

Marshall H. Ford and Marguerite P. Ford

v.

Town of Belmont

Docket No. 4435-88

DECISION

A hearing in this appeal was held, as scheduled, on November 16, 1989. The Taxpayers represented themselves. The Town was represented by Andrew L. Blais, Appraiser.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$31,400 (land, \$10,200; buildings, \$21,200) placed on their real estate, located on Rte. 107 for the 1988 tax year. The property consists of 42.6 acres with a partially complete house.

Neither party challenged the Department of Revenue Administration's equalization ratio of 35% for the 1988 tax year for the Town of Belmont. Based on that ratio, the Taxpayers' assessment equates to a market value of \$60,571.

The Taxpayers argued that the stage of completion of the house was much less than the Town's estimate of 35% completion. They testified that they had salvaged the frame and some interior features of an old house in Thornton and were reerecting it on this site. They presented evidence and testified that as of April 1, 1988, only the foundation and major frame components were in place.

They stated that the basement floor had not been poured, only minimal interior partitions were in place, no roof or exterior sheathing was in place and no well or septic were installed.

As a result, the Taxpayers felt the improvements had a contributory market value of \$10,000-\$12,000 plus some undeterminable value for the demolition and salvage time and costs of obtaining the old building components.

The Town agreed that no well and septic were in place on April 1, 1988. The Town agreed that the dimensions of the house are 32' x 44' rather than 34'

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x 44' and recommended a corresponding reduction in the replacement cost when completed to \$45,800. Based on a "percentage breakdown of base costs" from the Marshall & Swift Replacement Cost Manual, the Town recommended a 25% completion estimate which included all of the 11% allocation for rough lumber but only half of the 9.5% allocation for carpenter labor for the rough lumber as some of it was on site but not erected.

As a result the Town recommended a revised building assessment of \$14,300.

In regard to the Taxpayer's allegation 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.

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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 as follows:

There were no well or septic on the property as of April 1, 1988. No basement floor was in place on April 1, 1988. Approximately half the rough lumber (framing components and sheathing) was erected on April 1, 1988. The dwelling is 32' x 44' and has an estimated replacement cost when finished of \$45,800.

The Board rules that building components must be permanently attached to the land or so immobile so as to make their removal impactful before they can be considered real estate assessable per RSA 75:1. Blacks Law Dictionary 5th Edition defines real estate as: "Land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the building, such as light fixtures, plumbing and heating fixtures or other such items which would be personal property if not attached. . ." (emphasis added)

Based on the above findings and rulings, the Board rules that the dwelling was approximately 20% complete on April 1, 1988, and the proper building assessment is calculated as follows:

$45,800(\text{replacement cost}) \times 20\% \times 1.25(\text{local multiplier}) = \$11,450$

With the well and septic value removed, the Board rules the correct 1988 land assessment to be \$6,800.

For the above stated reasons the Board rules that the proper assessment for the 1988 tax year is \$18,250.

If the taxes have been paid, the amount paid on the value in excess of \$18,250 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

Anne S. Richmond, Esq., Chairman

George Twigg, III, Member

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(Mr. Donahue did not sit.)
Peter J. Donahue, Member

Paul B. Franklin, Member

Date: January 10, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Marshall H. & Marguerite P. Ford, taxpayers; and the Chairman, Selectmen of Belmont.

Michele E. LeBrun, Clerk

Date: January 10, 1990

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