

Patricia M. and Robert M. Hood, Jr.

v.

City of Berlin

Docket No.: 17696-97PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1997 assessment of \$125,000 (land \$14,000; buildings \$111,000) on a colonial-style home on a 1.1-acre lot (the "Property"). The Taxpayers requested, and were granted, leave to not attend the hearing. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) an appraisal by Androscoggin Appraisal Associates (Androscoggin appraisal) estimates the market value of the Property was \$100,000 on April 1, 1998;

(2) a replacement cost prepared by an insurance agency indicated a lower value than the assessment; and

(3) a property at 60 Bemis Street is assessed significantly less.

The City argued the assessment was proper because:

(1) the Property was assessed using a methodology that was consistent with that used on other properties in the City during the revaluation;

(2) there are some flaws in the Taxpayers' appraisal; and

(3) the insurance company's replacement cost estimate is unclear concerning the treatment of the basement.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to carry their burden. The Taxpayers submitted several arguments to support their claim of overassessment; 1) Androscoggin appraisal; 2) insurance replacement cost estimate; and 3) a comparable assessment at 60 Bemis Street.

The board finds, the Androscoggin appraisal arrives at a low indication of market value. Comparable #1 (79 Bemis Street), while it sold for \$110,000, was assessed by the City at \$122,000 recognizing improvements done to the Property subsequent to the sale. The resulting assessment of 79 Bemis is very similar to the Property's assessment indicating that, if the improvements that were done subsequent to the sale, had occurred prior to the sale, the indicated value would have been higher. In other words, the improvements should have been adjusted for in the appraisal. Comparable #2 (211 Hillsboro Street) is in an inferior location than the

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Property. During the 1997 reassessment, the Hillsboro Street area received a 25% economic adjustment on the buildings and a \$6,000 lower lot value largely due to being downwind and

affected by the odor from the Crown Vantage mill. No adjustment for an inferior location was made in the appraisal. Comparable #3 (8 Grandview) received a minimal (\$10.00 per square foot) adjustment for the difference in the dwelling's size. The dwelling at 8 Grandview is approximately two-thirds the size of the Property (1,426 square feet versus 2,112 square feet), yet received only an adjustment of \$6,700 for that difference in size. The board finds even the Berlin market would likely recognize more of an adjustment than that provided in the appraisal. Further, the cover letter to the Androscoggin appraisal stated the "highest priced sales in Berlin that have occurred within the past year, ..." were used. However, the time frame for sales should be expanded if good comparables close to the date of the appraisal don't exist. While the Androscoggin appraisal comparables are not so different as to be disregarded, there are enough differences as noted earlier to warrant a review of earlier sales. For example, the City submitted several sales, including the sale at 3 McGee Street, which sold for \$135,000 in 1996 that give support to a higher value.

The Taxpayers also submitted a replacement cost estimate for insurance purposes which estimated a replacement cost of the dwelling at \$102,540. Insurance replacement cost estimates do not generally include value for land (and as in this case, value for water and sewer hookup) or for the foundation. If the value for the site and foundation are added to the insurance company's replacement cost estimate, the resulting value closely approximates the City's assessment of \$125,000.

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The Taxpayers also compared their Property to a nearby property at 60 Bemis Street, which was assessed for only \$94,800. A review of the assessment-record card for 60 Bemis Street, however, indicates the dwelling has 1,378 square feet of living area on the first floor with 689 square feet of inferior basement finish area. Further, the City testified that 60 Bemis Street

was a dwelling constructed by trade school students and was generally of inferior quality to the Property. The City cited a number of the good features that the Property had, including the good interior trim and clear span in the basement area as contributing towards the City's grade and final value conclusion.

Lastly, the City submitted properties in the area that showed that the Property was consistently assessed with other similar properties. This similar methodology is some evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

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

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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

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Patricia M. and Robert M. Hood, Jr., Taxpayers; Mary E. Pinkham-Langer, Representative for the City of Berlin; and Chairman, Board of Assessors of Berlin.

Date: April 22, 1999

Lynn M. Wheeler, Clerk

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