

Edward L. and Roberta S. Klopfer

v.

Town of Hollis

Docket No.: 6980-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$355,400 (land, \$93,000; buildings, \$262,400) on a home with a 2-acre lot (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved disproportionality only in showing overassessment for the heat pump.

The Taxpayers argued the assessment was excessive because it was higher than a similar property -- the McLaughlin house. The Taxpayers' arguments were summarized on Taxpayers' Exhibit 1. The Taxpayers had no supportive opinions on the Property's fair market value.

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The Town argued the assessment was proper because:

- (1) the land value in this neighborhood was the highest in Town based on sales;
- (2) one-third of the neighborhood was graded at Class 4 and two-thirds at Class 5; and
- (3) the McLaughlin property was incorrectly assessed as a 4 1/2.

Based on the evidence, we find the correct assessment should be \$348,890 (land \$93,000 and building \$255,890). This assessment is ordered because the Town incorrectly assessed for the heat pump. Therefore, an adjustment was made, attributing only \$.70 per square foot to the heat pump.

Concerning the McLaughlin property, the Town stated an error was made. The board finds the Taxpayers' Property was not overassessed. However, there was evidence that the McLaughlin property may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that

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in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

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The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers must make a showing of the Property's fair market value. This value would then be compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

If the taxes have been paid, the amount paid on the value in excess of \$348,890 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Edward L. and Roberta S. Klopfer, Taxpayers; and Chairman, Selectmen of Hollis.

Dated: July 20, 1992

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Valerie B. Lanigan, Clerk

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