

R. Scott Butler and Jean O. Butler

v.

Town of Marlborough

Docket No. 4169-88

DECISION

A hearing in this appeal was held, as scheduled, on November 14, 1989. The Taxpayers were represented by R. Scott Butler, one of them. The Town was not represented.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$18,910 placed on their real estate, located on Stone Pond Road and identified as Map 5, Lot 13. The property consists of 19 acres of which 17 acres received current use assessment.

Mr. Butler testified that his assessment increased from \$16,210 in 1987 to \$18,910 in 1988. He stated that the only improvement to the property during that time was \$300 of bulldozing done to open up a small area in the current use portion of the lot for a logging truck to load logs. He testified that an existing clearing and drive in the portion of the lot not in current use was also smoothed up for the same purpose.

He argued that the amount of improvement done was so negligible that it did not warrant an increase in the assessment.

Mr. Butler submitted appraisal cards of several nearby properties on which he argued substantial improvements for logging and development had taken place without any increase in assessment.

Mr. Butler testified that he purchased the parcel in January 1985 for \$17,000 with the existing site cleared and the same amount of land in current use.

R. Scott Butler and Jean O. Butler v. Town of Marlborough

The Town on a copy of the assessment card dated April 30, 1987, noted that the lot was cleared.

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 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, 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 a copy of the current use assessment card indicated the assessment increased from \$16,210 in 1986 to \$18,638 in 1987 and no further

R. Scott Butler and Jean O. Butler v. Town of Marlborough

change indicated for 1988. The Board finds however, that the taxpayers were sent a tax bill for the first half of 1988 based on an assessment of \$18,910.

The Board finds that a very small amount of clearing and grubbing was done to the lot in May of 1987, to facilitate a small logging operation.

The Board is unable to determine due to the lack of complete assessment information specifically how much the current use and ad valorem components of the assessment changed although it is apparent that the current use portion was lowered for the 20% recreational adjustment while the ad valorem portion was increased.

The Board rules that while assessing officials can be justified in increasing assessments to create more equitable assessing, such changes should be broad based in scope and be the result of a systematic analysis of the market.

The Board finds in the case at bar that there is no evidence of increases of assessments of similar property; in fact the taxpayer submitted evidence to the contrary. Further, the Board finds that the improvements done to the lot were so insignificant that no change in the assessment was warranted for that reason. Lacking any evidence to the contrary, the Board can only find the increase smacks of spot assessing.

For the above stated reasons, the Board rules the proper assessment for the 1988 tax year is \$16,210.

If the taxes have been paid, the amount paid on the value in excess of \$16,210 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, Esq., Chairman

George Twigg, III, Member

R. Scott Butler and Jean O. Butler v. Town of Marlborough

(Mr. Donahue did not sit.)
Peter J. Donahue, Member

Paul B. Franklin, Member

Date: November 27, 1989

I certify that copies of the within Decision have this date been mailed, postage prepaid, to R. Scott & Jean O. Butler, taxpayers; and the Chairman, Selectmen of Marlborough.

Michele E. LeBrun, Clerk

Date: November 27, 1989

0009