

Town of Seabrook  
v.  
Department of Revenue Administration

Docket No. 7554-89

DECISION

The Town of Seabrook (Town) appeals, pursuant to RSA 71-B:5, II, the 1989 equalized assessed value of the Town, \$2,788,243,277, as determined by the Department of Revenue Administration (DRA) pursuant to RSA 21-J:3, XIII.

RSA 21-J:3, XIII, states the commissioner of the Department of Revenue Administration shall: "Equalize annually the valuation of the property in the several towns, cities, and unincorporated places in the state by adding to or deducting from the aggregate valuation of the property as assessed in towns, cities and unincorporated places such sums as will bring such valuations to the true and market value of the property . . . so that any public taxes that may be apportioned among them shall be equal and just."

RSA 71-B:5 states that the Board of Tax and Land Appeals "shall have [the] power and authority . . . [t]o hear and determine any appeals relating to the equalization of valuation performed by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII."

In its appeal, the Town focused its claim of excessive valuation on the Seabrook Station portion of the equalized valuation, amounting to

\$2,205,232,430.00. The Town argued the more than two times increase in the

Seabrook Station's equalized value from \$991,798,988 in 1988 to \$2,205,232,430 in 1989 was due largely to DRA's erroneous consideration of the possibility of Seabrook Station receiving a low power license.

The Town argued that the agreement (Exhibit State-A attachment D) between Public Service Company of New Hampshire (PSNH), et al., and the Board of Selectmen of the Town of Seabrook set the full 1989 value of Seabrook Station at \$1.2 billion, or less if the Town's 1989 ratio was less than 100 percent. The Town also submitted an "estimate" of market value by David D. MacArthur (Exhibit TN 6) for 1988 that estimated the value at \$1,167,780,090.

DRA stated that they had, as in the past, used the "unit valuation method" in determining the full and true value of the public-utility property in Seabrook. Once the proper total value had been allocated to the Town, DRA stated they reduced the Seabrook Station value by 50 percent for the uncertainty of the plant going on line. DRA argued the 50-percent adjustment was derived from discussions with the various owners of Seabrook as to what extent the respective regulatory agencies were allowing those companies to include the Seabrook investment in their rate bases.

The issues before this board are narrower in this case than in previous appeals from Seabrook on the question of equalized valuation. This time the Town did not raise the argument that the "unit valuation method" for determining the value of utility property was not proper or properly calculated. Therefore, and inasmuch as Appeals of the Towns of Bow, Newington and Seabrook, 133 N.H. 194 (1990) has definitively answered such argument, the board need not address that argument here.

The issue then narrows to: 1) did the Town meet its burden of proof in showing the true and full valuation as determined by DRA was excessive and thus the Town was bearing a disproportionate share of the county taxes; and 2), attendant to that issue, was the DRA's estimate of the "write down" percentage or discount factor of 50 percent reasonable given the information and facts existing on April 1, 1989.

As DRA properly states in its memorandum, it is the petitioner's (Town's) burden to show that DRA has improperly estimated the Town's equalized valuation. (See New Hampshire Code of Administrative Rules, Tax 203.04, (c).)

The board rules that the Town did not meet its burden of proving the valuation was excessive. The two documents provided by the Town indicating a lower value are suspect by their very nature.

The agreement between PSNH and the Town pegging the maximum taxable valuation at approximately \$1.2 billion is a document intended to settle multiple years of tax abatement appeals. Its very purpose (partially cited below) obviates any probative value it might have in objectively determining the value of Seabrook for equalization purposes.

WHEREAS, the Town is facing financial uncertainty arising from the potentially large judgments for tax abatements with respect to tax years 1983 through 1986 as well as 1987, and there is continuing uncertainty about the commercial operation of Seabrook Station; and

WHEREAS, the Joint Owners and the Town wish to reduce the risk of future litigation between them and find an equitable manner to pay any abatements owed to the Joint Owners . . . " (Exhibit State A, attachment D, Pg 3)

While DRA raises an interesting argument that this document may be "in violation of the Town of Seabrooks (sic) . . . legislative mandate to

(annually) appraise property at full and true value" (Defendant's Memorandum

of Law, Pg 10), the board need not rule on that argument as any probative import of the agreement for determining equalized value has already been dismissed.

The estimate of value by David D. MacArthur is a reworking of a 1986 appraisal containing little or no documentation for his subsequent discount factors, and it is for 1988, not 1989. As DRA points out, his two-page estimate includes comments and observations that are more of an assessing or political nature than strictly appraising judgments.

The board finds DRA's summary (see Affidavit of Jeffrey M. Earls) of their contacts with the owners of Seabrook and of their process in arriving at the 50-percent discount rate very thorough and credible. DRA properly analyzed the political changes and resulting hurdles that had been overcome from 1988 and 1989 (see Affidavit of Jeffrey M. Earls Pgs 11-12) and correlated this information with the different write-down factors used by several of Seabrook's owners.

The board rules that DRA's methodology and logic arrives at as reasonable an estimate of the full and true value for the Town as possible given complexities and uncertainties in appraising such a property as Seabrook Station on April 1, 1989. Therefore, the Town's petition is denied.

The board would note that the Town apparently made no formal discovery requests with DRA leading up to this hearing. It is the board's belief, while not unmindful of the litigious climate that existed at that time, that such discovery could possibly have led to a settlement locally.

Lastly, the board would agree with the Town's observation that such appeals as this should be heard more expeditiously than was this case, given

their potential impact county-wide. The board intends to, in the future, schedule such hearings as promptly as possible and incorporate this policy in a revision of its rules.

SO ORDERED.

August 6, 1991

BOARD OF TAX AND LAND APPEALS

—

George Twigg, III, Chairman

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to Richard F. Upton, Esq., to the Department of Revenue Administration, and to Peter Foley, Esq., Office of Attorney General.

August 6, 1991

Brenda L. Tibbetts, Clerk