

Jack H. Tottel and Judith E. Tottel

v.

Town of Milford

Docket No. 5732-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$221,900 (land, \$145,700, buildings, \$76,200) on Map 15, Lot 1 (the Property). The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the Board. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry their burden and prove any disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1)the Simpson property is assessed at a lower value although in a commercial zone as is the subject property; and
- (2)a bank appraisal by Charles Werth (6-3-88) estimated the fair market value at \$130,000 (one of his comparable properties was in Wilton - another town).

The Town argued the assessment was proper because:

- (1)the Simpson property applied for and was granted an exemption from the commercial rate as the property on 4-1-88 was used as a residence; and
- (2)the subject property located in the same commercial zone was used by the tenant, Ms. Anna Cabana, a/k/a, Little Toot, as a day care facility and thus was not entitled to the reduced residential rate.

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We find the Taxpayers' property was used commercially in 1988 and was assessed proportionately as such in comparison to the Town's several comparables - and in particular to the Guild day care property.

Thus, we find the Taxpayers failed to prove their assessment was disproportional.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

Date: November 21, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Jack H. Tottel and Judith E. Tottel, Taxpayers,; and Chairman, Selectmen of Milford.

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Brenda L. Tibbetts, Clerk

Date: November 21, 1991

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