

**Theodore E. Moulton, Jr. and Gloria J. Moulton  
v.  
Town of Belmont**

**Docket No. 4162-88**

**DECISION**

A hearing in this appeal was held, as scheduled, on April 13, 1990. The Taxpayers were represented by Theodore E. Moulton, Jr., one of them. The Town was represented by Andrew Blais, appraiser.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$63,200 (land, \$10,200; buildings, \$53,000) placed on their real estate, located on Diane Drive and identified as Map 10, Lot 46-4 for the 1988 tax year. The property consists of a dwelling and attached garage on a 1.63 acre lot.

The Taxpayers also own, but did not appeal the assessment on, a developed parcel on Lake Winnisquam, at Tucker Shore, with a 1988 assessment of \$33,400 and identified as Map 29, Lot 4.

Neither party challenged the Department of Revenue Administration's equalization ratio of 35% for the 1988 tax year for the Town of Belmont. Based on that ratio the Taxpayers' assessment on Map 10, Lot 46-4 equates to \$180,571 and on Map 29, Lot 4 equates to \$95,429.

Mr. Moulton argued that his 1988 assessment, based on values established during a revaluation in 1978, was the highest of the eleven properties on his street. In 1989 after a new revaluation in Belmont, he testified that his property was only the seventh highest on the street with a 1989 assessment of \$141,000. Thus he argued the 1989 revaluation proved he was over assessed in 1988.

Upon questioning, Mr. Moulton stated that he did not appeal the assessment on the Winnisquam Lake property as he realizes waterfront property has increased

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in value. As of April 1, 1988, he stated that he felt the market value of the lake property was \$169,000 to \$175,000.

Mr. Blais stated that when he visited the property in December of 1988, he felt it was one of the better properties in the neighborhood. As a result of his visit, he adjusted the assessment card by adding for the previously omitted basement finish, reduced the fireplace value and applied 5% functional depreciation to the building value for being slightly overbuilt for the neighborhood. These changes resulted in the revised value being appealed.

Mr. Blais stated that the Town's position was that the Moulton property was being fairly assessed vis-a-vis the values established during the 1978 revaluation.

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 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,

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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).

When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for 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) Appeal of Town of Sunapee, 126 N.H. 214, 217.

The Board finds that, while there may be some evidence to the Taxpayer's claim of overassessment on the Diane Drive property, any such overassessment is offset by the underassessment of the Tucker Shore property.

Based on the evidence and testimony submitted by the Town, the Board finds that the market value of the Diane Drive property in 1988 could reasonably have been slightly higher than the 1989 valuation of \$141,000, as land values fell some from 1988 to 1989.

However, the Board also finds, based on testimony of the Taxpayer, that the market value of the Tucker Shore property greatly exceeded the 1988 equalized assessed value for this property of \$95,429.

Thus, the assessments of both parcels, when viewed in aggregate, reasonably estimate the Taxpayer's proper share of the tax burden in Belmont.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

(Ms. Richmond did not sit.)

Anne S. Richmond, Esq., Chairman

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George Twigg, III, Member

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Peter J. Donahue, Member

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Paul B. Franklin, Member

Date: April 26, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Theodore E., Jr. & Gloria J. Moulton, taxpayer; and Chairman, Selectmen of Belmont.

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Michele E. LeBrun, Clerk

Date: April 26, 1990

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