

Edward J. Tedesco

v.

Town of Tamworth

Docket No.: 15724-94PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$14,400 on a vacant, 1.48-acre lot (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 carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) subdivision is generally prefabricated homes;
- (2) the Property was on the market for less than the assessment without any offers; and
- (3) the Town's subsequent sales were in a subdivision with nicer stick-built homes that have views.

The Town argued the assessment was proper because:

- (1) there were sales in the subdivision in 1992, but the sales were auction sales;
- (2) it was based on the sales analysis used during the revaluation; and
- (3) subsequent sales supported the assessment.

**Board's Rulings**

The Taxpayer has the burden to show by convincing evidence that the Property is disproportionately assessed. The primary evidence submitted by the Taxpayer was that he had listed the Property for sale for \$9,900 and then reduced to \$9,500 with no offers being made on the Property. While this is considered some evidence of the market, the board also reviewed the sales submitted by the Town that indicated sales generally in excess of the Taxpayer's asking price. The board also reviewed the array of sales submitted by the Town relied upon during the reassessment. Those sales included a number of lots that sold at auction in 1992 for approximately \$8,000 to \$9,000. Auction sales generally set the floor to any market value range and are generally not considered arms'-length transactions. Consequently, the Taxpayer's assessment of \$14,400 is not unreasonable in light of the sales data submitted by the Town.

The Taxpayer also stated that his lot is in a neighborhood of generally modular homes whereas the sales submitted by the Town were in a second phase of a subdivision where stick-built homes are commonly built. Again, while this conceivably could have an affect on market value, the Taxpayer did not carry his burden in showing through further documentation or evidence that such a distinction is being recognized in the market.

Lastly, the Taxpayer stated in response to a question that the lot had no apparent impediments to construction (wetlands, ledge, etc.) and that a gravity septic system could most likely be installed. This is some evidence of the lot's potential and value.

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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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

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Docket No.: 15724-94PT

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Edward J. Tedesco, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Tamworth; and Chairman, Selectmen of Tamworth.

Date: September 27, 1996

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Valerie B. Lanigan, Clerk

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Edward J. Tedesco

v.

Town of Tamworth

Docket No.: 15724-94PT

ORDER

This order responds to the "Taxpayer's" rehearing motion, which is granted. The board rescinds the section in the September 27, 1996 decision that was headed, "Board's Rulings" and substitutes this order.

Board's Rulings

The board finds the proper assessment should be \$10,300.

After receiving the Taxpayer's rehearing motion, the board viewed the Property and the three sales listed in Town exhibit A. The view convinced the board that the Property was inferior to all three sales. The board does not, however, agree with the Taxpayer that the quality of the homes varies markedly in the two areas. But the value of the lots certainly do. Lots 69 and 73 are up on the hill and afford some views and the sense of being elevated. The Property is at the bottom of the hill tucked in a cul-de-sac and abutting a school. Additionally, the Property is not level and has many large boulders on it. Lot 55 sits atop a knoll with views of the river and the mountains. The Property

does not enjoy these attributes. The most comparable sale is Lot 73, which sold in June 1995 for \$13,000. The Property is inferior and should be valued less. The board, therefore, adjusts the assessment by increasing the topography adjustment.

<u>Basic Value</u>	<u>Topo.</u>	<u>Excess</u>	<u>Undeveloped</u>	<u>Assessment</u>
\$30,928	.5	.95	.70	\$10,300

If the taxes have been paid, the amount paid on the value in excess of \$10,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

**Rehearing**

If the Town wishes to file a rehearing motion to this order, it must do so within 30 days of the clerk's date below. See RSA 541:3; Appeal of White Mountains Education Association, 175 N.H. 771, 774-75 (1984) (newly aggrieved party must file rehearing motion to appeal to court). The Taxpayer's review would be to file an appeal with the supreme court within 30 days of the clerk's date below. RSA 541:6.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Edward J. Tedesco, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Tamworth; and Chairman, Selectmen of Tamworth.

Date: November 15, 1996

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Valerie B. Lanigan, Clerk

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