

William A. Norton and Sybil S. Norton

v.

Town of Sugar Hill

Docket No. 4076-87

DECISION

A hearing in this appeal was held, as scheduled, on March 23, 1989. The Taxpayers were represented by William A. Norton, one of them. The Town was represented by Bruce J. Bean, Appraiser from the Department of Revenue Administration.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$17,650 for land only placed on their real estate identified as Map 8, Lot 8 for the 1987 tax year. This property consists of 8 acres off of Main Street. The Taxpayers also own, but do not contest, the value of a separate parcel with buildings having an assessment of \$128,200 (land, \$51,900; buildings, \$76,300) and identified as Map 7, Lot 6. This property consists of 4 acres with a house.

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

The Taxpayer testified that the 8 acres is landlocked and sets 400-600 feet back from Main Street. He stated that there is only a walking right-of-way to the property. He testified that the property was old grown up pasture that was wet most of the year and thus was an excellent source of water. He stated that in fact, seven properties in addition to his own residential parcel have water or spring rights to the parcel and at least four additional water lines cross his property from an adjacent lot. He stated that several wells on properties along Main Street (including the Town Meeting House) have been

contaminated with

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salt, and thus since 1950, when he purchased the parcel, he has granted or sold for a minimal sum several new water rights to the parcel.

The Taxpayer alleged that the ground was so wet that construction equipment would probably damage the water lines (whose exact locations are unknown) and this essentially precludes the development potential of the lot even if access were to be obtained.

The Taxpayer further stated that at the 1983 Town Meeting, the Town granted him a right of way across the library lot (if he were to build a new drive and parking area for the library in exchange) which is adjacent but not contiguous to the lot in question. He stated that he would need to obtain an additional short right-of-way from the Smith property to connect the library right-of-way to his parcel. These right-of-way options have not been pursued, he stated, due to the questionable building potential of the lot.

The Taxpayer submitted a letter from the selectmen dated March 6, 1989, in which they proposed the assessment be lowered to \$13,720, if the Taxpayer's appeal was withdrawn.

Bruce Bean, Appraiser from the Department of Revenue Administration, representing the Town, stated that the lot was appraised as having building potential and that its access problems were accounted for by the adjustments of lowering the grade of land and the 10 percent additional factor applied at the time of the reviews after the revaluation.

The Town also submitted a sale of a property consisting of all backland as evidence supporting the unit price of \$3,500 for backland.

The Town also noted that on the Taxpayers residential property the value for the drilled well and septic system (\$4,500) were inadvertently omitted.

In regard to the Taxpayer's 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

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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 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. 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 land is so poorly drained and so encumbered with water rights and water lines that there is very limited utility remaining to the parcel. This is further supported by a restriction in the deed to the property which states . . . "it is also agreed that there shall not be anything done in any way to damage any of the springs heretofore sold."

The Board finds that the land has very limited access presently and that the remedies to provide better access are fraught with many uncertainties and undetermined costs. The Board finds that the \$3,500 base value for rear land used during the revaluation is correct.

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For the above stated reasons the Board finds that a 30 percent adjustment factor is appropriate for the poor access and a 25 percent adjustment factor is appropriate for the encumbrance of the water rights.

Thus the value is calculated as follows:

8 acres fair land x \$3,500 x .70(size) x .70(access) x .75(water rights)=\$10,300

The Board further finds that \$4,500 for the well and septic should be added to the Taxpayer's residential parcel (Map 7, Lot 6) resulting in a correct value of \$132,700.

The Board rules that the overassessment of the contested parcel (Map 8, Lot 8) is partially offset by the underassessment of the residential parcel of the Taxpayer (Map 7, Lot 6).

. . ."a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. Bemis &c. Bag Co. v. Claremont 98 N.H. 446, 449, 102 A.2d 512, 516 (1954). "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899)"

In summary the Board finds the correct values to be:

Map 8, Lot 8	\$ 10,300
Map 7, Lot 6	\$132,700

If the taxes have been paid, the amount paid on the total value of the two parcels in excess of \$143,000 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

— Anne S. Richmond, Esquire, Chairman

— George Twigg, III, Member

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Peter J. Donahue, Member

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Paul B. Franklin, Member

Date: May 25, 1989

I certify that copies of the within Decision have this date been mailed, postage prepaid, to William A. & Sybil S. Norton, taxpayers; Richard Yound, Director, Department of Revenue Administration; and the Chairman, Selectmen of Sugar Hill.

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Michele E. LeBrun, Clerk

Date: May 25, 1989