William G. York, Carl R. York, and Paul W. York
v.
Town of Charlestown

Docket No. 5459-88

DECISION

The Taxpayers appeal, pursuant to RSA 76:16-a, the "Town's" 1988 assessments as follows:

1) Map 39, Lot 26

Land	$21,000
Building	42,600
	$63,600

2) Map 39, Lot 35

Land	$ 7,500
Building	5,900
	$13,400

3) Map 39, Lot 36

Land only	$8,000

(the Properties). 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 disproportionally taxed.

The Taxpayers argued the assessment was excessive because:

(1) the measured frontage was disproportionately higher than the area of the lots:

(2) the power easement adversely affects the Properties' value; and

(3) the odd shape of two of the lots.

The Town argued the assessment was proper because:

(1) the Town did not value the Properties based on frontage;

(2) adjustments were made for Lots 35 and 36 for size; and

(3) the site values used were low relative to others in the Town.

The board's inspector reviewed the property record cards, the Properties, and concluded no adjustments were needed for Lots 35 and 36 but an adjustment (20 percent reduction in land) should be made on Lot 26 because of the power-line easement. When questioned by the board, the Town stated a 25 percent adjustment might be appropriate for Lot 26 because of the easement.

Based on the evidence, including the board's inspector's report, no abatement is ordered for Lots 35 and 36, but an abatement is warranted for Lot 26. We find the correct assessment for Lot 26 should be $60,100 (land $17,500 and building $42,600). This assessment is ordered because we find a 25 percent adjustment to the land only is warranted due to the power-line easement.

Before the abatement, the Properties' total assessment was $85,000. With this abatement, the total is $81,500.

If the taxes have been paid, the amount paid on the value in excess of $81,500.00 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

March 14, 1991

George Twigg, III, Chairman

Peter J. Donahue

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to William C., Carl R., and Paul W. York, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Charlestown.

Michele E. LeBrun, Clerk

March 14, 1991

1002

William Lepsevich and Bernadette Lepsevich
v.
Town of Goffstown

Docket No. 5466-88

DECISION

The Taxpayers appeal, pursuant to RSA 76:16-a, the Town's 1988 assessments listed as follows:

Map 11, Lot 10	land	$176,300
	buildings	137,800
	total	$314,100
Map 8, Lot 33	land only	$112,300
Map 11, Lot 6	land only	$ 31,800

The property, located on Tibbetts Hill Road, consists of three separately assessed, but contiguous, parcels totaling approximately 175 acres, improved with a dwelling and attached garage. 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, 125 N.H. 214, 217 (1985). We find the Taxpayers carried their burden and proved they were disproportionally taxed.

The Taxpayers argued the assessments were excessive because:

1) most of the acreage had poor access due to limited frontage, the irregular shape of the parcels, wetlands, and ledge;

2) the frontage was entirely encumbered with a 400-foot-wide power-line right-of-way that contained two power lines with a third line, a DC transmission line, installed shortly after the assessment date;

3) the setting is in a rural part of town with no lawns or flatland; and

4) the house had improper drainage and has significantly settled causing many cracks in foundation, walls, and floors.

The Taxpayers also submitted evidence of their purchase price of the property in 1984 for $193,000 and a bank appraisal in March of 1988 that estimated the market value at $255,000.

The Town testified that the assessments on Map 8, Lot 33, and Map 11, Lot 6, were reduced to $97,900 and $10,900, respectively, in 1990 and should also apply for 1988. The Town then submitted a comparative spreadsheet of seven sales in support of the revised assessments.

The Board rules that, pursuant to RSA 75:9, there is no evidence to support the valuation of these three parcels as if they were separate estates as the Town has done. The parcels are contiguous, have unity of use, and could not have been sold separately on the assessment date. Therefore, the property should be described and appraised as one estate.

The Board finds that the power lines crossing the frontage and the imminence of the DC line in 1988 would have a significant chilling effect on the value of the property. Therefore, the Board rules that the frontage

condition factor should be adjusted to .15 and the house should receive 5 percent economic depreciation for the effect of the power lines.

All the rear acreage has substantial topographical (wetness and ledge) and access limitations that effect its utility and contributory market value beyond that recognized by the Town. All the rear acreage should have a x.30 condition factor to reflect these conditions.

The house, while only ten years old, exhibits many signs of settling and poor drainage (cracked foundation, racked frame, and cracked walls) for which any prospective buyer would discount. While the Town depreciated the house 10 percent for physical reasons, an additional 5 percent depreciation more adequately accounts for this condition.

In summary, the proper valuation is as follows:

Land:

Site	1 acre	= $ 51,400	
Rear land	174 acres x $4,000 (unit price) x .68 (influence factor) x .30 condition factor)	= 142,000	
Total land value			$193,400

Buildings:

$155,292 (total undepreciated value) -15% (physical depreciation) - 2% (functional depreciation) - 5% economic depreciation) x .78 (total condition)	=	121,150
Total value		$314,550

If the taxes have been paid, the amount paid on the value in excess of $314,550 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

May 1, 1991

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within decision have been mailed this date, postage prepaid, to William and Bernadette Lepsevich, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Goffstown.

Michele E. LeBrun, Clerk

May 1, 1991

1002

David E. Corbit and Judith M. Corbit
v.
Town of Goffstown

Docket No. 5556-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of $466,000 (land, $304,500; buildings, $161,500) placed on their property consisting of a colonial-style residence sited on approximately 94 acres of land (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 their burden and proved they were disproportionally taxed.

The Taxpayers argued the assessment was excessive because the land of the Property was traversed by two easements for electric-power companies. The Taxpayers further stated one of the power-company transmission lines was a high-voltage line which presented some health risk. The Taxpayers presented into evidence an appraisal indicating the fair-market value of the subject property to be $380,000 as of April 1, 1988. The Taxpayers' appraisal

indicated the impact of the power lines, as well as the topographical conditions of the land.

The Town argued the land was valued based on approximately $2,600 per acre after adjustments from an original back-land value of $4,000 an acre. The Town's representative explained that the frontage of the Property was adjusted for the power line, as well as excess frontage and topography.

Based on the evidence, including the board inspector's report, we find the correct assessment should be $380,000 (land, $218,500; buildings, $161,500). This assessment is ordered because the Taxpayers met the burden of proof and demonstrated the land surrounding their home did not have development value but was valuable as supplemental land to the homesite and colonial residence.

If the taxes have been paid, the amount paid on the value in excess of $380,000 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

May 2, 1991

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to David E. and Judith M. Corbit, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Goffstown.

Michele E. LeBrun, Clerk

May 3, 1991

1002

Estate of Edna G. Wilcox
v.
Town of Greenland

Docket No. 6050-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10 the "Town's" assessment of an RSA 79-A:7 land-use-change tax of $7,000, which was assessed with a August 1988 change-of-use date.

The Taxpayer has the burden of showing the Tax was improperly assessed. See RSA 79-A:10; RSA 76:16-a; TAX 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985). We find the Taxpayer carried this burden. The facts are as follows.

The "Property" consists of a 6.3 acres of which 4.92 acres +/- were in current use and 1.38 acres +/- were not in current use. The Property was originally part of a larger tract that was divided when the highway was put in. Despite not being 10 or more acres, the Property, being part of a larger tract was entitled to current-use classification. See REV. 1201.07, 1201.02. The Property was conveyed in August 1988, losing its current-use status since it was not 10 acres on its own. See REV. 1203.02 (a)(1). The Town fully valued the current-use land at $70,000, resulting in a $7,000 tax.

The Taxpayer argued the Tax was excessive because:

1. The entire 6-acre parcel with improvements was assessed for $230,000 in 1988;
2. The Property sold in August 1988 for $175,000, the price based on a December 1987 appraisal; and
3. The Town erred by treating the 4.92 acres as a separate lot when it was part of the 6.3-acre lot and thus was not subdivided and could not be conveyed

without subdivision approval.

The Town argued the Tax was correct because:

1. The Tax was correctly figured treating the 4.92 acres as a separate lot and not as part of the 6.3-acre lot;

2. The 4.92 acres was assessed as if one lot with back land when the 4.9 acres could have been valued as 2 lots since the 4.92 acres could be subdivided into 2 lots; and

3. The value arrived at was based on the 1988 assessment with adjustments made as deemed appropriate.

RSA 79-A:7 states, "the tax shall be *** 10 percent of the full and true value ***" of the land. Numerous cases have interpreted this language, and many have been reviewed in making this decision. E.g., Appeal of Sawmill Brook Development Co., 129 N.H. 410 (1987); Appeal of Town of Hollis, 126 N.H. 230 (1985). The clear mandate is to value the property at its highest and best use with due consideration for all factors that affect the property's value on the change date. Appeal of Sawmill Brook Development Co., 129 N.H. at 412; Appeal of Town of Hollis, 126 N.H. at 234. So, while the Town was correct in valuing the 4.92 acres as a separate lot, it could not be blind to the lack of subdivision approval as of the change date. Therefore, an adjustment of 15% is warranted. Additionally, a 10% adjustment should have been made for the utility right-of-way since it affected the frontage of the 4.92 acres.

To what base value should these adjustments be made? We do not adopt the Town's value because no documents were presented explaining how the $70,000 was calculated. Similarly, we do not adopt the Taxpayer's value because the Taxpayer's appraisal was not an appraisal of the 4.92 acres but rather was an appraisal for the entire 6.3 acres with improvements. The appraisal does, however, support the conclusion that a lot would sell for at least $60,000.

The board has determined the 4.92 acres' value as of August 1988 is $66,588 calculated as follows:

basic site	60,000 square feet	$66,600
additional land	3.54 acres	$20,443
adjustment for subdivision		x .85
adjustment for easement		x .90
TOTAL		$66,588

Therefore, the Tax should have been $6,659. If the Tax has been paid, the amount paid in excess of $ 6,659 shall be refunded to the Taxpayer with interest at six percent per annum from the date paid to the rate refunded.

SO ORDERED.
BOARD OF TAX AND LAND APPEALS

_____
Paul Franklin, Member

_____
Ignatius MacLellan, Esq., Member

Date: October 16, 1991

I certify that copies of the within Decision have been mailed this date, postage prepaid, to David Sanderson, Esq., counsel for the Estate of Edna G. Wilcox, taxpayer; and the Chairman, Selectmen of Greenland.

_____
Brenda Tibbetts, Clerk

Date: October 16, 1991

0009

Alice C. True
v.
Town of Alton

Docket No. 6249-89

DECISION

The Taxpayer appeals, pursuant to RSA 76:16-a, the Town's total 1989 assessment of $432,071 for four separately assessed properties as listed below:

Map 81, lot 18	$ 74,400 (land only)
Map 81, lot 19	$198,800 (land $112,100; building $86,700)
Map 48, lot 29	$ 47,600 (land $46,600; building $1,000)
Map 18, lot 31	$111,271 (land $37,971; building $73,300)

Map 81, lot 18

This is an unimproved lot of approximately one-half acre located on the extreme northwestern tip of Barndoor Island in Lake Winnipesaukee.

The Taxpayer argued the assessment was excessive because:

1) the lot was not buildable due to its size;

2) a utility easement crossed a portion of the lot; and

3) it is exposed to the prevailing winds which would make it difficult for boats to approach and dock.

The Town argued the assessment was proper as lot 18 would most likely be sold with the contiguous improved lot 19 and would contribute the assessed

value toward the total value of the two lots.

Map 81, lot 19

This lot, also located on Barndoor Island, is approximately .65 acre in size and is improved with a seasonal cottage.

The Taxpayer argued the assessment was excessive because:

1) the cottage was one of the smallest on the island, consisting of only three rooms serviced with wood heat and lake water only; and

2) several properties with larger cottages were not assessed proportionately more.

The Town argued the assessment was proper because the grade of the building had been reduced 8 percent to reflect the Taxpayer's concerns.

Map 48, lot 29

This parcel is a very small (approximately .01 acre) piece of land between Roberts Cove Road and Lake Winnipesaukee, with a dock providing access to the lake.

The Taxpayer argued the assessment was excessive because the usable area was so small due to the Town's culvert and resulting drainage that there was only enough room to access the dock but not to park a vehicle.

The Town argued the assessment was proper as there had been several sales of unbuildable "water access" lots in excess of $40,000.

Map 18, lot 31

This is a parcel of 15.7 acres on the east side of Roberts Cove Road improved with a dwelling and garage. Two acres are assessed at market value with the balance having been granted current use status.

The Taxpayer argued the assessment was excessive because:

1) of the age and style of the house, its lack of a basement, and the moisture under it; and

2) the driveway would need to be improved to make the dwelling accessible year round.

The Town stated the dwelling had been appraised consistent with other similar buildings but that the current-use land should be corrected to reflect a total acreage of 15.7 acres, not 20 acres.

The board finds and rules as follows:

Map 81, lots 18 and 19

Both parties testified that lot 18 has more value when considered in conjunction with lot 19 than standing alone. However, despite that fact, the Town assessed the two lots separately, making adjustments to lot 18 for its size, shape, access, and unbuildable nature. The board rules the Town's value for lot 18 is excessive given all its limitations and should be reduced to a correct assessment of $33,600 to better reflect its contributory value to the total value of lots 18 and 19 considered as one estate. See RSA 75:9. The board finds lot 19 properly assessed.

Map 48, lot 29

The board finds that the Taxpayer's use of this lot to access the lake is so restricted by its size, the lack of parking, and the Town's culvert that a further 25-percent reduction is warranted on the land, resulting in a correct assessment of $36,700 (land $35,700; building $1,000).

Map 18, lot 31

The board finds that the Town properly assessed the dwelling by reducing the grade from C+ to C (average) and by allowing a 20-percent depreciation (market adjustment). The board finds the Town inadvertently neglected to correct the total acreage, thereby reducing the current-use portion of the land value from $1,021 to $759. Therefore, the board rules the proper assessment for this lot is $111,009 (land $37,709; buildings $73,300).

Therefore, if the taxes have been paid, the amount paid on the value in excess of $380,109 is to be refunded with interest at six percent per annum from date of payment to refund date.

SO ORDERED.

August 16, 1991 BOARD OF TAX AND LAND APPEALS

_ George Twigg, III, Chairman

Paul B. Franklin

I certify that copies of the within decision have been mailed this date, postage prepaid, to Alice C. True, the Taxpayer, and to the Chairman, Board of Selectmen, Town of Alton.

August 16, 1991

Brenda L. Tibbetts, Clerk

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 disproportionally 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;

(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

Docket Nos. 6291-89 and 9269-90

Robert E. and Barbara A. Smith

v. Town of Wentworth

0007

Richard K. and Joan Bossart

v.

Town of Merrimack

Docket No.: 7693-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $193,600 (land $59,500; buildings $134,100) on a .9-acre lot with a gambrel-style house (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 disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the assessment should only be what someone would pay for the Property;

(2) comparable properties were assessed at $100,000, $106,000, and $120,800 and a much larger gambrel was assessed for only $136,000;

(3) the per-square-foot price is much higher than the comparables;

(4) there are discrepancies on the assessment card, i.e., square footage and age of dwelling;

(5) PSNH has a power-line easement across the Property, resulting in several limitations on the use of the easement area, and also raises concerns about the potential for contracting cancer; and

(6) the assessment should be $168,989.

The Town argued the assessment was proper because:

(1) the Town used 604 known sales from 1987, 1988 and 1989 and time adjusted the sales to January 1, 1989 and, using multiple-regression analysis, arrived at models to be used in assessing the properties in Town;

(2) the same methodology was used throughout the Town;

(3) all factors must be considered in the assessment, i.e., land, porches, decks, garages, and the Taxpayers only considered the building's living area;

(4) comparable properties sold in October, 1987 for $156,200, in September, 1987 for $159,900, in September, 1986 for $175,000, and in March, 1989 for $194,286; and

(5) sales showed that power-line easements had no effect on a property's value.

Board's Rulings

Based on the Taxpayers' evidence and the board's experience, the board finds the correct assessment should be $180,000. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its

assessing practices.)

The land assessment was adjusted by -10% to reflect the negative impact of the PSNH easement. The Town asserted that no adjustment was warranted, but the Town did not submit any data to support that conclusion. Common sense indicates that if you had two identical properties but one had the PSNH easement on it, the property with the easement would sell for less. Therefore, the board adjusted the land assessment. The board used a -10% figure based on the so-called "4-3-2-1 principal." This principal, simply stated, estimates that the value of land decreases as one moves away from the road frontage, resulting in only 10% of the land value being on the back portion of the lot.

After making the adjustment for the power easement, the board looked at the Taxpayers' and the Town's comparables and concluded the Property was worth approximately $180,000 in 1989.

If the taxes have been paid, the amount paid on the value in excess of $180,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____

Ignatius MacLellan, Esq., Member

_____

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard K. and Joan Bossart, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

_____
Valerie B. Lanigan, Clerk

0005

Thomas W. and Jean M. Story

v.

Town of Merrimack

Docket No.: 7771-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $159,400 (land $59,900; buildings $99,500) on a .977-acre lot with a ranch house (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 disproportionality.

The Taxpayers argued the assessment was excessive because:
(1) there is a 60' x 120' PSNH power-line easement in the back of the Property, and the Taxpayer cannot build or plant in the easement;
(2) PSNH should pay the taxes on the easement area because PSNH benefits from the easement;
(3) there is a correlation between cancer and high-voltage lines;

(4) only one of the Town's five comparables has an easement (comparable #4) and that property has been for sale for two years without a buyer;

(5) there are errors on the tax card, namely the house should be assessed with a half basement because one-half of the basement is the garage, and the house is actually two years older than indicated on the card, and there is an error on the market-analysis sheet, namely the dwelling does not have two full bathrooms;

(6) the Property was purchased in 1984 for $104,900; and

(7) the assessment should be $137,374.

The Town argued the assessment was proper because:

(1) the Town used 604 known sales from 1987, 1988 and 1989 and time adjusted the sales to January 1, 1989 and, using multiple-regression analysis, arrived at models to be used in assessing the properties in Town;

(2) the same methodology was used throughout the Town;

(3) a similar property in the neighborhood sold in 1987 for $164,000;

(4) the building age on the assessment card would not affect the value as the depreciation charts are based on 10-year increments; and

(5) the card and the data sheet do not have errors because the basement was considered full because it sits below the entire building, and any bathroom with three plumbing fixtures was considered a full bath.

Board's Rulings

Based on the evidence presented by the Taxpayers and the board's experience, the board finds the land assessment must be adjusted by -10% to reflect the negative impact of the PSNH easement, resulting in an assessment of $153,410 (land $53,910; building $99,500). The Town asserted that no

adjustment was warranted, but the Town did not submit any data to support that conclusion. Common sense indicates that if you had two identical properties but one had the PSNH easement on it, the property with the easement would sell for less. Therefore, the board adjusted the land assessment. The board used a -10% figure based on the so-called "4-3-2-1 principal." This principal, simply stated, estimates that the contributory land value decreases as one moves away from the road frontage, resulting in only 10% of the land value being on the back portion of the lot.

The Town reasonably answered the Taxpayers' other concerns. Additionally, to succeed in this procedure, the Taxpayers must show not only errors and miscalculations, but they must also show how those miscalculations resulted in disproportional assessment. While the Taxpayers asked the board to time adjust their 1984 purchase price and to accept a realtor's estimate, the Taxpayers did not submit any reliable market data from which the board could determine whether the Property was disproportionately assessed.

If the taxes have been paid, the amount paid on the value in excess of $153,410 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____

Ignatius MacLellan, Esq., Member

_____

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas W. and Jean M. Story, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

_____
Valerie B. Lanigan, Clerk

0005

James P. and Joanne M. Rogers

v.

Town of Cornish

Docket Nos.: 10828-90 and 10987-91

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $62,050 (land $45,800; buildings $16,250) and 1991 assessment of $81,000 (land $45,800; buildings $35,200) on an 11-acre lot with a mobile home (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 agreed with the building assessments for both years, but argued the land assessments were excessive because:

1) the Property is steep, wet, and the ledge severely impairs building potential;

2) only 120 of the 900-foot frontage is usable;

3) the comparables have artesian wells and poured-concrete foundations, while the Property has a dug well and the trailer sits on block piers;

4) the Property has an easement for power poles and lines and a high voltage line runs across the Property;

5) the Property borders gravel pits and a stump dump, resulting in heavy equipment being used constantly;

6) the trailer home is 36 feet from a Class VI road, resulting in noisy recreational-vehicle traffic;

7) garbage and heavy objects are constantly being dumped on the Class VI road;

8) the shape, location, and condition of the Property makes it less marketable than the comparables; and

9) an appraiser estimates the December, 1990 market value to be $70,000 including a $35,000 site value, however, the appraiser neglected to address the lack of artesian well, street lights, and the power-line easement.

The Town argued the assessment was proper because:

1) adjustments were already applied to the assessment, i.e., increased topography depreciation for the wetlands, adding 2 acres to the wetlands, and recalculating the frontage, all resulting in a $19,199 reduction in the original assessment; and

2) an 11.1-acre, undeveloped lot was sold on January 25, 1989 for $52,400, and another 12-acre, undeveloped lot sold on July 16, 1990 for $43,450.

The board's inspector reviewed the property tax card and filed a report with the board. This report concluded the proper assessment for 1990

should be $50,600 (land $34,350; buildings $16,250); and for 1991 should be

$69,550 (land $34,450; buildings $35,350). (The increase in building value is due to the new trailer home.) The inspector increased the depreciation to address the power lines, topography, and the swampy frontage.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be: 1990 - $50,600; and 1991 - $69,550. These assessments are ordered because:

(1) the Taxpayers showed the wet frontage, shape of lot, and abutting gravel pit were not adequately adjusted for by the Town;

(2) the Taxpayers' 1990 appraisal is some indication of market value; and

(3) the board's inspector's report reasonably adjusted for problems with the parcel.

If the taxes have been paid, the amounts paid on the values in excess of $50,600 in 1990, and $69,550 in 1991, 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

_____

Paul B. Franklin, Member

_____
Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to James P. and Joanne M. Rogers, Taxpayers; and Chairman, Selectmen of Cornish.

Dated: February 18, 1993

_____
Melanie J. Ekstrom, Deputy Clerk

0005

James P. and Joanne M. Rogers

v.

Town of Cornish

Docket Nos.: 10828-90 and 10987-91

AMENDED DECISION

On March 2, 1993, the board of tax and land appeals (board) received a request from the Town of Cornish to review its decision of a 1991 valuation of $69,550 (land $34,450; buildings $35,350). The Town is correct in its assumption that the land and building values should equal the total valuation.

The total valuation is correct and the board amends the last paragraph of page 2 of its decision to read as follows: "The board's inspector reviewed the property-tax card and filed a report with the board. This report concluded the proper assessment for 1990 should be $50,600 (land $34,350; buildings $16,250); and for 1991 should be $69,550 (land $34,350; buildings $35,200)."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Member

_____
Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to James P. and Joanne M. Rogers, Taxpayers; and Chairman, Selectmen of Cornish.

Dated: March 16, 1993

_____
Melanie J. Ekstrom, Deputy Clerk

0005

Shirley and Rudolphe Daigle

v.

Town of Candia

Docket No.: 11371-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of $114,450 (land, $30,050; building, $84,400) on a house with .60 acres (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

1) in one year's time the land and building values increased over 2-3/4 to 4 times;

2) a neighboring property with more acreage was taxed only $10,000 more;

3) a PSNH power line runs through the Property;

4) errors exist on the property-record card, i.e., dishwasher, fireplace, paved driveway;

5) the basement was wet during the spring and fall seasons; and

6) the well water had a high content of iron, therefore water must be bought, and the septic system needs to be updated.

The Town argued the assessment was proper because:

1) sales of nearby comparable properties, with proper adjustments, and having similar acreage indicated Taxpayers' assessment was proper;

2) property-record cards of neighboring properties indicated front-foot values compared with Taxpayers; and

3) upon an inspection in August of 1991, there was no evidence or discussion of a wet basement.

The board's inspector reviewed the assessment-record card, the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the adjusted assessment was proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Finding

Based on the information provided, the board finds the proper

assessment should be $110,640 (land, $26,240; building, $84,400). The board finds that the Town, after receiving the Taxpayers' concerns, made corrections

and adjustments to the assessment for most of the issues the Taxpayers raised. However, the board concludes the Town's -5 adjustment for the PSNH easement was insufficient. The tax map, which showed the location of the easement, demonstrates that the easement encompasses most of the Taxpayers' frontage. The other properties affected by the easement, which the Town pointed out, were not as adversely affected since the easement was on the back of those lots and those lots were somewhat larger. In this case, the Taxpayers have a small lot, which is substantially encumbered by the easement. Therefore, the board concludes a -20% adjustment would be more appropriate.

No further adjustment is warranted because the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

To the extent the Taxpayers claim an inability to pay their taxes, the amount of property taxes paid by the Taxpayers were 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

Taxpayers 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). The board has included a copy of RSA 72:38-a. The board, by providing this copy, is not in any way indicating whether the Taxpayers are entitled to such a lien.

If the taxes have been paid, the amount paid on the value in excess of $110,640 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, the Town shall also refund any overpayment for 1992 and 1993. 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.

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

_____

Ignatius MacLellan, Esq., Member

_____

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Shirley and Rudolphe Daigle, Taxpayers; and Chairman, Selectmen of Candia.

Dated: December 9, 1993

_____

Melanie J. Ekstrom, Deputy Clerk

Estate of Robert J. Bonin

v.

Town of Rye

Docket No.: 11651-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of $105,750 on Lot 3, a vacant 5.86-acre lot; and 649,600 (land $531,350; buildings $118,250) on Lot 63, a 32,300 square foot lot with a house. The Taxpayer also owns, but did not appeal, another lot in the Town assessed at $387,200. (An additional lot owned by the Taxpayer under the name of Sleepy Hollow Motel, Inc. is under appeal in BTLA Docket No. 11652-91PT.) For the reasons stated below, the appeal for abatements is granted on Lot 3 and denied on Lot 63.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried their burden and proved disproportionality on Lot 3 and failed to prove Lot 63 was disproportionately assessed.

The Taxpayer argued the assessment on Lot 3 was excessive because:

(1) the lot abuts the Coakley landfill superfund site (listed among the top 10; and

(2) the lot was appraised along with the abutting 2.48 acre lot with motel (Docket No. 11652-91PT, Sleepy Hollow Motel, Inc.) for $250,000 in April 1990, for $195,000 in September 1991 and a recent offer of $195,000 for the motel and vacant lot was made by an abutter.

The Town argued the assessment on Lot 3 was proper because:

(1) the lot was assessed as 3.7 acres and actually contains 5.86 acres, is a separate lot of record, can be separately sold and should be assessed separately;

(2) the 1991 assessment does not show discounts made for the power line;

(3) based on the testimony, a 50% reduction to the rear land is appropriate because the rear land will not support a building; and

(4) a recommended assessment of $100,000 is appropriate.

The Taxpayer argued the assessment on Lot 63 was excessive because:

(1) the house was not winterized and its use was as a seasonal property;

(2) a September 1990 appraisal estimated the value to be $545,000;

(3) the Property was sold for $670,000 in February, 1993; and

(4) the Property was subsequently sold (July 1993) and the owner raised the building and has built a new home.

The Town argued the assessment on Lot 63 was proper because:

(1) a neighboring property sold in November 1992 for $685,000; several other comparables which occurred in 1992 and 1993, when equalized, support the assessment;

(2) the strength of oceanfront sales is documented by the ratios; and

(3) the assessment is proper.

Board's Rulings

Lot 3 - Based on the evidence, we find the proper assessment on Lot 3 to be $75,600. As stated in the board's decision in Sleepy Hollow Motel, Inc., Docket No. 11652-91PT, the board must consider this lot separately from the Sleepy Hollow Motel because the property is a separate lot of record and can be separately sold. Therefore, this decision deals solely with a determination of the proper assessment on Lot 3.

This lot is sandwiched between the Sleepy Hollow Motel and the Coakley site, has 271 feet of frontage on Lafayette Road of which 100 feet is encumbered by a power line easement and also a large embankment on the property. The Town stated the incorrect acreage was applied in 1991 and the board is basing this decision on the correct acreage of 5.86 acres.

The Town stated that they did not consider the existence of the Coakley site and therefore made no reduction in value for any impact on the value of the lot. As of April 1, 1991, the lot had no water or sewer and testimony established that the water on the abutting motel lot was contaminated and the motel was in the process of securing water from the Town of Hampton. The board concludes the property's location abutting the Coakley site impacts its 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 therefore some adjustment must be made. To ignore the negative impact of being in a superfund site would require abandonment of judgment and common sense.

Arriving at a proper assessment is not a science 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); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). Finally, judgment is the touchstone of reaching a value conclusion.

We find the Town's material insufficient to overcome this common-sense approach. Specifically, none of the evidence dealt with properties impacted by the superfund site. Based on the evidence presented and the board's own judgment, the board finds an assessment of $75,600 is proper. The board has made a 10% topography adjustment for the public service easement and embankment on the lot, a 50% adjustment to the rear land because it will not support a building, and has determined that a 30% economic adjustment to the

lot is appropriate based on its location abutting the superfund site. The board has calculated the assessment as follows:

Figured Front	Avg. Depth	Unit Price	Unit Percent	Front foot Price	Basic Value	Topo. Dep.	Excess Frontage	Undev. Dep.	App. Value
271	400	600	x 100	600	162,600	x .90	x .84	x .82	100,800

Classification	No. of Acres	Unit Price	Basic Value	Topo. Dev.	Size Dep.	Appraised Value
Rear - Good	3.38	5,000	16,900	x .50	x .85	7,200

Subtotal $108,000
x .70
Total Assessment $ 75,600

Lot 63 - Based on the evidence, the board finds the Taxpayer failed to prove the property was disproportionately assessed. The property sold in February 1993 for $670,000 (estate sale) and resold in July 1993 for $750,000. The Department of Revenue Administration (DRA) calculated the equalization ratios for 1991 through 1993 as follows: 1991 - 81%; 1992 - 88%; 1993 - 89%). The DRA ratios indicate that the overall change in the market from April 1991 through April 1993 was -9% or -.00375 per month. The board has trended the sales data and arrived at a range of value of $727,620 to $825,000 as of April 1, 1991. The property's equalized value is $801,975 ($649,600 ÷ .81, 1991 eualization ratio) which falls in the high end of the range of value; however, the board finds that the July sale is more indicative of the property's fair market value. The February sale was a sale by the Executor of the Estate of Arthur Bonin. While this sale may have been a market sale, the fact that the

property sold five months later for 11% more indicates the substantial value that this type of ocean-front property has on the market.

Further, the board finds that the Town supported the assessment of this property through the sales evidence presented, specifically comparable sale #1 which had only 70 feet of water-frontage and sold in November 1992 for $685,000. The subject property has 180 feet of water-frontage which significantly increases its value.

If the taxes have been paid on Lot 3, the amount paid on the value in excess of $75,600 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, the Town shall also refund any overpayment for 1992, 1993 and 1994. 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 law. Thus, new 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

_____
Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John M. O'Connor of Marvin F. Poer & Co., Agent for the Estate of Robert J. Bonin, Taxpayer; and Chairman, Selectmen of Rye.

Dated:June 22, 1995

_____
Valerie B. Lanigan, Clerk

0006

Estate of Robert J. Bonin

v.

Town of Rye

Docket No.: 11651-91PT

ORDER & AMENDED DECISION

This order responds to the Town's rehearing motion which is granted. The board inadvertently neglected to calculate the depth adjustment factor for Lot 3.

The board amends pages 3, 4, 5 and 6 of its decision as follows:

Page 3

"Lot 3 - Based on the evidence, we find the proper assessment on Lot 3 to be $86,900."

Page 4

"...Based on the evidence presented and the board's own judgement, the board finds an assessment of $86,900 is proper."

Page 5

Figured Front	Avg. Depth	Unit Price	Unit Percent	Front foot Price	Basic Value	Topo. Dep.	Excess Frontage	Undev. Dep.	App. Value
271	400	600	x 116	696	188,616	x .90	x .84	x .82	116,950

Classification	No. of Acres	Unit Price	Basic Value	Topo. Dev.	Size Dep.	Appraised Value
Rear - Good	3.38	5,000	16,900	x .50	x .85	7,200

Subtotal $124,150
x .70
Total Assessment $ 86,900 Page 2

Bonin v. Town of Rye
Docket No.: 11651-91PT

Page 6
"If the taxes have been paid on Lot 3, the amount paid on the value in excess of $86,900 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

_____
Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John M. O'Connor of Marvin F. Poer & Co., Agent for the Estate of Robert J. Bonin, Taxpayer; and Chairman, Selectmen of Rye.

Dated: August 9, 1995

_____
Valerie B. Lanigan, Clerk

0006

Margaret and James Farrenkopf, Sr.

v.

Town of Campton

Docket No.: 12736-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $12,975 (land $8,550; buildings $4,425) on a .25-acre lot with a mobile home (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden.

The Taxpayers argued the assessment was excessive because:

(1) the trailer is only 240 square feet, is not permanently hooked up to utilities, is still on wheels and has the tongue, and thus the trailer should not have been taxed as realty;

(2) the Town assessed the trailer because it does not have a commercial license plate;

(3) the land was assessed higher than other lots, including larger lots; and

(4) there is an electrical transmission easement on the lot, which has been cleared.

The Taxpayers asserted they thought the land was worth approximately $9,500.

The Town argued the assessment was proper because:

(1) the department of revenue advised the Town that many of the trailers in this development might be taxable realty;

(2) the Property includes a deck and a doorway; and

(3) under RSA 72:7-a, the trailer, which is not registered and is on the site year-round, is taxable.

Board's Rulings

Based on the evidence, we find the correct assessment should be $9,575 (land $8,125; shed and deck $1,450). This assessment is ordered because:

(1) we find the Town erred in taxing the trailer; and

(2) the land assessment should have been adjusted due to the transmission line easement on the Property (We used -5%.).

None of the Taxpayers' other arguments were meritorious.

Regarding the first issue, the board rules that, based on the facts presented in this case, the trailer is neither taxable as manufactured housing under RSA 21:21 (II) and RSA 72:7-a nor taxable as personal property that has become a fixture to real estate under RSA 21:21 (I) and RSA 72:6.

Our analysis is in four steps:

1) review of the statutes;

2) determination of whether the Property is a "manufactured house" or personal property;

3) if personal property, determination of whether it is taxable as real estate; and

4) review of the constitutionality of the pertinent statutes.

Statutes

The pertinent statutes are:

RSA 21:21 Land; Real Estate.

I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.

II. Manufactured housing as defined by RSA 674:31 shall be included in the term "real estate."

RSA 72:6 Real Estate.

All real estate, whether improved or unimproved, shall be taxed except as otherwise provided.

RSA 72:7-a Manufactured Housing

I. Manufactured housing suitable for use for domestic, commercial or industrial purposes is taxable in the town in which it is located on April 1 in any year if it was brought into the state on or before April 1 and remains here after June 15 in any year; except that manufactured housing as determined by the commissioner of revenue administration, registered in this state for touring or pleasure and not remaining in any one town, city or unincorporated place for more than 45 days, except for storage only, shall be exempt from taxation.

RSA 674:31 Definition.

As used in this subdivision, "manufactured housing" means any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a.

The various statutes dealing with manufactured housing were intensely studied and generally amended in 1983. A review of the legislative records and minutes reveals the intent of the amendments was to treat manufactured housing as real estate for both local property tax and state transfer tax purposes and to separate it from travel trailers, which were to remain as vehicles to be registered by the state. The threshold size for manufactured housing of 320 square feet was chosen to correspond with HUD minimum size standards for living units.

Taxable as Manufactured Housing

RSA 674:31 states four conditions must exist for a unit to be taxable as manufactured housing: 1) it must be larger than 320 square feet; 2) it must have a permanent chassis; 3) it must be designed to be used as a dwelling; and 4) it must be connected to basic utilities. In the present case, the trailer has a permanent chassis, is used as a seasonal camp, has power and simple water and sewer hookups, but the trailer is less than 320 square feet. Thus, the trailer is not "manufactured housing" as defined in RSA 674:31 and as taxable under RSA 72:7-a.

Under the present statutory construction, the

trailer is considered personal property eligible for registration as a "trailer" with the division of motor vehicles under RSA 259:113 and RSA 261:141. Further, RSA 261:69 and RSA 261:70 make it clear that a unit should not be assessed as manufactured housing and registered as a motor vehicle at the same time.

Taxable as Real Estate

Having determined the trailer is personal property does not automatically mean the trailer is not taxable. In fact, three different possibilities exist.

1) The trailer can be registered as a motor vehicle if it is "to be driven on the ways of this state"(RSA 261:40) and thus remain as mobile personal property.
2) The trailer can exist simply as immobile personal property without being registered and used on the highways and without taking on the aspects and rights of realty.
3) The trailer can by its very use and nature become a fixture to the realty and taxable as such.

The second option is the case with the Taxpayer's trailer. In arriving at this decision, no one fact was controlling. Whether a trailer is taxable as real estate requires a case-by-case analysis, considering all factors. The board was convinced by the collective weight of the following facts.

a) The trailer is not permanently hooked up to utilities.
b) The trailer still has tires and the tongue, and it could be moved with very little work. Moving the trailer would do minimal damage to the trailer, the land or the deck.

Taxable as a Fixture

To understand why this trailer is not considered a fixture, a review of the

definition of fixtures and the authority to tax fixtures follows.

The authority to tax fixtures as real estate is found in RSA 72:6 and RSA 21:21. RSA 72:6 states: "All real estate, whether improved or unimproved, shall be taxed except as otherwise provided." This statute is to be broadly interpreted. King Ridge, Inc. v. Sutton, 115 N.H. 294, 298-99 (1975). RSA 21:21 I states: "The words `land,' `lands' or `real estate' shall include lands, tenements, and hereditaments, and all rights thereto and interests therein." (Emphasis added.)

In addition to these statutory criteria, the caselaw on fixtures must be examined--fixtures being taxable as realty. As stated in The Saver's Bank v. Anderson, 125 N.H. 193, 195 (1984):

> A chattel loses its character as personalty and becomes part of the realty when there exists "an actual or constructive annexation to the realty **with the intention of making it a permanent accession to the freehold**, and an appropriation or adaptation to the use or purpose of that part of the realty with which it is connected." However, if a chattel becomes an intrinsic, inseparable and untraceable part of the realty, it is deemed a fixture regardless of the intent of the parties. (Emphasis added.) (Citations omitted.)

Black's Law Dictionary defines "fixture," in part, as "an article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the land. . . . Goods are fixtures when they become so related to particular real estate that an interest in them arises under real estate law."

Based on this review, especially the facts here, the board rules this trailer has not become such "an intrinsic, inseparable and untraceable part of the realty" to be considered taxable as a fixture. We note that a different result could be reached concerning other trailers if those trailers qualified as a fixture under the above

fixture analysis.

Constitutional Review

While not raised as an issue by either party, the board researched whether the right of reciprocal protection and taxation as provided in Pt. 1, Art. 12 of the New Hampshire Constitution was violated by RSA 21:21 (II), RSA 72:7-a and RSA 674:31 or by this decision. We find no constitutional violation.

The legislature has the authority to classify property differently for taxation as long as the classification bears some rational relationship to the statute's legislative purpose. State v. Scoville, 113 N.H. 161, 163 (1973); Belkner v. Preston, 115 N.H. 15, 17 (1975). "Inequality of taxes laid is forbidden, but inequality caused by taxing some property and not taxing other is permitted." Opinion of the Justices, 95 N.H. 548, 550 (1949). "(T)he rule of equality and proportionality does not apply to the selection of subjects for taxation, provided just reasons exist for the selections made." Opinion of the Justices, 94 N.H. 506, 508 (1947).

In the 1983 amendments dealing with manufactured housing, the legislature created two classifications -- units greater than 320 square feet to be treated as real estate and those less than 320 square feet to be treated as personal property. The legislative intent appears to have been to facilitate the assessment of real estate by making a distinction between

manufactured housing as real estate and travel trailers as personal property, based on size, mobility and the utility of the unit. Further, the minimum 320-square-foot size has a basis in the H.U.D. minimum living unit size. Therefore, these statues meet the "rational basis" requirement of equal protection provisions of the New Hampshire Constitution.

Refund

If the taxes have been paid, the amount paid on the value in excess of $9,575

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, the Town shall also refund any overpayment for 1992, 1993 and 1994. 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.

Rehearing and Appeal

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 law. Thus, new 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, 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 Christopher J. Kelly, Agent for Margaret and James Farrenkopf, Sr., Taxpayers; and Chairman, Selectmen of Campton.

Dated:February 1, 1995 _____
Valerie B. Lanigan, Clerk

0006

Margaret and James Farrenkopf, Sr.

v.

Town of Campton

Docket No.: 12736-91PT

ORDER

This order responds to the "Taxpayers'" April 12, 1995 letter in which the Taxpayers asserted the "Town" abated taxes in 1991 and 1992 but did not refund taxes for 1993 and 1994 because the Town had undergone a revaluation in 1993. The Taxpayers asked the board to enforce the board's February 1, 1995 decision for 1993 and 1994 even though the Town underwent a complete revaluation in 1993. The board was prepared to order the Town to follow the board's previous decision, i.e. not to tax the trailer unless it had changed. The board then received the Town's response, stating the trailer should not have been taxed for 1993 and 1994. The Town is doing the right thing. The Taxpayers' letter now requires no response.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

_____
Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Margaret and James Farrenkopf, Sr., Taxpayers; and Chairman, Selectmen of Campton.

Date: May 22, 1995

_____
Valerie B. Lanigan, Clerk

0007

Philip and Elsie Traxler

v.

Town of Antrim

Docket No.: 15030-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $56,900 (land, $42,300; building, $14,600) on a camp with .340 acres (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 denied.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

1) it exceeded the general level of assessment of other property in the neighborhood;

2) the Property's use is restricted, i.e., half the Property is under the power lines and the lot has poor topography; and

3) a proper April 1, 1994 fair market value would have been $56,000.

The Town argued the assessment was proper because:

1) a base-acre price for lots on Franklin Pierce Lake of $75,000 was established in the 1993 revaluation;

2) reductions were given to address the Taxpayers' arguments about the power line and topography; and

3) similar lots were assessed proportionately with each other.

BOARD FINDINGS

Based on the evidence, the board finds the Taxpayers did not show overassessment.

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Property was assessed at $56,900, but the Town's equalization ratio is 1.11, indicating that assessments in the Town generally exceeded market value. The Property's equalized assessment was $51,260 ($56,900 assessment ÷ 1.11 equalization ratio). To show overassessment, the Taxpayers should have shown that the Property was worth less than $51,260. Perhaps erroneously, the Taxpayers in their brief stated the Property was worth $56,000.

The Taxpayers argued their lot was assessed higher based on a per-acre analysis. Differing per-acre assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-acre prices for smaller lots than for larger lots. Because the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-acre basis to reflect this market phenomenon.

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982). Additionally, the Town adjusted the Property's assessment for topography and the utility easement. Finally, the Town stated that the Property may have erroneously received a 20% downward adjustment for topography near the lake, which was given to most properties in this area due to topographical problems near the lake. The Town stated, and the photographs certainly showed, that the Property has very good topography near the lake. The lakefront area is the most valuable part of the Property.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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.

This, new evidence and new Page 4
Traxler v. Town of Antrim
Docket No.: 15030-94PT

arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration 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

_____
Ignatius MacLellan, Esq., Member

_____
Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Philip and Elsie Traxler, Taxpayers; and Chairman, Selectmen of Antrim.

Date: June 13, 1996

_____
Valerie B. Lanigan, Clerk

0006

Lockheed Sanders, Inc.

v.

Town of Hudson

Docket Nos.: 15346-94PT and 17233-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 and 1996 assessments of $31,331,700 (land $4,771,600; buildings $26,560,100) on a 171-acre lot with two research and development (R&D)/manufacturing buildings (the Property). The Taxpayer also owned, but did not appeal, another property in the Town with a $36,000 assessment. 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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) an appraisal (Thompson appraisal) estimated the market value as of April 1996 to be $18,500,000;

(2) the most reliable indicator of value of this Property is the comparable sales approach;

(3) based on the appraisal and the Town's 1996 equalization ratio of 112%, the proper assessment for 1996 should be $20,720,000; and

(4) the asbestos/concrete composite siding ("edgerock") and the multiple heat-pump units make the buildings less desirable than other more conventional buildings.

The Town argued the assessment was proper because:

(1) an appraisal (Traub appraisal) estimated the market value as of April 1996 to be $29,900,000; and

(2) the Thompson appraisal has too many inconsistencies with an earlier 1991 Thompson appraisal of the Property to be credible.

Following the June 9, 1998 hearing, the board viewed the Property including the site and the interior of both buildings.

Stipulations of Parties

The parties stipulated that evidence would be limited to the fair market value of the Property as of April 1, 1996. The board's finding of the 1996 market value would be adjusted by the 1996 ratio (112%) to arrive at the 1996 assessment and the 1996 assessment would be applied to 1995 and 1994.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $27,440,000 based on a market value finding of $24,500,000 and the Town's 1996

equalization ratio of 112%.

The hearing took place over three days and voluminous evidence and documents were submitted. The board has thoroughly reviewed all the appraisals and associated documents. The board will not comment or rule on every conflicting issue raised by the parties; however, the decision will "include specific, although not excessively detailed, basic findings in support of the ultimate conclusion[s] ..." Appeal of Portsmouth Trust Co., 120 N.H. 753, 759 (1980). The board's decision will be similar to reading a road map; it will not describe all the roads not taken, only those that are.

Dissimilar to the board's ruling in Hi Tension Realty Corp./Lockheed Sanders, Inc. v. Town of Hudson, Docket Nos. 9305-90PT, 11546-91PT and 14375-93PT, the board finds the Taxpayer submitted adequate evidence (Thompson

Appraisal) to raise a serious question as to whether the Property was properly assessed. Upon further analysis of the entire body of evidence, including the Town's Traub appraisal and the board's view of the Property, the board has concluded the Property is disproportionately assessed and an abatement is warranted. However, initially, the board must express concern at the $11,400,000 difference in the value conclusions of two qualified appraisers. While the Property has some unique issues related to it, the highest and best use of the Property as R&D and manufacturing with some expansion potential was assumed by both appraisers. They also agreed that the sales approach to value was the most applicable although the Town placed more weight on the income and cost approaches as support for the sales approach than did the Taxpayer. So why such a great difference in value? Some might argue cliental deference.

The board is unable to reach such a conclusion. Both appraisers have significant education, experience and reputation. Both certified that their appraisals were prepared in conformance with the requirements of the Uniform Standards of Professional Appraisal Practice and that there was no bias or value deference to the cause of their clients. While inconsistent or inappropriate assumptions and methodologies were argued by both parties, the board is unable to attribute such actions to deliberate bias by either appraiser. Consequently, the board gives no credence to the Town's argument that Mr. Thompson's appraisal was biased and will focus this decision on the most credible evidence submitted from all sources.

Issues

As with any appraisal process there are generally three areas that must be addressed in this case: 1) what are the property rights being valued (this usually takes the form of a description of the physical characteristics of the Property and a determination of its highest and best use); 2) what approaches to value are most appropriate; and 3) what is the correlated market value conclusion based on the chosen approaches to value.

Property Description and Highest and Best Use Determination

The land consists of a 171.1-acre parcel in New Hampshire with additional acreage in Massachusetts. The parcel fronts 900 feet on River Road and the interior is accessed by an approximately 3,000 foot, two-lane, paved road. The two existing buildings and associated parking areas are laid out on the northwesterly side of the Public Service of New Hampshire (PSNH) transmission line right of way which diagonally bisects the Property. On the

view, the board noted the lot was nicely landscaped in a campus setting style and that a significant area was available for either expansion or future development. The improvements consist primarily of two large R&D buildings built in 1983. One building known as PTP-1 consists of a two-story R&D building with a total square footage of 304,168 square feet. The second building known as PTP-2 consists of a two-story building with the first floor being primarily open manufacturing areas with some office and petitioned areas while the second floor is similar to the R&D space in PTP-1. The square footage of PTP-2 is 254,080 square feet. The total area of the two buildings is 558,248 square feet. The board has relied on this square footage derived from the Traub appraisal in all of its approaches to value. While the Thompson appraisal contained slightly different square footage, the differences were insignificant. Further, the board has adopted the Traub square footage because: 1) it is the more conservative of the two square footages; and 2) the Traub appraisal contained a dimensional sketch of each building supporting the square foot calculation.

Based on the testimony, review of both appraisals and the view, there are three issues relative to the physical property that impact on many of the board's decisions and the various approaches to value it has analyzed.

First, the board finds the improvements not to be of the good to excellent quality as described in the Traub appraisal nor of just the average quality described in the Thompson appraisal. As will be described in more

detail in the cost approach, the board finds the Property is of above average construction but in several ways not of as good a quality as argued by the

Town. (For example, both in the appraisal and on the view, remarks were made as to the finish of the executive office area. On the view the board did not see that the finish was substantially any different than that of the other office areas. While pleasant and very functional, it was not of excellent quality. Indeed the furnishings, wall coverings and pictures, etc., in the executive area were more elaborate than the other office areas; however, those are personal property and the board's observations were that the actual office improvements were not substantially better than above average.)

Second, the board finds the heating and cooling of the buildings with a total of 448 zoned heating pumps would be a factor the market would consider. The testimony and the view indicate that the systems require constant rotational maintenance and to some extent had become obsolete due to parts being unavailable. While in the overall scheme of the buildings, the heat pumps may not be a large item, it is still a factor that the board has determined needs to be recognized and adjustments made in the various approaches to value.

Third, the exterior "edgerock" panels which contain asbestos add additional environmental and work safety concerns that would need to be addressed during any exterior maintenance or expansion of the buildings. Again, while not an overriding factor, it is one that, everything else being equal, the board believes the market would consider and, thus, adjustments have been made in the several approaches to value.

The board has determined the highest and best use of the Property to be as developed with the two R&D and light manufacturing buildings. Further, the board finds there is significant land area for expansion and/or further development of additional R&D/industrial or office uses. Both the view and the market evidence submitted indicates there is reasonable current demand and

usage for the Property as it was originally configured. While

these buildings have the potential of being leased to other large users, the board concludes, based on the Property's history and the market evidence of other similar properties, the Property would likely continue to be owner occupied.

Approaches to Value

There are three approaches to value: 1) the cost approach; 2) the comparable sales approach; and 3) the income approach. The Appraisal of Real Estate at 71 (10th Ed. 1991).

While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate at 72; Property Appraisal and Assessment Administration at 108. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

The Thompson and Traub appraisals employed the three approaches to value. We agree that consideration of all three approaches is warranted for this Property, and the board's subsequent analysis will be broken down by those three approaches. However, the board has in its correlation of values placed the least weight on the income approach and equal weight on the cost and sales approaches. As the board noted in its highest and best use determination, the Property does have the potential for being leased to other large users. However, we find it is more likely for both buildings to be

owner occupied due to their size and large open configuration. However, because the Property is improved with two separate buildings and as indicated by the phased sale of the two Digital properties at Continental Boulevard in Merrimack, New Hampshire, there is the possibility of leasing one building or a portion of it while occupying the balance of the space. Thus, the income approach is given some weight.

We agree with the parties that the sales approach is a reliable method to estimate the Property's value. Both the Thompson and Traub appraisals indicate there was significant market activity for properties of similar usage from which to derive indications of value.

The board agrees with the Town's argument that the cost approach also has merit in estimating the Property's value. "The principle of substitution is basic to the cost approach. This principle affirms that no prudent buyer would pay more for a property than the cost to acquire a similar site and construct improvements of equivalent desirability and utility without undue delay." Appraisal Institute, The Appraisal of Real Estate, 11th ed., 1996. The Town argued that in the 1995-1996 time frame the supply of existing R&D/manufacturing properties was diminishing to the extent that there were sales occurring of raw land being purchased for the purpose of constructing new facilities. Both the Thompson and Traub appraisals contain several land sales on which similar buildings were subsequently constructed. Thus, this evidence of substitute property being constructed warrants consideration of the cost approach. Further facilitating the use of the cost approach is the fact the buildings are relatively new (1983), have been well maintained, and thus, have relatively little depreciation.

Cost Approach

The cost approach always entails two separate calculations: 1) an estimate of the land value by the sales approach; and 2) an estimate of the improvement's depreciated replacement cost.

The board finds the land has a market value of $3,750,000 (rounded) based on an estimate of $22,000 per acre for the 171.1 acres.

Generally, the board gave more weight to the land value conclusions contained in the Traub appraisal than in the Thompson appraisal for the following reasons. 1) The Traub appraisal's 11 land sales and listings provide a good picture of what was occurring in the southern New Hampshire market for relatively large tracts of land available for 100,000 plus square

foot R&D and industrial building development. 2) While the board is not entirely convinced that parcel size at some point is not a market consideration, the sales of larger lots (approximately 20 acres and larger) do not support the size adjustments contained in the Thompson appraisal. The board is not convinced that the Thompson appraisal parcel size adjustment may not be influenced by other factors such as location and potential use. The size adjustment was estimated by doing a paired sales analysis of three smaller industrial/office parcels with a larger parcel purchased for construction of a Wal-Mart distribution center in Raymond. The Raymond parcel, while perhaps good for distribution purposes, is not as desirable for R&D/industrial uses. The other three sales are closer to major interstate transportation, similarly used properties and an established work force. 3) The Property has existing internal access by a two-lane paved road and on-

site municipal water and sewer. Several of the sales, in both the Traub and Thompson appraisals, did not have such features on site at the time of the sales. Consequently, adjustments, such as those in the Traub appraisal, to the sales price to account for the cost of providing good internal access and utilities is warranted to result in an indicated price per acre comparable to the Property.

The board placed most weight on the Traub appraisal's larger acreage sales and little weight on the two different asking prices of the property on Lowell Road in Hudson. It is clear that the smaller acreage sales contained in the Traub report are not comparable without significant size adjustments. Probably the best sale, which both Thompson and Traub used, was the sale of 65.05 acres at 45 Executive Drive in Hudson for $1,500,000. This sale occurred in the year under appeal, was in the same town and, while not exactly the same size as the subject, is a large tract of land capable of supporting large multiple improvements. This parcel was subsequently subdivided into several industrial lots which comprise some of the smaller sales in the Traub appraisal. While there is disagreement between the parties as to the

comparability of the Property with this sale based on access to utilities, the board finds any adjustment relative to differences in utilities could be totally or partially offset by the existence of the large PSNH transmission line right of way on the Property. Thus, with significant weight on the 45 Executive Drive sale and some consideration for the size of the Property, the board concludes $22,000 per acre is a reasonable estimate of the parcel's value.

Building Value

A summary of the board's findings of the building's depreciated cost are contained in the attached calculator cost forms of Marshall Valuation Service contained in Addendum A. The depreciated value of the two buildings are: PTP-1 $12,606,061 and PTP-2 $8,600,027.

The board will briefly outline the significant variations from the parties' cost calculations.

First, based on the board's view of the Property, it concludes the building's class is more equivalent to a class C masonry type of construction than to a class S steel construction. A review of the Marshall Valuation Service's class S type building indicates that class S is generally of lower quality construction than that seen on the view. There is no question that the construction class of this Property is somewhat unique. However, the board has concluded that the market would view this equivalent to a class C property.

The board finds the quality of the building to be average plus. The base square foot price is derived by an average of Marshall Valuation Service class C average and good quality R&D and manufacturing categories. As already stated, the board made this conclusion based on its view of the Property in comparison to the comparables submitted and the appraisals' descriptions of the Property compared to the Marshall Valuation quality level descriptions.

Adjustments in the heating and cooling have been made for the heat pumps and for the fact that the Property is located in an extreme climate versus a moderate climate.

The height and size adjustments and current cost and local multipliers are drawn directly from the Traub and Thompson appraisals which were generally in agreement as to these adjustments.

Lump sum adjustments are detailed on the rear portion of the calculator cost form and, as indicated in the parenthesis, are figures adopted from either the Thompson or Traub appraisals. The board, in reviewing Marshall Valuation and the Property's description in the appraisals and reconciling them with what was seen on the view, chose the lump sum value that was the most appropriate after that review. The most significant element in the lump sum calculation is the Traub appraisal estimate of $900,000 for the 3,000 foot internal road. The board agrees with the Town that this is a value that the Thompson appraisal did not recognize but that the market certainly would. The internal road as it was laid out provides excellent access to both the developed portion of the Property and the area available for future development. For a market value estimate not to include some contributory value for this road is to ignore a significant factor of the Property. The board did not find that an adjustment for site improvements such as grading, landscaping, clearing, etc. needed to be added in addition to those that are contained within the Marshall Valuation base prices. On the view, the board observed that the Property was generally level with well-drained soils having been improved on a former agricultural site. Thus, the board did not observe any abnormal site improvements associated with the buildings that are not already contained in the Marshall Valuation base prices.

The board's physical depreciation of 15% is not a straight-line, age-life factor, but rather an observed depreciation based on the board's view of the Property and consideration of its age and good condition.

The board finds a 5% functional depreciation necessary to recognize the obsolescence of the multiple heat pumps and the existence of the asbestos in the exterior "edgerock" panels. On the view, the board observed the heat pumps undergoing a continual maintenance and rebuilding program. Testimony indicated that many of the replacement parts for the heat pumps are no longer being made, and thus, have to be fabricated by the Taxpayer. The board finds any prospective purchaser would certainly take into account this unique ongoing maintenance requirement compared to other buildings with more conventional heating systems. Further, the board was shown on the view that any disturbance with the exterior wall of the building required special environmental precautions due to the asbestos within the "edgerock" panel. Any drilling or cutting of the panel would make the asbestos friable, and thus, a hazard to the workers. Again, while this is not an overriding issue in the valuation of the Property, the board concludes it is a factor that needs to be recognized as part of the 5% functional depreciation adjustment.

The board finds a 5% economic depreciation is warranted based on several indications. First, the board did an analysis similar to that contained in the Traub appraisal on page 158 comparing the price per square foot derived in the sales approach minus an estimated site value with the price per square foot estimated by the cost approach with only physical and functional depreciation deducted. This analysis indicated a difference of slightly greater than 3%. Further, the board finds that a number of the parties' sales of improved R&D and manufacturing properties involved extensive renovations following the sales. These renovations are some indication that there existed some functional and economic depreciation in the existing buildings and that

the excess supply of improved properties was not yet quite at market balance on April 1, 1996.

In summary, the cost approach valuation is:

Land	$ 3,750,000
PTP-1 building	$12,606,061
PTP-2 building	$ 8,600,027
Total	$24,956,088 (rounded to $25,000,000)

Sales Approach

First, both the Thompson and Traub appraisals contained the two Digital sales at Continental Boulevard in Merrimack (buildings MK1 and MK2). The properties were sold by Digital Equipment Corporation to FMR Merrimack Limited (Fidelity) with MK2 closing in December of 1995 and MK1 transferring in November of 1996. While these properties are similar in many ways with the appealed Property, the board has been unable to give much weight to these sales because of the unresolved conflicting testimony surrounding these sales, the significant alterations that took place after the sales and the prerequisite of the separation of utilities before the first purchase of MK2. Mr. Thompson and Mr. Traub received conflicting verification from the parties involved with the sales as to whether the two transactions were related or not. The board was unable to resolve this, and thus, the analyses in the Traub and Thompson appraisals as either separate transactions or related transactions are given no weight.

The Thompson appraisal relied on six sales, two of which are the MK1 and MK2 sales. Two of the remaining four sales received significant adjustments for being transfers of leased fee interests versus fee simple interest. The board reviewed Mr. Thompson's comparison analysis of fee simple and leased fee sales and was unable to agree that such an adjustment was warranted. The board concludes that other factors such as whether the buildings were either multi-tenant or single tenant may have impacted on the resulting sales price rather than just the fact that the property sold with an existing tenant or not. As a consequence, the board was unable to place much weight on the conclusions of the indicated values of the remaining Thompson sales.

The board finds the sales contained in the Traub appraisal, with the exception of the two MK sales (comparable #6 and comparable #10), are

reasonable comparables from which the indicated value after adjustments can be derived. The board has revised the adjustments of the remaining Traub comparable sales as shown on the chart on page 14. The board's revised analysis does two things. One, it revises the percentage adjustments to the sales from a chain multiplication to an additive adjustment. Adding the percentage adjustments results in each adjustment being applied equally to the time adjusted sales price. Second, it reduces the construction quality adjustment for each comparable by 10% to reflect both the lower construction quality and the issues related to the heat pumps and the "edgerock" exterior.

The board has concluded that an adjustment for building size is not warranted. The Property's total square footage is approximately 550,000 which is larger than the square footages of the comparables which range from 116,408 square feet to 461,395 square feet. Initially, the board had concerns, based

on a review of both appraisals, that the Traub appraisal did not contain any adjustment for building size. However, the board compared on a cost basis the square foot price of buildings the size of the comparables to that of the subject and found that there was a relatively negligible (3% to 4%) difference in replacement cost due to size. This generally supports the Traub appraisal's conclusion of no size adjustment for buildings of this size.

The revised analysis has a median of $42.47 per square foot and an average of $42.38 per square foot. The board finds a correlated price per square foot of $42.40 is appropriate which applied to the Property's square footage of 558,248 square feet provides an indicated value of $23,669,715 (rounded to $23,750,000).

REVISED TRAUB APPRAISAL 1996 COMPARABLE SALES ANALYSIS

Comparables[1]	Comp. #1	Comp. #2	Comp. #3	Comp. #4	Comp. #5	Comp. #7	Comp. #8	Comp. #9	Comp. #11
Sale $ psf	64.47	31.12	48.32	78.57	54.90	28.84	47.68	30.56	42.41
Time Adj.	0	10% 34.23	12% 54.12	6% 83.28	5% 57.65	10% 31.72	28% 61.03	17% 35.76	2% 43.26
Financial Concessions	0	0	0	0	0	0	0	0	0
Renovations	0	+5,000,000 61.29	0	0	0	+1,600,000 45.47	0	0	0
Municipality Adj.	- 5%	- 5%	- 5%	-15%	-10%	0	-20%	+ 5%	0
Lot Size/ L to B Ratio	0	0	0	0	0	- 5%	0	0	0
Const. Quality[2]	-20%	-10%	-10%	-20%	-10%	0	-10%	0	0
Condition/ Age	0	-10%	0	-10%	0	0	+10%	+10%	0
Finish	- 8%	- 8%	- 8%	- 4%	- 8%	0	- 8%	0	0
Total Adj.	-33%	-33%	-23%	-49%	-28%	- 5%	-28%	+15%	0
Indicated $ psf	x .67 43.19	x .67 41.06	x .77 41.67	x .51 42.47	x .72 41.51	x .95 43.20	x .72 43.94	x1.15 41.12	0 43.26

[1] As already ruled on by the board, the board was unable to give any weight to the two Digital sales (comparable sales number 6 and number 10).

[2] As already discussed in the board's general findings, the construction quality adjustment has been decreased for all comparables by 10% for the general quality of buildings, the heat pumps, and the exterior "edgerock" panels.

Income Approach

As stated earlier, the board gives the least weight to this approach to value. Nonetheless, the board has estimated the Property's value by the income approach as summarized below:

Gross Potential Income		
R&D Space	430,422 sf	
Rental Rate	x 5.25	
	$ 2,259,715	
Manufacturing Space	127,820 sf	
Rental Rate	x 4.25	
	$ 543,235	
Total Gross Potential Income	$ 2,802,950	(weighted average rate $5.02/sf)
Vacancy (10%)	x .90	
Effective Gross Income	$ 2,522,655	
Expenses (est. 15% of EGI)	x .85	
Net Operating Income	$ 2,144,257	
Capitalization Rate (9%)	÷ .09	
Indicated Market Value	$23,825,077	
Excess Land	$ 1,750,000	
Total Market Value	$25,575,077	($25,500,000 rounded)

Market Rents

The Thompson appraisal estimated a market rent of $4.75 NNN for the R&D area and a market rent of $3.25 NNN for the manufacturing area. These rates were derived from five rental comparables. No specific adjustments were made to the rental comparables. However, a discussion of the comparables' attributes relative to the Property led to the choice of the rental rates. The Traub appraisal derived a blended rate (a rate that included a minus 8% adjustment for the manufacturing space) of $5.75 per square foot after making

specific adjustments for time, location, space quality, physical condition and the 8% manufacturing space adjustment.

In attempting to reconcile the divergent market rent estimates, the board applied a time adjustment to the Thompson rents. This adjustment alone resulted in an indicated rate of approximately $5.00 per square foot for buildings largely of R&D use and a rate of $4.00 for buildings with some manufacturing space. The board, however, was unable to make further adjustments for location, quality, condition, etc. because of the lack of

specific knowledge about the comparables. Consequently, the board considers the results of the adjusted Thompson rents but does not find them conclusive.

The board did a revision to the Traub rental comparables similar to that done in the Traub sales approach. Adjustments were made to reduce the space quality by 10% and the overall adjustments were calculated on an additive basis. The resulting indicated rents range from a low of $4.71 per square foot to a high of $6.33 per square foot with an average of $5.25 per square foot and a median of $5.18 per square foot.

Giving more weight to the revised indicated rents per square foot in the Traub appraisal, but also, to some extent, considering the revised Thompson rental rates, the board concludes that a rate for the R&D space of $5.25 per square foot and $4.25 for the manufacturing space is reasonable.

The board clearly understands that deriving a market rent for property of this nature is subject to debate. However, the board has also reviewed its estimated rental rates with the unadjusted rates of the rental comparables in both the Traub and Thompson appraisals and find they are reasonable given the

Property's good location, campus setting, above average construction and the issues of the heat pumps and "edgerock" panels.

Vacancy

The board finds the Thompson appraisal's estimate of 20% vacancy to be unreasonable based on the survey information and rental data contained in the Traub appraisal. Again, because of the Property's size and general owner/occupant type of use it is difficult to predict with any accuracy what a reasonable vacancy rate would be. However, the board finds a 10% rate (one year in ten) would be a reasonable period of time for either a change in tenancy or rehabilitation work to accommodate a new tenant.

Expenses

The Thompson appraisal expenses equated to approximately 18% of its effective gross income. The Traub appraisal expenses were estimated at approximately 13% of its effective gross income. From these estimates, the

board concludes a 15% rate for expenses of the effective gross income is reasonable. The board notes the Thompson expense percentage is higher, to some extent, based on his assumption of a 20% vacancy which increases his vacancy cost expense. The board's estimated 10% vacancy rate consequently reduces that expense. The other expenses in the two appraisals for management, replacement for reserves, and brokerage fees are essentially identical calculated on an effective gross income basis.

Capitalization Rate

The Thompson appraisal estimated an overall capitalization rate of .088, while the Traub appraisal estimated an overall capitalization rate of .093.

Both rates are not unreasonable, are within one half of one percent of each other and are adequately documented. Consequently, the board has given equal weight to both rates and rounded its conclusion to .09.

Excess Land

As found in the cost approach, the board estimated the overall value of the total 171.1 acres at $3,750,000 based on an estimate of $22,000 per acre. Neither party submitted a definitive site plan to indicate what acreage was actually encumbered in the existing improvements, and thus, captured by the income approach calculation and what land would be available for future expansion or development. The board, based on its view and the relatively simplistic site plan submitted, concludes that approximately half of the acreage remains for development. This estimate is inclusive of most of the PSNH right of way line. Consequently, the board has made an approximate allocation of $2,000,000 to the improved site and allocated the balance of $1,750,000 to the undeveloped land. This allocation considers: 1) the risk associated with developing the undeveloped portion; and 2) the effect of the PSNH transmission line right of way on the placement of certain future improvements. The resulting difference per acre for the developed site versus the undeveloped site is approximately $3,000 ($23,391 for the developed site versus $20,468 for the undeveloped area). This

differential seems reasonable based on the appraisals, the board's view, and as noted, the risk and powerline issues involved in the undeveloped portion.

Correlation of Values

The three approaches to value indicated the following estimates of value:

cost approach	$25,000,000 (rounded)
sales approach	$23,750,000 (rounded)
income approach	$25,500,000 (rounded).

The board correlates these indications to a final estimate of value of $24,500,000 by giving equal weight to the cost and sales approaches and less weight to the income approach.

As stated at the beginning of this decision, the board intended to pick the best evidence from the mass of evidence presented. That is what this decision attempts to do. Further, the final value conclusion of $24,500,000 when compared to the raw sales data submitted by both the Thompson and Traub appraisals reasonably fits the range of sales if proper consideration is given to the Property's attributes relative to those of the comparables sales.

Town's Findings of Fact and Rulings of Law

In these responses, "neither granted nor denied" generally means one of the following:

a. the request contained multiple requests for which a consistent response could not be given;

b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. the request contained matters not in evidence or not sufficiently supported to grant or deny;

d. the request was irrelevant; or

e. the request is specifically addressed in the decision.

f. All requests comparing Thompson's earlier testimony with his current appraisal and testimony were neither granted nor denied because the board has

found that Thompson's testimony and evidence to be generally credible, notwithstanding some inconsistencies and assumptions as addressed in the decision.

1. Granted.

2. Granted.

3. Granted.

4. Neither granted nor denied.

5. Granted.

6. Granted.

7. Granted.

8. Granted.

9. Neither granted nor denied.

10. Granted.

11. Neither granted nor denied.

12. Neither granted nor denied.

13. Granted.

14. Granted.

15. Neither granted nor denied.

16. Granted.

17. Neither granted nor denied.

18. Neither granted nor denied.

19. Granted.

20. Granted.

21. Neither granted nor denied.

22. Neither granted nor denied.

23. Granted.

24. Denied.

Refund

If the taxes have been paid, the amount paid on the value in excess of $27,440,000 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 1996 and 1997. 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. Further, as stipulated to by the parties, the assessment of $27,440,000 shall apply to both the 1994 and 1995 tax years.

Rehearing

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 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

_____
Michele E. LeBrun, Member

_____
Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph M. Kerrigan, Esq., Counsel for Lockheed Sanders, Inc., Taxpayer; John J. Ratigan, Esq., counsel for the Town; and Chairman, Selectmen of Hudson.

Date: November 10, 1998

_____
Valerie B. Lanigan, Clerk

0006

ADDENDUM A

Lockheed Sanders, Inc.

v.

Town of Hudson

Docket Nos.: 15346-94PT and 17233-96PT

ORDER

This order responds to the "Town's" December 2, 1998 Motion for Reconsideration and Clarification (Motion). The Motion raises three general issues:

1) the sales approach calculation in the board's November 10, 1998 decision (Decision) did not include a value for the excess land;

2) if the sales approach value estimate is revised, the board's economic depreciation in the cost approach needs to be recalculated; and

3) the excess land should be valued at $2,550,000.

In response to the Motion, the board amends the Decision relative to the first two issues, as follows: (Deletions in brackets; additions bolded).

Page 2, paragraph 5

Based on the evidence, the board finds the proper assessment to be **$28,280,000** [$27,440,000] based on a market value finding of **$25,250,000** [$24,500,000] and the Town's 1996 equalization ratio of 112%.

Page 11, paragraph 2

The board finds a 5% economic depreciation is warranted based on several indications. First, the board did an analysis similar to that contained in the Traub appraisal on page 158 comparing the price per square foot derived in the sales approach minus an estimated site value with the price per square foot estimated by the cost approach with only physical and functional depreciation deducted. This analysis indicated a difference of **approximately 2.5%** [slightly greater than 3%]. **Second** [Further], the board finds that a number of the parties' sales of improved R&D and manufacturing properties involved extensive renovations following

Page 2
Lockheed Sanders, Inc. v. Town of Hudson
Docket Nos.: 15346-94PT and 17233-96PT

the sales. These renovations are some indication that there existed some functional and economic depreciation in the existing buildings and that the excess supply of improved properties was not yet quite at market balance on April 1, 1996. **Third, the Traub appraisal estimated an economic depreciation of 4% was warranted.**

Page 13, paragraph 3
The revised analysis has a median of $42.47 per square foot and an average of $42.38 per square foot. The board finds a correlated price per square foot of $42.40 is appropriate which applied to the Property's square footage of 558,248 square feet provides an indicated value of $23,669,715 (rounded to $23,750,000) **for the improvements and the developed area of the parcel. It is not clear from the sales analysis grid on pages 119 - 121 of the Traub appraisal as to the exact basis of the lot size/land-to-building ratio adjustments. However, the several -5% adjustments that were made and the text and footnotes on page 122 indicate the analysis was done comparing the sales to only the developed portion of the Property. Thus, the board's value of $1,750,000 for the excess land (page 17) needs to be added to result in the total value by the sales approach of $25,500,000 ($23,750,000 + $1,750,000).**

Page 18, paragraph 2
Correlation of Values

The three approaches to value indicated the following estimates of value:

cost approach	$25,000,000 (rounded)
sales approach	**$25,500,000** [$23,750,000] (rounded)
income approach	$25,500,000 (rounded).

The board correlates these indications to a final estimate of value of **$25,250,000** [$24,500,000] by giving equal weight to the cost and sales approaches and less weight to the income approach.

As stated at the beginning of this decision, the board intended to pick the best evidence from the mass of evidence presented. That is what this decision attempts to do. Further, the final value conclusion of **$25,250,000** [$24,500,000] when compared to the raw sales data submitted by both the Thompson and Traub appraisals reasonably fits the range of sales if proper consideration is given to the Property's attributes relative to those of the comparables sales.

Page 20, Paragraph 1

Refund

If the taxes have been paid, the amount paid on the value in excess of **$28,280,000** [$27,440,000] 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 1996 and 1997. 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. Further, as stipulated to by the parties, the assessment of **$28,280,000** [$27,440,000] shall apply to both the 1994 and 1995 tax years.

The board declines to amend the Decision for the Motion's third issue because the board's findings relative to the $1,750,000 value for the excess land is adequately contained in its decision and the Town did not raise any error or misconstrued fact in its Motion to warrant any change.

Because this order is more favorable to the Town and was as a result of a motion for reconsideration pursuant to RSA 541:3, the Town need not file a subsequent motion for rehearing with the board if it intends to appeal to the supreme court. If the Town wishes to appeal the board's order to the supreme court, it must be done within 30 days from the date of this order. RSA 541:6.

Because this order is less favorable to the "Taxpayer," if the Taxpayer wishes to appeal this order, it must file a motion for rehearing with the board pursuant to RSA 541:3 within 30 days of the clerk's date. Any appeal by the Taxpayer to the supreme court could only occur subsequent to the resolution of the Taxpayer's motion for rehearing. Appeal of White Mountains Education Association, 125 N.H. 771, 775 (1984).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

_____
Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph M. Kerrigan, Esq., Counsel for Lockheed Sanders, Inc., Taxpayer; John J. Ratigan, Esq., counsel for the Town; and Chairman, Selectmen of Hudson.

Date: December 24, 1998

_____
Valerie B. Lanigan, Clerk

0006

Lockheed Sanders Inc.

v.

Town of Hudson

Docket Nos.: 15346-94PT and 17233-96PT

ORDER

This order confirms the board's verbal ruling during the May 14, 1998 telephone conference with the parties of the Town's May 7, 1998 Motion to Compel Further Answers to Interrogatories and Production of Documents (Motion). The board grants the Motion and orders the Taxpayer to provide the Town with a copy of the 1998 lease prior to the May 22, 1998 hearing. Such information is reasonably calculated to lead to the discovery of admissible evidence and thus discoverable.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Joseph M. Kerrigan, Esq., Counsel for the Taxpayer; John J. Ratigan, Esq., Counsel for the Town; and Chairman, Board of Assessors for the Town of Hudson.

Date: May 15, 1998

Valerie B. Lanigan, Clerk

0006

Lockheed Sanders Inc.

v.

Town of Hudson

Docket No.: 17233-96PT

ORDER

This order relates to two issues:

1) the "Town's" response when asked by the board, "Did the Taxpayer File and abatement application with you?" The Town responded, "No, the Taxpayer's Representative did."; and,

2) the Taxpayer's failure to include a copy of the "comparative assessment analysis" referred to under the section, Reasons for Appeal, on their original appeal document filed with this board on August 29, 1997.

Regarding the first issue, the Taxpayer must sign the municipal abatement application, pursuant to TAX 203.02(d). Since the Taxpayer's counsel instead of the Taxpayer signed the abatement application, the board, on its own motion, declares the Taxpayer in default. See TAX 201.04 (if defective, the taxpayer shall have opportunity to cure before the case is dismissed).

Regarding the second issue, the board declares the Taxpayer in default for filing an incomplete appeal document with the board, pursuant to TAX

203.03(f).

The Taxpayer shall within ten (10) days from the date of this order:
1) cure the defaults by:
a) providing a corrected copy of the abatement application to the Municipality signed by the Taxpayer; and,
b) filing with the board a copy of the "comparative assessment analysis" referred to in the original appeal document under the section entitled "reasons for appeal"; **and**
2) move to strike these defaults.

IF THE TAXPAYER FAILS TO TIMELY CURE THE DEFAULTS OR FAILS TO MOVE TO STRIKE, THE APPEAL SHALL BE MARKED:

Taxpayer finally defaulted for failure to comply with board's default order; Taxpayer may not take further action on this appeal, and the board will not make any further ruling on this appeal. See TAX 201.19; TAX 201.04, .05, .06; Superior Court Rule 35.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Joseph M. Kerrigan, Esq., Counsel for the Taxpayer; John J. Ratigan, Esq., Counsel for the Town; and Chairman, Board of Assessors for the Town of Hudson.

_____
Dated: January 17, 1998 Valerie B. Lanigan, Clerk

Anne Krantz

v.

Town of Amherst

Docket No.: 15830-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $306,200 (land $100,100; buildings $206,100) on a 2.10-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the size of the house is incorrect on the Property's assessment card and should be reduced;

(2) there has been a disproportionate change in assessed valuation for the

Property when compared to similar neighborhood properties;

(3) a comparison of the absolute assessments of neighborhood properties shows an inequity in assessments;

(4) the land value segment of the assessment is too high when compared to other properties in the neighborhood; and

(5) the proper assessment should be $280,000.

The Town argued the assessment was proper because:

(1) there are some small differences between the Property and 29 Storybook Lane that would necessitate adjustments, including the number of bathrooms and some finished basement area;

(2) there may be an error of fact concerning the number of bathrooms at 29 Storybook Lane; and

(3) the adjustment for power lines near 29 Storybook Lane is approximately $10,000.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $295,000. The equalization ratio for Amherst in 1994 was 1.00, therefore, the assessment value is also equal to the market value in this instance. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing

assessment process allocates the total value between land value and building value. The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.

The board recognizes this abatement is within less than 4% of the Town's assessed valuation. However, after reviewing the sales evidence submitted by the parties and the descriptions of the properties contained on the assessment-record cards, the board concludes the Town's assessment slightly exceeds a reasonable valuation range for the Property. Further, in reviewing

the various features of the Property and the comparable sales, we find the $295,000 assessed valuation results in the Property being more proportional to market value and the attributes of the sales comparables.

The board arrived at the $295,000 estimate of value by revising the Taxpayer's appraisal performed by Judith Parker (Parker Appraisal). The board revised the Parker Appraisal by adjusting the sales by the valuation differences for each of the property components as estimated on the Town's assessment-record card. For example in comparable #1, the board added $10,000 for the approximate difference in site value; $10,000 for the property being located near a power line right-of-way; and differing amounts for decks, bathrooms, finished basement, garage, porches and fireplaces. The board performed similar adjustments to the other two comparables. The indicated value range by making those adjustments was approximately $290,000 to $300,000. From that, the board estimated the reasonable market value of $295,000.

While not determinative of the board's conclusion, the board did note by

reviewing the photographs of the Property and the comparables that the Property lacked some of the architectural appeal that the comparables had. While this is indeed a subjective observation, the board notes the general saltbox design of the Property is detracted from by the shed dormer on the rear of the saltbox and the shed-roof portion of the one-story addition. While these features are at the rear of the Property and not generally visible from the street, they detract from the pure lines of the saltbox design. Again, the board made no adjustment for these architectural features in its revision of the Parker Appraisal but notes that this could possibly be a factor in the marketing of the Property.

If the taxes have been paid, the amount paid on the value in excess of $295,000 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

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

_____
Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Anne Krantz, Taxpayer; and Chairman, Selectmen of Amherst.

Date: December 27, 1996

_____
Valerie B. Lanigan, Clerk

0006

James and Margaret H. Smith

v.

Town of Windham

Docket No.: 16544-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of $166,000 (land $54,900; buildings $111,100) on a 5.73-acre lot with a single-family home (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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:
(1) the Property was purchased in 1991 for $119,010 plus $3,000-$4,000 in back taxes;

(2) a high voltage power line easement runs through the Property;

(3) the Property and two other lots (139 and 141 Castle Hill) have substandard frontage and share a long common access;

(4) the Property has significant inadequacies which detract from its value;

(5) an adjoining property (139 Castle Hill) with better grade, condition and layout sold in June 1993 for $166,000;

(6) a comparison of 1994 versus 1995 assessments of comparable properties support disproportionality of the Property;

(7) the sales used by the Town all are assessed less than their sales prices; and

(8) the proper assessment should be $135,490.

The Town argued the assessment was proper because:

(1) there is no relevant comparison between the 1994 and 1995 records;

(2) 139 Castle Hill Road sold after a 2-year marketing period in which the property was overpriced and the C quality grades for 139 and 143 Castle Hill Road are minimum building code qualities;

(3) a 15% depreciation has been made for the negative aspects of the power line easement and long, shared driveway access; and

(4) three comparable sales support the assessed value.

The board's review appraiser (Mr. Bartlett) inspected the property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. A copy of the report was sent to the parties who were given an opportunity to respond in writing. This report concluded the range of assessed values to be $143,500 to $147,000. Note: The review

appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $143,500.

In arriving at this abatement, the board finds that many of the issues raised by the Taxpayers would have an affect on the Property's value including the physical problems with the house, the long shared drive and the power line

easement. The board finds the Town's assessment, while recognizing to some extent these issues, did not sufficiently adjust for them to result in the assessment being proportional to the sales submitted by the parties. Conversely, while the board gave some weight to the physical problems of the Property, we did not find them to have as substantial an affect on the market as the Taxpayers' claimed.

The board places most weight on Mr. Bartlett's value conclusions contained in his report rather than the Town's or the Taxpayers' analyses. Mr. Bartlett viewed the Property with the Taxpayers and viewed the comparables from the exterior. Based on Mr. Bartlett's view and his appraisal knowledge and experience, the board finds his analysis to be the most credible. The Taxpayers responded to Mr. Bartlett's report noting several errors in it such as the notation of the number of fireplaces and the basement finish quality of comparable number 3. The board made revisions to Mr. Bartlett's analysis

which resulted in a correlated indication of market value being slightly less than $145,500 found by Mr. Bartlett, in fact, more in line with his revised assessment recommendation of $143,500.

The board was unable to place significant weight on the Taxpayers' case summary (Taxpayers' Ex. #2), or the Taxpayers' analyses contained in their August 21, 1997 response to Mr. Bartlett's report. We find their analyses and commingling of adjustments difficult to follow in a rational manner and their conclusions of questionable market relationship. Further, the Taxpayers' comparison of old assessments to current assessments is without merit as far as proving disproportionality for the 1995 tax year. Assessments must always be based on market value. Consequently, increases from past assessments are not evidence that a taxpayer's property is disproportionally assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985). Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

If the taxes have been paid, the amount paid on the value in excess of $143,500 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 1996. 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 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

_____
Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James and Margaret H. Smith, Taxpayers; and

Chairman, Selectmen of Windham.

Date: September 22, 1997

_____
Valerie B. Lanigan, Clerk

0006

Charles and Diane Interbartolo

v.

Town of Piermont

Docket No.: 17834-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of $69,700 (land $20,300; buildings $49,400) on a single-family home on a 1.2-acre lot (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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the building is of a lower quality than assessed by the Town;

(2) the building was previously a camp/recreational hall and the interior finish is varied and of lower quality than assumed by the Town during its exterior inspection;

(3) the building has no foundation (except for a small area where the heating system and utilities

are located) with the floor joists resting on rocks;

(4) comparing the assessment to other properties in the neighborhood that are of better quality indicates the assessment is excessive; and

(5) a power distribution line goes through the middle of the lot.

The Town argued the assessment was proper because:

(1) similar style properties are assessed similarly;

(2) the Taxpayers' comparable (Whitcher) is dissimilar in that it is a seasonal camp-type property and significantly larger; and

(3) the distribution power line only affects the supplemental land, not the primary house site.

The board's review appraiser, Mr. Stephan Hamilton, inspected the Property, reviewed the assessment-record card and reviewed the parties' briefs and filed a report with the board. This report concluded the proper assessment should be $58,600.

Note: The review appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $60,600. This assessment is based on the board finding that Mr. Hamilton's report is the best evidence as to the condition and value of the Property, but modified by reducing the adjustment on the lot for the distribution power line from 20% to 10%.

Separate from the review appraiser's report, the board concludes the Town's assessment

overstated the quality of the dwelling based on the photographs and the general description and history of the structure. Because no improved properties had sold recently on Lake Arlington, no sales evidence was submitted by either party. Consequently, the board finds the board's review appraiser's cost approach estimate to be the best evidence of market value submitted. Further, Mr. Hamilton was able to view the interior of the Property whereas the Town had not during its assessment process.

However, because the power line easement is only for distribution lines and because the improvement is not year round, the board concludes the power lines would not be as significant a deterrent in the market (-$4,000) as adjusted by Mr. Hamilton. However, the board concludes that it is a factor that, everything else being equal, would be considered by the market. Paras v. City of Portsmouth, 115 N.H. 63, 67-8 (1975) (In properly assessing property, municipalities must look at all relevant factors.)

Last, while no market data existed for the board to review, the revised assessment of $60,600 appears more proportional relative to the assessed values of other properties submitted by the parties.

If the taxes have been paid, the amount paid on the value in excess of $60,600 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 1999. 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.

If the taxes have been paid, the amount paid on the value in excess of $60,000 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 . 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 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

_____
Steven H. Slovenski, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Charles and Diane Interbartolo, Taxpayers; and Chairman, Board of Selectmen of Piermont.

Date: March 24, 2000

_____
Lynn M. Wheeler, Clerk

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Board\PFSS\17834-98.

Bruce J. Connell

v.

Town of Londonderry

Docket No.: 24811-09PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2009 assessment of $331,800 (land $116,900; building $214,900) on Map 13/Lot 71-11, 12 Seasons Lane, a single family home on 1.96 acres (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property is encumbered by a Public Service of New Hampshire ("PSNH") utility easement which lowered the value of the Property due to an "error" concerning its location;

(2) this location error was discovered by PSNH in 2009 and meant the easement is actually much closer to the house and the driveway on the Property than believed when the Taxpayer purchased the Property (in 1996);

(3) following discovery and notification to property owners including the Taxpayer, PSNH proceeded to utilize the easement to construct overhead power lines that now bisect the Property;

(4) the Property's lower market value is documented in the appraisal prepared by a certified appraiser (the "Concannon Appraisal," included in Taxpayer Exhibit No. 1); and

(5) the assessment on the Property should be substantially abated (to either $200,000 or $150,000) in tax year 2009 based on the Concannon Appraisal.

The Town argued the assessment was proper because:

(1) the Town abated the assessment for tax year 2010 (to $265,400, as explained in Municipality Exhibit A) to reflect the PSNH easement issue by adjusting both the land and building components by 20%, but no abatement is warranted for tax year 2009 since the Taxpayer did not receive notice of the location error from PSNH until after the assessment date (April 1, 2009);

(2) notice did not occur until a March 30, 2009 PSNH letter, from an engineering supervisor to property owners (stating "boundary survey" would begin "to determine and stake the edges of the PSNH right of way," according to the article in The Derry News included in Municipality Exhibit A) and the Taxpayer does not dispute he received notice regarding these facts after April 1, 2009 (when he received the PSNH letter);

(3) the Town disputes the severe impact on market value assumed, without any supporting documentation, in the Concannon Appraisal (which has an effective date of June 1, 2010 and was signed on June 21, 2010);

(4) the appraisal literature included in Municipality Exhibit A conflicts with Mr. Concannon's assumptions (regarding the inevitability and severity of the potential impact of power line easements) when there is no adequate market data to support them;

(5) the Town's own "Comparative Analysis" of three nearby properties, one of which (82 Wiley Hill Road) had a "most similar power line influence," supports the Property's assessment; and

(6) the Taxpayer did not meet his burden of proving disproportionality.

The parties agreed the level of assessment in the Town was 106.8%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer met his burden of proving the Property was disproportionally assessed in tax year 2009 and the appeal is therefore granted. The board finds the assessment should be abated to $298,600 (land $105,200; building $193,400) for the reasons explained below.

In brief, the board finds the market would have recognized some adverse impact stemming from the PSNH easement, even if the Taxpayer did not obtain an understanding of the location error until after April 1, 2009. The board cannot find, however, the market value impact as of the assessment date was as severe as presumed in the Concannon Appraisal relied upon by the Taxpayer.

The board bases these findings primarily on the following facts. The recorded PSNH easement on the Property is 100 feet in width and effectively bisects the Property. (See the

"survey worksheet" in Taxpayer Exhibit No. 1.) Even before the discovery of the error in 2009, when a boundary survey was conducted by PSNH, and even before the clear cutting of trees for construction of the power lines that occurred in 2010, a property encumbered by the size and location of this PSNH easement would likely have less value to a knowledgeable buyer exercising reasonable due diligence than one that was not so encumbered.

Using its judgment and experience,[1] the board finds a negative 10% adjustment to both the land and building components is warranted as of the April 1, 2009 assessment date. When this adjustment is applied to the assessment under appeal ($331,800), using the same methodology applied by the Town in tax year 2010 (when it made a more substantial 20% adjustment), the abated assessment for tax year 2009 is $298,600 (land $105,200; building $193,400). An abated assessment of $298,600 for tax year 2009 corresponds to an indicated market value of approximately $280,000 as of the assessment date. ($298,600 abated assessment divided by 106.8% level of assessment = $279,588.)

This abated assessment is supported by the market evidence presented by the parties. The board finds the 82 Wiley Hill Road sale provides the most reliable indication of value and was offered as a comparable by the Town. The Town's "Comparative Analysis" grid indicates 82 Wiley Hill Road sold in June, 2009 (close to the April 1, 2009 assessment date) and is impacted by a power line easement in close proximity to the house and other improvements, as shown by the Town's photographs (in Municipality Exhibit A). When adjustments are made to

[1] See RSA 71-B:1 and former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it.") Further, in making market value findings, the board must determine for itself the weight to be given each piece of evidence because "judgment is the touchstone." Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

the $250,000 sale price for location, size and a fireplace using the numbers in the Town's grid, this sale provides an approximate market value indication of $282,600, rounded, for the Property, close to the market value indicated by the abated assessment noted above.

33 Seasons Lane, located on the same street as the Property (at 12 Seasons Lane, just one-quarter mile away), is closer to I-93 but is not encumbered by a power line easement and was used as a comparable both by the Town and the Taxpayer (as the first comparable in the Concannon Appraisal). This property sold for $305,000 in October, 2009, but both the Town and Mr. Concannon made adjustments that resulted in market value indications of approximately $295,000 for the Property. ($295,420 using the specific adjustments in the Town's grid and $294,500 as adjusted in the Concannon Appraisal.) The board finds, however, that one further adjustment is necessary to the Town's grid because the power line influence on the Property is likely to have a more significant negative impact on market value than closer proximity to Route 93, making the Property inferior to 33 Seasons Lane based on this factor. Applying a net $15,000 adjustment for this influence in the Town's grid (rather than concluding these factors offset each other) results in a modified indication of value from the 33 Seasons Lane sale that is also about $280,000.

30 Shasta Drive, the third and last comparable presented in the Town's grid, also lends support to a value indication of $280,000 for the Property. 30 Shasta Drive sold for $310,000 in September, 2009. Using the adjustments in the Town's grid results in a calculated $287,000, rounded, indication of value for the Property, but the Town made only a negative $5,000 adjustment when it compared the power line influence on the Property versus the power line "proximity" of 30 Shasta Drive. The aerial photograph of 30 Shasta Drive (in Municipality Exhibit A) shows that two properties separate it from the PSNH right of way and the house and

driveway are located much further away from the right of way, providing an additional buffer which the market would likely recognize as a value influencing factor in comparing the two properties. The board finds it would not be unreasonable to increase the Town's negative adjustment for this difference somewhat. Applying an additional $7,000 negative adjustment would result in an indication of value of approximately $280,000 for the Property, in line with the indications of value from the Town's other two comparables.

The board could not give much weight to the substantially lower alternate estimates of value stated in the Concannon Appraisal for the effect of the PSNH easement. Before consulting Mr. Concannon in 2010, the Taxpayer learned more about the PSNH easement and he asked Mr. Concannon to develop alternate market value estimates to support his belief a tax year 2009 abatement was warranted. Mr. Concannon did so, first estimating a $285,000 market value, [2] which is quite close to the $280,000 estimate arrived at by the board. Mr. Concannon then stated alternate estimates of $200,000 ("with the easement closer to house/driveway with the potential for the PSNH to build power lines") and $150,000 ("with easement closer to property and added PSNH power lines"). In making these alternate estimates, Mr. Concannon stated he was "factoring a rough estimate of 40% diminished utility and value." Mr. Concannon used four comparable sales (including 33 Seasons Lane) and, at the request of the Taxpayer, added "two current listings" (not sales), which is not a commonly accepted appraisal practice.

On the one hand, the board does not agree with the alternate estimates in the Concannon Appraisal, which are based on an assumed "40% diminished utility," because they appear to be excessive and are not adequately supported. In a well-supported appraisal, "The first step in any

[2] As noted by the Town, the Concannon Appraisal has an effective date of June 1, 2010, 14 months after the assessment date. Mr. Concannon's market value estimate would likely have been different as of April 1, 2009, the relevant date for this appeal.

comparative analysis is to identify which elements of comparison affect property values…. The appraiser must not assume that an element of comparison affects value unless its influence is indicated by the market data." (The Appraisal Institute, The Appraisal of Real Estate 415 (11th ed. 1996)). The Concannon Appraisal contains no market data to support a 40% diminished utility adjustment. The appraisal literature included by the Town in Municipality Exhibit A suggests the impact of power lines on market values is by no means so clear or "systematic" and, as one article concludes "a presumption of material negative effects . . . on property values is not warranted." (See the Chalmers article in the Summer, 2009 issue of The Appraisal Journal). Mr. Concannon did not attend the hearing and therefore was not available to answer questions regarding his assumptions and methodology.[3]

On the other hand, the board finds the Town's grid, presented in support of the argument the assessment under appeal is proportional for tax year 2009 and no abatement is necessary, to be somewhat confusing and not actually supportive of such conclusions. The Town's grid appears to add the impact of the 106.8% level of assessment in tax year 2009 (on the "Ratio 1.068" line) to calculate an indicated range of *assessed values* rather than *market value* indications.[4] In any event, the range calculated by the Town ($301,625 to $315,509) is lower

[3] Municipality Exhibit A includes an October 23, 2009 email from a real estate broker (John Conley) titled "Power Line Impact" and estimating the market value of the Property to be somewhat higher than the estimates in the Concannon Appraisal. Mr. Conley states a "selling price" range of "$309,500 - $313,500" for the Property would be warranted, with reductions in value of either "15-20%" (when the easement path is 'staked out') or a "minimum 35% reduction" (when "trees are removed and construction begins"). Neither party, however, presented testimony regarding this document or the estimates contained in it and the board could give it no weight except to note the points of divergence with the Concannon Appraisal, reflecting the uncertainties inherent in each estimate.

[4] There is some ambiguity on this point because the Town's grid also includes an "ADJ SP" line on the bottom which might mean the Town intended to estimate adjusted *selling prices* (SP) rather than a range of indicated *assessed values*. The Town's two representatives at the hearing did not provide sufficient testimony to clarify the meaning of this grid or its intended purpose.

than the assessment under appeal ($331,800), even if the board were to accept the Town's grid at face value.

In making a negative 10% adjustment to the assessment under appeal ($331,800), the board took into consideration the larger negative 20% adjustment for "easement" made by the Town in tax year 2010 (resulting in a $265,400 assessment for that year). The board finds some adjustment for the PSNH easement is warranted for tax year 2009. Given the market value evidence discussed above, the board finds a negative 10% adjustment is more reasonable than either the Town's zero percent adjustment or the Taxpayer's proposed 40% negative adjustment for that year, resulting in an abated assessment of $298,600.

For all of these reasons, the board finds the assessment should be abated to $298,600 for tax year 2009. The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of $298,600 for tax year 2009 shall be refunded with interest at six percent per annum from date paid to refund date. (As noted above, the Town abated the tax year 2010 assessment of the Property to $265,400 and the Taxpayer did not appeal that assessment.)

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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 evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Bruce J. Connell, PO Box 474, Londonderry, NH 03053, Taxpayer; and Londonderry Assessor's Office, 268B Mammoth Road, Londonderry, NH 03053.

Date: 12/9/11

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Anne M. Stelmach, Clerk