

Arthur C. (III) and Julia Slade (Slade)

v.

Town of Northwood

Docket No. 5322-88

Patricia A. and A. Joel Aiello (Aiello)

v.

Town of Northwood

Docket No. 5324-88

Robert E. and Janet S. Clark (Clark)

v.

Town of Northwood

Docket No. 5323-88

DECISION

These consolidated appeals involve three separately owned properties. The properties' wells were contaminated by a leaking underground storage tank located near the properties. The question presented by the appeals is whether the 1988 assessments were correct given the contaminated wells and the status of a water district that was to provide a new water source to the properties.

Facts

The facts are as follows. In 1986, a gasoline leak from a nearby underground tank contaminated the properties' wells, rendering the water unfit to drink and in some instances requiring the property owner to limit or stop using the water for other household uses. In view of the contamination, the "Town" reduced the properties' 1986 and 1987 original assessments by 90%. However, because of the progress made by the water district, the "Taxpayers'"

original 1988 assessments were reduced only by 47.5%. The facts concerning the water district will be presented below.

Analysis

To obtain an abatement, the Taxpayers were required to show their assessments resulted in them paying a disproportionate share of taxes. See Appeal of Sunapee, 126 N.H. 214, 217 (1985). To carry this burden, the Taxpayers would have had to show the assessments were at a higher percentage of fair market value than the percentage at which property was generally assessed in the Town. See id. The Taxpayers did not make such a showing, and they did not submit evidence that the 1988 assessment resulted in them paying a disproportionate share of taxes. Rather, the Taxpayers argued the 1988 final assessments should have continued to be at 90% of the assessed values because steps to provide a new source of water had not yet been finalized or sufficiently advanced to result in a change in the assessment from 1987.

Contrary to the Taxpayers' argument, the evidence demonstrated that steps to provide a new source of safe water were significantly underway by April 1, 1988, as shown by the following: 1) the water district was formed in 1986; 2) an adequate site for wells for the water district had been found and test wells had already been drilled; 3) a federal grant had been received by the water district to conduct an income survey and engineering study; 4) regulations for the water district had been drafted; and 5) funding sources, including payments from the owner of the leaking tank and grants from the federal government, were already sought and it appeared such funding would be available in the near future for the water district. Admittedly, the construction of the actual wells did not occur until August 1989, and the properties were not hooked up until August 1990. Nonetheless, there was sufficient progress to reasonably conclude the new source of water would be available in the near future. This progress was sufficient to be reflected in the properties' assessments. See Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985) (value of future benefit properly included in assessment).

Thus, the Town properly reduced the percentage reduction from 1987 to 1988.

The Taxpayers' specific argument--that the Town erred in decreasing the percentage reduction from 90% to 45.7%--fails for the reasons just stated and

also because it is founded on the assumption that the full amount of the original percentage reduction was required to ensure the Taxpayers were not paying a disproportionate share of taxes. If the original percentage reduction was incorrect or without support, the Taxpayers' argument against the decrease in the percentage reduction would fail too. As will be shown next, the 1988 assessments were proper and did not result in the taxpayers paying a disproportionate share of taxes. Moreover, the percentage reduction applied in 1987 was in excess of the true effect the contamination had on the properties' values. Thus, the 1987 percentage reduction cannot be used as the proper starting point for the 1988 assessments.

The 1988 assessments (without applying any exemptions) and their equalized values were as follows¹:

<u>Owner</u>	<u>Assessed value</u>	<u>Equalized value</u>
Slade	\$13,700	\$48,929
Aiello	\$28,540	\$89,188
Clark	\$19,810	\$70,750

Although the 1987 assessment are not the matter in issue here, they are the basis of the Taxpayers' argument and thus a matter of evidence. If the 1987 assessments were too low because the percentage reduction was too high, the Taxpayers' argument for challenging the 1988 assessments is without sound basis. The 1987 assessments (without applying any exemptions) and equalized values were as follows:

<u>Owner</u>	<u>Assessed value</u>	<u>Equalized value</u>
Slade	\$2,620	\$8,188
Aiello	\$5,465	\$17,078
Clark	\$3,790	\$11,844

To judge the correctness of these values some information about the properties themselves is required, and thus, a brief description of each

¹ Neither party disputed the 1988, 28% equalization ratio or the 1987, 32% equalization ratio, both as established by the department of revenue administration.

property will be given next.

Slade Property. The Slade property is located on Route 4 and has 120 feet of frontage on the highway. The lot is approximately 30,625 square feet (.7 acre). There is a 1 1/2 story cape built in 1804 with two large outbuilding including a barn on the lot. Based on the evidence presented concerning the Slade property, the property had a value in 1988 of at least \$48,929, even with the contamination problem and when the progress of the water district is considered.

Aiello Property. The Aiello property is also on Route 4 with 140 feet of frontage. The lot is approximately 26,600 square feet (.6 acre). There is a two-family house built in 1840 and a 30' x 30' barn on the property. The Aiellos bought the property in 1986 for \$135,000.00 and some improvements had been made to the property since the purchase. The Aiellos rent an apartment in the house, and they run an antique business out of the barn. Despite the contamination, the apartment was rented for \$375 per month and in 1988 the antique business grossed approximately \$100,000.00, netting approximately \$33,000.00. Based on the evidence, the Aiello property had a value in 1988 of at least \$89,188.00, even with the contamination problem and giving appropriate consideration to the status of the water district.

Clark Property. The Clark property is on Ridge Road with a lot of approximately 33,350 square feet (.77 acre). There is a single family home built in the 1950's with a detached three-car garage on the lot. The Clarks bought the property in May 1980 for \$36,500. During 1988, the property was rented for \$500 per month. Based on the evidence, the Clark property was worth at least \$70,750 in 1988 even with the contamination problem and giving appropriate consideration to the status of the water district.

A review of these values and assessments for 1987 and 1988 establishes:

1) the 1987 percentage in reduction was excessive and thus was not a proper reflection of the properties' values even given the contamination; and 2) the decrease in the percentage reduction did not result in an over assessment for 1988 and did not result in the Taxpayers paying a disproportionate share of taxes.

Conclusion

The assessments were proper given the properties' value even with the contaminated wells. This is especially true since the water district had made significant progress towards supplying a new, safe source of water to the properties. By applying a 47.5% reduction to the properties' assessments, the assessments used in taxing the taxpayers adequately reflected that the properties did not yet have the new source of water.

TOWN OF NORTHWOOD'S REQUESTS FOR FINDINGS OF FACT

- A. 1. Granted.
- 2. Granted.

- B. 3. Granted.
- 4. Granted.
- 5. Granted.
- 6. Neither Granted nor Denied.

- C. 7. Granted.
- 8. Granted.
- 9. Granted.
- 10. Granted.
- 11. Granted.
- 12. Granted.
- 13. Granted.

- D. 14. Granted.
- 15. Granted.
- 16. Granted.
- 17. Granted (The word "income" has been read as "interest.")
- 18. Granted.
- 19. Granted.
- 20. Granted.
- 21. Granted.
- 22. Granted.
- 23. Granted.
- 24. Granted.
- 25. Granted.
- 26. Granted.

- E. 27. Granted, except 47.5% not 50%.
- 28. Granted.
- 29. Granted.
- 30. Granted.
- 31. Granted.

32. Granted.
33. Granted.
34. Granted.
35. Granted.
36. Granted.
37. Neither Granted nor Denied.
38. Denied.
39. Granted.

TOWN OF NORTHWOOD'S REQUEST FOR RULINGS OF LAW

40. Granted.
41. Granted.
42. Granted.
43. Granted.
44. Neither Granted nor Denied.
45. Neither Granted nor Denied.
46. Granted.
47. Neither Granted nor Denied.
48. Granted, as finding of fact.
49. Granted.
50. Granted.
51. Neither Granted nor Denied.
52. Neither Granted nor Denied.
53. Granted.

TAXPAYERS', CLARK, REQUEST FOR FINDINGS OF FACT

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Denied.
7. Granted.
8. Granted.
9. Denied.
10. Denied.
11. Denied.
12. Granted.
13. Granted.
14. Granted.
15. Granted (defining "potable" as water safe to drink, available through houses' plumbing).
16. Denied.
17. Granted.
18. Denied.
19. Granted.
20. Granted.

TAXPAYERS', CLARK, REQUEST FOR RULINGS OF LAW

- A. Granted, as a finding of fact.
- B. Denied.
- C. Denied.
- D. Granted, as a finding of fact.
- E. Granted (defining "potable" as water safe to drink, available through houses' plumbing).
- F. Denied.
- G. Denied, as a finding of fact.
- H. Denied.

TAXPAYERS', AIELLO, REQUEST FOR FINDINGS OF FACT

- 1. Granted.
- 2. Granted.
- 3. Granted.
- 4. Granted.
- 5. Granted.
- 6. Denied.
- 7. Granted.
- 8. Granted.
- 9. Denied.
- 10. Denied.
- 11. Denied.
- 12. Granted.
- 13. Granted.
- 14. Granted.
- 15. Granted (defining "potable" as water safe to drink available through houses' plumbing).
- 16. Granted.
- 17. Denied.
- 18. Denied.

TAXPAYERS', AIELLO, REQUEST FOR RULINGS OF LAW

- A. Granted, as a finding of fact.
- B. Denied.
- C. Denied.
- D. Granted, as a finding of fact.
- E. Granted (defining "potable" as water safe to drink available through houses' plumbing).
- F. Denied.
- G. Denied, as a finding of fact.
- H. Denied.

TAXPAYERS', SLADE, REQUEST FOR FINDINGS OF FACT

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Neither Granted nor Denied.
8. Granted.
9. Denied.
10. Denied.
11. Denied.
12. Granted.
13. Granted.
14. Granted.
15. Granted (defining "potable" a water safe to drink available through houses' plumbing).
16. Granted.
17. Neither Granted nor Denied.
18. Neither Granted nor Denied.
19. Granted.
20. Denied.
21. Denied.

TAXPAYERS', SLADE, REQUEST FOR RULINGS OF LAW

- A. Granted, as a finding of fact.
- B. Denied.
- C. Denied.
- D. Granted, as a finding of fact.
- E. Granted (defining "potable" as water safe to drink available through houses' plumbing).
- F. Denied.
- G. Denied, as a finding of fact.
- H. Denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue, Member

Ignatius MacLellan, Member

Date:

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Steven M. Gordon, Esq., counsel for the Clark's, Aiello's, and Slade's, taxpayers; and Mark S. Gearreald, Esq., counsel for the Chairman, Selectmen of Northwood.

Michele E. LeBrun, Clerk

Date:

0009