

Shelton B. and Kathleen A. Wicker, Jr.

v.

Town of Londonderry

Docket No.: 10004-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$118,000 (land \$20,500; building \$97,500) on a 1.33-acre lot with a house (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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) the proximity to the EPA superfund site has a negative impact on the Property's value;
- 2) five banks refused to refinance the Property, and neighboring homes could not sell because banks refused to finance mortgages on homes in the EPA site;

- 3) the taxes should be abated because the Property is contaminated; and
- 4) the Town's information only refers to homes in the area of the EPA site when the Property is directly in the EPA site.

The Town argued the assessment was proper because:

- (1) sales and building permit activity do not indicate properties have declined in the area due to the superfund site;
- (2) banks are giving loans and refinancing properties in the area;
- (3) a study in Nashua indicated no negative impact could be established due to proximity of a property to a contaminated site; and
- (4) as of April 1, 1990, a water line was available for hookup, thereby mitigating the contamination.

Board Findings

The board concludes the Property's location in the superfund site, even though the Property is serviced by Town water, impacts the Property's value. The standard is clear: 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); Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). There is a simple way to decide when adjustments are warranted. Envision two identical properties, except one property (the subject) is in a superfund site and the other is not. Then, ask would the market pay the same for the subject as for the other property? Certainly, the market would pay less for the subject and thus some adjustment must be made. To ignore the negative impact of being in a superfund site would require

abandonment of judgment and common sense. Yes, deciding on an adjustment is difficult. But to simply ignore these factors would be worse.
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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 Taxpayer did not submit evidence on this point, the board must be conservative in its adjustment. Therefore, the board has chosen a -25% adjustment.

We find the Town's material insufficient to overcome this common-sense approach. Specifically, none of the evidence dealt with properties right in the superfund site. The evidence only related to properties near such sites.

Finally, concerning financing the homes in the site, Taxpayers stated five banks would not refinance the home.

If the taxes have been paid, the amount paid on the value in excess of \$88,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Shelton B. and Kathleen A. Wicker, Jr., Taxpayers; and Chairman, Selectmen of Londonderry.

Dated: April 22, 1993

Melanie J. Ekstrom, Deputy Clerk

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