Linda U. Bornstein

v.

City of Berlin

Docket No.: 15996-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1995 assessment of $91,900 (land $5,500; buildings $86,400) on a .04-acre lot with an office building (the Property). 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 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 Taxpayer argued the assessment was excessive because:

(1) an appraisal estimated the Property's value to be $65,000 as of April 1995;

(2) there was a surplus of foreclosed property in Berlin, and foreclosure sales represented the market in Berlin;

(3) recent sales supported a market value of $60,000 to $65,000; and

(4) the proper assessment should be $77,000.

The City argued the assessment was proper because:

(1) most of the Taxpayer's comparable sales were not valid because they were foreclosure sales;

(2) analyzing the Taxpayer's appraisal and making adjustments for foreclosure sales supported the assessment; and

(3) the Property sold (between associates) in 1990 for $94,500 according to the transfer tax stamps.

In rebuttal, the Taxpayer stated that the 1990 purchase was for $90,000, which was arrived at through negotiations in 1987 and was an allocated value of the real estate.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $78,000, which equates to a market value of $65,000.

The board makes this finding for the following reasons.

1) The board begins by noting that the City did not present any information to explain how the assessment was calculated and why it was appropriate for tax year 1995. For example, the City did not present any sales information to support the assessment.

2) The Taxpayer presented a $65,000 appraisal. While the board agrees

with the City that there were questions about the sales used in the appraisal, the appraisal does represent a value opinion by a person familiar with values in the City. Clearly, the best sale in the appraisal was comparable sale #1. While this was a bank sale, the sale occurred after being on the market with realtors for over a year.

3) The Taxpayer's representative was an attorney in the City who works in the Property and was familiar with values, having been involved in real estate transactions. He opined that the Property was worth approximately $60,000 to $65,000. Furthermore, he stated that in negotiations (in 1997)

with his current law partner, they agreed that the Property would be worth approximately $60,000 to $65,000, which would be used in setting a purchase price for a share of the partnership.

4) Two other notes. First, the Taxpayer discussed two other sales on Pleasant Street, but the board could not rely upon those sales because insufficient information was presented. Second, the board finds the Taxpayer's 1990 purchase of the Property from a former law partner did not represent market value because the purchase price was preset in 1987 and because the purchase price was based on an allocation of a partnership purchase.

If the taxes have been paid, the amount paid on the value in excess of $78,000 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 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 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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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter J. Bornstein, Esq., Counsel for Linda U. Bornstein, Taxpayer; and Chairman, Board of Assessors, City of Berlin.

Date: June 19, 1997

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Valerie B. Lanigan, Clerk

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