

Malcolm W. Wadleigh, Ramona M. Wadleigh and John P. Wadleigh

v.

Town of Charlestown

Docket No. 4490-88

DECISION

A hearing in this appeal was held, as scheduled, on July 13, 1990. The Taxpayers were represented by Ramona M. Wadleigh. The Town was not represented.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$72,000 (land, \$31,500; buildings, \$40,500) placed on their real estate, located on Route 12-A for the 1988 tax year.

The Taxpayers argued their property is located next to a gravel pit own by St. Pierre. They operate a stone crusher which is directly across from the subject house that runs from 7a.m. to 5p.m. six days a week. Large diesel trucks transport the gravel from the pit to various job locations during operating hours causing a lot of dust and noise as well as diesel fumes. The water run off from the gravel operation runs onto the subject land and floods the septic system periodically.

They submitted an appraisal prepared by James Hogan in 1981 that contained the following observation. "The gravel operation on Chestnut Hill Road is an adverse conditions." This was in conjunction with an application for abatement of taxes for 1981 in which the town reduced the subject property assessment by \$4,350.

The Town submitted copies of the property record card of the subject property, but offered no rebuttal to the application for abatement.

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).

The Boards review inspector inspected the subject property May 26, 1989, and made the same observation as Mr. Hogan.

His recommendation to the Board was a 15% reduction to reflect the adverse conditions present.

In light of the testimony and evidence presented this seems reasonable to the Board.

The Board therefore rules the proper assessment for April 1, 1988, is \$61,200.

If the taxes have been paid, the amount paid on the value in excess of \$61,200 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

Peter J. Donahue, Member

Paul B. Franklin, Acting Chairman

(Concurred, unavailable for signature.)
Raymond J. Damour, Temporary Member

Date: August 24, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Malcolm W., Ramona M. & John P. Wadleigh, taxpayers; and Chairman, Selectmen of Charlestown.

Michele E. LeBrun, Clerk

Date: August 24, 1990

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