

**Edward & Rita Mackey**

**v.**

**Town of Sandown**

**Docket No.: 12803-92PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$197,700 on a single-family home (land \$59,300; buildings \$138,400) (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 Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried their burden and proved disproportionality.

The Taxpayers argued the assessment should be reduced by at least 15% to reflect the noise, nuisance and devaluation caused by an adjacent dirt bike track. The Taxpayers submitted a videotape of the dirt track's use, and they

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submitted letters from realtors indicating that the track would adversely impact value.

The Town did reduce the original assessment by 3% because of the dirt track, but it argued the requested 15% reduction was excessive.

#### Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$173,975, which represents an additional 12% reduction due to the devaluation caused by the track. Thus, the total reduction due to the track is 15% -- 3% having already been given by the Town.

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 Taxpayers' 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 15% is a very reasonable reduction. Based on the Taxpayers' 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 Taxpayers 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 \$173,975 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 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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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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 Edward & Rita Mackey, Taxpayers; and Chairman, Selectmen of Sandown.

Dated: December 13, 1994

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Lynn M. Wheeler, Deputy Clerk

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