

Frank J. and Lorraine Rano

v.

City of Berlin

Docket No.: 14077-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1993 adjusted assessment of \$242,800 (land \$12,400; buildings \$230,400) on a .09-acre lot with a hotel (the Property). The Taxpayers also own, but did not appeal, three other properties in the City with a combined, \$160,900 assessment. 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 and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the City's methodology was flawed;
- (2) the physical description of the Property was not detailed enough, and there had been no inspection or discussion with the Taxpayers;

- (3) the Property was on the market for 30 months at \$165,000 (including equipment, furniture and fixtures), and no offers were received; and
- (4) an April 1993 appraisal estimated the Property's value to be \$122,000.

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The City argued the assessment was proper because:

- (1) the City's notes indicated the Property was inspected by Mr. Gelinas;
- (2) buildings of this type are generally looked at as apartments; and
- (3) an income approach (although not the appropriate approach to value) supported the assessment.

Board's Rulings

Response to City 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 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

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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.

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.

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The board finds the proper assessment should be \$132,600, which equates to a \$135,300 market value adjusted by the 98% equalization ratio.

Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). The agency's experience,

technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

The board finds a market value of \$135,300 based on the following.

1) The Taxpayers presented substantial evidence that raised serious doubts about the accuracy of the assessment. This included the Taxpayers' testimony concerning the Property's actual rental, vacancy and expense history. Additionally, the Taxpayers had the Property on the market for \$165,000 for thirty months without any offers. Finally, the Taxpayers' appraiser, Mr. Goddard, performed a competent analysis given the limited market data that was available. Mr. Goddard is experienced in real estate appraisal in the Berlin area, and his testimony certainly warrants serious consideration.

2) The board's review appraiser's report clearly indicated overassessment, but the board concluded his income approach used a vacancy rate that was too low given the Property's historical vacancy rate. Nonetheless, Mr. Bartlett did take an independent review of the City's assessment and other available market data, concluding the Property was overassessed.

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3) The City did an inadequate job explaining and supporting the assessment. The burden of proof is on the Taxpayers. Nonetheless, when the Taxpayers' case raises serious doubts about the assessment, the City has the

burden of persuasion to support the assessment.

4) The board revised Mr. Goddard's income approach by: a) not treating real estate taxes as an expense but adding a tax rate to the capitalization rate; and b) using the board appraiser's capitalization rate.

NOI	\$ 18,675
Cap Rate	<u>÷ .138</u>
	\$135,300

Based on all of the above, the board decided a \$135,300 value was reflective of the Property's value on April 1, 1993.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$132,600 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

evidence and new arguments are only allowed in very limited circumstances as
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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

Ignatius MacLellan, Esq., Member

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 Frank J. and Lorraine Rano, Taxpayers; and Chairman, Board of Assessors, City of Berlin.

Date: January 8, 1997

Valerie B. Lanigan, Clerk

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