

**Kellop Development, LLC**

**v.**

**Town of Raymond**

**Docket Nos.: 23021-06PT and 23636-07PT**

**DECISION**

The “Taxpayer” through its tax representative, Mr. Steven M. Poole, appealed the assessment of approximately 40 lots of an approved subdivision that, as of April 1, 2006 and 2007, had been partially developed with some lots sold and others still owned by the Taxpayer. As the board’s January 16, 2009 Order (“Order”) noted, the “Town” assessed each subdivided lot separately pursuant to RSA 674:37-a. Mr. Poole submitted, as the grounds for the appeal, a single page comparison of the lots’ assessed values with the developer’s “costs” attributable to each lot.

As the sole issue was whether the lots should be assessed separately or based on the development costs attributable to each lot, the Order, citing the applicable statutes and two prior board decisions entailing similar facts, required the parties to submit memoranda as to why the appeals should not be dismissed in keeping with the statutes and the board’s prior holdings. After reviewing the responses from Mr. Poole and Mr. Normand Pelletier,

Assessor for the Town of Raymond, the board dismisses the appeals for the following reasons.

First, Mr. Poole presented no bases for the board to arrive at a different conclusion in applying RSA 674:37-a to the facts of this case then it had in the two cases cited in the prior order (Bearfoot Creek, LLC v. Town of Bartlett, Docket Nos.: 22045-05PT/23090-06PT and Owl Street Associates, LLC v. Town of Thornton, Docket Nos.: 21244-04PT/22474-05PT). Rather, Mr. Poole argued that he wished to hire an appraiser to have the properties valued on a “wholesale” basis. The board finds Mr. Poole submitted no evidence to show the Town’s separate assessment of approved lots is contrary to the provisions of RSA 75:1 and RSA 674:37-a.

Second, Mr. Poole’s response includes a request to have more time to obtain the “wholesale appraisal” (when it is “completed” and before the board rules) and then use that appraisal to “meet with the Town and continue settlement talks.” An appraisal based on an incorrect valuation approach, however, cannot be meaningful or lead to fruitful settlement discussions with the Town given the Town’s position that Bearfoot Creek is “similar” and requires dismissal of these appeals. In addition, the request for more time (before a ruling) is denied because it is contrary to the provisions of Tax 203.03(g), which limits each taxpayer to the grounds stated in the appeal document.<sup>1</sup> Mr. Poole, when filing the appeal on behalf of the Taxpayer, never stated as a ground for the appeal the intention

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<sup>1</sup> Tax 203.03(g) states: “[t]hroughout the appeal, the issues raised by the taxpayer in the abatement application and appeal document may differ, but the grounds stated in the appeal document shall control the issues before the board.” See also Tax 202.02(d); Tax 203.03(b)(6), (d), and (e)(2); and Booth v. Town of Gilford, BTLA Docket No. 21101-04PT (September 14, 2007) (taxpayer barred from presenting at the hearing a new ground for appeal (effect of flooding on value) not stated in the appeal document).

to prepare or use an appraisal of any kind, but simply relied upon the allocated costs relative to each subdivided parcel.

Consequently, based both upon the application of the applicable statutes to the facts in this case and because the grounds of the appeal were limited solely to the “costs” of each subdivided parcel, the board finds the Taxpayer has failed to carry its burden to show the assessments are disproportionate and, therefore, the board dismisses the appeals.

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(a). 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(f). 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

#### CERTIFICATION

I hereby certify a copy of the foregoing Decision has been mailed this date, postage prepaid, to: Steven M. Poole, Extax Consulting Group, LLC, 200 Broadway, Suite 302, Lynnfield, MA 01940, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Raymond, 4 Epping Street, Raymond, NH 03077.

Dated: March 5, 2009

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Anne M. Stelmach, Clerk