

Michael Marterano
v.
Town of Lancaster

Docket No. 5471-88

DECISION

A hearing in this appeal was held, as scheduled, on June 15, 1990. The Taxpayer was represented by himself and by Ron Roberts, Property Manager. The Town was represented by Robert G. Camp, Appraiser for the Department of Revenue Administration.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$361,700 (land, \$51,100; building, \$310,600) placed on his real estate, located at 65 Main Street, for the 1988 tax year. The property consists of a three-story frame commercial building on a small parcel of land.

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 Taxpayer argued he was overassessed due to incorrect measurements of the building, low net operating income, and inadequate depreciation for its condition.

The Town recommended a revised assessment of \$264,900. The Town argued this value reflected the corrected square footage of the building and greater depreciation for the fire damage and remaining utility of the third floor and

numerous outdated features of the building.

The Board's investigator, in his report of the property, made note of the incorrect dimensions and adjusted the physical and functional depreciations. His resulting valuation was \$259,300.

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 the building dimensions to be 67 feet by 77 feet. The Board rules that the Town's revised assessment of \$264,900 reasonably reflects the property's physical and functional problems and is corroborated by the Board's investigator's report. Therefore the Board rules that the proper assessment for the 1988 tax year is \$264,900.

If the taxes have been paid, the amount paid on the value in excess of \$264,900 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 17, 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 Marterano, the Taxpayer, and to the Chairman, Board of Selectmen, Town of Lancaster.

Michele E. LeBrun, Clerk

July 17, 1990