

Henry F. Zurmuhlen  
v.  
Town of Westmoreland  
  
Docket No. 7649-89

Henry F. Zurmuhlen and A. A. Murphy  
v.  
Town of Westmoreland  
  
Docket No. 7650-89

#### DECISION

Pursuant to RSA 71-B:5, a consolidated hearing on a "Betterment" assessment affecting the Appellants (under RSA 231:16 and 231:34) was held.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because they own 9 percent of the betterment frontage and are being assessed for 40 percent of the cost; it is unfair for the Town to include the cost of Town vehicles since the Taxpayers have contributed to the purchase and maintenance of said equipment over a 20-year period; and topography makes some of the Taxpayers' frontage undevelopable.

The Town argued the assessment was proper because after a public hearing the Selectmen developed a schedule of apportionment by percentage with a final cost of \$4,924.75. The Taxpayers were assessed 20 percent for each of their two lots. The estimated cost, according to the road agent, was between \$2,600 and \$5,000. The Town justified the charges for Town equipment on the basis that a private contractor would have charged more.

Based on the evidence, we find the correct assessment should be 10 percent for each lot (one half of \$984.95 = \$492.48 for each lot under appeal.

The Board of Tax and Land Appeals finds there should be a greater recognition of "contributory value" of the road improvement to the parcels served. We rule that 20 percent is disproportionate and that 10 percent of the betterment cost be substituted for each of the Appellants' lots.

If the assessments have been paid, the amounts paid in excess of \$492.48 per lot shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Henry F. Zurmuhlen and A. A. Murphy, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Westmoreland.

July 30, 1992

Valerie B. Lanigan, Clerk

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Henry F. Zurmuhlen

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ORDER

This order relates to the "Taxpayers'" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

Motion denied.

The board in its decision of July 30, 1992, found that a greater recognition of the road improvements contributory value to each parcel was proper in apportioning the costs. Therefore, inherent in such a finding is the conclusion that others were most likely underassessed to the amount abated for the "Taxpayers". However, the board declines to increase the assessment of other taxpayers who are part of this "betterment assessment" since their assessments were not appealed to this board.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

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III, Chairman

George Twigg,

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Franklin, Member

Paul B.

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LeBrun, Member

Michele E.

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CERTIFICATION

I certify that copies of the within order have this date been mailed, postage prepaid, to Henry F. Zurmuhlen, Taxpayer; and Chairman, Selectmen of Westmoreland.

Date: September 9, 1992

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Ekstrom, Deputy Clerk

Melanie J.

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