

Edward L. Devlin and Margaret R. Devlin
v.
Town of Epping

Docket No. 4263-88

DECISION

A hearing in this appeal was held, as scheduled, on May 22, 1990. The Taxpayers were represented by Edward Devlin, one of them. The Town was represented by David W. Bolton, appraiser for M.M.C., Inc.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessments of \$38,300 (land only) and \$41,700 (land only) for two parcels identified as Map 9, Lot 26, and Map 9, Lot 31, respectively. The Map 9, Lot 26 parcel is approximately 1 acre, fronting on both Route 87 and Hedding Station Road. Lot 31 is approximately 1.75 acres with frontage on Hedding Station Road and Mast Road.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100 percent for 1988 for the Town of Epping.

Mr. Devlin testified that both parcels had limited utility due to their wetness and shape. Lot 26 was a narrow strip with 75 feet on Hedding Station Road and 100 feet on Route 87. Mr. Devlin argued that zoning setbacks for both buildings and septic systems severely limit the value of the lot. Lot 31, he argued, was wet most of the year and had failed a percolation test in the 1960's. He stated that local realtors had stated that each lot was worth under \$10,000.

Mr. Bolton submitted several sales of land and copies of the assessment record cards of those properties to show how land values were arrived at.

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).

The Board finds, based on the testimony, that the utility of the parcels suffers due to their wetness and shape. While the Town did account for these factors, it did so minimally.

Therefore, the Board rules that the "first acre" or "basic site" value of both lots be reduced by 50 percent to more properly reflect their market value. The correct assessment for Map 9, Lot 26, is, then, \$19,200 and for Map 9, Lot 31, is \$21,900.

If the taxes have been paid, the amount paid on the value in excess of \$41,100 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

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 L. and Margaret R. Devlin, the Taxpayers, to the Chairman, Board of Selectmen, Town of Epping, and to David W. Bolton, M.M.C., Inc.

Michele E. LeBrun, Clerk

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ORDER RE CLARIFICATION

On June 25, 1990, the Board received from the Taxpayers a request for clarification of its June 13, 1990, decision in this case. The Taxpayers sought clarification as to how the assessments as ruled by the Board were determined.

As mentioned in the decision, the Board ruled that the "first acre" value (which is the first calculation in the land value section of the assessment card) should be reduced by 50 percent. Thus, for Map 9, Lot 26, the calculation would be the Town's value for the first acre (\$38,333) times 50 percent, or \$19,167 (rounded to \$19,200). For Map 9, Lot 31, the calculation would be the Town's value for the first acre (\$39,640) times 50 percent, or \$19,820 (rounded to \$19,800). As the Board's ruling of a 50 percent adjustment was for only the "first acre" calculation, the Town's previous value for .6 acre of additional land (\$2,100) is added to the

adjusted value of \$19,800, to arrive at the correct assessment of \$21,900 for Lot 31, as ruled by the Board.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

July 17, 1990

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Order have been mailed this date, postage prepaid, to Edward L. and Margaret R. Devlin, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Epping.

Michele E. LeBrun, Clerk

July 17, 1990