

**Richard S. Gates and Hae Ran Gates**

**v.**

**Town of Northwood**

**Docket No. 5540-88**

**DECISION**

A hearing in this appeal was held, as scheduled, on August 16, 1990. The Taxpayers were represented by Richard S. Gates, one of them. The Town was represented by Mark S. Gearreald, Esq..

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$100,610 (land, \$10,960; buildings, \$89,650) placed on their real estate, located on Bow Street for the 1988 tax year. The property consists of a dwelling and garage on 2.32 acres.

Neither party challenged the Department of Revenue Administration's equalization ratio of 28% for the 1988 tax year for the Town of Northwood.

Mr. Gates testified that contamination of wells of several properties on the "Ridge" in Northwood was first detected in the summer of 1986. The source of the contamination was determined to be leaking gasoline storage tanks at the store on Route 4. Mr. Gates stated that while even to date his well has not been contaminated, the selectmen reduced his assessment in 1987 by 25% to reflect the possibility of contamination. He stated that in 1988 however, his adjustment was reduced to 12 1/2 percent. Mr. Gates argued that the conditions had not changed materially from 1987 to 1988 to warrant a reduction in his adjustment. He argued that while, as of April of 1988, a water district had been formed and test wells dug to provide usable water to the contaminated properties, there was still much opposition and uncertainty as to the eventual cost of the being on district water. He stated that in 1988 the district water supply solution to the problem was no shoo-in.

The Town testified that in 1987, the first tax year that the contamination issue could be addressed, those properties most affected by the contamination received a 90% reduction in their assessment, those affected with some contamination received a 50% reduction and those with no contamination, but in close proximity to contaminated properties, received a 25% reduction. Mr. Martell, then Director of the Property Appraisal Division of the Department of Revenue Administration, testified that these levels of reductions were based upon the Division's experience in another contamination situation in Barrington, N.H.

Mr. Morrill, an appraiser supervisor for the Property Appraisal Division, testified that he was asked by the selectmen in 1988 to review the situation to see if the 1987 adjustments were still warranted in 1988. He argued that based on six sales of properties in the area and on rental information, he recommended to the selectmen that only those properties most affected by the contamination should receive a 30% reduction in assessment.

Mr. Martell testified that after the selectmen assessed the properties in 1988 based on Mr. Morrill's recommendations, he, then retired, was employed by the Town to review the 1988 appeals on this issue. He testified that after holding an informational meeting with taxpayers, he recommended to the selectmen that the 1987 adjustments be reduced by half to reflect the progress made by April 1, 1988, in solving the contamination problem.

The Board rules as follows.

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same . . . .

and RSA 75:1 (supp.) which states:

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.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board finds that the market perceptions of the negative effect of contamination or potential contamination on the value of real estate was somewhat ameliorated in 1988 by the formation of the water district and the initial stages of test well drilling and land acquisition negotiations. While it appears the ultimate solution to supplying clean water to the contaminated properties was still uncertain, as of April 1, 1988, it was more certain than a year earlier before even the formative steps had been taken.

The Board finds that while the Town's analysis of sales is less than conclusive evidence of no effect of the contamination on the market, it at least failed to detect any glaring market effect. That fact along with no contamination of the Taxpayers property and the nearly 2000 foot distance of the Taxpayers well from the source of the contamination all support the Towns 12 1/2% reduction as being reasonable. The only testimony that the Board finds as an indication of any market influence by the potential contamination, was the Taxpayer's son's difficulty in receiving a loan to construct a dwelling on an adjoining lot where the bank required assurances that he would

be on the districts water and not on his own well water. This effect on the marketability of the Taxpayer's property is adequately accounted for by the Towns 12 1/2% reduction.

The Board therefore rules the Taxpayers have failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in excess of the Taxpayer's just share of the common tax burden. The ruling is, therefore: Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

George Twigg, III, Chairman

---

Peter J. Donahue, Member

---

Paul B. Franklin, Member

Date: February 12, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Richard S. & Hae Ran Gates, taxpayers; Mark S. Gearreald, Esq., counsel for the Town of Northwood; and Chairman, Selectmen of Northwood.

---

Michele E. LeBrun, Clerk

Date: February 12, 1991

0009