

Allan C. Morrison

v.

Town of Milford

Docket No. 4507-88

DECISION

A hearing in this appeal was held, as scheduled, on June 27, 1990. The Taxpayer represented himself. The Town was represented by Douglas R. Smith, tax appraiser and David W. Bolton, of M.M.C., Inc..

The Taxpayer appeal, pursuant to RSA 76:16-a, the assessment of \$335,300 (land, \$232,200; buildings, \$103,100) placed on his real estate, located on North River Road for the 1988 tax year. The property consists of 13.2 acres with a dwelling, a manufactured house and a used car shop.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100% for the 1988 tax year for the Town of Milford.

The Taxpayer argued he was overassessed due to the stripped off top soil and ledgy and rocky condition of the land. Mr. Morrison testified that the property was for sale and that he had received one offer of \$235,000 in 1989, which he did not accept. He stated that he felt the real estate was worth \$200,000, but that the entire business was for sale including all equipment, tow truck, junkyard liscence, etc.

Mr. Bolton agreed that the assessment was excessive and recommended adjusting the land for its topography and the buildings for additional physical and functional depreciations. He recommended a new assessment of \$273,000.

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 Board finds that the land is ledgy, having been stripped of much of its topsoil and cover. The Board finds that while it is conceivable that the land could be subdivided, the highest and best use is the continuance of the non-conforming salvage auto use of the property.

The Board finds the Towns recommended adjustments to the land and building values are reasonable, given this use. Consequently, the Board rules that the best evidence before it, as to its value, is the Towns recommended assessment of \$273,000.

For the above stated reasons the Board rules that the proper assessment for the 1988 tax year is:

Land	\$188,000
Building	<u>\$ 85,000</u>
Total	\$273,000

If the taxes have been paid, the amount paid on the value in excess of \$273,000 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

George Twigg, III, Member

Peter J. Donahue, Member

Paul B. Franklin, Member

Date: July 26, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Allan C. Morrison, taxpayer; and Chairman, Selectmen of Milford.

Michele E. LeBrun, Clerk

Date: July 26, 1990

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