

Michael W. Beattie and Sally Beattie

v.

Town of Lancaster

Docket No. 5470-88

DECISION

A hearing in this appeal was held, as scheduled, on June 26, 1990. The Taxpayers represented themselves. The Town was represented by Thomas M. Welch, Appraiser Supervisor for the Department of Revenue Administration.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$315,300 (land, \$208,850; buildings, \$106,450) placed on their real estate, located on Bridge Street, for the 1988 tax year. The property consists of a log dwelling with several buildings on 24.69 acres of land.

The Taxpayers also owned in 1988, but did not appeal, two land-only parcels assessed for \$13,300 and \$9,650.

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

The Taxpayers argued they were overassessed due to most of their land flooding each year and that it is infeasible to obtain any further building permits for any new buildings due to the land being in the "floodway" as delineated by the National Flood Insurance Program floodway map. They further testified that the long driveway was necessitated to access the only area that did not flood when the buildings were constructed. They argued that

the driveway was expensive to maintain, especially after the damage done to it by the annual flooding. The Taxpayers conceded that the open-field land provided privacy to the buildings and afforded a good view, but that due to the drop-off in grade from Bridge Street and the flooding problem it did not contribute as much in value to the entire property as the Town's appraisal indicated.

Mr. Welch recommended that the Town's assessment be revised to \$295,750 by adjusting the topography adjustment an additional 20 percent for the flooding and below road-grade aspect of the land along Bridge Street.

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).

The Board finds that most of the Taxpayers' land does seasonally flood and precludes any further development of that land. Further, inasmuch as the base frontage land values used by the Town were derived from sales of land that does not flood, the Board rules that an additional and separate 50 percent reduction in the value attributable to the frontage is warranted. This adjustment reflects what the market would recognize for the flooding and driveway-maintenance problems.

In summary, the Board rules the assessment should be calculated as

follows:

Homesite	\$ 28,500
Rear land	69,700
Frontage	40,450
Paving	1,000
Water and Septic	5,000
Buildings	<u>106,450</u>
Total	\$251,100

If the taxes have been paid, the amount paid on the value in excess of \$251,100 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

July 13, 1990

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Michael W. and Sally Beattie, the Taxpayers, to the Chairman, Board of Selectmen, Town of Lancaster, and to Richard Young, Director, Property Appraisal Division.

Michele E. LeBrun, Clerk

July 13, 1990