

State of New Hampshire

Board of Tax and Land Appeals

Michele E. LeBrun, Chair
Albert F. Shamash, Esq., Member
Theresa M. Walker, Member

Anne M. Stelmach, Clerk



Governor Hugh J. Gallen
State Office Park
Johnson Hall
107 Pleasant Street
Concord, New Hampshire
03301-3834

In Re: Town of New Ipswich

Docket No.: 30002-20OS

ORDER

The board of tax and land appeals (the "board") opened this "other source" (OS) docket on September 25, 2020 in response to a September 2, 2020 letter signed by all three members of the Board of Assessors of the Town of New Ipswich. The letter seeks guidance from the board based on information that two other municipalities in Hillsborough County (Peterborough and Manchester) were not assessing solar energy systems installed on buildings (real property). New Ipswich's main expressed concern is that such non-assessment results in inconsistency and possible inequity in the determination of each municipality's "share of the Hillsborough County Tax" and "the setting of our county tax rate." New Ipswich's letter further states it had contacted a "DRA [department of revenue administration] assessing audit supervisor" about this concern who stated: "towns are free to value solar as they please."

In its September 25, 2020 Order, the board asked both Manchester and Peterborough to respond to New Ipswich's letter within thirty (30) days. They responded on October 6, and October 16, 2020, respectively.

Manchester's October 6, 2020 response stated that while it "list[s]" the "solar feature" on the assessment-record card for each property having this feature, "there were

few, if any, solar equipped property sales to analyze and no conclusion could be drawn as to a solar feature contributing to value.” Further, Manchester stated:

Contrary to the New Ipswich allegation, the City is not ignoring the solar value feature but rather has found no evidence in the market that a solar feature contributes to value. We certainly will continue to monitor solar parcel sales looking for evidence to the contrary. We will also work with whichever firm is contracted to complete our 2021 full statistical revaluation to determine whether market data indicates a solar feature contributes to value, during that project.

Peterborough’s October 16, 2020 response, on the other hand, stated its assessors “only note them [solar energy systems] on the property record card but do not assign value to them.” Further, Peterborough stated:

Historically, we have not valued the solar panels because in the past the few sales we have had do not show that solar energy adds or subtracts value to the property. There are many complexities involved when looking at market value contribution.... It may be difficult to defend any value we assign to them without a direct sale comparison. Because we are unable to document the market value they contribute to the property, we do not value them.

After receiving these responses, the board asked its Senior Tax Review Appraiser, Thomas P. Hughes, to investigate further and submit an independent analysis of the issues presented. His November 16, 2020 report (the “Hughes Report”), discussed further below, was sent to New Ipswich.

New Ipswich reviewed the Hughes Report and responded with a second letter to the board dated November 30, 2020 asking for “clarification” and “guidance” as to how solar energy systems should be assessed for the purpose of real property taxation. This Order reviews the statutory framework and presents the board’s findings.

RSA 72:6 provides “[a]ll real estate, whether improved or unimproved, shall be taxed except as otherwise provided.” Further, RSA 72:7 states: “[b]uildings, mills, wharves, ... are taxable as real estate.”

RSA 72:61, as rewritten and enacted in 2019, provides as follows:

72:61 Definition of Solar Energy Systems.

I. For purposes of an exemption under RSA 72:62 adopted before January 1, 2020, in this subdivision "solar energy system" means a system which utilizes solar energy to heat or cool the interior of a building or to heat water for use in a building and which includes one or more collectors and a storage container. "Solar energy system" also means a system which provides electricity for a building by the use of photovoltaic panels.

II. In a municipality that adopts or re-adopts the exemption under RSA 72:62 on or after January 1, 2020, "solar energy system" means, in addition to the definition in paragraph I, a system which utilizes solar energy to produce electricity for a building and includes all photovoltaics, inverters, and storage. Systems may be off grid or connected to the grid in a net metered or group net metered arrangement pursuant to RSA 362-A:9 or in a direct retail sale arrangement pursuant to RSA 362-A:2-a.

RSA 72:62 permits, but does not require, municipalities to adopt exemptions for solar energy systems, as follows:

72:62 Exemption for Solar Energy Systems.

Each city and town may adopt under RSA 72:27-a an exemption from the assessed value, for property tax purposes, for persons owning real property which is equipped with a solar energy system as defined in RSA 72:61.

(Emphasis added.) New Ipswich has adopted this exemption up to a maximum of \$25,000. Manchester has adopted an exemption equal to "100% of the actual assessed value of qualifying equipment..." Peterborough has not adopted the exemption.

The Hughes Report, as well as the responses from Manchester and Peterborough, confirms New Ipswich's belief that neither Manchester nor Peterborough, at present, place any assessed value on solar energy systems. To determine the quantitative impact of these omissions, Mr. Hughes performed a hypothetical quantitative analysis, comparing Peterborough and Manchester to municipalities with similar characteristics

characteristics that assessed solar energy systems: Peterborough to Brookline and New Boston; and Manchester to Nashua.

Mr. Hughes' conclusion (reported in the table on page 5 of the Hughes Report) is that if Manchester and Peterborough had assessed solar systems in 2019, such reporting would have had a de minimis impact on their respective apportionments with respect to the county tax. In dollar terms, he estimates New Ipswich would have paid \$58 less in county taxes, Peterborough would have paid \$873 more and Manchester would have paid \$3,950 more. Further, while the total dollar amount of the solar energy system exemptions in Nashua is in the millions of dollars, Mr. Hughes calculated its impact on the Hillsborough County tax rate was less than a tenth of one percent.

New Ipswich understands and accepts Mr. Hughes' conclusion. Nonetheless, New Ipswich asserts, and the board agrees, municipalities should not ignore the contributory value of solar energy systems when assessing real property in order to preserve and maintain consistency and equity.

In support, New Ipswich has cited the board's August 19, 2002 Order in Town of Stoddard, BTLA Docket No. 18362-00RA, pp. 1-2, which addressed a parallel assessment issue as follows:

Driveway paving is certainly an improvement to land and should be assessed if it has a contributory value to the property. Docks are also improvements to real estate and are synonymous to wharves as mentioned in RSA 72:7 as being taxable. Docks are permitted and regulated by the Department of Environmental Services and, at times, add significant value to the adjoining waterfront real estate. Above-ground pools and prefab screen houses can, at times, be either personal property or taxable real estate as fixtures. Such determinations are made on a case-by-case basis and are dependent on a number of factors, i.e., the nature and use of the items, the fashion in which they may be specially adapted to the real estate and vice versa (the interrelationship or intertwining of the item and the

underlying real estate) and the intent of the property's owner. See Crown Paper Co. v. City of Berlin, 142 N.H. 563 (1997) and N.E. Tel. & Tel. Co. v. City of Franklin, 141 N.H. 449 (1996).

The proper assessment of solar energy systems as real property appears to be an issue of first impression. Based on the statutory framework and other authorities cited above, however, the board finds solar energy systems are subject to assessment and taxation in each municipality, whether or not the optional exemption is adopted. In enacting an optional exemption for solar energy systems, the legislature indicated installation of such systems can impact market value, whether or not that impact is easily measurable or uniform in each instance.¹ Each municipality must therefore establish a system for valuing and assessing them, whether or not all or part of that assessment is subject to a statutory exemption.

It is not, of course, the board's intent to require any municipality to expend time and resources needlessly to measure and list improvements that, after a good faith analysis, are shown to add little or no contributory value to real property subject to assessment and taxation. However, the board's concern is that a blanket policy of solar energy system omission, such as that reflected in Peterborough's response, could result in some value-contributing taxable real estate not being assessed, leading to concerns about consistency and assessment equity.

The board finds if a municipality adopts an exemption, the amount of the exemption should be deducted from the assessed value. This is consistent with the assessment of other types of property that receive a partial or full tax exemption such as

¹ In its November 30, 2020 letter to the board, New Ipswich presents the following "logic" regarding the exemption: "if they were not taxable property why have an exemption." See also its September 2, 2020 letter: "Should solar have not been taxable then the State would not have provided solar exemption enabling legislation."

charitable, educational and governmental exemptions under RSA 72:23.

In summary, all municipalities, including Peterborough, should measure, list and value in good faith all improvements determined to be taxable real estate, including solar energy systems, if they add contributory value. There is simply no basis for a blanket omission of solar energy systems in that process.

In the foregoing discussion and findings, the board has recognized New Ipswich's concerns regarding the assessment of solar energy systems. Such concerns have merit, even though the Hughes Report suggests the lack of uniform assessment has, thus far at least, had no more than a de minimis financial impact on New Ipswich insofar as its share of the county tax burden is concerned.

RSA 21-J:3, V states the commissioner of the DRA shall:

Exercise general supervision over the administration of the assessment and taxation laws of the state and over all assessing officers in the performance of their duties, except the board of tax and land appeals, to the end that all assessments of property be made in compliance with the laws of the state.

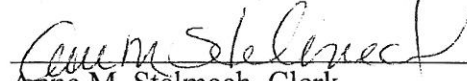
It is the responsibility of the DRA to review each municipality's compliance with the relevant statutes regarding the assessment of all physical features that contribute to value including solar energy systems. Should a municipality not comply, the commissioner has the authority to petition the board for a reassessment order pursuant to RSA 21-J:3, XXV.

In light of the above findings, the board closes this docket.²

² For the benefit of the DRA, the board is providing copies of all relevant documents with its copy of this Order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS



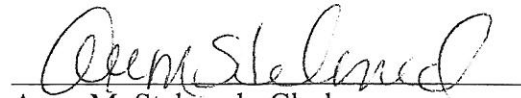
Anne M. Stelmach, Clerk

Per Order of the Board

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Chairman, Board of Selectmen, 661 Turnpike Road, New Ipswich, NH 03071; Chairman, Board of Assessors, 195 McGregor Street, Unit 201, Manchester, NH 03102; Chairman, Board of Selectmen, 1 Grove Street, Peterborough, NH 03458; and Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301.

Dated: February 12, 2021



Anne M. Stelmach, Clerk

