

**Chester F. and Nancy M. Orban**

**v.**

**Town of Sandown**

**Docket No.: 15095-94PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$147,900 (land \$48,900; buildings \$99,000) on a 2.25-acre lot with a single-family house (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) the Property is marshy, wet and in a flood zone, and surrounding lots are not buildable because of this condition;

(2) surrounding farms result in bad odors;

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(3) traffic has increased on the road due to nearby new housing, yet the Town does not maintain the road;

(4) insurance costs are high because fire and police protection is voluntary;

(5) comparable lots were selling for far less than their assessed values and assessments continue to increase despite dropping market values;

(6) a realtor estimated a \$115,000 - \$122,500 market value;

(7) the assessment should be \$101,000 - \$112,000; and

(8) the Town's comparables were not comparable to the Property in location and land condition.

The Town argued the assessment was proper because:

(1) the land value was depreciated to address the topography and excess frontage condition and the acreage was corrected;

(2) the Property is not in a flood zone per Town and HUD flood zone maps;

(3) the incomplete nature of the basement was addressed in the building value;

(4) the Property is in a rural location with low-density traffic and the road is maintained consistent with its use;

(5) the abutting lots are not located in wetlands and therefore, are buildable;

(6) many of the Taxpayers' comparables were only listings for sale; however, the sales that occurred had an average assessment-to-sales ratio of 1.36 and were within range of the Town's 1.31 ratio; and

(7) the nearby horse farm is typical for the area.

**BOARD'S RULINGS**

Based on the evidence, the board finds the Taxpayers did not show overassessment. However, we direct the Taxpayers' attention to the paragraphs below that state certain other remedies that may be available to the Taxpayers for future property-tax relief.

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. A property's assessment, therefore, is not unfair simply because it exceeds the property's market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1994 level of assessment was 131% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was \$112,900 ( $\$147,900 \text{ assessment} \div 1.31 \text{ equalization ratio}$ ). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayers would have to show the Property was worth less than the \$112,900 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment.

The Taxpayers did not show that the Property was worth less than the \$112,900 equalized value. Moreover, the Taxpayers' realtor recommended a listing price of \$115,000 to \$122,500 with an estimated sale price of \$115,000. The comparables submitted by the Taxpayers also indicated that the

Property was not overassessed.

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The Taxpayers' major complaint was with the amount of tax not with the assessed value of the Property. The amount of property taxes paid by the Taxpayers was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor, i.e., the board decides if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See The Bretton Woods Company v. Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

The Taxpayers in the letter to the selectmen stated that their major complaint was that their "total source of income [was] too low to cover the real estate taxes." The board wants to inform the Taxpayers about two possible relief mechanisms: 1) seeking an abatement based on poverty and inability to pay; and 2) seeking an RSA 72:38-a tax deferral. If the Taxpayers are entitled to relief under either of these, the board hopes the Town will assist the Taxpayers in obtaining such relief.

To qualify for a tax abatement based on poverty and inability to pay, a taxpayer must show: 1) that the taxpayer spends all of his/her money on

essentials of life; and 2) if the taxpayer has any equity in the property, that it would be unreasonable for the taxpayer to relocate, refinance or obtain other public assistance. This standard is discussed in the case of Page 5

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Ansara v. City of Nashua, 118 N.H. 879, 881 (1978). The relief provided by RSA 72:38-a (discussed next) may be considered other public assistance. To file for an abatement based on poverty and inability to pay, the Taxpayers must file an abatement application with the Town (RSA 76:16) and then, if not granted, file an appeal with the board (RSA 76:16-a) or the superior court (RSA 76:17). RSA 72:38-a allows the elderly and disabled to defer payment of their taxes until the property is transferred or sold. A copy of RSA 72:38-a (supp. 1995) is attached. If the Taxpayers are entitled to relief under RSA 72:38-a, they should consider applying for such relief.

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. 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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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Chester F. and Nancy M. Orban, Taxpayers; and Chairman, Selectmen of Sandown.

Date: June 17, 1996

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Valerie B. Lanigan, Clerk

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**ORDER**

This order responds to the "Taxpayers'" request for reconsideration and clarification (Request) filed with the board on June 22, 1996. The board denies the Taxpayers' request as they did not make a showing that the board overlooked or misapprehended fact or law in its June 17, 1996 decision (Decision). The Taxpayers' request was in essence a rebuttal of all the "Town's" arguments summarized in the Decision.

Even if the board were to reconsider the Taxpayers' arguments in their request, none of them overcome the Taxpayers' burden of showing either the property was disproportionately assessed relative to market value or that the Taxpayers were incapable of paying the tax. As stated in the Decision, the Taxpayers' concern appears to be not so much for the proportionality of the

assessment but rather with the size of the tax. The board's jurisdiction is limited to only the proportionality of the assessment and/or the Taxpayers' inability to pay. The Taxpayers' arguments did not carry their burden on either issue.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Chester F. and Nancy M. Orban, Taxpayers; and Chairman, Selectmen of Sandown.

Date: July 22, 1996

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Valerie B. Lanigan, Clerk

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