

John T. Gallus

v.

City of Berlin

Docket No.: 17698-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1997 assessment of \$42,200 (land \$13,200; buildings \$29,000) on a converted mini-mart convenience store on a .31-acre lot (the "Property"). The Taxpayer also owns, but did not appeal, four other lots in the City with a combined total assessment of \$86,700. 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) the Property was purchased for \$25,000 in a sealed bid auction;

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(2) the Property had been actively marketed for an extended period without any written offers;
and

(3) there may be some bias in the affidavit of the realtor who had the listing as he is a competitor
in the local area.

The City argued the assessment was proper because:

(1) auction sales are not considered arm's-length transactions and, therefore, not reliable
indicators of market value; and

(2) there were some verbal offers for the Property that were much lower than the asking price but
still higher than the equalized assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry his burden.

The Taxpayer's primary evidence was his purchase of the Property at a sealed bid auction
in early 1998 for \$25,000. The board finds the transaction does not meet the requirements of a
market value transfer or the requirements of RSA 75:1, and consequently, we give the sales price
little weight. See Society Hill at Merrimack Condo Association v. Town of Merrimack, 139
N.H. 253, 256 (1994) (“[A] fact finder has the discretion to evaluate the credibility of the
evidence and may choose to reject that evidence in whole or in part.”)

RSA 75:1 requires assessors to “appraise all taxable property at its full and true value in
money as they would appraise the same in payment of a just debt due from a solvent debtor....”
The board finds the sealed bid price does not meet the test of RSA 75:1. A sealed bid auction
does not have the competitive incentive for the bidders to bid up a property in open competition.

Bidders are more apt to put in a conservative bid to try to get a good deal. While the Taxpayer
testified the seller had requested a second bid from the bidders after the initial offering, the board

still concludes that most bidders would not put a bid in at market value and would more likely offer a bid to obtain a good buy. There was also some testimony that the seller was finally to the point where it was liquidating a number of such properties at one time; thus, while the auction was not absolute, the seller was not typically motivated. While the Property had been marketed for a number of years, both parties' testimony was that the asking price of \$185,000 was unrealistically high. The Property had never been marketed at a realistic price prior to the auction. The Property was owned by the real estate affiliate of Cumberland Farms which had held onto the Property rather than pricing it a reasonable level to move it as a prudent owner would. Also, the City testified the assessment prior to the 1997 reassessment had been excessive and the high taxes possibly had a chilling effect on selling the Property. (In fact, the Taxpayer recognized that the tax burden was high and that it would likely drop as a result of the 1997 reassessment.)

The board places little weight on the Coulombe affidavit relative to undocumented, verbal offers that were rejected by the owner. It is clear from the testimony that any offers that were made were never put on paper and the recollections of the offers were vague at best.

Lastly, the Taxpayer indicated that after \$25,000 of renovations, the Property is being occupied by himself for office use and that it is insured at \$75,000. If the \$25,000 for renovations is added to the City's assessment of \$42,200, the resulting indication of value is less

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than what the Taxpayer has the Property insured for. This exercise gives some indication that the City's assessment is reasonable especially since insurance estimates normally do not include land or foundations.

In short, the Taxpayer needed to present additional market evidence other than the auction transaction to support his claim that the \$25,000 purchase price was representative of

market value. The City did submit other assessment and sales information that showed the \$42,200 assessment is reasonable given the good location of the Property albeit the deferred maintenance at the time of the assessment.

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

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 John T. Gallus, Taxpayer; Mary E. Pinkham-Langer, Representative for the City of Berlin; and Chairman, Board of Assessors of Berlin.

Date: April 13, 1999

Lynn M. Wheeler, Clerk

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