Robert G. & Joan A. Rodrigue

v.

City of Berlin

Docket No.: 14398-93PT

ORDER

This order responds to the "Taxpayers'" request for a continuance or leave from attending the hearing scheduled for Tuesday, August 20, 1996.

The board grants a continuance and reschedules the case to be the "last case" heard on Wednesday, August 21, 1996. The board further grants the Taxpayers leave from attending the hearing. In the interim, the Taxpayers shall send via overnight delivery to arrive at the board by Wednesday morning any additional information for consideration at the hearing in their absence. The Taxpayers are to be available by telephone at their home on Wednesday to testify during the hearing being held in Concord.

Finally, the 14-day notification requirements of TAX 201.33(b) and TAX 201.35(a) as they pertain to this hearing are hereby waived by the board for both parties.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Robert G. & Joan A. Rodrigue, Taxpayers; and Chairman, Board of Assessors of Berlin.

Dated: August 21, 1996

Valerie B. Lanigan, Clerk

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Robert G. and Joan A. Rodrigue

v.

City of Berlin

Docket No.: 14398-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1993 assessment of $117,200 (land $20,200; buildings $97,000) on a 6.88-acre lot with a house (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) the land assessment was increased without explanation;

(2) the land assessment should have had a basic-site value of $20,000 similar to Grandview Drive (superior views); and

(3) the Property is adjacent to the landfill.

The Taxpayers also asserted the City failed to adequately explain the land assessment.

The City argued the assessment was proper because:

(1) the Property's neighborhood, distance from the mill and views supported the assessment;

(2) the City adjusted the Property's assessment and assessments on neighborhood properties to be consistent with other properties in the area; and

(3) it was supported by sales.

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 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.

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 Taxpayers did not show overassessment.

The Taxpayers' main complaint focused on the City's calculation of the land assessment. The board must, however, look at the Property's value as a whole, i.e., as land and buildings together, because this is how the market views a property. The Taxpayers, however, did not present any credible evidence of the Property's value as a whole. To carry their burden, the Taxpayers should have made a 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.

The Taxpayers purchased the Property in 1991 for $130,000. The Taxpayers stated they felt they over paid. However, the board finds the City's 1993 assessment being less than the sales price recognizes either an overpayment or a continuing declining market or both. Thus, the board gives the Taxpayers' purchase of the Property some weight in confirming the reasonableness of the assessment.

The Taxpayers raised some legitimate questions about the City's assessment methodology. However, the Taxpayers did not show these errors resulted in disproportionality. "Justice does not require the correction of

errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

Finally, the assessment was almost identical to Mr. Bartlett's value conclusion, and the assessment seemed fair given the board's view of the Property.

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 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

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Paul B. Franklin, Chairman

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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 Robert G. and Joan A. Rodrigue, Taxpayers; and Chairman, Board of Assessors, City of Berlin.

Date: January 20, 1997

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Valerie B. Lanigan, Clerk