

**Alyson's Apple Orchard**

**v.**

**Town of Walpole**

**Docket Nos.: 10680-90PT and 12262-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessment of \$115,950 (land \$17,200; buildings \$98,750) on Lot 4, a 2-acre lot with a house (the Property). The Taxpayer also owns, but did not appeal, eight other properties in the Town with a combined, \$355,975 assessment. (Note: Some of the Taxpayer's other lots are in current use.) 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to prove the Property was disproportionately assessed.

The Taxpayer argued the assessment was excessive because when the Property was valued for federal estate tax purposes in 1990, a local realtor estimated the value to be \$190,000.

The Town argued the assessment was proper because the value was assigned by Greene's Associates who did a revaluation in 1982 and the Selectmen's opinion is the Property is fairly assessed.

#### Board's Rulings

We find the Taxpayer failed to prove the Property's assessment was disproportional. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer 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. The Taxpayer asked the board to accept an unsupported opinion of value from his realtor/advisor in 1990 that the Property's value was \$190,000. The board could not rely on this value because no evidence was submitted to include the basis for the value conclusion. Specifically, there was no indication of what sales, if any, were used or what adjustments were made to the sales to arrive at the value conclusion. Without such information, the board and the municipality are unable to review the soundness of the value conclusions. The DRA determined that the 1990 equalized ratio was 41%, when applied to the assessed value the equalized value becomes \$282,805.

The Town must annually review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town.

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RSA 75:8 states:

The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all real estate as has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal \*\*\*.

See also, RSA 73:1, 73:10, 74:1, and 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

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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 John M. O'Connor of Marvin F. Poer & Company, Agent for Alyson's Apple Orchard, Taxpayer; and Chairman, Selectmen of Walpole.

Dated: September 28, 1994

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Valerie B. Lanigan, Clerk

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