

Office Products of Berlin, Inc.

v.

City of Berlin

Docket No.: 14367-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1993 assessment of \$96,400 (land \$5,600; buildings \$90,800) on a .04-acre lot with an office/retail building (the Property). For the reasons stated below, the appeal for abatement is granted.

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 Taxpayer argued the assessment was excessive because:

- (1) the second and third floors are used only for storage; the finish would need to be renovated to be rentable;
- (2) there is no hot water or heat on the second and third floors;

- (3) only the first floor has a dry sprinkler system; and
- (4) several more desirable properties are assessed less than the Property.

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The City argued the assessment was proper because:

- (1) the Property is in a good location downtown abutting the Berlin City Bank building;
- (2) the Property has some rear access and parking; and
- (3) one of the Taxpayer's comparables is gutted on the upper floors and has a little space rented on the first floor.

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 purposes." The individual appeals that the review inspector reviewed were filed under RSA 76:16-a, which requires the board to make "inquiry and
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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, the board finds the proper assessment should be \$65,000.

This is a difficult property to arrive at a definitive market value and assessment. The Property has some unique factors affecting value that make it

difficult to value by any of the three approaches. For example, the City's cost approach begins with a replacement cost new of the entire building of \$362,401. The City then depreciates this figure by 75% to arrive at a contributory market value of the building of \$90,800. The board finds the initial replacement cost and depreciation to be so distant from final market value as to give them little credence. Similarly, valuing the Property by either the market or the income approach is difficult due to the second and third floors no longer having any utility except for cold, dry storage. It is difficult to find either comparable sales or comparable rental properties from which to draw conclusions by these approaches to value.

Some of the factors affecting value are:

Positive

- 1) the Property is in a good downtown location next to Berlin City Bank;
- 2) the Property has some parking and access in the rear which is better than many other downtown properties.

Negative

- 1) The Property has significant deferred maintenance;
- 2) the second and third floors have little utility as already mentioned and renovations to that space would most likely exceed any reasonable return on the cost of the renovations.

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The board's finding of \$65,000 is greater than Mr. Bartlett's conclusions of market value contained in his report. The board finds that Mr. Bartlett's analysis did not adequately account for the parking and good location of the Property. Thus, the board gives little weight to Mr.

Bartlett's value conclusion and finds the assessment should exceed his estimate.

In short, while there is no simple mathematical calculation in arriving at the proper assessment of this Property, the board's estimate is based on the weighing of the various value influencing factors and market data presented in this case.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$65,000 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 stated in board rule TAX 201.37(e). Filing a rehearing motion is a

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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

Paul B. Franklin, Chairman

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kenneth G. Clark, Agent for Office Products of Berlin, Inc., Taxpayer; and Chairman, Board of Assessors, City of Berlin; and John J. Ratigan, Esq., Counsel for the Municipality.

Date: January 17, 1997

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the Taxpayer's February 14, 1997 request for clarification (Request). According to TAX 201.37, the board treats the Request as a "rehearing motion." The Taxpayer questions whether the finding in the board's January 17, 1997 decision (Decision) that "the property has some parking and access in the rear"...was a significant factor in determining the assessment.

The board denies the Request and responds briefly. The Taxpayer is correct that the testimony of both parties was that the parking to the rear was owned by the bank, not the Taxpayer. The board's statement in the Decision is incorrect. However, the board placed more reliance on the Property's good downtown location as an offset to its negative factors (see page 4 of Decision). Therefore, the board finds the abated assessment in the Decision is reasonable and does not need to be reconsidered.

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 order has been mailed this date, postage prepaid, to Kenneth G. Clark, Representative for the Taxpayer; John J. Ratigan, Esq., Counsel for the City of Berlin; and Chairman, Board of Assessors of Berlin.

Date: February 26, 1997

Valerie B. Lanigan, Clerk

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