James Borda and Joanne Borda
v.
City of Laconia

Docket No. 4323-88

DECISION

A hearing in this appeal was held, as scheduled, on February 2, 1990. The Taxpayers represented themselves. The City was not represented.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of $269,400 (land, $67,600; buildings, $201,800) placed on their real estate, located at 127 Court Street, for the 1988 tax year. The property consists of a dwelling with attached barns on a 19,800 square-foot lot.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100 percent for the 1988 tax year for the City of Laconia.

The Taxpayers testified that in 1978 and in 1988 they had been incorrectly assessed for the adjacent V.F.W. parking lot. They argued that while the size of their lot was corrected and an abatement was received for both years, their remaining land assessment should be reduced in proportion to the size and value of the land abated, and further that they should receive an abatement for all the years 1978 - 1988 for the difference.

Upon questioning, the Taxpayers stated that they felt the 1988 assessment was a reasonable estimate of market value of their property.

In writing, the City submitted initial and revised assessment cards with a copy of an abatement form which indicated the City "corrected lot size per deed" reducing the assessment by $3,500 and abating $58.35 in taxes in 1988.

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 first issue is whether this Board has jurisdiction to order an abatement for any years prior to the year properly brought before the Board. The Board rules that, based on RSA 76:16, RSA 76:16-a (1988 supp), and Tax 201.01(c), the Taxpayers must appeal each year within four months of notice of the final tax bill to the local assessing officials and within six months of notice of the final tax bill to the Board to protect their appeal rights for each year.

RSA 76:16 states:

> By Selectmen or Assessors. Selectmen or assessors, for good cause shown, may abate any tax assessed by them or by their predecessors. Any person aggrieved by the assessment of a tax and who has complied with the requirements of RSA 74, may, within four months after notice of the tax, and not afterwards, apply in writing to the selectmen or assessors for an abatement of the tax. (emphasis added)

RSA 76:16-a (1988 supp) states in part:

> By Board of Tax and Land Appeals.
> I. If the selectmen neglect or refuse to so abate, any person aggrieved, having complied with the requirements of RSA 74, upon payment of a filing fee equal to the filing fee established by law for bills in equity in the superior court, may, within 6 months after notice of such tax, and not afterwards, apply in writing to the board of tax and land appeals which, after inquiry and investigation, shall hold a hearing if requested as provided in this section and shall make such order thereon as justice requires; and, such order shall be enforceable as provided hereafter. "Notice of such tax" means the date the department of revenue administration determines to be the last date of mailing of tax bills by the taxing district. (emphasis added)

Board Rule Tax 201.02(c) states:

An appeal to the board may be made only if the taxpayer has first made an application for abatement in writing to the board of

> selectmen or other local assessing official(s) within 4 months of notice of the final tax bill. "Notice of the final tax bill" means the date the department of revenue administration determines to be the last date of mailing of tax bills by the taxing district. No fee is charged for the application for abatement to the selectmen or other local assessing official(s). If a decision is not made by the selectmen or assessors or if the taxpayer is not satisfied with the results of the application for abatement, the taxpayer may then enter an appeal with the board or petition the superior court of the county within 6 months of notice of the tax, and not later. If the taxpayer's choice is to file an appeal with the board, then such action shall be deemed a waiver of any right to petition the superior court and vice versa.

As to the second issue of the market value of the property on April 1, 1988, the Board finds no evidence to the contrary that the assessment is a fair representation of market value.

The Board therefore rules the Taxpayers have failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in excess of the Taxpayers' just share of the common tax burden. The ruling is, therefore:

Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

February 27, 1990

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 James and Joanne Borda, the Taxpayers, and to the Chairman, Board of Assessors, City of Laconia.

Michele E. LeBrun, Clerk

February 27, 1990