

John J. Collins, Jr. and Margo B. Collins

v.

Town of Plaistow

Docket No. 4029-87

DECISION

A hearing in this appeal was held, as scheduled, on April 18, 1989. The Taxpayers were represented by Margo B. Collins, one of them. The Town was represented by Mary E. Pinkham and Robert G. Camp, Appraisers from the Department of Revenue Administration.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$330,950 (land, \$242,500; buildings, \$88,450) placed on their real estate located on Old County Road for the 1987 tax year. The property consists of 19.25 acres with a house and garage.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100 percent for the 1987 tax year for the Town of Plaistow.

The Taxpayer contested the value of the land only. The Taxpayer testified that the front 1.85 acre portion of the lot where the buildings were located was relatively level and usable. A survey was presented as evidence showing the lot having 260' of frontage on Old County Road. The Taxpayer described the backland as being either steep or wet and that access to it was only across the front portion of the parcel. The slope of the rear land off the back of the 1.85 acre portion was 27.5 percent until it levels out in a wet gully at the bottom of the slope.

The Taxpayer further testified that the Town would not allow the previous owner (who apparently subdivided the land) to retain a 50 foot wide road access

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to the rear land as it could only have gone through the existing leachfield on the parcel.

The Taxpayer estimated the wetland to comprise approximately 4.5 acres.

The Taxpayer testified that an appraisal was conducted in September of 1987, for financing purposes which estimated the value of the property at \$219,000.

The Town, represented by Mary Pinkham, conceded that the rear land had little or no development potential. Upon questioning she verified that the \$20,000 base price per acre for backland that was used in the Collins was derived from sales of large tracts in Plaistow that had some development potential. She further stated that during the revaluation, the \$20,000 base price was used in appraising the rear land of any parcel over 10 acres in size.

The Town recommended that the frontage be corrected to 260 feet, the depth revised from 600 feet to 200 feet and the topography adjustment revised to .85 to reflect the better quality of land in the first 200 feet. Further, the Town recommended categorizing 2 rear acres as fair land, 5 acres as poor and the balance as wetland. The new total value resulting from the revisions was \$250,650.

In regard to the Taxpayers' allegation the Board rules as follows.

The Taxpayer's 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 Board finds that the correct frontage on Old County Road is 260 feet according to the survey presented as evidence.

The Board finds that the rear land of the Collins' property has very little development potential due to its steep slopes and poor drainage and thus is not comparable to other larger acreage parcels that had sold in Town and were used as the basis in determining the \$20,000 base price used in the assessment of the rear land. Thus the Board finds that a 65 percent adjustment is appropriate to all the rear land calculations to cause the value to be more in line with the assessment of other rear land with little development potential.

In summary, the correct land values are as follows:

Frontage:

260×450 (unit price) $\times .85$ (topo) $\times .85$ (excess frt.) $\times .93$ (undev) = \$78,600

Rearland:

Fair 1 acre x 20,000 x .55 x .35 = 3,850

Poor 12.06 acres x 20,000 x .35 x .35 = \$29,550

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| Wet | 5 acres x 20,000 x .10 x .35 = | 3,500 |
| Water and Septic | = | <u>5,500</u> |
| | Subtotal | 121,000 |
| Buildings | | <u>88,450</u> |
| | Total Value | \$209,450 |

If the taxes have been paid, the amount paid on the value in excess of \$209,450 is to be refunded with interest at six percent per annum from date of refund.

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:

I certify that copies of the within Decision have this date been mailed, postage prepaid, to John J., Jr. & Margo B. Collins, taxpayers; Mary E. Pinkham & Robert G. Camp, Department of Revenue Administration; and the Chairman, Selectmen of Plaistow.

Michele E. LeBrun, Clerk

Date:

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