

Richard G. Sweatt
v.
Town of Boscawen

Docket No. 5456-88

DECISION

A hearing in this appeal was held, as scheduled, on July 11, 1990. The Taxpayer represented himself. The Town was represented by Sherlene Fisher, Administrative Assistant and Gary J. Roberge, Appraiser.

The Taxpayer appeals, pursuant to RSA 76:16-a and RSA 79-A:9, the assessment of \$111,528 (land, \$44,528; buildings, \$67,000) placed on his real estate, located on Corser Hill for the 1988 tax year. The property consists of 74 acres, some assessed in current use, and a dwelling with several outbuildings and is identified as Map 94, Lot 21.

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

Mr. Sweatt argued that the Town used the high end of the current use value ranges for all current use properties in town. He testified that his horticulture, forage and pasture land was not the best in town as the soil was rocky, wet and full of clay. He testified that the Soil Conservation Service had rated his soils at 61% under the soil potential index system. Further, he stated the Town assessed his forest land in the white pine category, but argued it should be assessed in the hardwood category due to the hardwood species on the land.

Mr. Sweatt argued that his house lot (or land not in current use) value was excessive as the Town was assessing a full acre at market value and that the area around the buildings has limited view. He argued that the foot print of the buildings, lawn and drives was less than one half an acre.

Mr. Roberge stated the Town had neither granted nor denied the soil potential index on the agricultural acres as the Taxpayer had never asked the Town for that consideration. Likewise Mr. Roberge stated that the Taxpayer had never specifically asked for or defined a different acreage of the land not in current use other than applying for 73 acres for current use assessment out of a total of 74 acres.

Mr. Roberge stated that there were three sales at the time of the revaluation that gave the appraisers some indication as to appropriate adjustment to the housesite for view. He testified that such factors were consistently applied by him and one other senior appraiser throughout Boscawen.

Mrs. Fisher stated that the present Board of Selectmen had continued the policy of previous boards of using the high end of the range of current use values, except in the forage category where two values were used.

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 soil potential index provision of the current use regulations were not effective until the 1989 tax year and thus is not applicable to the case at bar.

The Board rules that the soils of the current use land used for forage and pasture are rocky and drain poorly and thus should be assessed at the mid range of their respective categories. The Board finds that the horticultural land as agreed to by the Taxpayer and Town should be assessed at the top end of the horticulture category range. The Board rules that the forest land is predominately hardwood and should be assessed at the mid range of the hardwood category. The Board rules that all the current use land qualifies for the 20 percent recreational adjustment as applied for by the Taxpayer.

The Board rules that it is the Taxpayer's responsibility to supply the Town with information and a map showing what land is being kept out of current use. Current Use rules 1202.01(d) reads:

(d) Identification of land on which the application is filed.

(1) Each tract shall be marked with identifiable boundaries on the ground.

(2) The application for current use assessment shall be accompanied by a map or drawing of the entire parcel, showing both current use and non-current use land, adequately identified and oriented to establish its location, and sufficiently accurate to permit computation of acreages. Besides showing overall boundaries and computation of acreages, the map shall show interior boundaries and acreages of land and forest type categories for which the applicant is seeking qualification, differentiating land uses within each category, and all portions not to be classified under current use.

The Board finds based on the evidence before it that no such delineation of the land not in current use has been supplied by the Taxpayer to the Town. Consequently, the Board finds that a one acre housesite is a reasonable area to encompass the several buildings and drives and the land maintained around them for the day to day use of the buildings.

While the adjustment made by the Town to the housesite acre is inherently subjective, the Board finds it is none-the-less reasonable based on the testimony of the limited view and the photographs supplied by both the Town (Town's Exhibit B) and the Board's investigator.

For the above stated reasons, the Board finds the proper assessment for the 1988 tax year is \$109,040 and is calculated as follows:

Land:

1 acre housesite	=	\$37,500
6 acres pasture at \$75/acre x .80	=	360
14.5 acres forage at \$235/acre x .80	=	2,730
1.5 acres horticulture at \$525/acre x .80	=	630
51 acres hardwood at \$20/acre x .80	=	<u>820</u>
Total land	=	\$42,040
Buildings	=	<u>67,000</u>
Total value	=	\$109,040

If the taxes have been paid, the amount paid on the value in excess of \$109,040 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 Richard G. Sweatt, taxpayer; and Chairman, Selectmen of Boscawen.

Michele E. LeBrun, Clerk

Date: August 8, 1990

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