

Noel Dery and Rachel Dery

v.

Town of Belmont

Docket No. 5188-88

DECISION

A hearing in this appeal was held, as scheduled, on November 16, 1989. The Taxpayers were not represented. The Town was represented by Andrew L. Blais.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$33,100 (land, \$7,100; buildings, \$26,000) placed on their real estate, located on Sunset Drive for the 1988 tax year. The property consists of .35 acres with a dwelling and attached garage and is identified as Map 28, Lot 48-1.

Neither party challenged the Department of Revenue Administration's equalization ratio of 35% for the 1988 tax year for the Town of Belmont. Based on that ratio, the Taxpayers' assessment equates to a market value of \$94,571.

In correspondence to the Board, the Taxpayers stated they were overassessed compared to three adjacent properties on Lake Winnisquam.

"I am comparing this house to three houses across the street, directly on the Lake front

Thomas Messmore, Map 028, lot 044 (waterfront). Assess \$25,200. This is a three bedroom year round home with a two car garage and storage shed, sandy beach, this house was bought in 1980 for \$85,00.

Blanche Kling, Map 028, lot 043 (waterfront). Assess \$31,990. This is a three bedroom home with one car garage. This house was sold last year for \$175,000.

Joe Lamaltina, Map 028, lot 42 (waterfront). Assess \$31,950. This is a three bedroom house. It also has a small cottage and one bedroom and bath on

same lot. All three have a sandy beach plus dock.

Noel Dery and Rachel Dery v. Town of Belmont

Mr. Blais testified that the Taxpayers base unit price for the land was \$7,500 while the base unit price for the three comparables listed by the Taxpayers was \$22,500 reflecting the higher value being on the lake.

Mr. Blais testified that Belmont had completed a revaluation in 1989 appraising property at 100% of market value. He stated that the new assessment for the Dery property was \$105,700, and the new assessments for the comparables were: Messmore, Map 28, lot 44, \$192,100; King (Boika) Map 28, lot 43, \$172,900 and Lamaltina, Map 28, lot 42, \$194,100.

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

Noel Dery and Rachel Dery v. Town of Belmont

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 equalization ratio for Belmont for the 1988 tax year was 35%. Equalizing the taxpayer's assessment (33,100/.35) results in an indicated value of \$94,571 slightly less than the 1989 full market assessment of \$105,700. Among the four properties the Board received evidence on, one property, the Boika (Map 28, lot 43) property, sold in 1988 for \$170,000 supporting the new full market assessments for 1989.

The 1988 base assessment value for land on the lake was three times the base value for land not on the lake side of Sunset Drive.

The correct assessment in 1988, as evidenced by the assessment record card, of the Messmore property (Map 28, lot 44) was \$45,200.

The Taxpayers' assessment record card and submitted photographs show an attached garage on the Taxpayers property but no assessed value was attributed to it.

The Board understands the Taxpayers contention that they are overassessed to the three properties compared to on the lake. However, it is clear from the evidence that due to the dramatic escalation in waterfront properties in recent years, these three properties in 1988 are substantially underassessed. The Courts have long held that in proving disproportionate assessment the appellant must show they are overassessed in comparison to general assessment level in entire Town (i.e. equalization ratio) rather than to just a few select properties.

"The plaintiffs are bound to pay their share. An unequal distribution of the remainder among the other taxpayers, because of erroneous appraisals among individual taxpayers, is no reason why the plaintiffs should pay less than their share. If it were, the fact that some individuals pay more would establish with equal certainty the plaintiffs' obligation to pay more than their share. The ground upon which an abatement

Noel Dery and Rachel Dery v. Town of Belmont

is granted is the reduction of the plaintiffs' assessment to their share of the tax.

. . .Their share is such a proportion of the whole tax as the true value of their property bears to the true value of all the taxable estate in the city." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 205, 206.

The Board therefore rules the Taxpayers have failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in excess of the Taxpayers' just share of the common tax burden. The ruling is, therefore: Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Anne S. Richmond, Esq., Chairman

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George Twigg, III, Member

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(Mr. Donahue did not sit.)  
Peter J. Donahue, Member

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Paul B. Franklin, Member

Date: January 15, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Noel & Rachel Dery, taxpayers; and the Chairman, Selectmen of Belmont.

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Michele E. LeBrun, Clerk

Date: January 15, 1990

0009