

Ernest and Loretta Gagne

v.

City of Berlin

Docket No.: 14058-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1993 assessments of: \$34,800 (land \$16,600; buildings \$18,200) on Lot 10, a .53-acre lot with a house; and \$1,200 on Lot 23, a vacant, .06-acre lot (the Properties). For the reasons stated below, the appeal for abatements is granted.

The Taxpayers did not appear but were granted leave consistent with our Rule, TAX 202.06. This decision is based on the evidence presented to the board.

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

The Taxpayers argued the assessments were excessive because:

- (1) the taxes were not fair;
- (2) the land lacks views, is close to the town dump and has some drainage problems, and the vacant lot is unbuildable;
- (3) the driveway is unpaved;
- (4) the assessment increased from the prior assessment;
- (5) a neighbor's 4-1/2 acre lot with a paved driveway was assessed the same as the Property; and
- (6) the home has some unfinished areas and needs renovation in other areas.

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The City argued the assessments were proper because:

- (1) the well for the Taxpayers' house is located on the vacant lot, but the vacant lot was assessed as backland because it is unbuildable;
- (2) the assessment card included adequate adjustments; and
- (3) sales supported the assessment.

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

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appraiser "who shall be competent to review the value of property for tax 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 Properties 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, the board finds the total assessment for Lot 10 and Lot 23 to be \$32,900 (Lot 10 = \$31,700; Lot 23 = \$1,200).

The board reviewed Mr. Bartlett's report and the City's submission,

concluding there was a dearth of sales for these low-end properties. The board then reviewed the photographs and the assessment-record card, and the board concluded a 50% depreciation would be more appropriate rather than 40% depreciation. The resulting assessment -- \$32,900 -- seems reasonable to the board given the camp-type building, the poor quality land and the location of the well on the lot across the street.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$32,900 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

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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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ernest and Loretta Gagne, Taxpayers; and Chairman, Board of Assessors, City of Berlin.

Date: January 15, 1997

Valerie B. Lanigan, Clerk

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