072-01PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the City’s adjusted assessments¹ on Map 430-246-37, a 12,375-square foot lot with a single-family home at 121 Winter Street (the “Property”), for tax year 2000, \$125,700 (land \$19,300; buildings \$106,400); and for tax year 2001, \$136,900 (land \$27,900; buildings \$109,000). The Taxpayers also own, but did not appeal, property identified as Map 426-246-64, an 8,740-square foot lot with a single-family

¹ The City reduced the original assessment appealed by the Taxpayers in Docket No.: 18587-00PT as a result of discovery permitted by the board. See the board’s Order dated June 11, 2002, which granted the City’s Motion to Compel Discovery and permitted the City to make an inspection of the Property. (The Taxpayers had previously refused to grant permission to the City to make an inspection based on objections the board found to be without merit. Id.) As a result of this physical inspection, the City promptly reduced the assessments and submitted revised assessment-record cards to the board and the Taxpayers showing the values indicated above. The Taxpayers, upon inquiry by the board’s Deputy Clerk, elected to continue with their appeal in Docket No. 18587-00 despite the reduced assessment and, in addition, to file an appeal of the tax year 2001 assessment. The board assigned a separate docket number to the tax year 2001 appeal (No.: 19072-01PT), but consolidated both appeals for hearing and decision, since they raise the same issues.

home at 71 Winter Street. For the reasons stated below, the appeals for further abatement are denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show 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 adjusted assessments were still excessive because:

- (1) while the City has abated the assessments for tax years 2000 and 2001 after conducting an inspection and measurement in July, 2002, further abatement is needed;
- (2) the abatement granted by the City related solely to adjustments on the building;
- (3) the assessments fail to consider the increased traffic, noise and queuing effect at a nearby stop sign, which blocks the Property's driveway since expansion of the nearby school;
- (4) the City changed the listing of the house from four to five bedrooms due to the inspection, but the additional room has not been used as a bedroom; and
- (5) the assessments should be reduced to \$114,020 for tax year 2000 and \$124,720 for tax year 2001, based largely on comparisons with neighbors and the relative increase of the neighbors' assessments from tax year 2000 to 2001.

The City argued the adjusted assessments were proper because:

- (1) the City made appropriate adjustments to the assessments for tax years 2000 and 2001 after gaining access to inspect the Property in July, 2002;
- (2) this inspection substantially reduced the assessments primarily because of a change in grade and no further adjustments are necessary; and
- (3) the Taxpayers failed to meet their burden of proof.

Board's Rulings

Based on the evidence, the board finds the adjusted assessments that resulted from the City's inspection are reasonable and proportional.

The Taxpayers presented no market evidence to support their claim that the increased traffic and noise resulting from the nearby school negatively impacted the market value. As the City noted, there were no sales or listings of properties similarly affected on Winter Street or the Winter Street Extension. While not discounting any nuisance that results from the traffic, if the noise and inconvenience had risen to the level argued by the Taxpayers, one would expect a higher turnover of property in the area. In this case, the City said, and the Taxpayers did not refute, the neighborhood has had a stable residency in recent years.

The City's 2000 and 2001 comparable sales analyses of property sold in similar neighborhoods generally support the revised assessments. A review of comparison grids and comparable assessment-record cards indicates the Property is generally larger than many of the residences the City utilized in its comparison, and thus, one would expect the Property's assessment to be higher than the sales prices of the comparables.

Further, the Taxpayers arrived at their opinion of value by comparing their Property to adjoining properties. The board finds this does not produce an assessment based on the standard

of market value. RSA 75:1. The adjoining properties are smaller than the Property and the calculations performed by the Taxpayers did not take into account their significantly different sizes. (The Taxpayers' effective living area is 2,458 square feet while the adjoining properties, at 115 Winter Street and 131 Winter Street have effective living areas of 1,776 square feet and 1,979 square feet, respectively.)

The Taxpayers also indicated that, in addition to the traffic noise, a helicopter landing pad for a nearby hospital impacted the Property's market value. The City, however, submitted several sales of property in even closer proximity to the helicopter landing pad which showed those properties were reasonably assessed relative to their sales prices and this evidence supports the City's methodology.

The board kept the record open for the City to submit copies of its computerized assessment model that assigns points for the relationship between the number of bathrooms and bedrooms. Based on the City's submission filed on October 30, 2002, the board finds the City's assessment model makes no distinction in value between a house with four bedrooms and two bathrooms and one with five bedrooms and two bathrooms. Therefore, the listing notation of five bedrooms was not relevant to the Property's assessed value and is a moot issue.

Lastly, the Taxpayers' other property owned, but not appealed, at 71 Winter Street, was assessed in 2000 for \$66,300 and in 2001 for \$74,500. The Taxpayers sold the property in November 2001 for \$107,000 and it was subsequently resold in September 2002 for \$139,000. The City testified 71 Winter Street is more directly impacted by the nearby helicopter pad which the Taxpayer argued should affect the Property's market value. The board finds the sale and resale of 71 Winter Street being significantly higher than the assessed value (even if market

appreciation is accounted for) indicates 71 Winter Street was likely underassessed for the two tax years in question. Consequently, even if the Taxpayers' Property was overassessed for any of the reasons the Taxpayers argue, the fact that other property they own for both tax years was underassessed further supports the board's finding that no abatement is warranted.

“When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town.”
Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

For all the reasons stated above, the board finds the Taxpayers did not carry their burden, and thus, no abatement is warranted.

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

Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Edith and Thomas Tardif, Taxpayers; and Chairman, Assessors of Laconia.

Date: November 22, 2002

Anne M. Bourque, Deputy Clerk

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Edith and Thomas Tardif

v.

City of Laconia

Docket Nos.: 18587-00PT and 19072-01PT

ORDER

This order responds to the “Taxpayers” December 2, 2002 Motion for Reconsideration (“Motion”), which is denied. The Motion does not demonstrate that the board erred in its decision and, thus, the Motion failed to show any “good reason” to grant a rehearing. See RSA 541:3; Tax 201.37 (d).

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

Albert F. Shamash, Esq., Member

CERTIFICATION

I certify that copies of the within Order have this date been mailed, postage prepaid, to Edith and Thomas Tardif, Taxpayers; Timothy Bates, Esq., counsel for the City of Laconia; and Chairman, Board of Assessors of Laconia.

Date: December 19, 2002

Anne M. Bourque, Deputy Clerk