

Duane Keeler and Norma M. Keeler

v.

Town of Meredith

Docket No. 3911-87

DECISION

A hearing in this appeal was held, as scheduled, on July 13, 1989, but started at 10:10 a.m., 25 minutes after the scheduled starting time. The Taxpayer represented themselves. The Town was represented by David W. Bolton, of MMC, who arrived at 10:45 due to transportation problems.

The Town alleged the Taxpayers appealed lot 1A and 1C not 9C. The Taxpayers alleged they appealed lots 1C and 9C, not 1A, which is in current use.

The Board finds the Taxpayers appealed lots 1A, 1C and 9C to the Town (see Taxpayers' appeal letter sent to Town) and to the Board (see Taxpayers' application for abatement of real estate tax dated April 30, 1988). At the hearing the Taxpayers appealed, pursuant to RSA 76:16-a, the following assessment for the 1987 tax year:

Map I08 001 C	\$129,500
(hereafter lot 1C)	<u>37,300</u>
	\$166,800
Map I08 009 C	\$ 91,300
(hereafter lot 9C)	<u>18,700</u>
	\$110,000

Lot 1C consists of a 1.17 acre lot with 150 feet of water frontage improved by a dwelling, lot 9C consists of a .76 acre lot with 50 feet of water frontage improved by a dwelling.

Neither party challenged the Department of Revenue Administration's equalization ratio of 96% for the 1987 tax year for the Town of Meredith.

Based

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on that ratio the Taxpayers' total assessment of \$276,800 equates to a market value of \$288,333.

The Taxpayers argued they were overassessed based on the base values of \$43 and \$44 per square foot used by the Town for the buildings. The Taxpayers stated the buildings were similar to garages in construction and should have a base value of \$20 per square foot which should then be reduced for age. The Taxpayers stated they were improperly assessed for chimneys when they only had insulated sleeves. The Taxpayers noted topographical problems with lot 9C and stated only the first 30 feet from the shore was buildable or traversable. They stated the septic system for lot 9C was on the neighbor's land and they had no deeded rights or written agreements. The Taxpayers valued the two lots at \$210,700 as of April 1, 1987, based on gut feeling there being no comparable properties.

The Town argued the Taxpayers were assessed on the same basis as the abutters and that it had checked and verified the data on the cards. The Town stated the Taxpayers were assessed for flues and that flue assessment variations were based on whether the flue was metal, block masonry or brick masonry, and that the cottages were more than garages having plumbing, wiring, flues and some interior finish. The Town noted the additional cost of building on an island.

The Taxpayers' appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state, and upon all estates within the same

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at

its full and true value in money as they would appraise
the same in payment of a just debt

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due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The New Hampshire Constitution Part I, Article 12, imposes a duty on every member of the community to contribute his share of the expense of government. An error by the assessors does not obviate one's duty to pay one's fair share of the tax burden.

The equitable rule in tax cases rests on a ground more fundamental than an equitable form of action, or a statutory provision for such an order as justice requires. The plaintiff holds his common-law rights of property and personal liberty subject to a constitutional liability to contribute his share of the expenses of government.

So much of his share as he escapes the payment of, his neighbors are compelled to pay for him. So much of his obligation as he avoids, he casts upon them. His payment of his share is as much their constitutional right as it is his constitutional duty. His non-performance of his duty is a violation of their right.

It is the theory of the constitution that government originates from the people, is founded in consent, and created by a mutual contract. Bill of Rights, Art. 1; Part 2, Art. 1. By their original contract, the people assume the expense of the common

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benefits of the government established by the contract. Bill of Rights, ART. 12 But a duty expressly declared by the bill of rights as one accepted in an indispensable stipulation of the social compact, must be regarded as of the strongest obligation, and based on first principles. If the theory of our government is sound, an effort to evade the payment of one's share of the public expense is an effort of one of a company of joint purchasers to make his associates pay his share of the price of something bought, owned, and enjoyed by him and them in common. The success of such an effort must be a fraud in law as well as in fact, unless the legislature have the power, and exercise the power, to legalize it. The statutes of taxation direct when, how, and by what common agents each one's share of the public

expense is ascertained, when it is due, to what common agent it is payable, and in what manner the constitutional obligation to pay it may be enforced. In the process of ascertaining each one's share, called an assessment, selectmen, unlearned and unskillful in law, or unable to forecast the decision by court an jury of numerous questions of law and fact, take a course which, in many particulars of omission and commission, a court an jury think is erroneous. This must happen frequently. It would be extraordinary if selectmen should so make the annual assessment that its form and substance, and the manner of making it, in every respect of law and fact, would, in the opinion of other tribunals, be perfect. "No prudent man would act in the office of selectman where he must act in every case at his peril; where he must not only judge right on every question of law, but where his judgment must coincide with judges and jurors examining the same point years afterwards." Harris v. Willard, Smith (N.H.) 63, 71. It is highly improbable that the legislature would consider a defect in the assessment of a man's share a reason for giving him authority to violate the constitutional rights of his neighbors by putting upon them the performance of his constitutional duty. Edes v. Boardman, 50 N.H. 580, 587 (1879)

The Board finds as follows. Both properties had flues, one of which was at least partly brick masonry. Both lots supported dwellings. The septic system of lot 9C was on land partly owned by one of the Taxpayers. Although

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the base square foot values for the dwellings may not have been supported by the cost approach to value, no convincing evidence was presented that the overall market value was less than \$288,333 on April 1, 1987.

The Board therefore rules the Taxpayers have failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in excess of the Taxpayers' just share of the common tax burden. The ruling is, therefore: Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

— Anne S. Richmond, Esquire, Chairman

— (Mr. Twigg did not sit.)
George Twigg, III, Member

— Peter J. Donahue, Member

— Paul B. Franklin, Member

Date: 7/24/89

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Duane & Norma M. Keeler, taxpayers; and the Chairman, Selectmen of Meredith.

— Michele E. LeBrun, Clerk

Date: 7/24/89

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