

**Bernard W. Chapman**

**v.**

**Town of Tilton**

**Docket No.: 11483-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$141,900 (land \$33,000; buildings \$108,900) on a .363-acre lot with a two-family home (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property fronts on a busy road near Winnisquam Regional School and the Veteran's Home and is subject to heavy traffic;

(2) the Property's front door is only 23 feet from the road, and the house is over 100 years old;

(3) the Taxpayer's apartment has lead paint and needs renovation, and money was already expended to renovate the rental unit due to lead paint;

(4) an October 1, 1991 appraisal estimated a \$55,000 to \$60,000 value;

(5) the Property's value did not increase and, therefore, neither should the taxes; and

(6) the rental unit does not warrant the Property being in a commercial zone.

The Town argued the assessment was proper because:

(1) the "appraisal" was only a value-opinion letter, which specifically stated there was no appraisal done on the Property;

(2) there were no supporting documents to substantiate the value opinion;

(3) the Property was placed in a commercial zone in accordance with RSA 75:10, and since the Property has a rental unit, the Property is disqualified from residential zoning;

(4) the Property's assessment was based on the same standards set for the revaluation and the assessment is equitable with abutting properties in the neighborhood; and

(5) the same methodology was used throughout the Town.

#### Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value.

This value would then have been compared to the Property's assessment and the

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level of assessments generally in the Town. 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. at 217-18. The Taxpayer submitted a value opinion based upon a preliminary study by Paul Doucette. The Taxpayer asked the board to base its decision on the preliminary study. The board, however, was unable to rely upon the preliminary study because the study did not include the basis for the value conclusion. Specifically, the study did not indicate what sales were used or what adjustments were made to the sales to arrive at the value conclusion. Without such information, the board and the municipality are unable to review the soundness of the value conclusions.

The Taxpayer argued that his Property should be assessed as a residential property in a commercial zone. RSA 75:11 allows an owner of record of any residence located in an industrial or commercial zone to apply to the selectmen or assessors for a special appraisal of the residence based upon its value at its current use as a residence. RSA 75:10 defines a residence as "the real estate which a person owns and occupies as his principal place of abode, and for no other purpose...". The Taxpayer's Property does not meet the definition of residence because it is an income producing property.

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

Motions for reconsideration of this decision must be filed within twenty

(20) days of the clerk's date below, not the date received. RSA 541:3. The

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motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bernard W. Chapman, Taxpayer; and Chairman, Selectmen of Tilton.

Dated: June 30, 1994

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Lynn M. Wheeler, Deputy Clerk

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