

**Mark Hevesh**

**v.**

**Town of Sandown**

**Docket No.: 12797-92-PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessment of \$154,900 (land, \$62,600; buildings, \$92,300) on a 1.35-acre lot with a house (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 his burden and proved disproportionality.

The Taxpayer argued the adjusted assessment was excessive because:

(1) the lot across the street has a dirt bike racetrack in the yard, resulting in frequent high noise levels;

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- (2) the dirt bike noise has a negative impact on the Property's value, i.e., a realtor's market analysis indicated a \$10,000 - \$20,000 decrease in value;
- (3) the Town's 3% abatement does not sufficiently address the negative impact of the racetrack;
- (4) the Taxpayer and neighboring property owners had to initiate a civil law suit against the racetrack owner; and
- (5) the neighborhood is zoned residential, yet the Town stated it is powerless to stop the racetrack.

The Town argued the adjusted assessment was proper because:

- (1) the original assessment was reduced by 3% because of the dirt track, but the requested 15% is excessive;
- (2) zoning regulations have no bearing on the abatement process and the Property's value is based on the market, not the zoning; and
- (3) the realtor's market analysis and value estimate do not apply specifically to the Property and the realtor failed to provide documentation to support the estimate.

#### Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$144,055, which represents an additional 7% reduction due to the devaluation caused by the track. Thus, the total reduction due to the track is 10% - - 3% having already been given by the Town. The Taxpayer asked the board to review the evidence submitted (specifically the videotape) in Markey v. Sandown, BTLA #12803-92PT. The board has reviewed this evidence and finds that this

Property, which is diagonally across the street from the track, suffers to a

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lesser degree than the Markey's who abut the track. Therefore, the board finds a total reduction of 10% to be appropriate in this case.

The board is required by RSA 75:1 to consider how the market would value the Property. Additionally, the board is required to review all factors that would affect market value. Undoubtedly, the dirt track would have a substantial negative impact on the Property's value, especially given the Taxpayer's unsuccessful efforts to have the dirt track use stopped by the Town or by the track owner. Any potential purchaser of the Property would be hesitant to buy the Property given the dirt track. Therefore, the reduction of 10% is a very reasonable reduction. Based on the Taxpayer's written material and videotape, the noise from the track is very stressful, and the board agrees completely that a reduction is required.

The track appears to be a private nuisance, which is defined as an activity that results in an unreasonable interference with the use and enjoyment of one's property. Robie v. Lillis, 112 N.H. 492, 495 (1972). The board is not making a finding that the track is a private nuisance. That is beyond the jurisdiction of this board. Such a finding could only be made if the Taxpayer decided to file a civil court action against the track owner for nuisance. All we are saying is that based on the evidence before us, this appears to be a private nuisance, even if permitted by local ordinances, and such a nuisance would certainly reduce property values.

If the taxes have been paid, the amount paid on the value in excess of

\$144,055 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

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TAX 203.05, the Town shall also refund any overpayment for 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 thirty (30) 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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George Twigg, III, 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 Mark Hevesh, Taxpayer; and the Chairman, Selectmen of Sandown.

Dated: March 14, 1995

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Lynn M. Wheeler, Deputy Clerk