

**James W. Smith
v.
Town of Danville**

Docket No. 4488-88

DECISION

A hearing in this appeal was held, as scheduled, on September 20, 1989. The Taxpayer was represented by himself and S. Jane Smith, his mother.

The Taxpayer appeals, pursuant to RSA 76:16-a the assessment of \$114,300 (land, \$92,600; buildings, \$21,700) for Map 2, Lot 77-1 and \$21,200 (land only) for Map 2, Lot 77-2, totalling \$135,500. Lot 1 consists of 1.938 acre with a capped foundation and Lot 2 consists of 1.92 acres, both parcels are located off Long Pond Road and Hawke Lane.

Neither party challenged the Department of Revenue Administration equalization ratio of 100 percent for the 1988 tax year for the Town of Danville.

The Taxpayer argued that the land was overassessed due to the steep rocky topography along Long Pond Road and the strip of land owned by the Town of Danville between the Taxpayer's land and Long Pond Road. Further they argued that the only access to the lots being a 200 to 300 yard long right of way across an adjoining parcel diminished the value of the lots. The Taxpayer testified that the ledgy soils made the lots difficult to develop and that the only feasible house sites on each lot were in very close proximity to each other.

The Taxpayer described the building as an uninsulated capped foundation with minimal finish, plumbing and electricity.

The Town recommended deleting the frontage assessment calculation on Lot 1 and valuing that land as rear land as a homesite had already been calculated.

Further, the Town recommended reducing the building replacement cost by \$2,000

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for there being no interior access from the living area to the storage area overhead.

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. 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).

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The Board finds that Lot 1 is more properly appraised using a homesite method as the parcel is improved and as the front of the lot has little bearing on its value due to the topography and access. Based on the testimony and evidence, the Board finds that the basic homesite value of \$90,000 should be adjusted by 20 percent for its topography and 25 percent for access resulting in a site value of \$54,000. The balance of the land (1.018 acres) should be valued as fair rear land for a value of \$3,550. The Board finds that the correct land value for Lot 1 is:

Homesite	\$54,000
Rear Land	\$ 3,550
Well & Septic	<u>\$ 7,000</u>
Total	\$64,550

As to the building on Lot 1, the Board finds that, as recommended by the Town, the replacement value should be reduced \$2,000 for no interior access to the storage area over the living area. Further, the Board finds that the building should be adjusted by an additional 15 percent to reflect the lower cost and lesser desirability of the concrete portion of the living area versus wood frame construction with normal fenestration. Thus, the Board rules the building value should be calculated as follows:

$$\begin{array}{rcl} 34,200 \times & .45 & = & \$15,400 \\ \text{(Replacement value)} & \text{(Functional dep.)} & & \end{array}$$

The Board finds no evidence before it that the value of \$21,200 for Lot 2 is in excess of market value.

The Board therefore rules that the proper assessment for the 1988 tax year is:

Map 2, Lot 77-1		
	Land	\$64,550
	Building	\$15,400
Map 2, Lot 77-2		
	Land	\$21,200
	Total	\$101,150

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If the taxes have been paid, the amount paid on the value in excess of \$101,150 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

(Mr. Twigg did not sit.)
George Twigg, III, Member

Peter J. Donahue, Member

Paul B. Franklin, Member

Date: October 6, 1989

I certify that copies of the within Decision have this date been mailed, postage prepaid, to James W. Smith, taxpayer; and Chairman, Selectmen of Danville.

Michele E. LeBrun, Clerk

Date: October 6, 1989

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