

Tony J. Buckovitch

v.

City of Berlin

Docket No.: 15050-94PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1994 assessment of \$6,200 consisting of a .28-acre, unimproved, vacant lot (the Property). The Taxpayer owns, but did not appeal, the following:

Map/Lot	Assessment	Description
113-0029	\$75,700	land and building
113-0030	\$100	land only
113-0031	\$5,700	land only
113-0032	\$900	land only
113-0033	\$800	land only
113-0034	\$700	land only
113-0039	\$300	land only

The Taxpayer and the City waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

Page 2  
Buckovitch v. City of Berlin  
Docket No.: 15050-94PT

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 this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- 1) the land is wild, unproductive wetlands and is unbuildable;
- 2) the City has combined the lot with a 50 X 100 lot for access on Western Avenue which has a 20 foot water culvert on it; and
- 3) a fair market value would be \$1,993 based on other comparables.

The City submitted a letter (including a topographical map) stating the case as presented by the Taxpayer fully described the lot, and the City was willing to have the board decide the case on its merits.

#### **Board Findings**

The board finds the assessment to be \$4,400. The board finds the topographical map and photographs indicated that this lot would be very difficult to build on; therefore, some adjustment is warranted for its topography. The board has made a X50 adjustment for topography based on the evidence presented. However, the Taxpayer owns several other lots but provided insufficient evidence for the board to determine if there was a way to configure the lots to maximize their value. It was difficult to determine from

the evidence provided as to the location of these lots or their topography or whether assemblage of the lots is an option. The board has based its decision solely on the information provided. The board finds no further adjustment is warranted because the Taxpayer presented no credible evidence of the Property's fair market value. To carry his burden, the Taxpayer 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

Page 3  
Buckovitch v. City of Berlin  
Docket No.: 15050-94PT

level of assessment generally in the Town. 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.

If the taxes have been paid, the amount paid on the value in excess of \$4,400 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 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.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all

of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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. This, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration 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.

Page 4  
Buckovitch v. City of Berlin  
Docket No.: 15050-94PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Ignatius MacLellan, Esq., Member

---

Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed

this date, postage prepaid, to Tony J. Buckovitch, Taxpayer; and Chairman,  
Board of Assessors.

Date: January 8, 1997

---

Valerie B. Lanigan, Clerk

0006

Tony J. Buckovitch

v.

City of Berlin

Docket No.: 15050-94PT

ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

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 that a copy of the foregoing decision has been mailed this date, postage prepaid, to Tony J. Buckovitch, Taxpayer; and Chairman, Board of Assessors.

Date: February 10, 1997

---

Valerie B. Lanigan, Clerk

0006