

Vincent and Michele Servello

v.

Town of Merrimack

Docket No.: 7867-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$307,000 (land \$81,500; buildings \$225,500) on a 1.992-acre lot with a colonial house (the Property). 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 this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in 1986 for \$198,000 and the Property did not appreciate to the amount of the assessment in three years;
- (2) several larger homes in the area are assessed for less and the Town has undercalculated the square footage of several comparable homes; and
- (3) an analysis of the area homes, their original sale prices in 1986, and their new assessments indicate a 1989 value of \$270,000 would be reasonable.

The Town argued the assessment was proper because:

- (1) a comparison of the area properties indicate the Property is assessed proportionately;
- (2) the Town used 604 known sales from 1987, 1988 and 1989 and time adjusted the sales to January 1, 1989 and, using multiple-regression analysis, arrived at models to be used in assessing the properties in Town; and
- (3) the same methodology was used throughout the Town.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. The Taxpayers' analysis and comparison was of homes they felt the Town had incorrectly understated the square footage of living area.

The Taxpayers did not present any credible evidence of the Property's fair market value as of 1989. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been 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.

While it is conceivable the Taxpayers could have been overassessed in 1989, lacking any probative evidence of market value, the Taxpayers did not tip the burden of proof simply by showing that other properties may have been underassessed due to miscalculations. 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

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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 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.

Lastly, the Taxpayers' argument that market values dropped dramatically since 1989 to present does not, simply by asserting that fact, prove that the assessment as of April 1, 1989 was disproportionate. Evidence of a declining market alone is not a basis for reducing an assessment no more than evidence of an appreciating market is a valid basis of increasing an assessment. The issue is proportionality. The Taxpayers need to make a showing that the Property has changed in the general level of assessment in the Town as a whole to prove their Property is disproportionately assessed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Vincent and Michele Servello, Taxpayers; and Board of Assessors of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

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