

Oscar and Janet Bouchard

v.

City of Berlin

Docket No.: 17833-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1998 assessment of \$152,100 (land \$73,500; buildings \$78,600) on a .7-acre lot with a supermarket (the "Property"). The Taxpayers also own, but did not appeal, four vacant lots with a total assessed value of \$6,800; the parties agreed these lots are appropriately assessed. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the City was revalued in 1997 and the Property was disproportionately assessed compared to other commercial properties;
- 2) parking is limited and the employees must park on the other side of the street;
- 3) deliveries must be made on Third Street frequently blocking the street; and
- 4) the assessment should be \$113,000.

The City argued the assessment was proper because:

- 1) the department of revenue administration (“DRA”) performed the 1997 revaluation; the original building values set by DRA were adjusted by approximately 50% for economic depreciation (the Property received a 55% adjustment);
- 2) the Property is in Zone 1 as are two of the Taxpayers’ comparables; the Taxpayers’ other comparables are in Zone 2 which has a significantly lower land value;
- 3) the land value disparity is problematic but when you compare the zones, the resulting assessments are reasonable;
- 4) while the land value may be a little high, the building value appears low and the assessment is in line with the Property’s market value; and
- 5) if there are problems with other properties’ assessments, those assessments need to be corrected, not the Taxpayers’.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not prove the Property was disproportionately assessed.

The Taxpayers’ main argument was the assessment on the Property was disproportionate

compared to assessments on other properties along the same street. The Taxpayers were concerned that, due to the 1997 revaluation performed by the DRA, assessments for several properties along the same street were lowered substantially from the pre-revaluation figures and the Property, although having its assessment lowered slightly, did not receive a proportionate reduction. The City rebutted this argument by pointing out several of the comparable sales used by the Taxpayers were in a different assessment zoning district and the principle difference between the zones was the base-land value for the primary site. The City testified the DRA tried to account for this factor through the use of a substantial adjustment for economic depreciation. The City also testified the arbitrary delineation between the assessment zoning districts may be problematic with regard to the great disparity between the land values but, on an individual basis (within the assessment zoning districts), the values are proportionate. The City also testified that while the land value for the Property may be a little high, the assessment on the building portion of the Property appears to be low and the overall assessment is in line with the Property's market value and, therefore, does not warrant an abatement or adjustment.

The City pointed out, and the board concurs, the variations in the new assessments for similar properties along the same street may need to be addressed by the City's assessing department. However, the underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar

properties. E.g., id.

Assessments must be based on market value. See RSA 75:1. The Taxpayers did not present any credible evidence of the Property's market value. To carry their burden, the Taxpayers should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the City. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

For these reasons the board denies the appeal.

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Page 5
Bouchard v. City of Berlin
Docket No.: 17833-98PT

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Oscar and Janet Bouchard, Taxpayers; and Chairman, Board of Assessors of Berlin.

Date: July 24, 2000

Lynn M. Wheeler, Clerk

0006