

McFarland Realty Trust
v.
Town of Exeter

Docket No. 5315-88

DECISION

A hearing in this appeal was held, as scheduled, on June 14, 1990. The Taxpayer was represented by Bruce E. DeBerry, Agent of Equitable Valuation Associates. The Town was represented by Dominic S. DiAntoni, Appraiser.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$1,655,300 (land, \$556,200; buildings, \$1,099,100) placed on its real estate located at 151 Portsmouth Avenue, for the 1988 tax year. The property consists of the showroom and garage of the McFarland Ford dealership located on a 4.4-acre lot.

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

Mr. DeBerry submitted an "equity analysis" of the Taxpayer's property and the other four automobile dealers' property in Exeter and argued based on this comparison that his client was overassessed relative to the average value of the other similar properties. He argued that the building square-foot value of \$53.76 was excessive when compared to the square-foot value range of the other four dealers of \$27.32 to \$35.40. Mr. DeBerry stated that he had

not done a separate appraisal of the Taxpayer's property, nor had he completely viewed the other four properties.

Mr. DiAntoni argued that the total valuation--land and buildings--must be considered when making comparisons to determine assessment equity. He submitted a spread sheet with such comparisons of the individual total assessments of the automobile dealers in Exeter, divided by their building square footage. He argued that the Taxpayer's square-foot value of \$73.04 was in the middle of the range of such values from \$53.92 to \$105.20. Mr. DiAntoni also argued that the Taxpayer's building was of a better grade than the other dealerships and was at one of the best commercial locations in town at the intersection of Route 101 and Route 51.

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, based on the testimony and evidence, that the Taxpayer's building is larger and of better quality and situated in a better location than the other dealerships in Exeter. The Board rules that assessments at the time of a revaluation should be proportional to their respective market values, not just to an average or range of assessments of similarly used properties. To show that one property is assessed more for its building than other similarly used buildings does not necessarily prove that it is overassessed. Such a comparison must be related to what the marketplace would or would not distinguish as desirable between similarly used but not identically located or constructed buildings. While apparently there were no sales of similar property in Exeter, or any rental-income information, it is the Board's available experience that the market will recognize and pay more for larger and better constructed and located property.

The Board therefore rules the Taxpayer has failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in

excess of the Taxpayer's just share of the common tax burden. The ruling is, therefore:

Request for abatement denied.

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 Bruce E. DeBerry, representing the Taxpayer, and to the Chairman, Board of Selectmen, Town of Exeter.

Michele E. LeBrun, Clerk

July 13, 1990