

Robert E. and Barbara A. Smith

v.

Town of Wentworth

Docket Nos. 6291-89 and 9269-90

DECISION

These appeals were consolidated for hearing. The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessment of \$133,800 (land, \$37,900; buildings, \$95,900) on their real estate, consisting of a dwelling and outbuildings on a 9 acre lot on Sanders Hill Road (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 they were disproportionately taxed.

The Taxpayers argued the assessment was excessive because:

- (1)they purchased the Property in 1987 for \$135,000;
- (2) since the date of purchase PSNH has erected Hydro-Quebec transmission towers in the right-of-way;
- (3)a 350 ft. by 1400 ft. power line easement results in less than 1/2 acre of usable land;
- (4)the Property is "unmarketable at any price";
- (5)they paid too much for the Property because they weren't aware of the major "imminent expansion" by PSNH;
- (6)rear acreage is inaccessible due to wetness and topography; and
- (7)the drinking water is taken from the brook.

The Town argued the assessment was proper because:

- (1)the power line easement was there at time of purchase and visible;

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(2)Hydro-Quebec expansion was constructed after April 1, 1990; and

(3)location of new towers was "flagged" in 1988.

Based on the evidence we find the correct total assessment should be \$66,900. This assessment is ordered because:

(1)the fact that through ignorance of the Hydro-Quebec expansion the Taxpayers paid too much for the property should not go unadjusted;

(2)the knowledge of the impending construction of the Hydro-Quebec line would have a significant chilling effect on the value dwelling (and in general the property) in such close proximity due to both its visual effect and the uncertainty of the health concerns raised by electromagnetic radiation.

(2)owing to the close proximity (within 50 ft. according to the Taxpayers) of the house to the edge of the right-of-way...in the very shadow of the tower, the Board applies a 50% reduction to the total value and leaves the allocation of value between land and building to the Town.

If the taxes have been paid, the amount paid on the value in excess of \$66,900 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Robert E. and Barbara H. Smith, taxpayers; and Town of Wentworth.

Valerie B. Lanigan, Clerk

Date: April 21, 1992

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