Edwin H. Pearce
(Paul A. McGuirk successor owner to
the deceased E.H. Pearce)

v.

Town of Walpole

Docket No.: 5954-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $41,450 (land, $15,900; buildings, $25,550) on Map 8, Lot 50 - County Road (the Property). For the reasons stated below, the appeal for abatement is denied.

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 Taxpayers failed to carry this burden.

The Taxpayer argued the assessment was excessive because an elderly exemption of $20,000 was eliminated on this Property. The undersigned of this application took possession of this Property on April 17, 1989. Other property transfers, involving similar exemptions subsequent to April 1, 1989, the new owners

were allowed the complete exemption for Tax Year 1989.

The Town argued the assessment was proper. To support their position the Town submitted the following written statement from their Town Counsel, Francis F. Faulkner, Esq.

"I understand the facts of this case to be as follows: In several tax years preceding April 1, 1989, the former owner of

this property, a Mr. Pearce, was granted an expanded exemption for the elderly in the amount of $10,000.00 under RSA 72:43-b. Mr. Pearce died prior to April 1, 1989. Mr. McGuirk bought the Pearce property from Mr. Pearce's estate and his deed was recorded on or about April 17, 1989. Mr. McGuirk seeks to have the exemption extended to the tax year 1989 since Mr. Pearce was listed as the owner as of April 1, 1989.

Conclusion: One of the requirements for the exemption is that the property be owned by the resident as of April 1. Mr. Pearce was not the resident as of April 1, 1989 because he had died and title to the real estate passed through his estate. At that point, the property no longer qualified for the exemption.

Mr. McGuirk seems to realize this but is saying that there are other properties that were transferred subsequent to April 1, 1989 in which the elderly exemptions were allowed. He is apparently alleging discrimination."

The Town also told the board by letter of January 17, 1990:

"We have checked our blotter books and the only discrepancies we can find are as follows:

Map 8, Lot 51 - John and Edna Koson

John Koson deceased on 9-1-85

Edna Koson deceased on 11-17-88

The elderly exemption should have been removed from this property on April 1, 1989, but it was not done.

The second discrepancy that we are aware of which Mr. McGuirk is questioning is:

Norman Parrott - North Walpole - there is a hand-written note in the Spring 1989 blotter book - delete fall - not living here.

In the Fall blotter book, Mr. Parrott's veteran's exemption has been removed, but the elderly exemption is not removed.

We enclose list of deceased persons received from the Probate Court on April 4, 1989. You will note Edwin H. Pearce listed; Koson is not listed. From this list, Pearce should have been removed as of April 1, 1989 but was not removed until the Fall blotter book for 1989.

Enclosed is copy of Warranty Deed, Ellen Louise Pearce to Doris G. Shattuck dated April 15, 1989. When this deed was received, we had no record of this property in the name of Ellen Pearce. After checking with Probate Court, we checked with the attorney (we believe it was Attorney Reynolds office) and subsequently received the enclosed Notification of Real Estate Transactions indicating property was transferred to Ellen Pearce on August 2, 1989. (the Koson property).

Paul McGuirk received the Pearce property through Administratrix Deed of Doris G. Shattuck, by deed dated April 17, 1989, a copy of which is enclosed.

The only thing we can say is that an error was made in this office by not removing the elderly exemption from the Koson property.

As to the Parrott property in North Walpole, he owned two houses in North Walpole, was living in one, had family problems and moved out. Because of the hand-written notation in the blotter book, we can only say we were aware that he was not living there and meant to delete the elderly on the Fall blotter book, but somehow only the Veteran's

Exemption was deleted."

Board's Rulings

Based on the evidence, we find Paul A. McGuirk not entitled to the elderly exemption, erroneously given the estate of the deceased, E.H. Pearce, on April 1, 1989. Mr. Pearce died prior to April 1, 1989.

We find the Taxpayer failed to prove the Property's assessment was illegal. We also find the Town supported their denial of the abatement. The

fact that the Town granted an elderly exception in several other cases, in error, does not constitute a good and sufficient reason to grant an exemption to the appellant, Mr. McGuirk. ("Two wrongs don't make a right").

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul A. McGuirk, Taxpayer; and Chairman, Selectmen of Walpole.

Dated: October 5, 1992

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Melanie J. Ekstrom, Deputy Clerk