

Joseph A. Pitre, Jr., Diann J. Pitre and Germaine Pitre
v.
Town of Farmington

Docket No. 7089-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessments of (all Map 19) Lot 22 - \$5,850, Lot 23 - \$29,150, Lot 23-1 - \$27,500 (collectively the "Property"). 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 the Property was across the street from a known and documented hazardous waste dump.

The Town argued the assessment was proper because there was no evidence that the hazardous waste dump had contaminated the Property or had adversely affected the Property's market value.

Both parties submitted evidence concerning the status of the hazardous waste dump, but neither party had any real quantitative or qualitative evidence to support the assessment or to support an adjustment to the assessment. Nonetheless, the board concludes the Property's proximity to the hazardous waste dump and the Town's landfill impacts the Property's value regardless of whether the Property has been contaminated yet and regardless of whether the Property could be serviced by Town water. The standard is simple: in arriving at a proper assessment, the board (and the Town) must consider all relevant factors. RSA 75:1 (must consider all evidence relative to property value);

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of Portsmouth, 145 N.H. 63, 67-67 (1975). Certainly, the Property's proximity to the hazardous waste dump and the landfill must be considered and some adjustment made. To ignore these factors would require total abandonment of judgment and common sense. Yes, deciding on an adjustment is difficult. But, to simply ignore these factors would be worse.

While not always at full market value, assessments must be founded on market value. The standard in RSA 75:1 states:

[S]electmen 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***.

Surely, a creditor would not accept the Property in payment for a \$142,045 debt (the Property's equalized value). The Taxpayer even testified the bank would not foreclose on the Property because of the hazardous waste issues. The board rejects the Town's position that no adjustment is required.

The board also rejects the Taxpayers' contention that the Property has zero market value. The Property still has 2 occupied houses on it. Additionally, the Taxpayers may have claims against the owner of the hazardous waste dump, or the dump owner might buy the Property to limit liability. In addition to these present benefits, the Property has a present worth for its future benefits, i.e., when the dump stabilizes or is cleaned up, the Property will have a higher value.

See Appeal of Great Lakes Container Corporation, 126 N.H. 67 (1985).

Arriving at the proper adjustment is not easy, and is not scientific, but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). Moreover, because the Taxpayers did not submit evidence on this point, the board must be conservative in its adjustment. Therefore, the board has chosen a 30% adjustment. Given the RSA 75:1 standard -- full and true value in payment of debt -- we wonder whether the Property's value should be adjusted more than

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30%, but given the evidence, 30% is a minimum adjustment.

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The revised assessments are:

30%

Lot 22\$ 4,095

Lot 23 20,405

Lot 23-C\$19,250

\$43,750

Two final notes.

First, the assessments may increase or decrease year-by-year as more information becomes available about the condition of the dump and the landfill and about the affect the dump and the landfill have on the Property's value. Second, this appeal differs from a "simple" contaminated-well case because the problem here -- proximity to hazardous waste dump and a landfill -- are potentially much more significant and will be perceived as such by the market.

Potential purchasers, justifiably or not, would think about the contaminated water issue and the issue of just living safely and healthfully near two dumps. Remember, the contaminants are in the soil and they leech into the water. So, the soil is contaminated even if the water is not. The market would wonder whether their children were safe living on the Property?

If the taxes have been paid, the amount paid on the value in excess of \$43,750 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to James H. Schulte, Esq., representative for the taxpayers; and Chairman, Selectmen of Farmington.

Melanie J. Ekstrom, Deputy Clerk

Date: March 5, 1992

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