

James C. Malouin and Mary Ann Malouin

v.

Town of Goffstown

Docket No. 6679-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$132,000 (land, \$43,400; buildings, \$88,600) on their real estate on 1.62 acres on 15 Alpine Drive. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved they were disproportionally taxed.

The Taxpayers argued the assessment was excessive because:

- (1)the situation as stated in the hearing of their 1988 appeal (docket number 5286-88) has not changed, i.e. overassessed because of the inability to provide clear title to the property as the builder of the dwelling did not follow the plans approved by the Town and placed part of the house, driveway and well within an easement owned by Public Service Company of New Hampshire (PSC);
- (2)an agreement could not be worked out with PSC in 1989 because the company was in bankruptcy;
- (3)the last conversation with PSC was on November 7, 1990 concerning a release of easement but although the second mortgagee (Household Finance) agreed to the change in the deed, the first mortgagee (First New Hampshire Bank) did not agree to it;

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- (4)the estimated costs to correct part of the problem total \$35,337 (replace well - \$15,400; redo driveway - \$9,637; redo septic system - \$10,300);
- (5)an appraisal prepared by Rose Gallagher on October 2, 1990 estimated the value of the Property, based on it being problem free, at a range of \$105,000 to \$115,000;
- (6)there are three major cracks in the cellar resulting in serious leakage problems; and
- (7)the market value of the Property is only what is owed on the Property which is \$59,000.

The Town argued the assessment was proper because:

- (1)the situation has been going on since 1986 and conversations with PSC led the Town to believe that PSC is very willing to work out a consent to joint use;
- (2)six years seems to be an unreasonable amount of time for this to have dragged on;
- (3)a 3 percent functional depreciation has been applied to account for the crack in the foundation; and
- (4)a 20 percent reduction has been applied to the homesite for the existence of the easement.

Based on the evidence we find the correct assessment should be \$102,000 (land, \$33,600 and building \$68,400). This assessment is ordered based on the evidence that PSC was in bankruptcy in 1989 and that the Taxpayers were making good faith efforts to clear the problems. The board expects that now that PSC is out of bankruptcy, the Taxpayers will resolve the problem with the utility.

If the taxes have been paid, the amount paid on the value in excess of \$102,000 shall be refunded with interest at six percent per annum from date paid to refund date.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to James C. Malouin and Mary Ann Malouin, taxpayers; and Chairman, Selectmen of Goffstown.

Melanie J. Ekstrom, Deputy Clerk

Date: March 5, 1992

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