

Jeffrey W. and Gary A. Young

v.

City of Berlin

Docket No.: 14693-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1993 assessment of \$79,200 (land \$3,700; buildings \$75,500) on a .11-acre lot with commercial building containing a store and apartments (the Property). 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 Property was purchased from a bank for \$35,000 in June 1993;
- (2) a bank appraisal was prepared as of December 1991 which estimated a value of \$61,000;
- (3) the City's methodology was flawed;
- (4) the age and condition of the building was not fully considered;

- (5) there are discrepancies in the depreciation applied to commercial properties in the City;
- (6) the market does not support the value placed on the building; and
- (7) the fair market value estimate as of April 1993 is \$50,000 to \$55,000.

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The City argued the assessment was proper because:

- (1) the City's method for valuing properties was the cost approach; the Property was depreciated by 50% based on its remaining economic life and an additional 20% locational adjustment was made due to lot size restrictions; and
- (2) the City reviewed the sales comparison and income approaches and applied them as a check to the cost approach and found they supported the assessed value of the Property.

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

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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.

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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.

The board finds the proper assessment should be \$58,800 which equates to a \$60,000 market value reduced 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's conclusion is based on the following factors.

1) The Taxpayers testified that the Property was in poor physical condition, having been vacant due to a foreclosure. This required replacing some warped areas on the floor and some other remedial work. Additionally, the Property lacks any legal right to on-site parking, which would adversely affect the rentability of the apartments. The Taxpayers testified, with their neighbor's permission, they park their car on an adjacent property.

2) The Taxpayers submitted a cover letter from a Robert Goddard December 1991 appraisal, which estimated a \$61,000 value. While the appraisal report was not submitted to the board, Mr. Goddard testified on other Berlin tax

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appeals, and he has a good knowledge of the Berlin market and is a competent real estate appraiser.

3) The board's review appraiser, Mr. Bartlett, found the assessment to be excessive. He performed an analysis of the available market information (\$50,700 by the market approach and \$53,700 by the income approach),

concluding an abatement was warranted. The board found Mr. Goddard's value opinion to be entitled to more weight than Mr. Bartlett's report.

4) The City submitted as comparables an office/daycare center, a retail/storage building and two apartment buildings and one retail office. The board concludes these properties are not good comparables for the appealed Property.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$58,800 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

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 Jeffrey W. and Gary A. Young, Taxpayers; and Chairman, Board of Assessors, City of Berlin.

Date: January 10, 1997

Valerie B. Lanigan, Clerk

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