

**Energetic Enterprises, Inc.**

**v.**

**Town of Enfield**

**Docket No.: 9538-90**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$525,000 (land \$196,200; buildings \$328,800) on Map 37, Lot 23, a 6.5-acre lot with a mill and a dam (the Property). The Taxpayer owns, but did not appeal, a vacant lot in the Town assessed at \$4,200. 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 Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

1) the taxes have tripled over a five-year period and based on this rate of increase, the taxes in 1996 will be \$31,328, resulting in financial ruin;

- 2) the Mascoma River divides the Property and the land is steep, has a drainage ditch, erosion potential, and the river is dangerous at high water;
- 3) the buildings and dam are 100 years old and the buildings have no heat, insulation, plumbing, or electricity and are so damaged that extensive safety repairs would be needed before any reconstruction could be done;
- 4) the \$54,450 per-acre, land assessment for the acreage on the river banks is unwarranted because the land slopes directly to the river and has water runoff;
- 5) the Town's 20% usability factor on the main building is unsupported given the building's dilapidated condition;
- 6) the Town's water and sewer restrictions limit the rent potential of the Property;
- 7) the dam requires expensive maintenance and the Taxpayer is at risk of water damage to the buildings and liability if the flooding damaged property downriver;
- 8) the liabilities imposed on the Taxpayer, both now and in the future, e.g., soil contamination, detracts from the value;
- 9) the location of the Property, e.g., below the highway and on a river bank, attracts vandals, resulting in further damage;
- 10) the buildings' value should be \$182,400 and the land value should be \$42,400; and
- 11) RSA 362-A:6 states qualified hydro-electric plants are exempt from taxation and instead a payment in lieu of taxation can be made by mutual Town/Taxpayer agreement up to a maximum of 5% of the gross revenue; and the

Taxpayer feels a payment in lieu at 2% of the gross revenue is reasonable.

The Town argued the assessment was proper because:

- 1) the main building has three stories and a full basement for a 96,708 square footage total, and the other buildings total 18,585 square footage space;
- 2) 32,500 square feet of space is rented throughout the year, resulting in \$27,100 per-year rental income;
- 3) the hydro-electric plant produces 1.2 million kwh per year, resulting in \$30,000 per-year income from PSNH;
- 4) the dam and generator in the main building enhance the earning potential of the Property, resulting in a higher assessment;
- 5) the increase in assessed value is a result of the 1990 revaluation;
- 6) the Taxpayer's current income does not support the value, however, the buildings are not being used to their full potential; and
- 7) similar properties have a selling price of \$4.00 - \$6.00 per-square-foot, and the Property is assessed within range at \$4.55 per-square-foot.

**Board's Rulings**

Based on the evidence, we find the correct assessment should be \$383,250 (land, \$127,600; buildings, \$255,650). While neither the Taxpayer nor the Town submitted any comparable market data to evaluate the assessment's equity, the board finds the Property has two major problems affecting value: utility and liability.

Utility

The steep topography of the parcel and the crowded existing improvements severely restrict the commercial potential and utility of the

lot. Examples of this problem are: the steep and acute angle driveway makes access, especially for larger trucks, difficult; limited area for parking; the

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below-road-grade level of the parcel limits its visibility from the road; the partially demolished or poor repair of the buildings; the obsolete size and design of the buildings, etc. While the Taxpayer has found some economic use for portions of the buildings, the assessment exceeds even the most optimistic estimate of the substitution value for the useful portions of the improvements.

#### Liability

The Property has several exposures of liability that could be of significant concern to a prospective purchaser and affect market value.

As of the assessment date (April 1, 1990), the site contained four large underground oil tanks and adjacent contaminated soil incident to their use.

While on one hand the dam is an asset allowing the production of hydro-electric power, the dam is also a financial and safety liability to the Property and other properties downstream.

The partially razed buildings also present an attractive nuisance exposure that any owner would have to protect against.

Considering all these factors and other evidence submitted and the lack of any comparable market evidence (primarily due to the uniqueness of the Property), the board finds the condition factor on the land should be reduced to .80 resulting in a land value of \$127,600 and the depreciation on the main building should be increased to -85% resulting in a total building value of

\$255,650. "Given all the imponderables in the valuation process, '[j]udgement is the touchstone'" Public Service Co. v. Town of Ashland, 117 N.H. 635,639 (1977).

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The Taxpayer raised two additional issues:

- 1) increase in taxes; and
- 2) the taxability of the hydro-electric facility.

On the first issue, the amount of property taxes paid by the Taxpayer was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

As to the taxability of the hydro-electric facility, under RSA 72:8, the facility is taxable as is all other real estate. See RSA 72:6. The Taxpayer may, however, if it is a qualifying small power producer, apply to the Town for an agreement concerning payment in lieu of taxes under RSA 362-A:6 (supp. 1992). If the Town and the Taxpayer cannot reach an agreement, the Taxpayer can then apply to the public utility commission for a payment in lieu of taxes. In this case, the Taxpayer never applied to the Town under RSA 362-A:6. Thus, the board need not consider RSA 362-A:6, and only needs to view

the Property under RSA 72:6, 8. The board weighed the evidence of the hydro-

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electric power capabilities in arriving at its adjustments to the land and building values.

If the taxes have been paid, the amount paid on the value in excess of \$383,250 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

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to A.W. Taylor, Treasurer for Energetic Enterprises, Inc., Taxpayer; and the Chairman, Selectmen of Enfield.

Dated: May 25, 1993

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Melanie J. Ekstrom, Deputy Clerk

0009 for 0004