

Guenter K. Hubert and Kathleen A. Hubert
v.
Town of Newport

Docket No. 5232-88

DECISION

A hearing in this appeal was held, as scheduled, on May 29, 1990. The Taxpayers were represented by Anthony F. DiPadova, Jr., Esq., and Guenter Hubert, one of them. The Town was represented by George Hildum, Senior Appraiser for Avitar.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$172,800 (land, \$13,400; buildings, \$159,400) placed on their real estate located on Bradford Road for the 1988 tax year. The property consists of a dwelling and garage on 1.88 acres.

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

The Taxpayers argued they were overassessed due to various grading and listing inaccuracies. The Taxpayers testified that the dwelling was basically a finished-off LaValley prefabricated garage on a floating slab. They further argued that the finish over the attached garage was below the grade of the main portion of the house and that it was only one large room with no partitions. They stated that the only access to the main portion second floor

was by a spiral staircase and that the bedrooms on the second floor were quite

small, with little closet space. They also described the houses in the neighborhood as being generally of poorer quality and condition.

Mr. Hubert submitted an appraisal of his property done by Pyramid Realty Associates, Inc., as of April 1990 that estimated the market value at \$125,000.

Mr. Hildum agreed some corrections were warranted and submitted a revised assessment card recommending an assessment of \$150,700. In the revised appraisal he recommended correcting the story height of the dwelling from 2-story to 1 3/4-story and applying 5 percent functional depreciation for the lack of frost walls, layout and quality of finish in the living area over the garage and the inadequate heat to that area. He further recommended assigning 5 percent economic depreciation for the house being overbuilt for the neighborhood.

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).

While not entirely dismissing it, the Board gives little weight to the appraisal submitted by the Taxpayers as it is two years subsequent to the tax year in question. Based on the testimony and the Board's general knowledge of the market in Newport, it is likely that the market value would be less in 1990 than in 1988.

The Board finds that the house is overbuilt and in better condition than the immediate area and that the Town's recommended 5 percent economic depreciation is reasonable. The Board further finds that the Town's quality adjustment of 1.1 is warranted based on the quality of the finish of the house. The Board also finds that the Town's revised appraisal, while properly addressing several of the functional deficiencies of the property, needs to be adjusted by an additional 5 percent functional depreciation for such items as

the spiral staircase, utility of connecting hallway area, the size of the bedrooms, and the amount of closet space.

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

Land	\$ 13,400
Buildings	<u>129,650</u>
Total	\$143,050

If the taxes have been paid, the amount paid on the value in excess of \$143,050 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 Anthony F. DiPadova, Jr., Esq. Counsel to the Taxpayers, and to the Chairman, Board of Selectmen, Town of Newport.

Michele E. LeBrun, Clerk

July 13, 1990