

Energy North Natural Gas, Inc.

v.

Town of Milford

Docket No.: 8383-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the Town's 1990 assessment of \$52,100 (land only) (the Property). The Taxpayer 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 Taxpayer has 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(3); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved it was disproportionally taxed.

The Taxpayer argued the assessment was excessive because:

- 1) they purchased the parcel from the Town in 1989 for \$5,000;
- 2) an appraisal done by Robert P. Morgan as of April 1, 1991, estimated a value of \$5,300; and
- 3) the Property is regulated by the New Hampshire Public Utilities Commission.

The Town argued the assessment was proper because:

1) the lot is used commercially to supply gas to the adjacent development and the neighborhood.

This appeal certainly presents a unique question on a unique Property. Nonetheless, the board is required to make a decision based on its knowledge and experience. The Taxpayer's asserted value of \$5,000-\$5,300 is certainly too low, and the Town's assessment is too high. One key piece of evidence is also missing -- the income earned on the Property (i.e., the land itself). The following issues warrant a reduction: a) the questions concerning any title defects since the Property is shown as a park on subdivision plans and was conveyed to the Town with the roads; b) need for a variance to change the use from its present use to another use; and c) small amount of road frontage.

Based on the above, the board has applied a 50% reduction resulting in an assessment of \$26,050.

If the taxes have been paid, the amount paid on the value in excess of \$45,000 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Energy North Natural Gas, Inc., Taxpayer and Chairman, Selectmen of Milford.

Dated: October 31, 1991

Melanie J. Ekstrom, Deputy Clerk