

Irene M. Searles and Judith A. Thompson

v.

Town of New Durham

Docket No. 4496-88

DECISION

A hearing in this appeal was held, as scheduled, on May 4, 1990. The Taxpayers represented themselves. The Town was represented by David W. Bolton, appraiser for M.M.C., Inc.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$110,700 (land, \$27,400; buildings, \$83,300) placed on their property, located on Ridge Road Top, for the 1988 tax year. The property consists of a 1.3-acre lot with a dwelling and barn.

Neither party challenged the Department of Revenue Administration's equalization ratio of 98 percent for the 1988 tax year for the Town of New Durham.

The Taxpayers argued they were overassessed due to the size and ledgy condition of the lot, the old and inadequate septic system, and the poor condition of the barn.

Mr. Bolton agreed that the appraisal of the property warranted an adjustment for the ledge and the inadequate septic system and thus recommended a 10 percent adjustment on the acre lot value and 5 percent functional depreciation on the house value, resulting in a recommended revised assessment of \$102,700. Mr. Bolton however felt that the \$6,200 value attributed to the

barn accurately reflected its contributory value as storage to the property's entire value.

The Board rules as follows.

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 Board finds, as was clear from the testimony, that, with both an old septic system adequate for only careful use by one or two people and a ledgy lot restricting the ease with which that system could be improved, the marketability of the property is affected. The Board finds that the Town's recommended adjustments to the land and house properly account for this reduction in value.

Further, the Board finds that the barn, notwithstanding its poor condition, does contribute the equivalent value of a storage shed or small garage to the property's aggregate value.

For the above stated reasons the Board rules that the proper assessment for the 1988 tax year is \$102,700.

If the taxes have been paid, the amount paid on the value in excess of \$102,700 is to be refunded with interest at six percent per annum from date of payment to date of refund.

May 16, 1990

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III

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Peter J. Donahue

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Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Irene M. Searles and Judith A. Thompson, the Taxpayers, to the Chairman, Board of Selectmen, Town of New Durham, and to David W. Bolton, M.M.C.

May 16, 1990

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Michele E. LeBrun, Clerk