

Edward Gamache and Barbara Gamache

v.

Town of Goffstown

Docket No. 4260-88

DECISION

A hearing in this appeal was held, as scheduled, on March 16, 1990. The Taxpayers represented themselves. The Town was represented by David W. Bolton of MMC, Inc.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$54,700 (land, \$34,000; building, \$20,700) placed on their real estate located at 20 Paige Hill Road (Map 36, Lot 29), for the 1988 tax year. The property consists of a dwelling on 8,000 square feet of land.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100 percent for the 1988 tax year for the Town of Goffstown. Based on that ratio the Taxpayers' assessment equates to a market value of \$54,700.

The Taxpayers argued they were overassessed because of the small lot size, a 50-foot Public Service Company right-of-way, the inability to build if the building burned down, and the former assessment of \$2,100.

The Town's position was an additional 20 percent depreciation to the land should be given for the Public Service Company easement but no depreciation to the land was warranted for not being a buildable lot. The Town stated the property was a developed lot and its highest and best use was as a single-family dwelling.

The Board rules as follows.

The Taxpayers' 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).

A past assessment by itself is not evidence of market value.

The Board finds as follows. The subject property is currently inhabited by the Taxpayers' son. The property has a septic system and Town water. The highest and best use of the property is as a dwelling. The dwelling has a gas wall furnace and was assessed as having such a furnace. The 50-foot Public Service Company easement warrants additional 20 percent depreciation to the land.

For the above stated reasons the Board rules that the proper assessment for the 1988 tax year is:

Land	\$27,200
Buildings	20,700
Total	<u>\$47,900</u>

If the taxes have been paid, the amount paid on the value in excess of \$47,900 is to be refunded with interest at six percent per annum from date of payment to date of refund.

April 2, 1990

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Chairman

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within decision have been mailed this date, postage prepaid, to Edward and Barbara Gamache, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Goffstown.

Michele E. LeBrun, Clerk

April 2, 1990