

**Kaj and Kathleen Sonne  
d/b/a Kathy Blake Dance Studios**

**v.**

**Town of Amherst**

**Docket No.: 14439-93PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessments of \$79,400 each on two commercial condominium units in Northwood Square (the Properties). Together, the units comprise the Kathy Blake Dance Studios. For the reasons stated below, the appeal for abatements is granted to the Town's recommended total \$112,000 assessment on the Properties.

The Taxpayers argued the assessments were excessive because:

- (1) the electric transmission lines adversely affect the Properties' values;
- (2) the lines are located directly behind the Properties;
- (3) the strength of the electro-magnetic fields (EMF) caused by the powerlines exceed the state guidelines ("in excess of 2.5 milligauss (mG) may indicate a heightened risk \*\*\*." Taxpayers' memorandum, exhibit 6, (emphasis in state letter));
- (4) the issue of EMF was well known in the Town due to the relocation of lines for a new school and due to newspaper articles on EMF;
- (5) PSNH readings on the Properties show EMF in excess of 2.5 mG; and

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(6) two realtors testified that the Properties' values were adversely affected by the location near the powerlines and the high EMF readings.

After the Taxpayers presented their case, the Town moved to dismiss, asserting the Taxpayers did not show the powerlines impacted the Properties' values. The board took the motion under advisement.

The Town then argued:

(1) the Taxpayers did not provide supportable evidence to show the powerlines affected values, and therefore, the appeal should be denied;

(2) based on a new analysis, the assessments should be adjusted to \$112,000 for both units; and

(3) the value opinions from the Taxpayers' realtors did not establish lower values.

#### **Board's Rulings**

Based on the evidence, the board finds the proper assessments to be the Town's recommended total assessment of \$112,000 for both units (\$56,000 per unit).

The board denies the Town's dismissal motion for two reasons: 1) the Taxpayers made a sufficient showing that the powerline issue at least should be considered, requiring a response from the Town as to how they considered the affect of the powerlines; and 2) the board had concerns at the hearing and before the Town made its case about whether the Properties' original assessments were excessive.

Turning to the merits of the case, the board finds 1) the Town's recommended adjusted assessments represent the best value evidence presented to the board; and 2) the Taxpayers did not prove the recommended adjusted assessments were excessive.

Assessments must be based on market value, see RSA 75:1, and thus, assessments must reflect all relevant factors that affect market value, Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The board finds the market would consider the existence of the powerlines and the high EMF readings. The Taxpayers, however, did not prove whether, and if so how, the powerlines and the EMF readings affected value. Simply put, the market would consider the powerlines' location and possible impact on the Properties, but mere consideration does not establish whether the market would therefore value the Properties less and if less how much less.

The Town asserted that it was unaware of any provable impact attributable to the powerlines and that national research was inconclusive on whether powerlines affect property values. Most importantly, the Town argued there was no evidence that powerlines affected commercial values (as compared to residential values).

The Taxpayers presented two realtors who testified powerlines and high EMF readings would affect the Properties' marketability. The board could not conclude that these realtors had demonstrated that these factors would have adversely affected the Properties' values nor did the realtors show the extent of that effect. For example, the board does not find convincing one realtor's opinion that the Properties were reduced to a warehouse value.

The Taxpayers also failed to show the powerlines had actually adversely impacted the Taxpayers' business or the use of other units in the development.

The board was told about the occupants of the other units, but the board was

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not told about any vacancy problem at this development. If the powerlines impacted either rentability or salability, one would expect that the rental, vacancies and sales in the development would demonstrate this impact.

The Taxpayers have the burden of proof. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1986). Carrying the burden of proof on this particular issue (effect of powerlines on value) can be difficult to meet. However, the board could not conclude in this case that the Taxpayers showed the powerlines and high EMF readings affected value.

The board does, however, conclude the Town's recommended revised assessments more accurately reflect the Properties' values. Certainly, the Properties' location, immediate surroundings, and market changes warranted lower assessments than the original assessments.

If the taxes have been paid, the amount paid on the value in excess of \$112,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the

reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new  
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evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Carolyn Baldwin, Esq., Counsel for Kaj and Kathleen Sonne, Taxpayers; William R. Drescher, Esq., Counsel for the Town of Amherst; and Chairman, Selectmen of Amherst.

Date: October 17, 1996

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Valerie B. Lanigan, Clerk