

Town of Seabrook
v.
State of New Hampshire
Department of Revenue Administration

Docket No. 4084-87

DECISION

Statement of the Case

A hearing in this appeal was held, as scheduled, on August 24, 1988. The Town was represented by Richard F. Upton, Esquire and David D. MacArthur, Real Estate Appraiser and Consultant. The Department of Revenue Administration (hereafter DRA) was represented by Peter T. Foley, Esquire; Monica Ciolfi, Esquire; James R. Martell, Director, Appraisal Division; Cynthia L. Brown, Equalization Supervisor, Appraisal Division; and Jeffrey M. Earls, Utility Appraiser, Appraisal Division.

The Town appeals, pursuant to RSA 71-B:5 II (1987 Cumulative Supplement), the equalized valuation and the sales-assessment ratio of the Town for the 1987 tax year as determined by the DRA.

The DRA moved to dismiss this appeal on the ground that it was not timely filed under New Hampshire Code of Administrative Rules Part Tax 203.02 (a)(1) which states the latest date for

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filing an appeal of the equalization of valuation with the Board of Tax and Land Appeals (hereafter Board) is "60 days after the notification of the official ratio by the commissioner of revenue administration". The Town was notified by a form letter from the Equalization Supervisor of the Property Appraisal Division of the DRA, dated February 16, 1988, that "Based on the enclosed survey, we have determined your sales-assessment ratio for the tax year 1987 to be 38 percent". Although the Town was notified of the sales-assessment ratio by form letter of February 16, 1988, the Town did not learn of the equalized valuation of the Town until publication of that figure on May 22, 1988. This appeal was filed with the Board on June 17, 1988, and since the Town is appealing the equalized valuation of all property pursuant to RSA 71-B:5 II (1987 Cumulative Supplement) the Board denies the DRA's Motion to Dismiss and rules this appeal was timely filed.

The Town argued the total equalized valuation for the Town as determined by the DRA was excessive. The Town further argued the DRA's method of equalizing the value of public utilities, specifically Seabrook Station, was the principal reason the equalized valuation was too high. The Town also argued the sales-assessment ratio as determined by the DRA was in error and did not reflect the inclusion of the equalized value of public utility property in the Town. The Town argued that a non operation factor

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should have been applied to the DRA valuation of Seabrook Station in order to more accurately reflect the market value of the plant.

The Town's former independent contractor appraiser testified he performed his 1987 appraisal based on a 1982 appraisal. The Town's witness further testified he followed the methodology of the appraisals performed since 1982 by another appraiser.

The Town's Appraiser and Consultant testified the inflation in value of Seabrook Station as measured by the Handy-Whitman Index from a base year 1982 indicated a ratio of 86 percent.

The DRA argued it properly determined the equalized value of the property in the Town. The DRA further argued its method of determining the value of Seabrook Station was proper. The DRA also argued its calculation of the sales-assessment ratio was correct.

Findings of Fact

The DRA determined the land, buildings, and manufactured housing, excluding public utility property and land in current use classification, in the Town to have a total assessed value of \$200,880,300 and to have an equalized value of \$528,632,368 as of April 1, 1987. The equalized value was calculated by dividing the total assessed value of land, buildings, and manufactured housing of \$200,880,300 by 38 percent, which was the conclusion of the 1987 ratio study.

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The DRA determined the assessed value of land in current use classification was \$28,050 and the equalized value was \$59,681. The equalized value of land in current use was calculated by dividing the assessed value of land in current use of \$28,050 by 47 percent which was the conclusion of the 1986 ratio study, which was used to determine the 1987 tax assessments for land in current use.

The DRA determined the assessed value of public utility property, excluding exempt public utility property, to be \$2,379,293,300 and determined the equalized value of public utility property, excluding exempt public utility property, to be \$3,764,974,865. The equalized valuation of public utility property was determined by DRA by the unit method of valuation. The unit method of valuation used by the DRA is based on a determination of the total value of a public utility by several approaches to value, ie. cost or income, and allocation of that total value to each New Hampshire town and city based on the original cost of the public utility property in that taxing district. For Seabrook Station this involved DRA appraising all of the public utility companies owning a portion of Seabrook Station and then allocating according to original cost to Seabrook Station.

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The 38 percent ratio for land, buildings, and manufactured housing, excluding public utility property and land in current use classification, was properly calculated and applied to said class of property. The Town's Appraiser and Consultant testified he used 1982 as a base year and applied the Handy-Whitman Index. The Board finds this analysis flawed as the Town has made the assumption that the 1982 assessment was indeed full and true market value. The Handy-Whitman Index is a recognized cost trending service; however, cost and value are not always synonymous.

The Board declines to create a new sales-assessment ratio incorporating any alleged ratio of the public utility property. Sales are the ultimate determiner of market value. Since there are rarely open market sales of public utility property, determining market value remains problematic. Using public utility property in determining the mean, median, or aggregate ratio of assessment to market value, where market value is so elusive, would undermine the purpose of the ratio. If the Board were to adopt the method advocated by the Town, it would allow the Town to control the assessment sales ratio by the Town's assessment on public utilities.

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Rulings of Law

RSA 75:1 (1987 Cumulative Supplement)

75:1 How Appraised. Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

Local taxing officials must appraise all taxable property at its full and true value. RSA 75:1 (1987 Cumulative Supplement). For local property tax purposes, towns are free to accept by actual use, stipulate to, or reject any equalization ratio arrived at by the DRA. Stevens v. City of Lebanon, 122 N.H. 29, 31 (1982). The general level of a town's assessment is not conclusively established by the DRA's equalization ratio. Appeal of Town of Sunapee, 126 N.H. 214 (1985).

RSA 21-J:3 XIII (1987 Cumulative Supplement) requires the Commissioner of the DRA (hereafter Commissioner) to:

Equalize annually the valuation of the property in the several towns, cities, and unincorporated places in the state by adding to or deducting from the aggregate valuation of the property as assessed in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16 inclusive, which were relieved from taxation by the laws of 1970, 5:3, 5:8, 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance

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with RSA 31-A, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just.

The DRA may equalize properties in any way such that the result enables public taxes to be apportioned among the towns, cities, and municipalities in an equal and just manner. The relationship between the level of local assessments and current market value need not be quantified, or expressed as a ratio, by the DRA in the course of the equalization of valuation process. The DRA is under no statutory or other legal obligation to determine a single ratio which considers all taxable property in each town, city, or municipality. The DRA is under no statutory or other legal obligation to include in its sales-assessment ratio study property that has not sold. To comply with RSA 21-J:3, XIII, the DRA's total equalized valuation for the Town of Seabrook must merely represent, pursuant to accepted appraisal standards, "the true and market value" of the property within the Town.

The Board rules on the Requests of Town of Seabrook as follows:

1. Granted
2. Neither granted nor denied.
3. Granted
 4. Granted
 5. Granted
6. Granted
 7. Granted
 8. Granted
 9. Granted
10. Granted

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- 11. Neith granted nor denied.
- 12. Granted
- 13. Denied
- 14. Denied
- 15. Neither granted nor denied.
- 16. Neither granted nor denied.
- 17. Neither granted nor denied. 18.
- Neither granted nor denied.
- 19. Neither granted nor denied.
- 19a. Granted
- 20. Denied
- 21. Granted
- 22. Denied
- 23. Denied
- 24. Granted
- 25. Granted
- 26. Denied
- 27. Denied
- 28. Granted
- 29. Denied
- 30. Denied

The Board rules on the Department of Revenue Administration's
Requests for Findings of Fact as follows:

- 1. Granted
- 2. Granted
- 3. Granted
- 4. Granted
- 5. Neither granted nor denied
- 6. Granted
- 7. Granted
- 8. Neither granted nor denied
- 9. Granted
- 10. Granted
- 11. Neither granted nor denied
- 12. Neither granted nor denied
- 13. Neither granted nor denied
- 14. Granted
- 15. Neither granted nor denied
- 16. Granted
- 17. Granted
- 18. Neither granted nor denied
- 19. Neither granted nor denied
- 20. Neither granted nor denied
- 21. Neither granted nor denied
- 22. Neither granted nor denied
- 23. Neither granted nor denied

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24. Neither granted nor denied
25. Neither granted nor denied
26. Neither granted nor denied
27. Neither granted nor denied
28. Neither granted nor denied

The Board rules on the Department of Revenue Administration's Requests for Rulings of Law as follows:

29. Granted
30. Granted
31. Granted
32. Granted
33. Neither granted nor denied
34. Granted
35. Granted
36. Granted
37. Neither granted nor denied
38. Granted
39. Granted
40. Granted
41. Granted
42. Granted
43. Granted
44. Neither granted nor denied
45. Granted
46. Granted
47. Denied

The Board rules on this appeal as follows:

Appeal dismissed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Esq., Chairman

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(Mr. Twigg did not sit.)

George Twigg, III, Member

Raymond J. Damour, Member

Peter J. Donahue, Member

Date:

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Richard F. Upton, Esq., counsel for the Town of Seabrook; Peter T. Foley, Esq., Monica Ciolfi, Esq., Counsel for the Department of Revenue Administration; and James R. Martell, Director, Appraisal Division, Department of Revenue Administration.

Michele E. LeBrun, Clerk

Date:

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