

D. Michael Straw and Janice M. Straw

v.

Town of Raymond

Docket No. 4179-88

DECISION

A hearing in this appeal was held, as scheduled, on November 15, 1989. The Taxpayers were represented by D. Michael Straw, one of them. The Town was represented by D. Michael Straw, one of them. The Town was represented by Andrew L. Blais, Appraiser.

The Taxpayers appeal, pursuant to RSA 76-16:a, the assessment of \$58,900 (land, \$27,600; buildings, \$31,300) placed on their real estate, located on Rte. 107 for the 1988 tax year. The property consists of approximately one acre of land with a dwelling and several out buildings and is identified as Map 15, Lot 4.

Neither party challenged the Department of Revenue Administration's equalization ratio of 58% for the 1988 tax year for the Town of Raymond. Based on that ratio the Taxpayers' assessment equates to a market value of \$101,552.

Mr. Straw argued the property was overassessed due to the fact the property is listed presently at the same price of \$62,000 as he purchased it for in September of 1986 and no offers have been made. Mr. Straw further argued the assessment was excessive due to the poor quality and condition of the buildings and due to the fact the area was zoned commercial thus reducing the long time residential desirability of the property. Mr. Straw also testified that the shallow well quite regularly went dry in the summer.

Mr. Blais testified that he had reviewed the property with Mr. Straw and had reduced the assessment to its present level due to the condition of the buildings, hot top and well.

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Mr. Blais testified that the property was in a commercial zone but that not much commercial development had taken place in that area of Rte. 107. Mr. Blais stated that this incipient transitional nature of the neighborhood would raise the question of to whom the property would best be marketed.

The Board's appraiser, in his valuation of the property made adjustments to the physical depreciation on the buildings for their condition.

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. 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).

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The Board finds that the Taxpayers property does suffer substantial physical depreciation due to its low quality materials and poor condition. The Board finds that this type of residential property in an under utilized commercial zone raises unanswered questions as to the properties highest and best use.

For the above stated reasons, the Board finds the best evidence as to the proper assessment is the Board's appraiser's valuation of \$49,900. Thus, the Board rules that the proper assessment for the 1988 tax year is \$49,900.

If the taxes have been paid, the amount paid on the value in excess of \$49,900 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

(Mr. Donahue did not sit.)

Peter J. Donahue, Member

Paul B. Franklin, Member

Date: November 30, 1989

I certify that copies of the within Decision have this date been mailed, postage prepaid, to D. Michael & Janice M. Straw, taxpayers; and the Chairman, Selectmen of Raymond.

Michele E. LeBrun, Clerk

Date: November 30, 1989

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