

James M. Colby and Lynn P. Colby

v.

Town of Boscawen

Docket No. 5454-88

DECISION

A hearing in this appeal was held, as scheduled, on July 11, 1990. The Taxpayers were represented by themselves and by Louis C. Manias, appraiser. The Town was represented by Douglas Supry, Selectman and George Hildum, senior appraiser from Avitar.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$194,600 (land, \$64,500; buildings, \$130,100) placed on their real estate, located on Route 4 for the 1988 tax year. The property consists of a dwelling and garage on 2.75 acres and is identified as Map 47, Lot 9, Sublot A.

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

Mr. Colby argued the land value was too high due to the view adjustment factor of 1.75. Mr. Manias appraised only the land portion of the Taxpayers property and estimated it was worth \$37,000 in its raw condition. He also testified that he conducted a cost estimate for the buildings and improvements from the Marshall and Swift replacement cost manual and estimated the improvements cost \$131,000. He testified to and submitted a comparison of assessments of similar lots and a proportionality study for 1988 to 1989. Based on his appraisal and the two studies, he estimated the proper assessment to be \$173,500 (land, \$42,500; buildings, \$131,000).

Mr. Hildum submitted written testimony (Town Exhibit B) concerning the comparability of the properties discussed by Mr. Colby and Mr. Manias. He testified that while there were few sales in Boscawen to give the appraisers an

indication of the proper adjustments for view, they drew upon their experience of appraising in numerous towns and applied the factors consistently.

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 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 rules that the Taxpayers entire estate must be considered in determining whether they are bearing an excess share of the tax burden. The value of the land can not be viewed in isolation from the value of the improvements or vice versa. The market value of the whole estate may be less

than, equal to or exceed the sum of the cost of the components of the estate depending on their effect on each other and how it is recognized in the market.

While the Board does not dismiss it entirely, the Board rules that the appraisal by Mr. Manias is not by itself conclusive evidence of market value. Therefore, based on the testimony and evidence of both parties, the Board rules that the proper view adjustment factor is 1.5 and the proper 1988 assessment is \$185,400.

If the taxes have been paid, the amount paid on the value in excess of \$185,400 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, Member

Paul B. Franklin, Member

Raymond J. Damour, Temporary Member

Date: August 8, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to James M. & Lynn P. Colby, taxpayers; and Chairman, Selectmen of Boscawen.

Michele E. LeBrun, Clerk

Date: August 8, 1990

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