

Allan E. Boerker and Claudine A. Boerker

v.

Town of Bristol

Docket No. 5609-88

DECISION

A hearing in this appeal was held, as scheduled, on July 24, 1990. The Taxpayers represented themselves. The Town was represented by John W. McSorley, appraiser of the Department of Revenue Administration.

The Taxpayers appeal, pursuant to RSA 76:16-a, the 1988 assessments of \$147,200 (land, \$112,950; buildings, \$34,250) for Map R7, Lot 104 and \$165,250 (land only) for Map R7, Lots 107, 108, 111 and 115. The property identified as Map R7, Lot 104 consists of a seasonal dwelling on approximately 1/3 of an acre on Birch Road. Map R7, Lots 107, 108, 111 and 115 are contiguous tracts of unimproved land totaling approximately 1 1/2 acres also on Birch Road.

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

The Taxpayers argued the cottage property was overassessed due to the lot being so shallow in depth that it precluded any further building. They further argued that both properties were accessed by only privately and seasonally maintained roads and yet were appraised the same as properties in the adjacent Camelot Acres that front on town roads. They testified that the cottage lot has deeded rights with others to a 60 foot beach on Newfound Lake and the unimproved tracts have only a 10 foot right-of-way to the lake shared with three other properties.

The Taxpayers submitted an appraisal by Bruce K. Platts, conducted at the request of the Taxpayers son-in-law, that estimated the 1988 value of the improved property at \$89,000 and the value of the unimproved tracts at \$81,500.

The Town stated that the property abutted Camelot Acres and since it had access to the lake was similarly appraised. Mr. McSorley stated the appraisers at the time of the revaluation had considered the seasonal and private maintenance aspects of the road in the basic front foot price. He stated that the four contiguous unimproved tracts were appraised as if they were one lot.

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).

\$244,600 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

George Twigg, III, Chairman

Peter J. Donahue, Member

Paul B. Franklin, Member

Date: August 24, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Allan E. & Claudine A. Boerker, taxpayers; Chairman, Selectmen of Bristol; and Richard Young, Director, Property Appraisal Division, Department of Revenue Administration.

Michele E. LeBrun, Clerk

Date: August 24, 1990

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