

Normand L. Beaudet and Brenda L. Beaudet
v.
Town of Loudon

Docket No. 4272-88

DECISION

A hearing in this appeal was held, as scheduled, on October 17, 1989. The Taxpayers represented themselves. The Town was represented by Raymond C. Cummings and Michael P. LaBonte, both selectmen.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$100,500 (land, \$21,700; buildings, \$78,800) placed on their real estate located on Lesmerises Road (Map 49, Lot 111) for the 1988 tax year. The property consists of a dwelling on two acres of land.

Neither party challenged the Department of Revenue Administration's equalization ratio of 71 percent for the 1988 tax year for the Town of Loudon. Based on that ratio the Taxpayers' assessment equates to a market value of \$141,500.

The Taxpayers argued they were overassessed based on the lower assessment of an identical house that had more improvements and based on the unexplained \$17,000 increase in the building assessment where the building had not changed.

The Town's position was the Taxpayers' assessment was similar to the assessment of their comparable property and the comparable was not yet assessed for some of the improvements noted. The Town stated it increased the Taxpayers' building assessment because it had failed to assess the 480-square-foot finished area in the basement.

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

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and RSA 75:1 (supp) which states:

Except with respect to open space land 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 the value of which cannot be determined by personal examination.

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"If the appellants established the fact that their tax for the year . . . was excessive, they were entitled to a repayment or abatement of the excess tax, according as they had or had not paid it. They could have shown that the tax was excessive in various ways. If the whole or a part of the property taxed to them was exempt from taxation, they could have shown that their tax was excessive by proof that the whole or a part of their property was exempt. If they did not own the whole or a part of the property taxed to

them, they could have shown the same fact by proof that they did not own any property in the taxing district, or a less quantity than was taxed to them. If their property was correctly appraised, they could have shown that their tax was excessive by proof that a greater valuation than that assessed upon it or too large a rate was made use of in computing the tax, or that some mathematical error occurred in the computation. And if the ratio between the true and assessed value of their property was greater than the ratio between the true and assessed value of all other property in the taxing district, this might have constituted the evidence from which it could have been found that their tax was excessive." Winnipiseogee v. Laconia, 74 N.H. 83, 83-84 (1906).

All the law affords a taxpayer is "to have one's property taxed at the same rate as property is taxed in the town as a whole, and not in comparison to a class of similar property. This rule of proportionality was stated long ago in Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 46 A. 470 (1899), and recently in Appeal of Town of Sunapee, 126 N.H. 214, 217, 489 A.2d 153, 155 (1985)." Appeal of Cannata, 129 N.H. 399, 401 (1987). The Taxpayers are not entitled to an abatement based on the assessment of one other property.

The Board finds as follows. The subject building is 26 feet by 50 feet, or 1,300 square feet. A 480-square-foot area in the basement was finished on April 1, 1988. The Taxpayers were assessed \$4,032 (adjusted for depreciation and the local multiplier) for the finished area in the basement and \$1,500 (adjusted for depreciation and the local multiplier) for the fireplace in the basement prior to the increase in the building assessment to \$65,000 (adjusted for depreciation and the local multiplier). The Town's \$8.40 square-foot replacement value for the finish in the basement is

reasonable, particularly in light of its \$35 square-foot replacement value for the house, a value that includes foundation, exterior walls, and roofing, as well as interior finish. No evidence supported an additional replacement cost of \$29.28 per square foot, or \$14,056 for the finish in the basement. The proper assessment is as calculated prior to the 1988 adjustment of \$17,000.

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

Land	\$21,700
Buildings	<u>61,800</u>
Total	\$83,500

If the taxes have been paid, the amount paid on the value in excess of \$83,500 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, Chairman

(Mr. Twigg did not sit)
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 Normand L. and Brenda M. Beaudet, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Loudon.

Date:

Michele E. LeBrun, Clerk

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