

**Frederick B. Sheehy**

**v.**

**Town of Newfields**

**Docket No.: 12548-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$216,050 (land, \$149,450; building, \$66,600) on 7.6 acres with a building (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 granted.

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 carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- 1) the odors and noise from the nearby sewage treatment plant affects the Property's value;
- 2) the Town did not take into effect the loss in value of the Property due to new land use regulations;

- 3) the assessment increased 50% due to being on the river; and
- 4) descriptive errors and omissions exist on the property-record card.

After reviewing the Taxpayer's submittal, the Town recommended the assessment should be adjusted on the current building from \$66,600 to \$56,500 and on the land from \$149,450 to \$147,450 for a total assessment of \$203,950.

The Town then argued the adjusted assessment was correct because:

- 1) the Taxpayer has otherwise failed to provide any creditable evidence that the assessment was disproportionate;
- 2) there have been no sales to indicate the Property was overassessed due to the admitted odor from the sewer treatment plant; and
- 3) similar comparable properties indicate Taxpayer's assessment was assessed equally.

#### Board Findings

Based on the evidence, the board finds the proper assessment should be \$183,560. The board accepts the Town's recommended assessment, but the board concludes an additional -10% adjustment is required for the Property's location near the sewage treatment plant. See Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (in arriving at an assessment, the municipality must consider all relevant factors). Common sense dictates that the market would pay less for a property near a sewage treatment plant than would be paid for a property not near the sewage treatment plant. A 10% adjustment was used as a conservative estimate of the effect of the sewage treatment plant on the Property's value.

If the taxes have been paid, the amount paid on the value in excess of \$183,560 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, the Town shall also refund any overpayment for 1992 and 1993. 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.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Frederick B. Sheehy, Taxpayer; and Chairman, Selectmen of Newfields.

Dated: April 19, 1994

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Melanie J. Ekstrom, Deputy Clerk

Frederick B. Sheehy

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Town of Newfields

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ORDER RE: REQUEST FOR REHEARING

On April 29, 1994 the board received a request for rehearing from the Town.

The board grants the motion for rehearing and schedules a hearing for Monday, June 27, 1994 at 1:00 p.m. This rehearing is limited solely to the issue of any affect the sewer treatment plant may have due to its proximity to the Taxpayer's Property. The parties should be prepared to present evidence and answer questions both on the physical relationship of the two properties and any market effect the sewer plant may have on the Taxpayer's Property and other properties in the general neighborhood.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Frederick B. Sheehy, Taxpayer; and Chairman, Selectmen of Newfields.

Dated:

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Valerie B. Lanigan, Clerk

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**Frederick B. Sheehy**

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Rehearing Order

On June 27, 1994, the board held a rehearing to receive evidence relative to any effect the sewer treatment plant ("Plant") may have due to its proximity to the Taxpayer's Property.

For the reasons stated below, the board affirms its decision of April 19, 1994 (Decision).

The Taxpayer argued the proximity of the "Plant" affected the Property's market value because:

1) a portion of the lot is within 50 feet of the lot containing the Plant and the house is within 300 feet from the lagoons of the Plant;

2) the noise of the pumps is a daily occurrence and the odor is noticeable several times per month;

3) the Property is southwesterly from the Plant and the odor is carried by the prevailing westerly winds;

The Town argued the Plant does not affect the Property because:

1) an embankment above the lagoons screens their view from the Taxpayer's house;

2) a farm across the river often spreads manure which causes odors;

3) a realtor stated she had had no concerns expressed by prospective purchasers of two other nearby lots.

**Board' Rulings**

The board finds the Taxpayer presented adequate evidence to conclude the Plant's proximity is a factor that must be considered in valuing the Property. Just as the Town determined the river location was a positive factor, conversely, the proximity to the Plant is a negative factor that should be recognized.

The daily noise, occasional odor, and the seasonal view of the Plant, the windward location of the Property and the good quality of the Property (riverfront location of the land and the older farmhouse dwelling) are all factors that distinguish the effect on this Property from other properties in the neighborhood. While the Town's concern of disproportionality as a result of granting an adjustment to the Taxpayer is a valid one, other properties would also need to make a showing of a notable effect of the Plant to receive an abatement.

As stated in the Decision, if the taxes have been paid, the amount paid on the value in excess of \$183,560 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, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent

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years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Any appeal to the supreme court by the Town from this Rehearing Order must be done within thirty (30) days of the clerk's date below pursuant to RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Frederick B. Sheehy, Taxpayer; and Chairman, Selectmen of Newfields.

Date: July 27, 1994

Valerie B. Lanigan, Clerk

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