

George E. Gosselin

v.

City of Berlin

Docket No.: 17508-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1997 assessment of \$117,100 (land \$9,500; buildings \$107,600) on a ranch-style home on a .37-acre lot (the "Property"). The Taxpayer also owns, but did not appeal, a modular-style home on a .23-acre lot assessed at \$59,100. For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) a December 29, 1997 appraisal updated to April 1, 1997 estimated the Property's market value at \$100,000;

- (2) the Property's neighborhood code should be changed and a higher economic depreciation factor applied to more accurately reflect the Property's location on the east side of the city downwind from the mill;
- (3) the traffic volume of large trucks traveling on Hutchins Street past the Property heading toward a lumber operation and an industrial park is substantial; and
- (4) the assessment for the Property on April 1, 1997 should be \$100,000

The City argued the assessment was proper because:

- (1) the original assessment arrived at during the revaluation was adjusted downward to its current level after a post revaluation review;
- (2) the neighborhood code factors have been consistently applied throughout the city; and
- (3) the Property's location is appropriately accounted for in the -15% economic obsolescence adjustment.

In addition to the appealed Property, the Taxpayer also owns an additional property within the City limits. When a taxpayer owns more than one property in a municipality but chooses to appeal the assessment on some but not all of the properties, the board must still consider the assessments on the taxpayer's nonappealed properties in the same municipality. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). A taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of the properties is disproportionate. See also Bemis Brothers Bag Co. v. Claremont, 98 N.H. 446, 451 (1954) ("Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant."). Therefore, when a taxpayer owns more than one parcel, an appeal for

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abatement on any one property will always require consideration of the assessments of any other properties. In this case, both the City and the Taxpayer testified that the nonappealed property was equitably assessed and need not be addressed at the hearing. The board will rely on the

representation of the parties.

Board's Rulings

Based on the evidence, the board finds the Taxpayer's counsel (Attorney Carlson) did not carry the burden of showing the assessment was disproportionately high or unlawful. The Taxpayer presented several pieces of evidence and gave testimony indicating the Property may be overassessed. However, the board finds the evidence was not sufficient to carry the Taxpayer's burden.

Attorney Carlson discussed the circumstances surrounding the original purchase of the Property in 1991. However, the board finds that given the testimony that the Property was probably not purchased in an arm's-length transaction and the length of time between the purchase of the Property and the date of the appeal, the circumstances surrounding the original purchase are not reliable factors in determining market value as of April 1, 1997, and therefore, are not relevant to this appeal.

Counsel for the Taxpayer based the majority of the Taxpayer's case on the appraisal performed by Androscoggin Appraisal Associates with an effective date of December 29, 1997. This appraisal was originally performed for the purpose of settling litigation in a divorce proceeding between the Taxpayer and his wife. However, the Taxpayer's attorney testified that during the divorce litigation, counsel for both parties agreed on the appraiser retained and agreed

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to consider the findings of the appraiser as an appropriate market value for the Property. The board reviewed the appraisal and along with testimony from the City concludes that the appraisal has flaws, both in its methodology and conclusions. The first flaw is a miscalculation on the grid page of the appraisal under Comparable Sale #1. Under the heading "Gross Living Area," the comparable sale has 100 less square feet of gross living area than the appealed Property. However, the appraiser has made an adjustment of only \$100. The City pointed out, and the

board concurs, that this adjustment should have been \$1,000 based on a \$10.00 per-square-foot adjustment for any variation of square footage between any of the comparable sales and the Property. Reviewing the adjustments made to Comparable Sale #2 and Comparable Sale #3 for this factor, shows that indeed the appraiser did make a \$10.00 per-square-foot adjustment and that the miscalculation on Comparable Sale #1 was simply that, a miscalculation. If this adjustment is corrected, the indicated value for the Property using Comparable Sale #1 would be \$110,000, an increase of \$900.

The second reason the board questioned the Taxpayer's appraisal is for the final reconciliation. Reviewing the values indicated by each of the comparable sales after their adjustments yields \$110,000 for Sale #1, \$107,900 for Sale #2 and \$95,000 for Sale #3. Given the number of adjustments, the size of the adjustments, the overall total net adjustment and the location of Sale #1, the board concludes that Sale #1 is the best indicator of value. In the appraisal, the reconciled value of \$100,000 appears to reflect that the appraiser considered Comparable Sale #3 to be the best indicator of value and weighted the reconciliation in the direction of Sale #3. However, the adjustments made, both in magnitude and number, to Sales

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#2 and #3, do not justify this conclusion. The board finds the best comparable sale is Sale #1. If the reconciled value of Sale #1 of \$110,000 is multiplied by the equalization ratio for the City of Berlin during 1997, the resulting assessment becomes \$111,100 ($\$110,000 \times 1.01$). The difference between this indicated assessment and the actual appealed assessment of \$117,100 is approximately 5%. The board finds this differential is not unreasonable. As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985); Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable

range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

Attorney Carlson testified the Property's location on the east side of Berlin is a stigma that reduces property values given the proximity to the mills in the downtown portion of the City. The City, however, rebutted this testimony indicating that the prevailing winds in this area blow in an westerly-to-easterly direction and that the Property is northeasterly of the mills and affected far less than properties that are directly east of the mill.

Counsel for the Taxpayer also testified the Property's location on Hutchins Street endures a high amount of heavy, large truck traffic going past the Property to the White Mountain Lumber Company and the Berlin Industrial Park, less than a mile north of the Property. The City testified, in rebuttal, that the amount of traffic on Hutchins Street is insignificant compared to the amount of heavy truck traffic through the City, across the river and down to the large mill

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and that all properties in those other areas have been adjusted with a higher economic obsolescence factor than the Property's neighborhood.

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

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Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to David P. Carlson, Esq., Counsel for George E. Gosselin, Taxpayer; Mary E. Pinkham-Langer, Representative for the City of Berlin; and Chairman, Board of Assessors of Berlin.

Date: April 19, 1999

Lynn M. Wheeler, Clerk