

Donald W. Couture

v.

City of Berlin

Docket No.: 14404-93PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1993 adjusted assessment of \$63,700 (land \$4,900; buildings \$58,800) on a 0.11-acre lot with a two-family home (the Property). The Taxpayer also owns, but did not appeal, another property in the City with a \$58,100 assessment. For the reasons stated below, the appeal for abatement is granted.

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 carried his burden.

The Taxpayer argued the assessment was excessive because:

- (1) the market for two-family homes in Berlin is depressed and three sales support the market;
- (2) an April 1993 appraisal estimated the value to be \$24,000; and
- (3) a fair settlement would be between \$35,000 and \$38,000.

The City argued the assessment was proper because:

- (1) the Taxpayer's sales are not comparable in terms of quality of construction and neighborhood and some are bank sales; and
- (2) similar sales of comparables support the assessed value.

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### **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).

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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, we find the proper assessment to be \$48,000. This assessment is based on a market value finding of \$49,000 and the City's 1993 equalized ratio of 98% ( $\$49,000 \times .98$ ).

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The board finds the best evidence of market value to be Mr. Bartlett's report which estimated market value of \$49,000. This estimate was based on his analysis of sales of duplexes and triplexes and his opinion that the Property was in good condition and in a good neighborhood. The board's observations during its view on September 16, 1996 concur with his opinion.

The board reviewed the four comparables submitted by the City but had difficulty placing great weight on those sales for the following reasons:

(1) the City submitted no photographs of the comparables and the property-record cards contained little or no description of the bases of the various

depreciations; (2) the property-record card for the comparable at 116 York Street indicated two different sales prices for the property on the same date in October 1989; however, instead of researching as to which price was correct, the City analyzed the sale of 116 York Street based on a 1989 sales price of \$47,500 but assessed the Property based on a sales price of \$17,000; and (3) the City improperly calculated in Municipality Ex. A the 36 Pleasant Street sales price at \$77.78 per square foot; the proper calculation of \$27.78 corresponds with Mr. Bartlett's conclusion of \$28.00 per square foot.

The board also reviewed the Taxpayer's appraisal prepared by Peggy Gallus which estimated market value of \$24,000. The board places no weight on the appraisal for the following reasons: (1) the appraiser also used the sale of 116 York Street as comparable #2 and based it upon a December 1992 sale price of \$17,000; no documentation was submitted for the different sales date and price; (2) the appraiser submitted no documentation or verification of the other two comparable sales; (3) the appraiser provided minimal description of the bases of the adjustments to the comparables; and (4) the sales used in the appraisal appear to be the low end of the duplex and triplex sales available (See Mr. Bartlett's report page 18).

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**Refund**

If the taxes have been paid, the amount paid on the value in excess of \$48,000 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 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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Michele E. LeBrun, Member

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Certification

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

Date: January 8, 1997

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Valerie B. Lanigan, Clerk

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