

**Stephen E. Scarcello and Margaret A. Scarcello**

**v.**

**Town of Hillsborough**

**Docket No. 3906-87**

**DECISION**

A hearing in this appeal was held, as scheduled, on July 14, 1989. The Taxpayers were represented by Stephen E. Scarcello, one of them. The Town was represented by Harlan A. Noyes, Appraiser and Peter A. Chamberlin, Administrative Assistant.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$88,700 (land, \$12,950; building, \$75,750) placed on their real estate, located on West Main Street (Map 11, Lot 197) for the 1987 tax year. The property consisted of a .4 acre lot improved by a dwelling with attached office, formerly a utility barn and a garage.

Neither party challenged the Department of Revenue Administration's equalization ratio of 53% for the 1987 tax year for the Town of Hillsborough. Based on that ratio the Taxpayers assessment equates to a market value of \$167,358.

The Taxpayers argued they were overassessed because the assessment of \$77,000 in 1984, when a revaluation was conducted, was greater than the 1984 purchase price of \$67,000. The Taxpayers argued the assessment record card contained several inaccuracies such as the inclusion of paved driveway, covered porches and plumbing and heating additions to the utility barn made prior to the Taxpayers' ownership. The Taxpayer argued four comparable properties showed he was assessed at a higher ratio to market value than the comparables were. On questioning the Taxpayers stated the market value of the subject property was \$165,000 - \$170,000 on April 1, 1987, based on a 1987 bank

appraisal.

Stephen E. Scarcello and Margaret A. Scarcello v. Town of Hillsborough

The Town stated it appraised the property as best it could based on the fact it was not allowed entry into the house. The Town alleged the Taxpayers' comparables were not comparable.

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).

This is all the law affords any taxpayer: to have one's property taxed at the same rate as property is taxed in the town as a whole, and not in comparison to a class of similar property. This rule of proportionality was stated long ago in Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 46 A. 470 (1899), and recently in Appeal of Town of Sunapee, 126 N.H. 214, 217 489 A.2d 153, 155 (1985).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord,

Stephen E. Scarcello and Margaret A. Scarcello v. Town of Hillsborough

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 New Hampshire Constitution Part I, Article 12, imposes a duty on every member of the community to contribute his share of the expense of government. An error by the assessors does not obviate one's duty to pay one's fair share of the tax burden.

The equitable rule in tax cases rests on a ground more fundamental than an equitable form of action, or a statutory provision for such an order as justice requires. The plaintiff holds his common-law rights of property and personal liberty subject to a constitutional liability to contribute his share of the expenses of government.

So much of his share as he escapes the payment of, his neighbors are compelled to pay for him. So much of his obligation as he avoids, he casts upon them. His payment of his share is as much their constitutional right as it is his constitutional duty. His non-performance of his duty is a violation of their right.

It is the theory of the constitution that government originates from the people, is founded in consent, and created by a mutual contract. Bill of Rights, ART. 1; Part 2, ART. 1. By their original contract, the people assume the expense of the common benefits of the government established by the contract. Bill of Rights, ART. 12 . . . . But a duty expressly declared by the bill of rights as one accepted in an indispensable stipulation of the social compact, must be regarded as of the strongest obligation, and based on first principles. If the theory of our government is sound, an effort to evade the payment of one's share of the public expense is an effort of one of a company of joint purchasers to make his associates pay his share of the price of something bought, owned, and enjoyed by him and them in common. The success of such an effort must be a fraud in law as well as in fact, unless the legislature have the power, and exercise the power, to legalize it. The statutes of taxation direct when, how, and by what common agents each one's share of

the public

Stephen E. Scarcello and Margaret A. Scarcello v. Town of Hillsborough

expense is ascertained, when it is due, to what common agent it is payable, and in what manner the constitutional obligation to pay it may be enforced. In the process of ascertaining each one's share, called an assessment, selectmen, unlearned and unskillful in law, or unable to forecast the decision by court an jury of numerous questions of law and fact, take a course which, in many particulars of omission and commission, a court an jury think is erroneous. This must happen frequently. It would be extraordinary if selectmen should so make the annual assessment that its form and substance, and the manner of making it, in every respect of law and fact, would, in the opinion of other tribunals, be perfect. "No prudent man would act in the office of selectman where he must act in every case at his peril; where he must not only judge right on every question of law, but where his judgment must coincide with judges and jurors examining the same point years afterwards." Harris v. Willard, Smith (N.H.) 63, 71. It is highly improbable that the legislature would consider a defect in the assessment of a man's share a reason for giving him authority to violate the constitutional rights of his neighbors by putting upon them the performance of his constitutional duty. Edes v. Boardman, 50 N.H. 580, 587 (1879)

Easements are taxable property. See RSA 21:21, RSA 75:1, and Gowan v. Swain, 90 N.H. 383, 387-88 (1939).

The Board finds as follows the subject property is the dominant estate having a deeded right to a paved driveway that abuts the subject property. No error was committed by the Town when is assessed the Taxpayers for additions added prior to the Taxpayers' purchase but omitted from the assessment card. The equalization ratio was 53% for the 1987 tax year in the Town. The market value of the subject property was approximately \$167,358 on April 1, 1987.

The Board therefore rules the Taxpayers have failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in excess of the Taxpayers' just share of the common tax burden. The ruling is, therefore: Request for abatement denied.

Stephen E. Scarcello and Margaret A. Scarcello v. Town of Hillsborough

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Esquire  
Chairman

George Twigg, III, Member

Peter J. Donahue, Member

(Mr. Franklin did not sit.)  
Paul B. Franklin, Member

Date: 7/21/89

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Stephen E. & Margaret A. Scarcello, taxpayers; and the Chairman, Selectmen of Hillsborough.

Michele E. LeBrun, Clerk

Date: 7/21/89

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