

Rita D. Gagne

v.

City of Berlin

Docket No.: 14316-93PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1993 assessment of \$21,200 on a vacant, 1½-acre lot (the Property). The Taxpayer and the City waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property has no view and is ¼ mile from the City dump;
- (2) the land is all ledge;
- (3) when the dump burns tires, the smell lingers for days;

(4) a 4½-acre lot in the City was assessed only \$26,100;

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(5) the assessment increased 5½ times since 1980; and

(6) the assessment should be \$15,050.

The City argued the assessment was proper because:

(1) the Property was assessed consistently with comparable lots, including front-acre price, rear land, and front-foot values;

(2) the same methodology was used throughout the City;

(3) the Property is level with the road, is a good building lot, and the wooded area assures privacy;

(4) the Property is located on a state-designated scenic route with views of the Presidential and Kilkenney mountain ranges;

(5) the Property does not overlook the mill and is not subject to the mill odor like other properties in the City;

(6) the dump is completely hidden; and

(7) although the assessment-record card contained an error, the Property's assessment was adjusted 15% for lack of septic and well.

#### Board's Rulings

Based on the evidence, we find the Taxpayer failed to prove the Property's assessment was disproportional. The City of Berlin's equalization ratio as determined by the department of revenue administration for 1993 was 98%. This ratio indicates that the general level of assessments was within 2% of the market value. To carry her burden, the Taxpayer needed to show the Property was assessed in excess of market value.

While the Taxpayer presented some factors that could affect market

value, the Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a

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showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the City. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

Further, the City submitted assessment-record cards of properties in the general neighborhood of the Taxpayer's Property, which showed the use of consistent assessment methodology, including similar base rates and adjustments for undeveloped factors, etc. Use of the same methodology is some evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayer also argued that her assessment increased 5½ times since 1980. Increases from past assessments are not evidence that a taxpayer's property is disproportionally assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985). Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all

of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration motion is granted only if the moving party establishes:  
1) the decision needs clarification; or 2) based on the evidence and arguments

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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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

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

Dated: October 11, 1995

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Lynn M. Wheeler, Deputy Clerk