

Stephen and Frances Miller

v.

Town of Milton

Docket No.: 10388-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$53,200 (land \$13,100; buildings \$40,100) on a 9.2-acre lot with a single-family home (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the house was only 80% complete;
- 2) a realtor's November, 1990 opinion of value at 80% completion was between \$115,000 to \$120,000, and \$135,000 at 100% completion;

3) other residential properties were assessed at about 25% to 30% of their sales prices; and

4) there were errors on the assessment-record card, e.g., the road is dirt not gravel, there is no full-shed dormer, and the square footage is wrong.

The Town did not submit any arguments to support the assessment.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the proper assessment should be \$48,250 (land \$13,100; buildings \$35,150). Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board rejects its inspector's report and conclusions because it was based on the second floor being closer to a three-quarter story rather than a two story. As is outlined in the following rulings, the board finds the second floor more closely approximates a full floor. Further, the Taxpayers' broker's opinion of value supports the assessment.

Board's Rulings

We find the Taxpayers failed to prove the assessment was disproportionate

for the following reasons:

(1) the Taxpayers presented evidence (Kendall Real Estate broker, Stu Fanning's opinion of value) that the Property had a market value of \$115,000 to \$120,000 as of November, 1990;

Page 3
Miller v. Town of Milton
Docket No.: 10388-90

(2) the broker's opinion that the market was depreciating at 1% per month would indicate a market value opinion, as of April 1, 1990, of \$123,000 to \$128,400 (115,000 x 1.07 and 120,000 x 1.07);

(3) the equalization ratio applicable to the 1990 tax year under appeal is 43%; the 1989 ratio of 33% does not apply to the 1990 findings of market value due to

the significant change in the general market in Milton from 1989 to 1990;

(4) applying the 1990 ratio of 43% to the market value range of \$123,000 to \$128,400 would indicate an assessment range of \$52,900 to \$55,200;

(5) the Taxpayers stated the second floor of the house contained 916 square feet (s.f.) compared to 952 s.f. on the first floor; since the second floor has 96% (916/952) of the first floor's s.f., the Town's listing as a 2-story house is reasonable;

(6) the Town adjusted the replacement cost of the house by 20% for the unfinished areas (see remarks and calculations on the assessment-record card); and

(7) the Taxpayers' evidence of other residential property being assessed both

less than their Property and less than the 1990, 43% level of assessment 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 in

Page 4
Miller v. Town of Milton
Docket No.: 10388-90

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Stephen and Frances Miller, Taxpayers; and the Chairman, Selectmen of Milton.

Dated: December 29, 1993

Lynn M. Wheeler, Deputy Clerk

0009