

Robert and Diane Bertin

v.

City of Berlin

Docket No.: 14782-93PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1993 assessments of: \$115,300 (land \$10,600; buildings \$104,700) on Lot 238, a .34-acre lot with a house; and \$8,400 (land \$3,800; buildings \$4,600) on Lot 237, a .20-acre lot with a garage (the Properties). For the reasons stated below, the appeal for abatements 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 Taxpayers argued the assessments were excessive because:

(1) the driveways need some work and are steep, and there are some water problems;

- (2) the assessment increased even though no work was done to the Property;
- (3) the assessment cards included some errors; and
- (4) two appraisals (not submitted) demonstrated overassessment.

Page 2  
Bertin v. City of Berlin  
Docket No.: 14782-93PT

The City argued the assessments were proper because:

- (1) an adjustment was made for the use of the two lots as one parcel;
- (2) the Property and the assessment cards were reviewed, and the Town concluded no adjustment was warranted;
- (3) they were supported by three sales;
- (4) the enclosed pool adds substantial value; and
- (5) the \$123,700 combined assessment was consistent with the Property's value.

#### **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

Page 3  
Bertin v. City of Berlin  
Docket No.: 14782-93PT

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

Page 4  
Bertin v. City of Berlin  
Docket No.: 14782-93PT

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 \$104,800 (land \$11,950; buildings \$92,850).

This assessment is based on: 1) combining the two lots as one and then using the City's methodology to value the lot; 2) applying 15% adjustment for the steep topography of the lot; and 3) increasing the depreciation on the improvements by 10% functional depreciation to account for the cathedral

ceiling area and the drainage/wet basement condition.

The board finds the resulting value of \$104,800 comports reasonably with Mr. Bartlett's estimate of \$101,200.

The board did review to see if the City's adjustments on the two lots as if separate resulted in a similar value as if valued as one lot. The board found that it was similar but still approximately \$1,000 in difference. Consequently, the board has valued the lots as one due to the improvements crossing the lot lines and has applied 15% reduction for the steep topography and access. The steep topography and access were testified to by the Taxpayers and noted by the board on its view. Lastly, the board finds the functional utility of the house is affected by: 1) the second floor containing only a loft with the balance being open cathedral ceiling area; and 2) the seasonal wetness of the basement.

#### **Refund**

If the taxes have been paid, the amount paid on the value in excess of \$104,800 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.

Page 5  
Bertin v. City of Berlin  
Docket No.: 14782-93PT

#### **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

---

Paul B. Franklin, Chairman

---

Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert and Diane Bertin, Taxpayers; and Chairman, Board of Assessors, City of Berlin.

Date: January 15, 1997

---

Valerie B. Lanigan, Clerk