

Paul Lavallee and Patricia Lavallee

v.

Town of Hooksett

Docket No. 5305-88

DECISION

A hearing in this appeal was held, as scheduled, on July 31, 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 \$3,000 (land only) placed on their real estate located on Bicentennial Drive, for the 1988 tax year. The parcel is 4,356 square feet of undeveloped land and is identified as Map 46, lot 29.

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

The Taxpayer also owns, but did not appeal, the adjoining improved parcel (Map 46, lot 30) with a 1988 assessment of \$123,800 (land, \$43,600; buildings, \$80,200).

Mr. Lavallee testified that lot 29 was the remainder of a larger lot that had been taken when Interstate 93 was constructed. He described it as the bank area between lot 30 and Bicentennial Drive. He argued that since the State of New Hampshire had appraised this piece at \$100 at the time of the

taking and since it was unbuildable by Hooksett's zoning ordinance, the parcel

had little or no value. He testified that he mows the steep bank and has three trees on it that help lot 30 look better.

Mr. Bolton stated that the parcel had received a 90 percent reduction as unbuildable. He argued that it did have contributory value to lot 30 and that no parcel was entirely worthless. He stated that it is difficult to quantify actually how much value the parcel does contribute to lot 30, and therefore he recommended a 95 percent reduction, or a revised assessment of \$1,500.

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).

". . . a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. Bemis &c. Bag Co. v. Claremont, 98 N.H. 446, 449, 102 A.2d 512, 516 (1954)." Appeal of Town of Sunapee, 126 N.H. 214, 217. (emphasis added)

RSA 75:9 states:

Separate Tracts. Whenever it shall appear to the selectmen or assessors that two or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory.

The Board rules that lots 29 and 30 have the same ownership and are situated so as to be considered as only one estate. The evidence from the Town and the Board's investigator indicated the total market value of both parcels to be approximately \$125,000. Therefore the Board rules that the Taxpayers' entire estate (lots 29 and 30) should be assessed as one estate and has a proper 1988 assessment of \$125,000.

If the taxes have been paid, the amount paid on the value in excess of \$125,000 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, Chairman

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Paul and Patricia Lavallee, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Hooksett.

Michele E. LeBrun, Clerk