

Dennis J. Brady and Maryanne R. Brady
v.
Town of Brentwood

Docket No. 4459-88

DECISION

A hearing in this appeal was held, as scheduled, on November 21, 1989. The Taxpayers represented themselves. The Town was represented by Ralph J. Cutting, Assessor.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$150,850 (land, \$27,600; buildings, \$123,250) placed on their real estate, located on Northrup Drive. The property consists of a dwelling with a garage on 1.92 acres. Neither party challenged the Department of Revenue Administration's equalization ratio of 38% for the 1988 tax year for the Town of Brentwood. Based on that ratio the Taxpayer's assessment equates to a market value of \$396,974.

The Taxpayers argued they were overassessed compared with the assessments of other slightly larger and better appointed homes in their neighborhood. They noted that the per square foot replacement costs of the comparable homes were in the \$40 to \$68 range while theirs was at \$81.90. They testified that they purchased the property in January of 1987, for \$249,000 and felt it had appreciated only \$11,000 to \$15,000 by April of 1988.

Mr. Cutting testified that one builder had constructed all the houses in the area. He stated that all the houses were of quality materials and workmanship, but that there were subtle differences between the houses. Mr. Cutting stated that most of the houses in the neighborhood and all of those submitted as comparables by the Taxpayers were graded a class 4 according to the 1981 New Hampshire State Appraisal Manual while the Taxpayer's house was graded a class 4 1/2. Mr. Cutting argued that the grade was correct based on

his judgement of the quality of the house from an outside inspection.

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In regard to the Taxpayer's allegation 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 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:

The quality and construction of the Taxpayers house is similar to others in the neighborhood and thus should be graded a class 4. The garage has no finished or heated area on the second floor and has only one electric door opener.

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The lot is not so much better than others in area to justify the 100% topography adjustment and \$2,000 to \$6,000 difference in value especially in light of the fact that some lots just across the street enjoy an additional amenity of frontage on the Exeter River.

Thus the Board rules the correct values to be calculated as follows:

Buildings:

Class 4 House:

1,200 sq. ft. x 69.60	=	\$83,500
fireplace		+ 2,700
builtins		+ 700
extra baths		+ 3,000
porches		+ 1,700
		<u>+ 2,000</u>
Replacement value		\$93,600
	(phys. dep.)	<u>x .99</u>
		\$92,650

Attached garage:

Base value: 12,300 (-850 commonwall +350 elec. opener) \$11,800

Total Building value \$104,450

Land value:

Basic value 23,900 x .90(topo.)	=	\$21,500
Paving		\$ 1,200
Water & Septic		<u>\$ 2,500</u>
Total land value		\$25,200

For the above stated reasons, the Board rules that the proper assessment for the 1988 tax year is \$129,650.

If the taxes have been paid, the amount paid on the value in excess of \$129,650 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

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Peter J. Donahue, Member

Paul B. Franklin, Member

Date: November 30, 1989

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Dennis J. & Maryanne R. Brady, taxpayers; and the Chairman, Selectmen of Brentwood.

Michele E. LeBrun, Clerk

Date: November 30, 1989

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