

Janet and Oscar Bouchard

v.

City of Berlin

Docket No.: 15436-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1994 assessment of \$276,000 (land \$75,100; buildings \$200,900) on a .72-acre lot with a commercial building containing a supermarket (the Property). The Taxpayers also own, but did not appeal, five other properties in the City with a combined, \$65,400 assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) similar properties along the same street used for commercial purposes have lower assessments for their buildings when compared on a square-foot basis;
- (2) other than vinyl siding, no renovations have been done for several years;
- (3) the main reason the City would not grant an abatement was the pending city-wide revaluation;

Page 2

Bouchard v. City of Berlin

Docket No.: 15436-94PT

- (4) there are several new commercial enterprises located in formerly residential neighborhoods that should not get the benefit of residential land values for assessment purposes; and
- (5) and the assessment for the Property should be \$175,000.

The City argued the assessment was proper because:

- (1) different neighborhoods were given different land values;
- (2) the adjustments made were done by Sabre (the revaluation company) and not the assessors office; and
- (3) any inequities would be resolved during the forthcoming revaluation.

The board's review appraiser, Mr. Bartlett, inspected the property, reviewed the property-assessment card, reviewed the parties' briefs, reviewed his report filed relative to the 1993 Berlin appeals and filed a report with the board. Mr. Bartlett found a market value range of \$177,200 to \$182,400
Note: The review appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation. In this case, the board accepts the review appraiser's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$183,600. This assessment is based on a market value finding of \$180,000 and the City's 1994 equalization ratio of 1.02.

The board finds the best evidence in this case is the board review appraiser's report which indicated an approximate market value of \$180,000. The board finds this report considered both the income approach and some general sales data to estimate the Property's value. The board agrees with its appraiser that the contract rent of the Property is low based on a 20-year term. Further, the board finds Mr. Bartlett's assumptions of the income

Page 3
Bouchard v. City of Berlin
Docket No.: 15436-94PT

approach of \$3.25 per square foot, 10% vacancy, 15% expenses and a capitalization rate of .138 to be reasonable based on his general market analysis performed following the appeals from the City's 1993 reassessment.

The board places no weight on the Gallus opinion of market value at \$75,000. The board was unable to rely upon the opinion because it did not include the basis for the value conclusion. Specifically, the opinion did not indicate what sales were used or what adjustments were made to the sales to arrive at the value conclusion. Without such information, the board and the municipality are unable to review the soundness of the value conclusions.

Lastly, the board notes that in a confirmatory manner, the board gives some weight to the Taxpayers' opinion of market value of \$175,000. While this opinion was also not documented, it is at least more reasonable than the Gallus opinion and generally comports with Mr. Bartlett's valuation conclusion.

If the taxes have been paid, the amount paid on the value in excess of \$183,600 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 "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

Page 4
Bouchard v. City of Berlin
Docket No.: 15436-94PT

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

Douglas S. Ricard, Member

Certification

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

Date: April 11, 1997

Valerie B. Lanigan, Clerk

0006

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Docket No.: 15436-94-PT

ORDER

After the January 2, 1997 hearing, the board had its review appraiser review the Property and his report is included with this order. (Additional addendum to the inspector's report, i.e., photos and assessment-record cards, are contained in the board's file.) If the parties have any comment to the report, they shall file those comments within 20 days of the clerk's date below. When the 20 days has run, the board will issue the decision.

The parties are also advised to see if the report can be used to resolve this appeal through settlement.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify that the foregoing order has been mailed, postage

prepaid to Janet & Oscar Bouchard, Taxpayer(s); and Chairman, Assessors of Berlin.

Dated: February 10, 1997

Valerie B. Lanigan, Clerk

0009