Colles C. Stowell
v.
Town of Lancaster

Docket No. 5306-88

DECISION

A hearing in this appeal was held, as scheduled, on September 19, 1990. The Taxpayer was represented by himself and his wife, Joe Ann Stowell. The Town was represented by John McSorley, Appraiser from the Department of Revenue Administration.

The Taxpayer appeals, pursuant to RSA 76:16-a, four 1988 assessments of $204,350 (land, $105,600; buildings, $98,750), $19,750 (land only), $95,150 (land, $82,550; building, $12,600), and $81,850 (land only) for parcels identified respectively as Map 23, Lot 16; Map 23, Lot 13; Map 26, Lot 25; and Map 22, Lot 5. Map 23, Lot 16, consists of 44 acres with two seasonal dwellings and various garages and outbuildings located on Martin Meadow Pond Road. Map 23, Lot 13, consists of 9.9 acres of undeveloped land on Martin Meadow Pond Road and Route 3. Map 26, Lot 25, consists of a parcel of land less than an acre in size, improved with a boathouse, on Martin Meadow Pond. Map 22, Lot 5, consists of 29 acres of undeveloped land on Martin Meadow Pond Road.

The Taxpayer did not wish to appeal the assessment of Map 22, Lot 5, as it had subsequently been placed in current use.

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

Map 23, Lot 16

The Taxpayer testified that the two main dwellings were 50-year-old log buildings caulked with oakum. He testified that they were built over dirt basements and crawl spaces that had caused some of the logs to rot. He testified that the guest cottage had not been occupied for over twenty years and many of the logs and floors were rotted.

Mr. McSorley stated that he felt the Town's depreciation on the structures properly reflected their problems.

Map 23, Lot 13

Mr. Stowell stated that all but 250 feet of the frontage along the new Martin Meadow Pond Road was swampy and that the frontage on Route 3 was so steep as to be unusable.

Mr. McSorley stated that the entire 1,276 feet of frontage on Martin Meadow Pond Road had received an average topography adjustment of minus 80 percent for its wetness, plus an additional minus 5 percent for the Public Service of New Hampshire transmission-line right-of-way. He also testified that the 500 feet of frontage on Route 3 had received a minus 60 percent adjustment for its steepness with an additional minus 10 percent factor for the Public Service of New Hampshire right-of-way. He argued that the final value reflected the physical problems with the lot.

Map 26, Lot 25

Mr. Stowell stated that the boathouse foundation was subsiding into the pond and that the roof was being reinforced by a post set on the fireplace hearth. He stated that there was no plumbing in the boathouse nor was there any septic system for the property. Mr. Stowell also argued the utility of the boathouse was limited to very shallow-draft boats as there was only 12 to 18 inches of water in the boathouse during the boating season. He also stated that, based on his own calculation, the land area was .58 of an acre, not the .85 acre noted on the assessment card.

Mr. Stowell stated that he felt, while his assessed value on the land on Martin Meadow Pond was in line with that of other property owners on the pond, the values were generally excessive and arbitrary as no property had sold on the pond to give an indication of value.

Mr. McSorley agreed that there had been no sales of property on the pond as properties have usually been transferred amongst family members. He testified that the pond frontage value was the last to be established after the market of all other property in Lancaster had been determined. He argued that the base values were conservatively set based on the appraiser's experience and knowledge of the typical relationship between waterfront and non-waterfront properties.

He stated that the size of the taxpayer's lot was taken from the Town's tax maps and that the minimum lot size permitted under Lancaster zoning was 20,000 square feet.

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).

Map 23, Lot 16

The Board finds that the Board's investigator's report corroborated the

Taxpayer's testimony as to the condition of the buildings and that he adjusted

the building values for their deteriorated condition. The Board finds that the Board's investigator's report (with the correction of $2,750 for a shed he omitted) is the best evidence before it as to the proper assessment for Map 23, Lot 16. Therefore the Board rules the correct 1988 assessment for this parcel is $179,150 (land, $105,600; buildings, $73,550).

Map 23, Lot 13

The Board finds that while it is clear that a large portion of this parcel is wetland, the Taxpayer failed in his burden of proof that the adjustments and final value of the Town assessment did not reasonably account for the limited utility of the property. The Board also notes that the Board's investigator in his report recommended no change in value.

Map 26, Lot 25

The Board finds, based on the evidence and testimony, that there are no plumbing or septic facilities for the boathouse and thus the Town's $5,000 assessed value for the pond-water connection and septic tank is inappropriate. Further, the Board finds that based on the testimony the boathouse should be further adjusted for its physical condition and its limited utility due to the shallowness of the water. Therefore the Board rules that the correct 1988 assessment is:

Land	$77,550
Building	
Boathouse replacement value ($24,200) x .50 (physical dep.) x .60 (functional dep.) =	7,250
Total assessed value	$84,800

Map 22, Lot 5

As no evidence was presented as to this parcel's ad valorem assessed value of $81,850 and as it appears from the record submitted to the Board that current use assessment of this parcel did not occur until 1989, the Board rules the proper 1988 assessment is $81,850.

In summary, the Board rules the proper assessments are as follows:

Map 23, Lot 16	$179,150
Map 23, Lot 13	19,750
Map 26, Lot 25	84,800
Map 22, Lot 5	81,850
Total	$365,550

If the taxes have been paid, the amount paid on the value in excess of $365,550 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

Paul B. Franklin, Acting Chairman

Ignatius MacLellan

I certify that copies of the within Decision have been sent this date, postage prepaid, to Colles C. Stowell, the Taxpayer, and to the Chairman, Board of Selectmen, Town of Lancaster.

Michele E. LeBrun, Clerk

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