

John A. Fabrycky and Barbara A. Fabrycky

v.

Town of Lempster

Docket No. 4687-88

DECISION

A hearing in this appeal was held, as scheduled, on April 6, 1990. The Taxpayers were represented by John A. Fabrycky, one of them. The Town was represented by Henry Frank and Rudolf Adler, Selectmen.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$23,800 (land, \$10,900; building, \$12,900) placed on their real estate located on Lempster Road (Map 4, Lot 488,101) for the 1988 tax year. The Taxpayers also owned but did not appeal Map 4, Lot 506,080, assessed at \$47,000 (land, \$7,650; building, \$39,350) and Map 7, Lot 522,152, assessed at \$3,900 (land, \$3,600; building, \$300).

Neither party challenged the Department of Revenue Administration's equalization ratio of 56 percent for the 1988 tax year for the Town of Lempster. Based on that ratio the Taxpayers' assessment on Map 4, Lot 488,101, equates to a market value of \$42,500.

The Taxpayers argued they were overassessed based on a purchase price of \$5,000 in 1986. They stated the building had no value and was not assessed as of April 1, 1987. They stated they had put in new sills and a new foundation as of April 1, 1988, and a new roof in April and May, 1988. The Taxpayers

stated they spent \$5,242 plus labor on the foundation and \$1,400 on the roof.

They felt the building deserved a 70 percent depreciation. The Taxpayers stated the appealed lot had no septic system, water, or electricity. They stated they purchased Map 7, Lot 522,152 for \$3,500 in 1983 and sold it for \$20,000 subsequent to April 1, 1988.

The Town's position was the selling price of \$5,000 for the appealed property did not reflect market value since the seller was under pressure to sell, having been ordered by the Town to remove or repair the building. The Town stated its building depreciation was based on the Department of Revenue Administration's manual and was determined by Mr. Gilmore, an expert they did not wish to overturn. The Town stated the removal of the garage enhanced the property's value.

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 as follows. The sale of the appealed property was not an arm's-length transaction and therefore was not evidence of market value. The dimensions of the building are 32 feet by 20 feet. The new sills and foundation were in place as of April 1, 1988. An 80 percent depreciation as of April 1, 1988, is warranted. The proper square-foot value was \$39.00.

For the above stated reasons the Board rules that the proper assessment for the 1988 tax year is:

land	\$10,900 (as assessed)
building	<u>5,000</u> (rounded)
total	\$15,900

If the taxes have been paid, the amount paid on the value in excess of \$66,800 is to be refunded with interest at six percent per annum from date of payment to date of refund.

April 11, 1990

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Chairman

(Mr. Twigg did not sit)

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 John A. and Barbara A. Fabrycky, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Lempster.

April 11, 1990

Michele E. LeBrun, Clerk