

Berkeley M. and G. Lee Pemberton

v.

City of Berlin

Docket No.: 13970-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1993 assessment of \$137,800 (land \$7,500; buildings \$130,300) on a .17-acre lot with a professional office and single family residence (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 an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden.

The Taxpayers argued the assessment was excessive because:

(1) there are mechanical problems with the assessment-record card: the Property has a professional office on the first floor and single family residence for the balance; and there is a discrepancy in the calculations of the total square footage (City - 3,263 square feet; Taxpayer - 2,960 square feet);

(2) the City's approach to value was not reflective of the trends as of the effective date; and

(3) an appraisal by Robert Goddard (Goddard) estimated the value as of April 1993 to be \$85,000.

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The City argued the assessment was proper because:

(1) the City has also remeasured the Property and its determination is that SABRE's calculations are closer to correct;

(2) the Property's highest and best use was as a single-family residence with home office use; and

(3) a review of sales of large single-family dwellings was evidence that the value of the Property as a single-family residence with office use was supportable.

Board's Rulings

Response to City's Letter

This responds to the City's August 2, 1996 letter concerning the board instructing the board's review appraiser to review individual appeals and to send a copy of his report to the City and to the individual taxpayers.

The review appraiser becomes involved in an appeal when the board concludes the review appraiser can assist the board in reviewing an appealed assessment. In these individual appeals, the board decided to employ the review appraiser to: 1) independently review the appealed assessments thereby providing the board with additional evidence on whether the assessments were correct or not; 2) address the concerns that were raised during the reassessment hearings about whether the City's assessments were correct or not

and whether the City was performing an adequate review of the assessments (e.g., April 4, 1995 order at 4; September 29, 1995 order at 2; August 15, 1995 review appraiser's report at 4-6); and 3) provide a basis for resolution without a hearing. The board has used its review appraiser in similar situations, and thus, the City has not been treated differently than other municipalities.

"In determining matters before it, the board may institute its own investigation, or hold hearings, or take such other action as it shall deem necessary." RSA 71-B:5 I. To this end, the board's staff includes a review appraiser "who shall be competent to review the value of property for tax

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purposes." The individual appeals that the review inspector reviewed were filed under RSA 76:16-a, which requires the board to make "inquiry and investigation ***." The board, therefore, has the discretion, and in some cases the duty, to employ the review appraiser to review an assessment and to then file a report with the board. Appeal of Sokolow, 137 N.H. 642 (1993) (the board's denial of a tax abatement was reversed and remanded because board did not have board appraiser review assessment).

Once the review appraiser's report is completed and filed with the board, the board is required by RSA 541-A:31 IV, VI (h) and RSA 541-A:33 VI to provide the report to the parties and to provide the parties with an opportunity to comment on the report. See also Appeal of Sokolow, 137 N.H. at 643 (court presumes that after a report is prepared the parties will have an opportunity to rebut the report). Providing the report to the parties before the hearing enables the parties to comment on the report at the hearing itself rather than leaving the record open for later comment.

The report, however, does not establish the proper assessment. It does not, as the City asserted, automatically have the board's "imprimatur." Rather, the board reviews the report and treats the report as it would other evidence, giving the report the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation. Mr. Bartlett's report (see the report's introduction) explicitly informed the parties about the extent of his investigation and analysis, and he stated the report was not conclusive but was only part of the evidence.

Given the above discussion, the board concludes it was appropriate to seek the review appraiser's input on this case and to then provide his report to the parties before the hearing. This procedure allows the parties to use the hearing to present their original evidence and to respond to the report.

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Valuation Findings

On September 16, 1996, the board viewed the Property from the exterior at the same time it viewed the other 1993 appealed properties in Berlin. The view was done without either the City or the Taxpayers being present. The view enabled the board to be more familiar with the appealed properties and the various neighborhoods and value influencing factors within Berlin.

Based on the evidence, we find the proper assessment to be \$94,850. This assessment is based on a market value finding of \$96,800 and the City's 1993 equalization ratio of 98% ($\$96,800 \times .98$). The board's market value estimate is based on a finding of 3,125 square feet of living area. The board

has revised the value conclusions of Mr. Goddard and Mr. Bartlett based on 3,125 square feet of living area. The revisions increase Mr. Goddard's value estimate to \$88,000 and reduce Mr. Bartlett's to \$105,600. The board gives equal weight to both Mr. Goddard's and Mr. Bartlett's estimates and concludes a market value of \$96,800 for the Property.

The parties disagreed as to the proper square footage of living area. Without an independent third measurement to determine which square footage was more accurate, the board finds the City's square footage to be reasonable with the exception that the rear 6 X 23 area is more appropriately valued as an enclosed porch. Consequently, the board finds the square footage to be 3,125 square feet.

The board finds the Property's commercial use (dentist office first floor) does not warrant assessing the Property, as the City did, with a higher commercial square foot price. The Property is essentially a large single-family home with minimal conversion for a dental office space on the first floor. Consequently, comparing the Property to single family sales as both the Goddard appraisal and the Bartlett report did is more appropriate.

This Property is a difficult one to value due to its size and mixed use. The board finds both Mr. Goddard and Mr. Bartlett properly attempted to adjust their sales data for the size of the living area. The board recognizes Mr.

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Bartlett's sales price estimate is based on an average of single-family sales and, other than a size adjustment, has no other Property specific adjustments.

On the other hand, all of Mr. Bartlett's sales are in Berlin and are non-bank related transactions. Mr. Goddard attempts to do a more traditional appraisal

by comparing the Property to several sales and adjusting for specific differences. However, we note that one sale was from a bank and another sale occurred in Gorham (yes, we realize that Gorham is generally a better market and, thus, would reduce the indicated value). Consequently, the board gives equal weight to both their value conclusions.

Lastly, we find the City's sales and income support calculations (Municipality - Exhibit A) to be overly optimistic and having a tenuous relationship to truly comparable market data.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$94,850 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 1994, 1995 and 1996. 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.

Rehearing

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

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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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert J. Goddard, Agent for Berkeley M. and G. Lee Pemberton, Taxpayers; and Chairman, Board of Assessors, City of Berlin.

Date: January 8, 1997

Valerie B. Lanigan, Clerk

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