

**James Joyal**

**v.**

**City of Laconia**

**Docket No.: 25822-10PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2010 assessment of \$132,500 (land \$64,600; buildings \$67,900) on Map 486/Lot 273/1, 92 Morin Road, a home on a 1.40 acre lot (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the photographs (Taxpayer Exhibit No.1) and other documents submitted (Taxpayer Exhibit No. 2) depict the location and condition of the Property and its history;
- (2) the Property is located on a “long-closed dump” site and is a non-conforming (residential) use in an industrial zone;

- (3) the Property is improved with a 1966 mobile home with two additions, one of which is incomplete, but, sometime in 2010, the City changed the description from mobile home to “ranch”;
- 4) extensive work was performed on the mobile home and the Property received abatements in prior years from previous City assessors;
- (5) the Taxpayer disagrees with one appraisal estimating a value of \$120,000 (the “McLean Appraisal” in Taxpayer Exhibit No. 2) because it did not use appropriate comparables; and
- (6) as shown on the prior assessment-record cards in Taxpayer Exhibit No. 2, the assessment should be \$73,000, the assessed value of the Property prior to completing the 2010 revaluation.

The City argued the assessment was proper because:

- (1) the City performed a full revaluation of all properties in tax year 2010;
- (2) the City’s Assistant Assessor inspected the Property on June 25, 2010;
- (3) the Taxpayer procured the McLean Appraisal for tax abatement purposes and this appraisal estimates the market value of the Property was \$120,000;
- (4) the McLean Appraisal used ‘stick built’ comparables (rather than mobile homes) because this appraiser noted more than 50% of the residence was ‘stick built’;
- (5) the City assessed the land consistently with other properties in the neighborhood whose values were also influenced by proximity to the former dump; and
- (6) the Taxpayer did not meet his burden of proving disproportionality.

The parties agreed the level of assessment in tax year 2010 was 98%, the median ratio calculated by the department of revenue administration. At the September 5, 2012 hearing of this appeal, the board asked the City to submit in writing an explanation of how the depreciation and percent complete factors were applied on the assessment-record card and the City agreed to

do so. The City submitted its explanation in a September 6, 2012 letter to the board, with a copy to the Taxpayer.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment for tax year 2010 to be \$98,500. The appeal is therefore granted for the following reasons.

In arriving at a proportionate assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The board therefore considers and weighs all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, in making market value findings, the board must determine for itself issues of credibility and the weight to be given each piece of evidence because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. at 68 ; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the Property is assessed at a higher level than the level generally prevailing in the municipality. See, e.g., Appeal of Andrews, 136 N.H. 61, 64 (1992); and Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the

municipality's general level of assessment, represents a reasonable measure of one's tax burden.

See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

In this appeal, there is no dispute the City, the state Department of Environmental Services ("DES") and the federal Environment Protection Agency ("EPA") were all aware the Property is located on an old dumping ground and this location has an adverse impact on market value. The Taxpayer originally took out a building permit in 1973 to construct an addition and foundation to the mobile home and a 34' by 28' roof was also added to the mobile home. A second addition began in 2000 to replace the kitchen. The City required both additions to be within the existing footprint of the mobile home because the Property was located in an industrial zone. The additions were never completed because the environmental issues were discovered in 2004 and the Taxpayer testified he was advised by DES and the EPA not to finish the construction until "we decide what to do with your land." In October, 2011, the City offered to purchase the Property because of the contamination issues, but the Taxpayer declined to accept the offer. Environmental remediation plans are now in place and are set to begin in 2014.

The power to grant abatements is prescribed by statute and RSA 76:16-a grants the board authority to "make such orders as justice requires." This gives the board some discretion to determine the amount of abatement needed to achieve an equitable and proportional assessment. Cf. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003).

The board considered all of the Taxpayer's arguments and finds a partial abatement is warranted (to \$98,500). The board does not agree with the Taxpayer's contention the assessment should be rolled back entirely to the assessed value (\$73,000) prior to the 2010 revaluation simply because previous assessors may have found that value to be appropriate for prior years.

Assessments are annual events (see RSA 74:1 and RSA 75:1) and the purpose of a municipal-wide revaluation (RSA 75:8-a) is to update values to reflect market values throughout the City.

The City testified the Property was last inspected on June 25, 2010 and the assessment-record card is reflective of its value, recognizing a substantial cost to complete (due to a 55% “Complete” estimate) and adjusting the land value by 10% for the environmental issues. The City based its assessment on ranch style home sales which occurred during the timeframe of the 2010 assessments (4/1/2009 thru 3/31/2010). Upon questioning by the board, Ms. Derrick, the City’s Assistant Assessor, testified she observed there was still no siding on the outside of the home and considered it to be below average construction. Further, she acknowledged the decks should not be assessed at \$2,000 each due to their poor condition (the values shown on the assessment-record card).

Weighing the evidence as a whole, the board finds the Town’s adjustment of 10% to the land value only for the environmental issues on the assessment-record card is not reflective of the market value impact of the dump site and the proper adjustment should be 20% to the entire Property (both land and buildings). Applying its judgment and experience, the board finds a prudent purchaser would give the environmental issues, including the uncertainties and risks associated with them, more weight in arriving at a negotiated, arm’s-length price for the Property. A 20% adjustment to the land value equates to \$56,100 for the base acreage (43,560 square feet: one acre). When added to the value of the excess 0.40 acres of land (\$1,500), the total abated land value is \$57,600.

As for the assessed value of the building, the board finds the percent complete in 2010 should be 45% rather than 55%, and, after applying the same 20% adjustment for contamination

issues, the resulting value of the building is an abated value of \$40,400. (\$112,213 estimated replacement cost new x 45% complete x 80% for contamination issues = \$40,400, rounded.)

With respect to the outbuildings shown on the assessment-record card, the Taxpayer testified the shed frame is in “very bad” condition, the metal shed is in “poor” condition and the two wood decks are not attached to the home and are of no value. Given the age and condition of these features, the board finds a \$100 minimal value for the shed frame and a \$400 minimal value for the metal shed is reasonable and the two wood decks have no value based on the photographic evidence submitted by the Taxpayer and the McLean Appraisal.

Adding the abated land and building values to these items results in a total abated assessment of \$98,500. The board finds \$98,500 is an equitable and proportional total assessment on the Property for tax year 2010.

Although, as the City emphasized at the hearing, the McLean Appraisal estimates a somewhat higher value (\$120,000 market value, which equates to a \$117,600 assessed value), the board could not give this estimate appreciable weight. The Taxpayer testified he did not agree with this estimate because the appraiser utilized sales that were not truly comparable to the Property and the appraiser’s assumption of how much would be required to complete the home is too low. The board agrees and has the following specific concerns that prevent undue reliance on the McLean Appraisal.

- 1) This appraisal acknowledges the Property is located on an old dumping ground, but makes no adjustment for that fact. The City has confirmed “the largest portion of Mr. Joyal’s [the Taxpayer’s] property was in fact part of the old Dump site.”<sup>1</sup>
- 2) This appraisal indicates both decks need to be replaced due to rotting and “1,000+/- square feet” of the home remain to be completed, but applies a very low estimate of

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<sup>1</sup> This statement is contained in Taxpayer Exhibit No. 2 at p. 2b, a letter from Paul J. Moynihan, Assistant Director of Public Works for the City, to Tom Sargent at the City Assessor’s Office.

the cost to finish (only \$10,300 compared to the much larger cost to finish estimated by the City), which is inconsistent with the photographic and other evidence presented.

- 3) A review of the three comparable sales utilized and their photographs in this appraisal does not support their comparability and the adjustments made for their differences with the Property.

For all of these reasons, the board finds the Taxpayer met his burden of proving the Property was entitled to an abatement for tax year 2010. The assessment is therefore abated to \$98,500.

If the taxes have been paid, the amount paid on the value in excess of \$98,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City shall use the ordered assessment for subsequent years.

RSA 76:17-c, I and II.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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(g). 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,

James Joyal v. City of Laconia

Docket No.: 25822-10PT

Page 8 of 8

an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: James Joyal, PO Box 293, Laconia, NH 03247, Taxpayer; and Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: 3/8/13

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Anne M. Stelmach, Clerk