

**Tanis Summers-Gates and David Gates**

**v.**

**Town of Tilton**

**Docket No.: 13089-92PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$151,900 (land \$39,100; buildings \$112,800) on a .380-acre lot with a 4-unit house (the Property). For the reasons stated below, the appeal for abatement is denied.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to prove the Property was disproportionately assessed.

The Taxpayers argued the assessment was excessive because:

- (1) a 1990 appraisal estimated the fair market value to be \$104,000;
- (2) 3 units were being rented at \$65 a week and 1 unit was rented at \$100 per week -- all units included heat and hot water; and
- (3) the Property's value, as of April 1992, was no more than \$104,000.

The Town argued the assessment was proper because:

- (1) the Town was reassessed in 1990, the equalization ratio was 100% and in 1992 the equalization ratio was 134%;
- (2) the Town was not given any data to evaluate the fairness of the abatement;
- (3) the rents presented by the Taxpayer were contract rents and the Town did not know if they were market rents;
- (4) the appraisal was 2 years out of date from the 1992 assessment date; and
- (5) no abatement was warranted.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers did not show overassessment.

The Taxpayers did not comply with TAX 201.33 and TAX 201.35, which require exchange of comparables and appraisals at least 14 days before the hearing. As explained at the hearing, even though the file included a copy of the appraisal, the rules require notification to the other side after the hearing notice is sent out to inform the other party about the specific information that will be relied on.

Without their appraisal, the Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers 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 level of assessment 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. To prevail the Taxpayers should have shown the Property was worth less than the \$113,260 equalized value (\$151,900 assessment ÷ 1.34 equalization ratio). This was not done, and the appeal must be denied.

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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Tanis Summers-Gates and David Gates, Taxpayers; and Chairman, Selectmen of Tilton.

Dated: October 27, 1995

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Valerie B. Lanigan, Clerk

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