

In their deliberative session, a majority of Board members voted to deny Mr. Luksus's request for abatement of the interest and penalties due on his unpaid taxes. (There were two abstentions.) The Board is required to explain its decision in writing (24 V.S.A. Sec. 1535[c]).

The Board based its decision on the statutes and principles laid out in "About Abatement," a publication of the Vermont Secretary of State, issued to help local boards of abatement "navigate the law to find the best solution for the members of [the] community." [Emphasis added.]

Portions of "About Abatement" that informed the Board's thinking in particular include:

- "Abatement is meant to be an equitable remedy, used only in the most unusual cases – as in a fire, or where a survivor is temporarily unable to access the assets of an estate while it is in probate. It is not meant to be a way for the town to subsidize taxpayers who can no longer afford the taxes on their property." [Emphasis added.] While Mr. Luksus's case is certainly unusual, requiring the other taxpayers of Old Bennington to shoulder his tax-related obligations would not provide the equitable relief that the State of Vermont requires. It would force other taxpayers (including elderly homeowners on fixed incomes) to pay more than their fair share. "About Abatement" calls on Abatement Boards "to find the best solution for the members of [their] community," not to favor just one person.
- "Equity constrains [Boards] from decisions that favor the [land-]poor taxpayer if there is no reason to believe that the problems that have led to the need for abatement are temporary.... Boards will more often abate in situations where a temporary circumstance has created the inability to pay." [Emphasis added.] Mr. Luksus has made clear that his inability to pay his property taxes is permanent. That constrains the Board's ability to grant him an abatement.
- "Decisions of the board are final. Title 24 does not provide a specific route of appeal from a decision by the board of abatement. If a taxpayer believes the board of abatement has abused its discretion in denying his or her request, case law in Vermont suggests that an appeal can be taken through Rule 74 or Rule 75 of the Rules of Civil Procedure. Appeals taken under these rules are not de novo and generally only review the proceedings below for abuse of discretion." [Emphasis added.] Mr. Luksus is asking the Board to reconsider its 2024 decision, not because it abused its discretion, but rather, he says, because the Board failed to appreciate that he is "land poor." But even with that new information in mind, the Board still finds itself facing the same insurmountable obstacle that it faced in 2024: The State of Vermont, in 24 V.S.A. §1535(a), lists seven categories of taxpayers who may qualify for tax abatement, and Mr. Luksus doesn't fit into any of them. (The third category, "persons who are unable to pay their taxes or charges, interest, and collection fees" might seem to apply, but the State expects the inability to pay to be caused by temporary circumstances which the affected taxpayer is working to cure.)

Finally, Mr. Luksus stated in his request that the continued accrual of interest and fees was creating an ever-expanding obligation that he could never repay, "even while attempting to send