

Thomas W. and Jean M. Story

v.

Town of Merrimack

Docket No.: 7771-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$159,400 (land \$59,900; buildings \$99,500) on a .977-acre lot with a ranch house (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 disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) there is a 60' x 120' PSNH power-line easement in the back of the Property, and the Taxpayer cannot build or plant in the easement;
- (2) PSNH should pay the taxes on the easement area because PSNH benefits from the easement;
- (3) there is a correlation between cancer and high-voltage lines;

(4) only one of the Town's five comparables has an easement (comparable #4)

and that property has been for sale for two years without a buyer;

(5) there are errors on the tax card, namely the house should be assessed with a half basement because one-half of the basement is the garage, and the house is actually two years older than indicated on the card, and there is an error on the market-analysis sheet, namely the dwelling does not have two full bathrooms;

(6) the Property was purchased in 1984 for \$104,900; and

(7) the assessment should be \$137,374.

The Town argued the assessment was proper because:

(1) the Town used 604 known sales from 1987, 1988 and 1989 and time adjusted the sales to January 1, 1989 and, using multiple-regression analysis, arrived at models to be used in assessing the properties in Town;

(2) the same methodology was used throughout the Town;

(3) a similar property in the neighborhood sold in 1987 for \$164,000;

(4) the building age on the assessment card would not affect the value as the depreciation charts are based on 10-year increments; and

(5) the card and the data sheet do not have errors because the basement was considered full because it sits below the entire building, and any bathroom with three plumbing fixtures was considered a full bath.

Board's Rulings

Based on the evidence presented by the Taxpayers and the board's experience, the board finds the land assessment must be adjusted by -10% to reflect the negative impact of the PSNH easement, resulting in an assessment of \$153,410 (land \$53,910; building \$99,500). The Town asserted that no

adjustment was warranted, but the Town did not submit any data to support that conclusion. Common sense indicates that if you had two identical properties but one had the PSNH easement on it, the property with the easement would sell for less. Therefore, the board adjusted the land assessment. The board used a -10% figure based on the so-called "4-3-2-1 principal." This principal, simply stated, estimates that the contributory land value decreases as one moves away from the road frontage, resulting in only 10% of the land value being on the back portion of the lot.

The Town reasonably answered the Taxpayers' other concerns. Additionally, to succeed in this procedure, the Taxpayers must show not only errors and miscalculations, but they must also show how those miscalculations resulted in disproportional assessment. While the Taxpayers asked the board to time adjust their 1984 purchase price and to accept a realtor's estimate, the Taxpayers did not submit any reliable market data from which the board could determine whether the Property was disproportionately assessed.

If the taxes have been paid, the amount paid on the value in excess of \$153,410 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas W. and Jean M. Story, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

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