

Gale G. Brown

v.

Town of Stratham

Docket No.: 8570-90PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$260,400 (land \$55,000; buildings \$205,400) on a single family home (the Property). The Taxpayer failed to appear, but was granted leave consistent with our Rule, TAX 202.06. This decision is based on the evidence presented to the board. 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 an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry his burden and prove disproportionality.

The Taxpayer in his appeal argued the assessment was excessive because:

- (1) the subdivision road was not completed on the time schedule as required by the Planning Board; and
- (2) due to the uncompleted nature of the road, the Taxpayer was deprived of use of certain town services.

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The Town argued the assessment was proper because:

- (1) the Taxpayer has not complied with the board's rules as to specificity of the basis for appeal;
- (2) the Town did abate \$5,000 of the assessment for the inconvenience related to not having curb-side rubbish pick-up due to the unfinished nature of the road; and
- (3) conflicting title claims to the lot that would contain the turn-around for the Taxpayer's lot was not public knowledge until after April, 1990.

#### Board's Rulings

Based on the evidence, we find the Taxpayer failed to prove the Property's assessment was disproportional.

The board finds the problems related to the completion of the road beyond the Taxpayer's house were not public knowledge until after the assessment date of April 1, 1990. Apparently any problem associated with the road were not enough of a deterrent to affect the Taxpayer's purchase of the Property in June of 1990 for \$286,000.

The board finds the Town's \$5,000 abatement due to the inconvenience of not receiving rubbish service is not unreasonable.

The Town stated that the Taxpayer was not specific in their appeal to the board and therefore, the appeal should be denied. The board notes the requirement of specificity on appeal to the board began with the adoption of the board's new rules September 1993, well after the Taxpayer had appealed to the board. The board's rules were prospective in nature and thus not in effect at the time of the appeal.

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The Town requested costs if the board found in the Town's favor. The board denies the Town's request for costs because the basis of the Taxpayer's appeal was one of judgment and was not necessarily frivolous.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gale G. Brown, Taxpayer; and Chairman, Selectmen of Stratham.

Dated: June 3, 1994

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Valerie B. Lanigan, Clerk