

John F. McGillicuddy and Gloria J. McGillicuddy

v.

Town of Northwood

Docket No. 5576-88

Chester R. Tuttle and Marylou B. Tuttle

v.

Town of Northwood

Docket No. 5656-88

DECISION

These consolidated appeals involve two 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>
McGillicuddy	\$18,945	\$67,660
Tuttle	\$14,155	\$50,550

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>
McGillicuddy	\$3,630	\$11,350
Tuttle	\$2,710	\$ 9,050

To judge the correctness of these values some information about the properties themselves is required, and thus, a brief description of each property will be given next.

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

McGillicuddy Property. The McGillicuddy property is located on upper Bow Street and has a figured frontage of 150 feet. The lot is approximately .78 acres with a dwelling and garage on the lot. Based on the evidence presented concerning the McGillicuddy property, the property had a value in 1988 of at least \$18,945 even with the contamination problem and when the progress of the water district is considered.

Tuttle Property. The Tuttle property, also on upper Bow Street, and consists of approximately .63 acre lot with a figured frontage of 120 feet. The land is improved with a dwelling and barn and sheds, which are all attached. Based on the evidence the Tuttle property had a value in 1988 of at least \$14,155 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.

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 Taxpayers' 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 20, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to John F. & Gloria J. McGillicuddy and Chester R. & Marylou B. Tuttle, taxpayers; and the Chairman, Selectmen of Northwood.

Michele E. LeBrun, Clerk

Date: February 20, 1991

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