

**Frank Benza**

**v.**

**Town of Woodstock**

**Docket No.: 15052-94PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$262,800 (land \$64,800; buildings \$198,000) on an 10.9-acre lot with two homes (the Property). 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 prove the Property was disproportionately assessed.

The Taxpayer argued the assessment was excessive because:

- (1) the Property has been devalued because of the construction of the Woodstock Motorsport Park in 1993;
- (2) the racetrack is separated from the subject by railroad tracks and a river; there are weekly races and practices several times a week;
- (3) there is no zoning in Town;

(4) a portion of the Property (new residence and 8.5 acres of land) has been on the market for two years for \$250,000 and an offer of \$150,000 has recently been made but refused; and

(5) the value of the cottage with the balance of the land was between \$85,000 and \$90,000.

The Town argued the assessment was proper because:

(1) the Taxpayers have had the main residence and 8.5 acres on the market for \$250,000 (does not include the cottage);

(2) the racetrack is approximately one-half mile from the main residence to the track, through the woods and across the river; and

(3) the Snapp property, adjacent to the Taxpayers' cottage lot, sold in May 1994 for \$25,000 while being assessed for \$19,050; this sale shows that the race track was not impacting nearby land values.

### **Board's Rulings**

Based on the evidence, we find the Taxpayers failed to prove the Property was disproportionately assessed. Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. A property's assessment, therefore, is not unfair simply because it exceeds the property's market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1994 level of assessment was 107% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was \$245,600 (\$262,800 assessment ÷ 1.07 equalization ratio). This equalized assessment should provide an approximation of market value.

To prove overassessment, the Taxpayers would have to show the Property was worth less than the \$245,600 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment.

Based on the evidence, the board finds that the race track would impact the market value of the newer residence significantly. However, based on the testimony of the Taxpayer as to the marketing of the Property, the board finds that the Town's assessment does not appear to be excessive. The Taxpayer stated that he has the new residence listed for \$250,000 and the cottage parcel could be easily marketed at \$85,000 to \$90,000. He also stated that he had declined an offer of \$150,000 on the new residence. The declined offer of \$150,000 and the Taxpayer's opinion of market value of the cottage for \$90,000 totals \$240,000, only 2% different from the Town's equalized assessed value. Consequently, the board finds the Property is proportionately assessed based on the Taxpayers' opinions of market value made with full knowledge of the effect of the race track.

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

\_\_\_\_\_  
Paul B. Franklin, Chairman

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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 Frank Benza, Taxpayer; and Chairman, Selectmen of Woodstock.

Date:           Augsut 27, 1996

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Valerie B. Lanigan, Clerk

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**ORDER**

The "Taxpayer" filed a motion for rehearing with the board on September 24, 1996, requesting the board consider new evidence.

The board denies the motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3 and TAX 201.37(e). All evidence should be presented at the initial hearing and leave to present further evidence will only be granted if it is "shown the evidence was newly discovered and could not have been discovered with due diligence in time for the hearing ... ."

The evidence the Taxpayer wishes to present could have been discovered and presented at the original hearing but wasn't. Consequently, the board denies the motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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**CERTIFICATION**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank Benza, Taxpayer; and Chairman, Selectmen of Woodstock.

Date: October 17, 1996

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Valerie B. Lanigan, Clerk

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