

Carl and Renee Cotter

v.

Town of Sandown

Docket No.: 12826-92PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$157,400 (land, \$70,700; building, \$86,700) on 5.6 acres with building (the Property). The Taxpayers 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 denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

1) a market analysis, dated November 13, 1992, estimated a fair market value of \$124,900, with a possibility of a further reduction of \$10,000 to \$20,000 due to the noise problem;

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- 2) due to excessive nuisance noise, i.e., a neighbor's bike track for OHRV's;
- and
- 3) the Property cannot be sold.

The Town argued the assessment was proper because:

- 1) the Taxpayers failed to submit any comparables indicating their assessment was improper;
- 2) the Taxpayers' market analysis did not contain any properties associated with the noise problem to support the suggested reduction;
- 3) the Town notified the Londonderry Assessor regarding this type of situation, and in conclusion, gave a 3% reduction; and
- 4) the Taxpayers have failed to submit any documentation of marketing their home.

#### **Board Findings**

The board finds the Taxpayers failed to support their burden of proving the assessment was disproportionate. The Taxpayers stated the main reason for overassessment was the noise from dirt bikes on a nearby property.

They argued that while the Town reduced their assessment by 3% for the noise, the assessment should be reduced further to account for the effect of the nearby property.

The board finds the Taxpayers' evidence failed to meet their burden because:

- 1) the Taxpayers' market analysis included an opinion by the realtor that the Property's value would be affected by \$10,000 to \$20,000 for the "noise generating activities" but supplied no documentation for that opinion;

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2) the indicated market value by equalizing the assessment by Sandown's 1992 ratio is \$119,242 ( $\$157,400 \div 1.32$ ); the indicated equalized value is less than the Taxpayers' indicated market analysis of \$124,900 and suggested listing price of \$129,900;

3) the Taxpayers' lot is three away and 400 feet distant from the lot on which the dirt bikes are; the board in the Hevesh (docket no. 12797-92PT) and Mackey (docket no. 12803-92PT) cases granted additional reductions for the noise; however those two properties abutted or were diagonally opposite the lot with the noise; and

4) while the noise may be a factor in the value of the Taxpayers' Property, the Town's reduction of 3% is appropriate given the distance between the lots and the equalized assessments being less than the Taxpayers' market analysis.

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,

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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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Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Carl and Renee Cotter, Taxpayers; and Chairman, Selectmen of Sandown.

Dated: April 11, 1995

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Melanie J. Ekstrom, Deputy Clerk