

**Emile J. Legere  
v.  
Town of Walpole**

**Docket No. 3897-87 and 5027-88**

**DECISION**

These appeals were consolidated for hearing.

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1987 and 1988 assessments of \$947,150 (land, \$45,600; buildings, \$901,550) on his property, consisting of a garden apartment complex containing 40 one bedroom units, including four units for handicap tenants sited on approximately 2.2 acres of land (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved he was disproportionately taxed.

The Taxpayer argued that the property had an average fair market value based on the income approach of \$1,355,000 for the two years under appeal. The Taxpayer argued further that the property could only be sold to a non-profit organization and the return on the owners equity was not restricted under the terms of the Farmers Home Administration and HUD Section 8 programs. The Taxpayer stated the highest and best use of the property was as elderly housing under the government programs.

The Town argued, through it's appraiser, that the property had a market value as of April 1, 1987, of \$2,037,000, based on the income approach, using the Elwood formula. The Town also argued the property could be sold in the open marketplace to any buyer on payoff of the existing financing contracts.

Based on the evidence, we find the correct assessment should be \$765,000.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

If the taxes have been paid, the amount paid on the value in excess of \$765,000 shall be refunded with interest at six percent per annum from date paid to refund date.

TOWN'S REQUEST FOR FINDINGS OF FACT

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.

TOWN'S REQUEST FOR RULINGS OF LAW

1. Granted.
2. Granted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Peter J. Donahue, Member

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Paul B. Franklin, Member

Date: May 2, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Marvin F. Poer & Company, representative for Emile Legere, taxpayer; and George R. Hanna, Esq., counsel for the Chairman, Selectmen of Walpole.

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Michele E. LeBrun, Clerk

Date: May 3, 1991

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