

Daniel J. Cameron

v.

Town of Barnstead

Docket No.: 15844-94PV and 16580-95PV

PROPOSED DECISION

The "Taxpayer" owns a single-family home (the Property) assessed by the "Town" at \$72,300. The Taxpayer has filed the following appeals for tax years 1994 and 1995:

- 1) an appeal of the Town's denial of the Taxpayer's RSA 72:38-a application for a disability lien; and
- 2) an RSA 76:16-a appeal for a tax abatement based on poverty and inability to pay.

Pursuant to TAX 201.21, the board consolidates the 1994 and 1995 appeals.

The Taxpayer has the burden of proof on both bases of appeal. See RSA 76:16-a; TAX 203.09 (a). For the reasons stated below, the board grants the appeals.

The Taxpayer argued:

- (1) he is a 48-year old resident with a wife and three children at home, and

he has been receiving Social Security Income disability (SSI) since October 1991 when he severely injured his leg in a forklift accident;

(2) in 1992, he offered to work for the Town, and after having a physical, the Town determined he would be a liability and refused him employment;

(3) the total family income (SSI, AFDC, and food stamps) is below the federal poverty guidelines, and his expenses exceed this income;

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(4) there is no other public assistance available;

(5) the Town denied his application for disability lien because his Property is mortgaged;

(6) CFX Mortgage (CFX) paid the taxes, and the mortgage payment was increased to \$930 per month (reduced later to approximately \$800);

(7) he is requesting a partial lien and a partial abatement and proposes to pay the Town \$100 per month (requiring the Town to refund the difference to CFX); and

(8) CFX consents to a lien.

The Town argued:

(1) the issue is whether the Taxpayer has carried his burden of demonstrating to the selectmen that there was undue hardship;

(2) the Taxpayer did not show that loss of the home was imminent nor did he look for alternate housing;

(3) the Town was not satisfied with the Taxpayer's and his wife's attempts to find work; and

(4) if a lien were placed on the Property, there would be no protection for the Town should the Property be taken by CFX.

At the hearing, the Town renewed its dismissal motion of the

RSA 72:38-a appeal. The Town had filed a dismissal motion in the 1994 appeal, which the board denied February 29, 1996.

BOARD'S RULINGS

Based on the record, the board finds the Taxpayer is qualified for relief based on poverty and inability to pay. The specific relief is enumerated below.

Facts

The Taxpayer is 48 years old. Several years ago, he was injured (lower back) in a work-related accident, receiving a "large settlement." Vocational Assessment, page 2, Municipality Exhibit A. In 1990, he was injured (ankle and lower back) when he slipped into a hole in a sidewalk, receiving a \$22,000

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settlement. The Taxpayer applied for SSI, and in 1993 was granted SSI (based on the above injuries) retroactive to 1991. The Taxpayer also suffers from dyslexia and a mild case of diabetes. He has been virtually unemployed for several years.

The Taxpayer is married and has three children (ages 6 - 11) living at home with him. His wife, who lacks a high school diploma, stays home to care for the children.

The Taxpayer has no significant assets other than the Property. The Property was assessed by the Town at \$72,300, which equates to a \$78,600 equalized value ($\$72,300 \div .92$ equalization ratio). The Property is subject to two mortgages: 1) a mortgage to CFX that has a principle balance of \$33,700 with an additional \$3,600 principle amount for taxes advanced by CFX; and

2) a \$15,000 - \$17,000 mortgage to USDA Rural Development (USDA)¹ (funds used to repair the Property's septic system). The principle of the USDA mortgage is reduced based on how long the Taxpayer owns the Property. Thus, as of 1994, the Taxpayer had approximately \$26,300 to \$36,300 of equity in the Property.

\$78,600	Value	\$78,600
- \$33,700	CFX	- \$33,700
- \$ 3,600	CFX taxes	- \$ 3,600
<u>- \$15,000</u>	USDA	<u>- \$ 5,000</u>
\$26,300		\$36,300

The Taxpayer submitted financial affidavits dated January 9, 1995, and July 20, 1995. These affidavits indicated as follows.

Income

SSI for Taxpayer	\$ 460/month
AFDC for children	<u>\$ 615/month</u>
Total	\$1,075/month

Expenses

\$1,200 - \$1,500 without consideration of real estate taxes
 \$1,415 - \$1,715 with real estate taxes

The Taxpayer's expenses, even without consideration of the real estate taxes, exceed the Taxpayer's income. The above expenses reflect the monthly mortgage payment required by the mortgage. However, because the Taxpayer did not pay the 1994 or 1995 taxes, CFX advanced the taxes and increased the

¹ Formerly the Farmer's Home Administration. The board was told the outstanding principle would reduce over time to \$5,000.

Taxpayer's monthly mortgage payment from \$380 per month (principle and interest \$340 plus \$40 home insurance) to \$937 per month. As of the hearing date, the bank had recently reduced the monthly payment to approximately \$800.

At the hearing, the Taxpayer proposed the following remedy orders:

1) order the Town to pay CFX for the property-tax advances for 1994 and 1995, which would lower the Taxpayer's monthly mortgage payment;

2) order the Town to partially abate the 1994 and 1995 taxes, abating all taxes in excess of \$1,200 per year;

3) order the Taxpayer to pay the Town \$100 a month for 24 months for the 1994 and 1995 unabated taxes;

4) order that a partial lien be placed on the Property to cover the unabated taxes; and

5) order the Taxpayer to make escrow payments to the CFX to ensure that taxes for future years are paid to CFX on a monthly basis.

Because of the Taxpayer's financial situation, he applied for a poverty abatement and an RSA 72:38-a lien on November 24, 1994. The Town, at the April 18, 1995 selectmen's meeting, denied the Taxpayer's application for a disability lien. The Town's decision was confirmed in a May 10, 1995 letter, and the letter stated:

After due consideration, the Board of Selectmen found that granting the tax lien would not be in the best interest of the Town as the existence of the mortgage on the property would leave the Town in a secondary position that would, in effect, leave the Town with an indebtedness that is not secured by a viable interest in the property[.]

The Town apparently did not respond to the Taxpayer's request for a poverty abatement. The Town, at some point, denied the Taxpayer's 1995 abatement/lien application, but the board was not given any written confirmation of the Town's denial.

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The Taxpayer then filed with this board a 1994 appeal and a 1995 appeal, asserting for each year two bases for granting the appeal: 1) poverty abatement (RSA 76:16-a); and 2) disability lien (RSA 73:38-a).

Preliminary Issues

At the hearing, the Town renewed its motion to dismiss the Taxpayer's RSA 72:38-a appeal, asserting the board had no statutory jurisdiction to hear such an appeal. The board, in the 1994 appeal had already denied the Town's dismissal motion. February 29, 1996 order. The board treats the Town's renewed dismissal motion as pertaining only to tax year 1995. The board denies the dismissal motion for the reasons stated in the February 29, 1996 order in the 1994 appeal. If the Town wishes to again challenge the board's denial of the dismissal motions for the 1994 and the 1995 appeals, the Town may file a rehearing motion within 30 days of this decision.

The Town also argued that even if the board had jurisdiction to hear the Town's denial of the RSA 72:38-a lien, the board's scope of review was very limited because RSA 72:38-a gave the selectmen the discretion over granting or denying the lien. Therefore, the Town asserted the board could not perform a de novo review of the Taxpayer's RSA 72:38-a application. While the board disagrees with the Town's position concerning the board's scope of review, the board need not elaborate further because the board's decision below is based on RSA 76:16-a not RSA 72:38-a.

Discussion

The board finds the Taxpayer is entitled to the relief requested based on the Taxpayer's poverty and inability to pay.

The Taxpayer filed for an abatement based on poverty and inability to

pay. Such an abatement request is governed by the phrase "as justice requires." RSA 76:16-a; Ansara v. City of Nashua, 118 N.H. 879, 880 (1978).

To qualify for an abatement based on poverty and inability to pay, a taxpayer must show: 1) all of the taxpayer's income is spent on essentials of existence; and 2) if there is equity in the property, that it would be

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unreasonable to relocate, refinance or obtain other financial public assistance. Ansara, 118 N.H. at 881. An abatement based on poverty and inability to pay requires the board to exercise equitable judgment. Id. at 880. Based on the board's review of the evidence, the board finds the Taxpayer meets the Ansara tests.

The board finds the Taxpayer was spending all of his income on the essentials of existence. Nonetheless, the board has concerns with the Taxpayer's income and expenses. Specifically, the board has concerns about the completeness of the financial information that was provided and whether the Taxpayer performed a thorough review and analysis of his actual living expenses. Additionally, the board has concerns about whether the Taxpayer could have arranged his lifestyle and finances to pay at least part of the taxes. It does, however, appear that even with a more accurate expense sheet and with reducing certain expenses, the Taxpayer would still be unable to pay all of his expenses and all of the taxes.

The Taxpayer also submitted the 1994 federal property guidelines. Under these guidelines, the poverty level is \$17,280 or below. The Taxpayer's income was \$12,900. Additionally, the New Hampshire Division of Human Services establishes a basic maintenance needs allowance of \$30,108 for a family of five.

The Town raised questions about whether the Taxpayer, and his wife, could have earned additional income. This is a valid question, but on the whole, it appears the Taxpayer's and his wife's capacity to earn income is questionable. For example, in addition to his physical limitations, the 1992 vocational assessment lists several considerations that adversely affect the Taxpayer's probability of finding other work. The board encourages the Taxpayer to be more active in trying to find work if he is physically able. It is not the Town's job to support those who can support themselves.

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The board received limited information about the Taxpayer's wife. She did not appear at the hearing. The Taxpayer's wife stays home to care for the three children. We do, however, know that she had not graduated from high school.

In addition to questions about the employability of the Taxpayer and his wife, the board did not receive any information about whether such employment would reduce the SSI benefits or the AFDC benefits. It is the board's understanding that the Taxpayer's SSI payments are based on a finding that the Taxpayer was disabled. The Social Security Administration January 28, 1993 decision specifically stated "[d]isability is defined in the Social Security Act as the inability to engage in any substantial gainful activity by reason of a physical or mental impairment which is anticipated to last for a continuous period of not fewer than 12 months or result in death." Social Security Decision at 1 (sic), Taxpayer Exhibit 1. The administrative law judge found that the Taxpayer met this definition of "disabled," and the board

received no information that as of April 1994 and 1995, the disability had been removed. It would appear that the Taxpayer would no longer qualify as "disabled" if he returned to work. Thus, any income he might earn from work would come with some or total reduction in SSI.

Based on the above and the only evidence submitted to the board, the board finds the Taxpayer has shown that all of his, and his wife's, income is being spent on life's essentials. We do not find there was sufficient evidence to show the Taxpayer and his wife could earn substantially more money, especially given the questions of how working would affect the SSI and AFDC payments. Again, it is not the board's intention to encourage the Taxpayer to continue to rely upon the Town. Rather, we have made our decision on the evidence presented.

Turning to the second test in Ansara, the board finds it would be unreasonable for the Taxpayer to relocate or refinance, and there was no showing that the Taxpayer could receive other public assistance.

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As stated earlier, the Taxpayer's home was worth approximately \$78,600 but was subject to two mortgages totaling \$52,300, leaving at least \$26,330 in equity. Because the Taxpayer's family income was derived from public assistance, the board finds it would not be reasonable to expect the Taxpayer to obtain refinancing.

Concerning relocation, the Taxpayer, his wife, and his children constitute a family of five. Presently, their total monthly housing cost, excluding utilities, was \$630 (CFX mortgage \$340, USDA mortgage \$30, association fees \$10, insurance \$40, and property taxes \$210). It certainly

could not be argued that \$630 is an excessive amount of money for housing for five.

There also was no information that was presented to show that the Taxpayer had an opportunity for receiving other public assistance.

Based on the above, the board finds the Taxpayer has proven it would be unreasonable for him and his family to relocate, refinance or otherwise obtain additional public assistance.

Having found the Taxpayer qualifies for a poverty abatement, the board is authorized to apply equitable principles in crafting a remedy. Therefore, the board makes the following orders.

1) The Town shall refund the Taxpayer's 1994 and 1995 taxes. This check, however, shall be made payable to CFX on behalf of the Taxpayer with the specific instructions that CFX use this check to pay back the taxes that were advanced by CFX. This will enable the Taxpayer to fulfill the remainder of this order.

2) The Town shall grant a poverty abatement for all taxes in excess of \$1,200 for 1994 and \$1,200 for 1995.

3) The Taxpayer shall draft a payment and lien agreement and seek the Town's approval of this document. The Taxpayer shall then execute the agreement with the Town whereby: a) the Town shall place a lien on the Property for \$1,200 for 1994 taxes and \$1,200 for 1995 taxes; b) beginning 30

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days after execution of that lien agreement, the Taxpayer shall pay \$100 per month to the Town for the 1994 and 1995 unabated taxes; and c) this lien agreement shall be recorded at the registry of deeds, shall include the

accrual of 5% interest, and shall include a provision that the entire lien plus interest shall be repaid upon any transfer of the Property, including any transfer pursuant to death. The lien agreement may contain such other terms as agreed to by the parties. Within 30 days of the clerk's date below, the parties shall submit the proposed lien agreement to the board.

4) The Taxpayer shall make monthly escrow payments to CFX so that the anticipated taxes on the Property can be paid in a timely manner in the future.

Findings of Fact and Rulings of Law

The parties' requests are attached.

In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny; or
- d. the request was irrelevant.

Taxpayer Findings of Fact

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.

6. Granted.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.
13. Granted.
14. Neither granted nor denied. The CFX letter was dated May 9, 1994. Query whether the letter consented to tax year 1994.
15. Granted.
16. Granted.
17. Granted.
18. Neither granted nor denied.
19. Granted.
20. Granted.
21. Granted as to mortgage payment. Neither granted nor denied as to remainder.

Taxpayer Rulings of Law

1. Granted.
2. Neither granted nor denied.
3. Granted.
4. Granted.
5. Granted.
6. Granted.

Town Findings of Fact/Rulings of Law

1. Granted.
2. Denied.
3. Denied.
4. Denied.

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5. Granted, except settlement was \$22,000 less one-third for attorney's fees.
- 6a. Granted, but Social Security Administration ruled he was "disabled" under SSI.
- 6b. Granted.
- 6c. Granted.
7. Neither granted nor denied. Current mortgages: CFX Bank \$33,700 plus \$3,600 tax advance; and \$15,000 to \$17,000 USDA mortgage that will over time be reduced to \$5,000. Additionally, issue is not purchase price but 1994 and 1995 value. 1994 approximate value \$78,600 equates to 68% liens.
8. Denied. Taxpayer is a diabetic with specific food requirements. See Vocational Assessment, Municipality Exhibit A, confirming diabetes controlled by diet.
9. Neither granted nor denied.
10. Granted.
11. Granted, except board notes indicate son was 21 years old not 11 as stated in request.
12. Neither granted nor denied.
- 13a. Granted.
- 13b. Granted. The board agrees certain expenses should be reduced. The board

understands the Taxpayer will reduce some expenses to pay taxes back to Town.

14. Granted.

15. Granted, except no evidence regarding \$850.

16. Granted.

17. Granted.

18. Neither granted nor denied.

19. Neither granted nor denied.

20. Granted.

21. Granted, except question regarding when USDA mortgage is reduced to \$5,000. Again, issue is 1994-1995 value not 1989 value.

22. Denied.

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23. Neither granted nor denied.

24. Denied.

Rehearing and Appeals

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 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. 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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 John E. Tobin, Jr., Esq., Counsel for Daniel J. Cameron, Taxpayer; Robert McCarthy, USDA Rural Development; Daniel D. Crean, Esq., Counsel for the Town of Barnstead; and Chairman, Selectmen of Barnstead.

Date: February 12, 1997

Valerie B. Lanigan, Clerk

Daniel J. Cameron

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ORDER

These appeals raise somewhat complex issues that require the board to craft a unique remedy. The board has deliberated and has attached to this order a proposed decision. The board's proposed remedy would place a lien on the "Taxpayer's" property. That property is already subject to mortgages held by CFX Mortgage Co. (CFX) and the USDA Rural Development (USDA)². Therefore, the board has decided to notify CFX Bank and USDA to provide them with an opportunity to object to the board's order. This notification may not be required because the board-ordered lien would be inferior to the two mortgages. Nonetheless, the board decided to notify the mortgagees in case any due process issues are present.

The board orders the parties and the mortgagees to review the attached proposed decision and to file any memorandum deemed appropriate concerning the proposed decision. Fashioning a remedy in this case was somewhat difficult.

² Formerly the Farmer's Home Administration.

Therefore, the parties are especially asked to review the proposed remedy and to inform the board of any alternative remedies that may be more equitable or more workable. For example, one of the issues the board wrestled with was whether the lien should be similar to an RSA 72:38-a lien or similar to a normal tax lien. The board considered ordering the "Town" to issue new tax

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bills coincidental with the lien agreement. This might allow the Town to rely on RSA Chapter 80 if the Taxpayer fails to pay under the agreement. However, such a lien would be superior to the mortgage, creating questions about such an approach.

Memoranda shall be filed within 30 days of the clerk's date below and shall be copied to each of the parties and the mortgagees.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

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I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John E. Tobin, Jr., Esq., Counsel for Daniel J. Cameron, Taxpayer; Ellin M. Morin, CFX Bank; USDA Rural Development; Robert McCarthy, USDA Rural Development; Daniel D. Crean, Esq., Counsel for the Town of Barnstead; and Chairman, Selectmen of Barnstead.

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Daniel J. Cameron

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FINAL DECISION

INTRODUCTION

This decision is issued after the parties reviewed and filed comments to the board's February 12, 1997 proposed decision.

The board begins by admitting its hesitation at the ultimate result here. We have lingering questions about whether the "Taxpayer" and his family have done all they can do to take responsibility for their taxes.

Nonetheless, we do find the Taxpayer carried his burden, ever so slightly, that relief was required to help the Taxpayer get over this tax problem. The Taxpayer should, however, realize the board will be reluctant to provide additional relief in the future absent substantially different facts.

ARGUMENTS

The Taxpayer owns a single-family home (the Property) assessed by the "Town" at \$72,300. The Taxpayer has filed the following appeals for tax years

1994 and 1995:

- 1) an appeal of the Town's denial of the Taxpayer's RSA 72:38-a application for a disability lien; and
- 2) an RSA 76:16-a appeal for a tax abatement based on poverty and inability to pay.

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The Taxpayer has the burden of proof on both bases of appeal. See RSA 76:16-a; TAX 203.09 (a). For the reasons stated below, the board grants the appeals.

The Taxpayer argued:

- (1) he is a 48-year old resident with a wife and three children at home, and he has been receiving Social Security Income disability (SSI) since October 1991 when he severely injured his leg in a forklift accident;
- (2) in 1992, he offered to work for the Town, and after having a physical, the Town determined he would be a liability and refused him employment;
- (3) the total family income (SSI, AFDC, and food stamps) is below the federal poverty guidelines, and his expenses exceed this income;
- (4) there is no other public assistance available;
- (5) the Town denied his application for disability lien because his Property is mortgaged;
- (6) CFX Mortgage (CFX) paid the taxes, and the mortgage payment was increased to \$930 per month (reduced later to approximately \$800);
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pay the Town \$100 per month (requiring the Town to refund the difference to CFX); and

(8) CFX consents to a lien.

The Town argued:

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BOARD'S RULINGS

Based on the record, the board finds the Taxpayer is qualified for relief based on poverty and inability to pay. The specific relief is enumerated below.

Facts

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settlement. The Taxpayer applied for SSI, and in 1993 was granted SSI (based on the above injuries) retroactive to 1991. The Taxpayer also suffers from dyslexia and a mild case of diabetes. He has been virtually unemployed for several years.

The Taxpayer is married and has three children (ages 6 - 11) living at home with him. His wife, who lacks a high school diploma, stays home to care for the children.

The Taxpayer has no significant assets other than the Property. The Property was assessed by the Town at \$72,300, which equates to a \$78,600 equalized value ($\$72,300 \div .92$ equalization ratio). The Property is subject to two mortgages: 1) a mortgage to CFX that has a principle balance of \$33,700 with an additional \$3,600 principle amount for taxes advanced by CFX; and 2) a \$15,000 - \$17,000 mortgage to USDA Rural Development (USDA)³ (funds used to repair the Property's septic system). The principle of the USDA mortgage

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The Taxpayer asserted he stopped escrowing the taxes because of a letter received from the Town welfare officer that stated the Town would lien the Property rather than requiring payment. Municipality exhibit A, selectmen's minutes for August 8, 1995.

At the hearing, the Taxpayer proposed the following remedy orders:

- 1) order the Town to pay CFX for the property-tax advances for 1994 and 1995, which would lower the Taxpayer's monthly mortgage payment;
- 2) order the Town to partially abate the 1994 and 1995 taxes, abating all taxes in excess of \$1,200 per year;

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- 3) order the Taxpayer to pay the Town \$100 a month for 24 months for the 1994 and 1995 unabated taxes;

4) order that a partial lien be placed on the Property to cover the unabated taxes; and

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The Town also argued that even if the board had jurisdiction to hear the Town's denial of the RSA 72:38-a lien, the board's scope of review was very limited because RSA 72:38-a gave the selectmen the discretion over granting or denying the lien. Therefore, the Town asserted the board could not perform a de novo review of the Taxpayer's RSA 72:38-a application. While the board disagrees with the Town's position concerning the board's scope of review, the board need not elaborate further because the board's decision below is based on RSA 76:16-a not RSA 72:38-a.

Discussion

The board finds the Taxpayer is entitled to the relief requested based on the Taxpayer's poverty and inability to pay.

The Taxpayer filed for an abatement based on poverty and inability to pay. Such an abatement request is governed by the phrase "as justice requires." RSA 76:16-a; Ansara v. City of Nashua, 118 N.H. 879, 880 (1978). To qualify for an abatement based on poverty and inability to pay, a taxpayer must show: 1) all of the taxpayer's income is spent on essentials of existence; and 2) if there is equity in the property, that it would be unreasonable to relocate, refinance or obtain other financial public assistance. Ansara, 118 N.H. at 881. An abatement based on poverty and inability to pay requires the board to exercise equitable judgment. Id. at

880. Based on the board's review of the evidence, the board finds the Taxpayer meets the Ansara tests.

The board finds the Taxpayer was spending all of his income on the essentials of existence. Nonetheless, the board has concerns with the Taxpayer's income and expenses. Specifically, the board has concerns about the completeness of the financial information that was provided and whether the Taxpayer performed a thorough review and analysis of his actual living

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expenses. Additionally, the board has concerns about whether the Taxpayer could have arranged his lifestyle and finances to pay at least part of the taxes. It does, however, appear that even with a more accurate expense sheet and with reducing certain expenses, the Taxpayer would still be unable to pay all of his expenses and all of the taxes.

The Taxpayer also submitted the 1994 federal property guidelines. Under these guidelines, the poverty level is \$17,280 or below. The Taxpayer's income was \$12,900. Additionally, the New Hampshire Division of Human Services establishes a basic maintenance needs allowance of \$30,108 for a family of five.

The Town raised questions about whether the Taxpayer, and his wife, could have earned additional income. This is a valid question, but on the whole, it appears the Taxpayer's and his wife's capacity to earn income is questionable. For example, in addition to his physical limitations, the 1992 vocational assessment lists several considerations that adversely affect the Taxpayer's probability of finding other work. The board encourages the Taxpayer to be more active in trying to find work if he is physically able.

It is not the Town's job to support those who can support themselves.

The board received limited information about the Taxpayer's wife. She did not appear at the hearing. The Taxpayer's wife stays home to care for the three children. We do, however, know that she had not graduated from high school.

In addition to questions about the employability of the Taxpayer and his wife, the board did not receive any information about whether such employment would reduce the SSI benefits or the AFDC benefits. It is the board's understanding that the Taxpayer's SSI payments are based on a finding that the Taxpayer was disabled. The Social Security Administration January 28, 1993 decision specifically stated "[d]isability is defined in the Social Security Act as the inability to engage in any substantial gainful activity by reason of a physical or mental impairment which is anticipated to last for a

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continuous period of not fewer than 12 months or result in death." Social Security Decision at 1 (sic), Taxpayer Exhibit 1. The administrative law judge found that the Taxpayer met this definition of "disabled," and the board received no information that as of April 1994 and 1995, the disability had been removed. It would appear that the Taxpayer would no longer qualify as "disabled" if he returned to work. Thus, any income he might earn from work would come with some or total reduction in SSI.

Based on the above and the only evidence submitted to the board, the board finds the Taxpayer has shown that all of his, and his wife's, income is being spent on life's essentials. We do not find there was sufficient evidence to show the Taxpayer and his wife could earn substantially more money, especially given the questions of how working would affect the SSI and

AFDC payments. Again, it is not the board's intention to encourage the Taxpayer to continue to rely upon the Town. Rather, we have made our decision on the evidence presented.

Turning to the second test in Ansara, the board finds it would be unreasonable for the Taxpayer to relocate or refinance, and there was no showing that the Taxpayer could receive other public assistance.

As stated earlier, the Taxpayer's home was worth approximately \$78,600 but was subject to two mortgages totaling \$52,300, leaving at least \$26,330 in equity. Because the Taxpayer's family income was derived from public assistance, the board finds it would not be reasonable to expect the Taxpayer to obtain refinancing.

Concerning relocation, the Taxpayer, his wife, and his children constitute a family of five. Presently, their total monthly housing cost, excluding utilities, was \$630 (CFX mortgage \$340, USDA mortgage \$30, association fees \$10, insurance \$40, and property taxes \$210). It certainly could not be argued that \$630 is an excessive amount of money for housing for five.

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There also was no information that was presented to show that the Taxpayer had an opportunity for receiving other public assistance.

Based on the above, the board finds the Taxpayer has proven it would be unreasonable for him and his family to relocate, refinance or otherwise obtain additional public assistance.

Having found the Taxpayer qualifies for a poverty abatement, the board is authorized to apply equitable principles in crafting a remedy. Therefore,

the board makes the following orders.

1) The Town shall refund the Taxpayer's 1994 and 1995 taxes. This check, however, shall be made payable to CFX on behalf of the Taxpayer with the specific instructions that CFX use this check to pay back the taxes that were advanced by CFX. This will enable the Taxpayer to fulfill the remainder of this order.

2) The Town shall grant a poverty abatement for all taxes in excess of \$1,200 for 1994 and \$1,200 for 1995.

3) The Taxpayer shall draft a payment and lien agreement and obtain the Town's approval of this document. The Taxpayer shall then execute the agreement with the Town whereby: a) the Town shall place a lien on the Property for \$1,200 for 1994 taxes and \$1,200 for 1995 taxes; b) beginning 30 days after execution of that lien agreement, the Taxpayer shall pay \$100 per month to the Town for the 1994 and 1995 unabated taxes; and c) this lien agreement shall be recorded at the registry of deeds, shall include the accrual of 5% interest, and shall include a provision that the entire lien plus interest shall be repaid upon any transfer of the Property, including any transfer pursuant to death. The lien agreement may contain such other terms as agreed to by the parties. Within 30 days of the clerk's date below, the parties shall submit the executed lien agreement to the board.

4) The Taxpayer shall make monthly escrow payments to CFX so that the anticipated taxes on the Property can be paid in a timely manner in the future.

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Final Notes

In response to the Town's comments to the proposed decision, the board

makes the following notes.

If the board had concluded it had no authority under RSA 76:16-a to order a lien, we would have simply abated the lien amount based on poverty and inability to pay. We see the lien as providing the Town with some possibility of future payment.

The ordered lien is subordinate to the mortgage because the board does not have the authority to affect CFX's rights under its mortgage. The board's authority extends only to the Taxpayer and the Town. Additionally, while the collection statute, RSA chapter 80, provides municipalities with a lien superior to a prior-recorded mortgage, liens under RSA 72:38-a are subordinate to prior-recorded mortgages.

FINDINGS OF FACT AND RULINGS OF LAW

The parties' requests are attached.

In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny; or
- d. the request was irrelevant.

Taxpayer Findings of Fact

1. Granted.
2. Granted.
3. Granted.

4. Granted.

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5. Granted.

6. Granted.

7. Granted.

8. Granted.

9. Granted.

10. Granted.

11. Granted.

12. Granted.

13. Granted.

14. Neither granted nor denied. The CFX letter was dated May 9, 1994. Query whether the letter consented to tax year 1994.

15. Granted.

16. Granted.

17. Granted.

18. Neither granted nor denied.

19. Granted.

20. Granted.

21. Granted as to mortgage payment. Neither granted nor denied as to remainder.

Taxpayer Rulings of Law

1. Granted.

2. Neither granted nor denied.

3. Granted.

4. Granted.

5. Granted.

6. Granted.

Town Findings of Fact/Rulings of Law

1. Granted.

2. Denied.

3. Denied.

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4. Denied.

5. Granted, except settlement was \$22,000 less one-third for attorney's fees.

6a. Granted, but Social Security Administration ruled he was "disabled" under SSI.

6b. Granted.

6c. Granted.

7. Neither granted nor denied. Current mortgages: CFX Bank \$33,700 plus \$3,600 tax advance; and \$15,000 to \$17,000 USDA mortgage that will over time be reduced to \$5,000. Additionally, issue is not purchase price but 1994 and 1995 value. 1994 approximate value \$78,600 equates to 68% liens.

8. Denied. Taxpayer is a diabetic with specific food requirements. See Vocational Assessment, Municipality Exhibit A, confirming diabetes controlled by diet.

9. Neither granted nor denied.

10. Granted.

11. Granted, except board notes indicate son was 21 years old not 11 as stated in request.

12. Neither granted nor denied.

13a. Granted.

13b. Granted. The board agrees certain expenses should be reduced. The board understands the Taxpayer will reduce some expenses to pay taxes back to Town.

14. Granted.

15. Granted, except no evidence regarding \$850.

16. Granted.

17. Granted.

18. Neither granted nor denied.

19. Neither granted nor denied.

20. Granted.

21. Granted, except question regarding when USDA mortgage is reduced to \$5,000. Again, issue is 1994-1995 value not 1989 value.

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22. Denied.

23. Neither granted nor denied.

24. Denied.

REHEARING AND APPEALS

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 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. 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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 John E. Tobin, Jr., Esq., Counsel for Daniel J. Cameron, Taxpayer; Robert McCarthy, USDA Rural Development; Daniel D. Crean, Esq., Counsel for the Town of Barnstead; and Chairman, Selectmen of Barnstead.

Date: May 30, 1997

Valerie B. Lanigan, Clerk

Daniel J. Cameron

v.

Town of Barnstead

Docket No.: 15844-94PV and 16580-95PV

FINAL DECISION

INTRODUCTION

This decision is issued after the parties reviewed and filed comments to the board's February 12, 1997 proposed decision.

The board begins by admitting its hesitation at the ultimate result here. We have lingering questions about whether the "Taxpayer" and his family have done all they can do to take responsibility for their taxes.

Nonetheless, we do find the Taxpayer carried his burden, ever so slightly, that relief was required to help the Taxpayer get over this tax problem. The Taxpayer should, however, realize the board will be reluctant to provide additional relief in the future absent substantially different facts.

ARGUMENTS

The Taxpayer owns a single-family home (the Property) assessed by the "Town" at \$72,300. The Taxpayer has filed the following appeals for tax years

1994 and 1995:

- 1) an appeal of the Town's denial of the Taxpayer's RSA 72:38-a application for a disability lien; and
- 2) an RSA 76:16-a appeal for a tax abatement based on poverty and inability to pay.

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Pursuant to TAX 201.21, the board consolidates the 1994 and 1995 appeals.

The Taxpayer has the burden of proof on both bases of appeal. See RSA 76:16-a; TAX 203.09 (a). For the reasons stated below, the board grants the appeals.

The Taxpayer argued:

- (1) he is a 48-year old resident with a wife and three children at home, and he has been receiving Social Security Income disability (SSI) since October 1991 when he severely injured his leg in a forklift accident;
- (2) in 1992, he offered to work for the Town, and after having a physical, the Town determined he would be a liability and refused him employment;
- (3) the total family income (SSI, AFDC, and food stamps) is below the federal poverty guidelines, and his expenses exceed this income;
- (4) there is no other public assistance available;
- (5) the Town denied his application for disability lien because his Property is mortgaged;
- (6) CFX Mortgage (CFX) paid the taxes, and the mortgage payment was increased to \$930 per month (reduced later to approximately \$800);
- (7) he is requesting a partial lien and a partial abatement and proposes to

pay the Town \$100 per month (requiring the Town to refund the difference to CFX); and

(8) CFX consents to a lien.

The Town argued:

(1) the issue is whether the Taxpayer has carried his burden of demonstrating to the selectmen that there was undue hardship;

(2) the Taxpayer did not show that loss of the home was imminent nor did he look for alternate housing;

(3) the Town was not satisfied with the Taxpayer's and his wife's attempts to find work; and

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(4) if a lien were placed on the Property, there would be no protection for the Town should the Property be taken by CFX.

At the hearing, the Town renewed its dismissal motion of the RSA 72:38-a appeal. The Town had filed a dismissal motion in the 1994 appeal, which the board denied February 29, 1996.

BOARD'S RULINGS

Based on the record, the board finds the Taxpayer is qualified for relief based on poverty and inability to pay. The specific relief is enumerated below.

Facts

The Taxpayer is 48 years old. Several years ago, he was injured (lower back) in a work-related accident, receiving a "large settlement." Vocational Assessment, page 2, Municipality Exhibit A. In 1990, he was injured (ankle and lower back) when he slipped into a hole in a sidewalk, receiving a \$22,000

settlement. The Taxpayer applied for SSI, and in 1993 was granted SSI (based on the above injuries) retroactive to 1991. The Taxpayer also suffers from dyslexia and a mild case of diabetes. He has been virtually unemployed for several years.

The Taxpayer is married and has three children (ages 6 - 11) living at home with him. His wife, who lacks a high school diploma, stays home to care for the children.

The Taxpayer has no significant assets other than the Property. The Property was assessed by the Town at \$72,300, which equates to a \$78,600 equalized value ($\$72,300 \div .92$ equalization ratio). The Property is subject to two mortgages: 1) a mortgage to CFX that has a principle balance of \$33,700 with an additional \$3,600 principle amount for taxes advanced by CFX; and 2) a \$15,000 - \$17,000 mortgage to USDA Rural Development (USDA)⁴ (funds used to repair the Property's septic system). The principle of the USDA mortgage

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is reduced based on how long the Taxpayer owns the Property. Thus, as of 1994, the Taxpayer had approximately \$26,300 to \$36,300 of equity in the Property.

\$78,600	Value	\$78,600
- \$33,700	CFX	- \$33,700
- \$ 3,600	CFX taxes	- \$ 3,600
<u>- \$15,000</u>	USDA	<u>- \$ 5,000</u>
\$26,300		\$36,300

The Taxpayer submitted financial affidavits dated January 9, 1995, and July 20, 1995. These affidavits indicated as follows.

⁴ Formerly the Farmer's Home Administration. The board was told the outstanding principle would reduce over time to \$5,000.

Income

SSI for Taxpayer	\$ 460/month
AFDC for children	<u>\$ 615/month</u>
Total	\$1,075/month

Expenses

\$1,200 - \$1,500 without consideration of real estate taxes
\$1,415 - \$1,715 with real estate taxes

The Taxpayer's expenses, even without consideration of the real estate taxes, exceed the Taxpayer's income. The above expenses reflect the monthly mortgage payment required by the mortgage. However, because the Taxpayer did not pay the 1994 or 1995 taxes, CFX advanced the taxes and increased the Taxpayer's monthly mortgage payment from \$380 per month (principle and interest \$340 plus \$40 home insurance) to \$937 per month. As of the hearing date, the bank had recently reduced the monthly payment to approximately \$800.

The Taxpayer asserted he stopped escrowing the taxes because of a letter received from the Town welfare officer that stated the Town would lien the Property rather than requiring payment. Municipality exhibit A, selectmen's minutes for August 8, 1995.

At the hearing, the Taxpayer proposed the following remedy orders:

- 1) order the Town to pay CFX for the property-tax advances for 1994 and 1995, which would lower the Taxpayer's monthly mortgage payment;
- 2) order the Town to partially abate the 1994 and 1995 taxes, abating all taxes in excess of \$1,200 per year;

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- 3) order the Taxpayer to pay the Town \$100 a month for 24 months for the 1994 and 1995 unabated taxes;

4) order that a partial lien be placed on the Property to cover the unabated taxes; and

5) order the Taxpayer to make escrow payments to the CFX to ensure that taxes for future years are paid to CFX on a monthly basis.

Because of the Taxpayer's financial situation, he applied for a poverty abatement and an RSA 72:38-a lien on November 24, 1994. The Town, at the April 18, 1995 selectmen's meeting, denied the Taxpayer's application for a disability lien. The Town's decision was confirmed in a May 10, 1995 letter, and the letter stated:

After due consideration, the Board of Selectmen found that granting the tax lien would not be in the best interest of the Town as the existence of the mortgage on the property would leave the Town in a secondary position that would, in effect, leave the Town with an indebtedness that is not secured by a viable interest in the property[.]

The Town apparently did not respond to the Taxpayer's request for a poverty abatement. The Town, at some point, denied the Taxpayer's 1995 abatement/lien application, but the board was not given any written confirmation of the Town's denial.

The Taxpayer then filed with this board a 1994 appeal and a 1995 appeal, asserting for each year two bases for granting the appeal: 1) poverty abatement (RSA 76:16-a); and 2) disability lien (RSA 73:38-a).

Preliminary Issues

At the hearing, the Town renewed its motion to dismiss the Taxpayer's RSA 72:38-a appeal, asserting the board had no statutory jurisdiction to hear such an appeal. The board, in the 1994 appeal had already denied the Town's dismissal motion. February 29, 1996 order. The board treats the Town's renewed dismissal motion as pertaining only to tax year 1995. The board denies the dismissal motion for the reasons stated in the February 29, 1996

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order in the 1994 appeal. If the Town wishes to again challenge the board's denial of the dismissal motions for the 1994 and the 1995 appeals, the Town may file a rehearing motion within 30 days of this decision.

The Town also argued that even if the board had jurisdiction to hear the Town's denial of the RSA 72:38-a lien, the board's scope of review was very limited because RSA 72:38-a gave the selectmen the discretion over granting or denying the lien. Therefore, the Town asserted the board could not perform a de novo review of the Taxpayer's RSA 72:38-a application. While the board disagrees with the Town's position concerning the board's scope of review, the board need not elaborate further because the board's decision below is based on RSA 76:16-a not RSA 72:38-a.

Discussion

The board finds the Taxpayer is entitled to the relief requested based on the Taxpayer's poverty and inability to pay.

The Taxpayer filed for an abatement based on poverty and inability to pay. Such an abatement request is governed by the phrase "as justice requires." RSA 76:16-a; Ansara v. City of Nashua, 118 N.H. 879, 880 (1978). To qualify for an abatement based on poverty and inability to pay, a taxpayer must show: 1) all of the taxpayer's income is spent on essentials of existence; and 2) if there is equity in the property, that it would be unreasonable to relocate, refinance or obtain other financial public assistance. Ansara, 118 N.H. at 881. An abatement based on poverty and inability to pay requires the board to exercise equitable judgment. Id. at

880. Based on the board's review of the evidence, the board finds the Taxpayer meets the Ansara tests.

The board finds the Taxpayer was spending all of his income on the essentials of existence. Nonetheless, the board has concerns with the Taxpayer's income and expenses. Specifically, the board has concerns about the completeness of the financial information that was provided and whether the Taxpayer performed a thorough review and analysis of his actual living

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The Taxpayer also submitted the 1994 federal property guidelines. Under these guidelines, the poverty level is \$17,280 or below. The Taxpayer's income was \$12,900. Additionally, the New Hampshire Division of Human Services establishes a basic maintenance needs allowance of \$30,108 for a family of five.

The Town raised questions about whether the Taxpayer, and his wife, could have earned additional income. This is a valid question, but on the whole, it appears the Taxpayer's and his wife's capacity to earn income is questionable. For example, in addition to his physical limitations, the 1992 vocational assessment lists several considerations that adversely affect the Taxpayer's probability of finding other work. The board encourages the Taxpayer to be more active in trying to find work if he is physically able.

It is not the Town's job to support those who can support themselves.

The board received limited information about the Taxpayer's wife. She did not appear at the hearing. The Taxpayer's wife stays home to care for the three children. We do, however, know that she had not graduated from high school.

In addition to questions about the employability of the Taxpayer and his wife, the board did not receive any information about whether such employment would reduce the SSI benefits or the AFDC benefits. It is the board's understanding that the Taxpayer's SSI payments are based on a finding that the Taxpayer was disabled. The Social Security Administration January 28, 1993 decision specifically stated "[d]isability is defined in the Social Security Act as the inability to engage in any substantial gainful activity by reason of a physical or mental impairment which is anticipated to last for a

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Based on the above and the only evidence submitted to the board, the board finds the Taxpayer has shown that all of his, and his wife's, income is being spent on life's essentials. We do not find there was sufficient evidence to show the Taxpayer and his wife could earn substantially more money, especially given the questions of how working would affect the SSI and

AFDC payments. Again, it is not the board's intention to encourage the Taxpayer to continue to rely upon the Town. Rather, we have made our decision on the evidence presented.

Turning to the second test in Ansara, the board finds it would be unreasonable for the Taxpayer to relocate or refinance, and there was no showing that the Taxpayer could receive other public assistance.

As stated earlier, the Taxpayer's home was worth approximately \$78,600 but was subject to two mortgages totaling \$52,300, leaving at least \$26,330 in equity. Because the Taxpayer's family income was derived from public assistance, the board finds it would not be reasonable to expect the Taxpayer to obtain refinancing.

Concerning relocation, the Taxpayer, his wife, and his children constitute a family of five. Presently, their total monthly housing cost, excluding utilities, was \$630 (CFX mortgage \$340, USDA mortgage \$30, association fees \$10, insurance \$40, and property taxes \$210). It certainly could not be argued that \$630 is an excessive amount of money for housing for five.

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There also was no information that was presented to show that the Taxpayer had an opportunity for receiving other public assistance.

Based on the above, the board finds the Taxpayer has proven it would be unreasonable for him and his family to relocate, refinance or otherwise obtain additional public assistance.

Having found the Taxpayer qualifies for a poverty abatement, the board is authorized to apply equitable principles in crafting a remedy. Therefore,

the board makes the following orders.

1) The Town shall refund the Taxpayer's 1994 and 1995 taxes. This check, however, shall be made payable to CFX on behalf of the Taxpayer with the specific instructions that CFX use this check to pay back the taxes that were advanced by CFX. This will enable the Taxpayer to fulfill the remainder of this order.

2) The Town shall grant a poverty abatement for all taxes in excess of \$1,200 for 1994 and \$1,200 for 1995.

3) The Taxpayer shall draft a payment and lien agreement and obtain the Town's approval of this document. The Taxpayer shall then execute the agreement with the Town whereby: a) the Town shall place a lien on the Property for \$1,200 for 1994 taxes and \$1,200 for 1995 taxes; b) beginning 30 days after execution of that lien agreement, the Taxpayer shall pay \$100 per month to the Town for the 1994 and 1995 unabated taxes; and c) this lien agreement shall be recorded at the registry of deeds, shall include the accrual of 5% interest, and shall include a provision that the entire lien plus interest shall be repaid upon any transfer of the Property, including any transfer pursuant to death. The lien agreement may contain such other terms as agreed to by the parties. Within 30 days of the clerk's date below, the parties shall submit the executed lien agreement to the board.

4) The Taxpayer shall make monthly escrow payments to CFX so that the anticipated taxes on the Property can be paid in a timely manner in the future.

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Final Notes

In response to the Town's comments to the proposed decision, the board

makes the following notes.

If the board had concluded it had no authority under RSA 76:16-a to order a lien, we would have simply abated the lien amount based on poverty and inability to pay. We see the lien as providing the Town with some possibility of future payment.

The ordered lien is subordinate to the mortgage because the board does not have the authority to affect CFX's rights under its mortgage. The board's authority extends only to the Taxpayer and the Town. Additionally, while the collection statute, RSA chapter 80, provides municipalities with a lien superior to a prior-recorded mortgage, liens under RSA 72:38-a are subordinate to prior-recorded mortgages.

FINDINGS OF FACT AND RULINGS OF LAW

The parties' requests are attached.

In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny; or
- d. the request was irrelevant.

Taxpayer Findings of Fact

1. Granted.
2. Granted.
3. Granted.

4. Granted.

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5. Granted.

6. Granted.

7. Granted.

8. Granted.

9. Granted.

10. Granted.

11. Granted.

12. Granted.

13. Granted.

14. Neither granted nor denied. The CFX letter was dated May 9, 1994. Query whether the letter consented to tax year 1994.

15. Granted.

16. Granted.

17. Granted.

18. Neither granted nor denied.

19. Granted.

20. Granted.

21. Granted as to mortgage payment. Neither granted nor denied as to remainder.

Taxpayer Rulings of Law

1. Granted.

2. Neither granted nor denied.

3. Granted.

4. Granted.

5. Granted.

6. Granted.

Town Findings of Fact/Rulings of Law

1. Granted.

2. Denied.

3. Denied.

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4. Denied.

5. Granted, except settlement was \$22,000 less one-third for attorney's fees.

6a. Granted, but Social Security Administration ruled he was "disabled" under SSI.

6b. Granted.

6c. Granted.

7. Neither granted nor denied. Current mortgages: CFX Bank \$33,700 plus \$3,600 tax advance; and \$15,000 to \$17,000 USDA mortgage that will over time be reduced to \$5,000. Additionally, issue is not purchase price but 1994 and 1995 value. 1994 approximate value \$78,600 equates to 68% liens.

8. Denied. Taxpayer is a diabetic with specific food requirements. See Vocational Assessment, Municipality Exhibit A, confirming diabetes controlled by diet.

9. Neither granted nor denied.

10. Granted.

11. Granted, except board notes indicate son was 21 years old not 11 as stated in request.

12. Neither granted nor denied.

13a. Granted.

13b. Granted. The board agrees certain expenses should be reduced. The board understands the Taxpayer will reduce some expenses to pay taxes back to Town.

14. Granted.

15. Granted, except no evidence regarding \$850.

16. Granted.

17. Granted.

18. Neither granted nor denied.

19. Neither granted nor denied.

20. Granted.

21. Granted, except question regarding when USDA mortgage is reduced to \$5,000. Again, issue is 1994-1995 value not 1989 value.

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22. Denied.

23. Neither granted nor denied.

24. Denied.

REHEARING AND APPEALS

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 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. 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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 John E. Tobin, Jr., Esq., Counsel for Daniel J. Cameron, Taxpayer; Robert McCarthy, USDA Rural Development; Daniel D. Crean, Esq., Counsel for the Town of Barnstead; and Chairman, Selectmen of Barnstead.

Date:

Valerie B. Lanigan, Clerk

0006

Daniel J. Cameron

v.

Town of Barnstead

Docket No.: 15844-94PV

ORDERS

This order relates to the "Town's" dismissal motion, which is denied. The board has addressed this issue in the past and has ruled that it has jurisdiction of appeals under RSA 72:38-a. The board refers to the "Taxpayer's" objection and supporting memorandum for the basis of this denial.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 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

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rehearing 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Daniel J. Cameron, Taxpayer; and Chairman, Board of Selectmen.

Dated: February 29, 1996

Valerie B. Lanigan, Clerk

Daniel J. Cameron

v.

Town of Barnstead

Docket No.: 15844-94PV and 16580-95PV

ORDER

Before ruling on the "Town's" rehearing motion, the board orders the "Taxpayer" to file, within 14 days of the clerk's date below, a statement from "CFX" reciting:

- (1) the total amount CFX advanced for taxes for tax years 1994 and 1995;
- (2) the total amount presently outstanding for the 1994 and 1995 tax advances plus interest; and
- (3) the total payments made by the Taxpayer that were applied to the 1994 and 1995 tax advances plus interest.

The board is asking these questions to determine if clarification of paragraph 1, page 9 of the decision is necessary. The board wants CFX paid back so the Taxpayer can financially carry out the decision. But the board did not intend that the Town be required to refund taxes to CFX to the extent the Taxpayer has already paid down the tax advance, especially given the Taxpayer's \$1,200 tax liability to the Town for 1994 and 1995.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

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Cameron v. Town of Barnstead

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CERTIFICATION

I hereby certify that copies of the within order have this date been mailed, postage prepaid, to John E. Tobin, Jr., Esq., Counsel for Daniel J. Cameron, Taxpayer; Daniel D. Crean, Esq., Counsel for the Town of Barnstead; and Chairman, Selectmen of Barnstead.

Dated: June 25, 1997

Valerie B. Lanigan, Clerk

0001