

**Joan Brasill Living Trust**

**v.**

**City of Berlin**

**Docket No.: 17646-97PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1997 assessment of \$273,000 (land \$73,500; buildings \$199,500) on a 1-story motel on a .72-acre lot (the "Property"). 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) based on an income analysis, the market value of the Property on April 1, 1997, was approximately \$190,000;

- (2) the Property suffers from a significant amount of deferred maintenance that the income stream can not cover and still be able to return an annual profit to the owner;
- (3) the Property has been listed for sale, with no serious offers, with the latest asking price of \$350,000; and
- (4) the Property is not operated on a year-round basis and must compete with lodging accommodations in the Town of Gorham. The City of Berlin is not a tourist destination and the success of the Property is very dependant on the construction activity in the City.

The City argued the revised assessment was proper because:

- (1) the additional 30% reduction applied to the improvements recognizes the amount of economic depreciation. This was the same reduction given to the multi-family properties in the City, a similar class of properties;
- (2) the Taxpayer's comparable sale of the Raynor's Motel in Franconia was the subsequent sale of a foreclosed property and all the sale details were not clear or known; and
- (3) the Taxpayer's representative did not know the details as to why some of the offers made on the Property were not finalized.

The parties agreed the City's 1997 equalization ratio was 1.01.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to carry its burden.

Municipalities are required to assess properties at market value. RSA 75:1.

Municipalities must consider "all evidence that may be submitted to them relative to the value of property..." and value the property accordingly. Once the municipality has fulfilled its initial

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assessing responsibility, the burden of proof to show the assessment is disproportionate rests with the Taxpayer. In this case, we find the City has reasonably fulfilled its initial obligation in valuing the Property. At the time of the abatement request, the City applied a 30% economic

depreciation to the buildings on the logic that the same economic factors that affected multi-family buildings also would impact the only motel in the City. The City also performed a sales analysis during the reassessment to derive land values, building replacement costs and appropriate depreciations.

Therefore, the burden rests with the Taxpayer to show that the City's assessment is disproportional. Mr. Lutter, the Taxpayer's agent, presented an income approach that argued a market value of approximately \$190,000<sup>1</sup>. First, the board finds many of the arguments for a lower assessment put forward by Mr. Lutter, are already embodied in the City's cost approach including physical, functional and economic depreciation.

Second, the board has a lack of confidence in Mr. Lutter's assumptions, due to his insufficient knowledge of the Berlin market and the inconsistencies in his various presentations. Mr. Lutter testified that this was the only Berlin taxpayer he has represented. Based on questioning of both the City's representative, Ms. Pinkham-Langer, and Mr. Lutter, the board concludes the City had better knowledge of Berlin's general market conditions in 1997.

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There are also a number of distinct factors in Mr. Lutter's income approach the board questions such as the amount of deduction for furniture, fixtures and equipment (FF&E), deduction in calculating the capitalization rate, appreciation in the capitalization rate, reliance upon actual expenses without more detailed knowledge as to what some expenses entailed, etc. For example, Mr. Lutter deducted nearly 1% from the capitalization rate for 5% to 10% annual appreciation in the Property based on state-wide trends. The City testified that there has been little or no appreciation in Berlin, especially for commercial property, based on sales and

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<sup>1</sup> Both parties presented some sales information although neither placed much weight on the sales. Likewise, the board places no weight on the sales that were submitted because of locational differences and the questionable arm's-length nature of a sale.

changes in the equalized ratios for the City of Berlin. Further, Mr. Lutter's deduction for FF&E equates to approximately \$59,000 or \$1,967 per room ( $\$9,760 \div 1.66$ ). This amount appears excessive based on the photographs of the rooms and the Marshall Valuation Service estimates. The City's total deduction (difference in capitalization rate and \$16,400 deduction) of \$22,200 is more reasonable given the low cost quality of the FF&E and the economic depreciation that also relates to the FF&E.

The differences between Mr. Lutter's income approach submitted with the appeal document and the income approach submitted at hearing also reduces the board's confidence in his value conclusion.

Lastly, the City's assessment does not seem out of place with the marketing history of the Property. While certainly the Taxpayer's asking prices are higher than market value, Mr. Lutter did not attempt to determine whether his market value conclusion was reasonable from his client's perspective, who is actively marketing the Property. Mr. Lutter also did not know the

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details of why one written purchase and sales agreement of \$300,000 did not go forward other than the prospective purchaser was not able to obtain financing.

For all the above reasons, the board finds the Taxpayer did not prove the assessment is excessive.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Mark Lutter, Representative for Joan Brasill Living Trust, Taxpayer; Mary E. Pinkham-Langer, Representative for the City of Berlin; and Chairman, Board of Assessors of Berlin.

Date: June 14, 1999

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Lynn M. Wheeler, Clerk