

Shaw Communications, Inc.

v.

City of Berlin

Docket No.: 16178-95PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1995 assessment of \$7,100 on a radio tower and 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) the tower (150 foot Rohn 25G) was built with used tower stock and is pinned into the ledge; the wooden 8' X 12' building is on blocks with no heat or cooling;

- (2) other tower sites that sit on the knoll were assessed lower than the Property;
  - (3) the City's replacement costs for the tower and building were improper;
- and
- (4) the replacement cost should have been in the \$3,500 value range.

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The City argued the assessment was proper because:

- (1) the Taxpayer's comparables should not be relied upon because they were based on a leasehold figure and not on the value of the towers;
- (2) accepting the Taxpayer's replacement cost new and applying the ratio, the assessment was within the range of the Taxpayer's value; and
- (3) a 2% depreciation per year from the Taxpayer's replacement cost new of the Property for its age would be appropriate.

#### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer demonstrated that the Property was overassessed. The board finds the proper assessment to be \$3,925, which equates to a \$3,270 market value.

Clearly, the best evidence presented to the board was the Taxpayer's cost replacement information, which the board adjusted by the 52.5% depreciation shown on the assessment-record card and then multiplied by the assessment ratio. While the depreciation adjustment was high, the Taxpayer's evidence established the age of the tower and the need to replace it in the future to remain a suitable tower. The following summarizes that evidence and the board's calculations.

Building	\$ 1,925
Tower	\$ 2,460
Labor	<u>\$ 2,500</u>
	\$ 6,885
Less 52.5% depreciation	<u>\$- 3,615</u>
	\$ 3,270
times ratio	<u>x 1.20</u>
Assessment	\$ 3,925

The City did not submit any information to support a market value, and therefore, the board relied on the Taxpayer's cost information.

If the taxes have been paid, the amount paid on the value in excess of \$3,925 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

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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 Shaw Communications, Inc., 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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