

Janine Paris (& Estate of Albert Paris)

v.

Town of Pembroke

Docket No. 4284-88

DECISION

A hearing in this appeal was held, as scheduled, on December 12, 1989. The Taxpayer represented herself. The Town was represented by Donald Dollard, Assessor.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$88,600 (land, \$41,100; buildings, \$47,500) placed on her real estate, located on Buck Street (Map 939, Lot 4) for the 1988 tax year. The property consists of a dwelling on .43 acre.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100% for the 1988 tax year for the Town of Pembroke. Based on that ratio the Taxpayer assessment equates to a market value of \$88,600.

The Taxpayer argued the land was overassessed due to excessive flooding on a regular basis.

The Town's position was it had sufficiently adjusted the acreage to reflect the market value of the land as it existed with all its problems. They depreciated the land by 40% as opposed to 25% for average land and 50% for poor land.

The Board's review appraiser adjusted the land an additional 10% due to the flooding.

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

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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 as follows. In excess of 50% of the subject land is underwater during periodic flooding that has occurred in more than half the last twenty springs. The appraisal of the Board's review appraiser best reflects this land's disability.

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

Land	\$38,000
Building	<u>\$47,500</u>
	\$85,500

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If the taxes have been paid, the amount paid on the value in excess of \$85,500 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, Esq., Chairman

George Twigg, III, Member

Peter J. Donahue, Member

(Mr. Franklin did not sit.)

Paul B. Franklin, Member

Date: December 18, 1989

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Janine Paris, taxpayer; and the Chairman, Selectmen of Pembroke.

Michele E. LeBrun, Clerk

Date: December 18, 1989

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