Robert D. Clement and Madeleine G. Clement
v.
Town of Allenstown

Docket No. 5453-88

DECISION

A hearing in this appeal was held, as scheduled, on July 12, 1990. The Taxpayers were represented by Simon Leeming, Esq. The Town was represented by Compton E. French.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessments of $128,900 (land, $34,600; buildings, $94,300) placed on their real estate located at 20 River Road, and $96,100 (land, $35,400; buildings, $60,700) placed on their real estate located at 17 River Road, for the 1988 tax year. The subject properties consist of a three-family residential property at 20 River Road and a single-family residential property with adjoining shop area at 17 River Road.

Neither party challenged the Department of Revenue Administration's assessment-sales ratio of 93 percent for the 1988 tax year for the Town of Allenstown. Based on that ratio the Taxpayers' assessments equate to market values of $138,600 on the property at 20 River Road and $103,350 for the property at 17 River Road as of April 1, 1988.

The Taxpayers argued the subject properties were affected by odors emanating from a sewerage system pumping station in the immediate proximity of

the subject properties. The Taxpayers testified the odor was not constant.

The Taxpayers also testified they had made many efforts to engage the assistance of elected and appointed public officials over the past ten years to discuss the problem and request that solutions be determined and effected.

Mr. French testified for the Town that the problem did exist and he observed that he noticed the odor at one meeting with the Taxpayers. The Town's representative stated that economic depreciation of 15 percent had been applied to the land portion of the assessment to account for the odor problem. Mr. French stated that the Selectmen felt depreciation of 15 percent for the buildings might also be a reasonable acknowledgment of the problem.

Under questioning Mr. French testified in his opinion economic depreciation of 30 to 40 percent was appropriate based on his experience for situations of the nature of the Taxpayers' case. Mr. French qualified his response by stating that proximity to the source of noxious odor was a key factor in determining the level of economic depreciation to be applied in assessing properties affected. Mr. French also acknowledged that the dispute between the Taxpayers and town officials had gone on for some time and was a source of some irritation to both parties.

Mr. Leeming summarized by stating the marketability of the Taxpayers' property was greatly effected by the proximity of the odor and that the Taxpayers had had long-time ownership of the property and were not of a mind to offer it on the marketplace. Mr. Leeming further stated the Taxpayers would be under requirements of making full disclosure of any deficiencies of the property which might effect its market value if it were offered for sale.

The Board finds the testimony of the Taxpayers and the Town's representative clearly indicate an odor problem with the sewer system pumping

station which effects the value of the subject properties. The Board finds the range of economic depreciation to be applied in cases such as the one at bar are infinite and difficult to measure.

The Board rules the evidence before it indicates an economic depreciation of 45 percent is appropriately applied to the buildings after normal and other condition depreciations are applied, and the same 45 percent depreciation should be applied to the land.

The Board therefore rules the proper assessment for the property at 20 River Road is $61,100 for the buildings and $19,000 for the land, for a total assessment of $80,100. The Board rules the proper assessment for the property at 17 River Road is $37,500 for the buildings and $19,400 for the land, for a total of $56,900.

If the taxes have been paid, the amount paid on the value in excess of $137,000 for both properties is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Robert D. and Madeleine G. Clement, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Allenstown.

_____

Michele E. LeBrun, Clerk

1002