

Victor and Gladys Hidish

v.

Town of Milton

Docket No.: 8627-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$73,450 (land \$13,950; buildings \$59,500) on a .90-acre lot with a cottage (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 203.09(a); 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 Property is a seasonal home, has no garage, paved driveway or road, and receives no Town services;
- (2) most of the Property's taxes are applied to the school tax, yet the

Taxpayers' children do not attend the Town schools;

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(3) the Taxpayers qualify for a veteran's exemption, but the Town will not give the exemption to non-resident taxpayers; and

(4) the abutting properties had a negative impact on the Property's value and marketability.

The Town failed to submit any documentation to support the assessment and was finally defaulted.

#### Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property's assessment was disproportional for the following reasons:

(1) The Taxpayers did not present any credible evidence of the Property's fair market value. 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.

(2) The Taxpayers complained about the high amount of taxes they must pay. The amount of property taxes paid by the Taxpayers was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of

Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the

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second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

(3) Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

(4) Veteran's exemptions apply only to the primary residential property of an individual (see RSA 72:28 and RSA 72:29).

(5) Further, the Taxpayers stated adjacent properties negatively affected their Property, but since the Taxpayers failed to submit any evidence of market value, the board is unable to determine if the assessment is reflective of this situation or not.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

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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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Victor and Gladys Hidish, Taxpayers; and Chairman, Selectmen of Milton.

Dated: January 17, 1994

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Lynn M. Wheeler, Deputy Clerk

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