

George A. Sylvain

v.

City of Berlin

Docket No.: 16167-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1995 assessments of:

\$117,900 (land \$10,000; buildings \$107,900) on "Lot 10" located at 84 Jericho Road, a .54-acre lot with a storage building; and

\$88,600 (land \$7,000; buildings \$81,600) on "Lot 171" located at 598 Third Avenue, a .23-acre lot with an 8-unit apartment building (the Properties).

For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment on Lot 10 was excessive because:

- (1) the two metal structures are on a cement slab, the gravel lot is small and has no fence around the building;
- (2) it was purchased in February 1994 for \$76,500 and sold in February 1997 for \$75,000; and
- (3) the income did not quite meet the expenses.

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The Taxpayer argued the assessment on Lot 171 was excessive because:

- (1) this apartment building was purchased in May 1993 for \$62,500; and
- (2) the building is old and in poor condition.

The City argued the assessments were proper because if you analyze the income potential and review the sales prices (which are not true arm's-length sales), they support the assessed values.

Subsequent to the hearing, the board asked its review appraiser (Mr. Bartlett) to perform an income analysis of the Properties. The parties were then allowed an opportunity to respond to Mr. Bartlett's report to the board. Based on his analysis, Mr. Bartlett determined the indicated market value of Lot 171 to be \$97,100 or an assessed value of \$116,500 and the indicated market value of Lot 10 to be \$103,900 or an assessed value of \$124,600.

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.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove disproportionality. Assessments must be based on market value. See RSA 75:1.

There are three approaches to determine market value: 1) the cost approach; 2) the comparable-sales approach; and 3) the income approach. The Appraisal of Real Estate at 71 (10th Ed. 1991). While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate at 72; Property Appraisal and Assessment Administration at 108. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979). In determining the appropriate approach to value, the board looks at the

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property's highest and best use. The highest and best use analysis determines what use will generate the highest present value to the property. For these Properties, which were generating income, the board finds the most appropriate approach to value is the income approach. Further, the board finds Mr. Bartlett's income analysis, using the Properties' actual income and expenses (see Municipality Exhibits A & B) not only supported the assessed values of the Properties but indicated market values higher than the equalized assessments.

Assessments must be based on market value. However, due to market fluctuations, they may not always be at market value. A property's assessment is not unfair simply because it exceeds the property's market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. Neither party challenged the Department of Revenue Administration's equalization ratio of 120% for the 1995

tax year for the City of Berlin. The Properties' equalized values are \$98,250 for Lot 10 (\$117,900 assessment ÷ 1.20 equalization ratio) and \$73,833 for Lot 171 (\$88,600 assessment ÷ 1.20 equalization ratio). The equalized assessments should provide an approximation of the market values of the Properties. Mr. Bartlett's income approach indicated market values of \$103,900 for Lot 10 and \$97,100 for Lot 171.

While the Taxpayer testified that the Properties sold for less than their equalized values, the board finds that although weight should be given to their sales prices as it is some evidence of their market values, it is not necessarily conclusive evidence. The evidence was unclear as to whether these sales were true arm's-length transactions. Upon review of the income approach, the sales data and the testimony, the board finds the assessments were reasonable and finds no abatement is warranted.

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Lastly, the Taxpayer suggested in his response to Mr. Bartlett's report that the board visit Berlin. On September 16, 1996, the board and Mr. Bartlett toured the City and viewed the Berlin properties under appeal for the 1993 tax year. This tour enabled the board to be more familiar with the various neighborhoods and value influencing factors within the City.

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 George A. Sylvain, Taxpayer; and Chairman, Board of Assessors, City of Berlin.

Date: October 23, 1997

Valerie B. Lanigan, Clerk