

**Glass and Aluminum Construction Services, Inc.**

**v.**

**Town of Alstead**

**Docket No.: 8532-90PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 adjusted assessment of \$151,550 (land \$14,150; buildings \$137,400) on a 1.47-acre lot with an industrial building and various outbuildings (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried its burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the actual cost to construct the building was 1/3 the industry average for the type of constructions because discounted materials and seconds were used and training labor was used;
- (2) the assessed value increase was excessive because of the work performed;
- (3) two appraisals (\$175,000 as of November, 1990 and \$120,000 to \$130,000 as of January, 1993) demonstrated overassessment;

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(4) the larger building is no more than 50% complete and has no electricity, no plumbing and no heating facility; and

(5) compared to the Benson property, which was 100% complete in 1990, the Property was overassessed.

The Town argued the assessment was proper because:

(1) the equalized value of 41% was based on land sales, duress sales and not arms-length sales and the Town's opinion the ratio was closer to 60-65%;

(2) the 1990 appraisal was low because the appraiser depreciated the new industrial building by 58%, used a high cap rate and relied on rental incomes from neighboring towns;

(3) utilizing a 10% cap rate in the 1990 appraisal would result in a \$230,000 value, which is more in line with the Property's fair market value;

(4) the 1993 "appraisal" is merely a letter of opinion; and

(5) the Benson property, which the Taxpayer used as a comparison, was not comparable because the buildings were not added until 1992.

#### Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$102,500. This finding is based on the inspector's report, including his comments on the Town's assertion that the ratios should be 63%.

After hearing the parties' evidence, the board decided to send its inspector to the Property because the board had an initial impression that the assessment was excessive. The inspector's report confirmed this. The board provided the parties with an opportunity to comment on the inspector's report. The Taxpayer basically

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agreed with the report, and the Town agreed with the market value conclusion but disagreed with the equalization ratio material. The board has thoroughly reviewed the report, and we find the report is the best evidence provided to the board on the issue of market value and on the issue of what is the proper ratio.

Concerning the ratio, the supreme court recently held that municipalities have the burden to show the appropriate ratio if the municipality does not stipulate to the department of revenue administration's equalization ratio. Appeal of City of Nashua, 138 N.H. 261, 266-67 (1994). The board finds the Town's proffered ratio to be inadequate for several reasons. Most of those reasons are enunciated in the inspector's report. Additionally, the board does not accept the study because the Town did not indicate how it determined what sales and properties it used in the ratio, and it did not indicate how it chose the time period for those sales.

The Taxpayer argued that the Property should be assessed consistent with the Benson property because it had similar buildings. The Town stated that the buildings were not added until 1992. It appears that the Benson property may have been underassessed in 1990. The board finds the Taxpayer's Property was not overassessed. However, there was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's 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 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.

If the taxes have been paid, the amount paid on the value in excess of \$102,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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 in 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

\_\_\_\_\_  
Ignatius MacLellan, Esq., Member

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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 Richard Pelletier, President of Glass and Aluminum Construction Services, Inc., Taxpayer; and Chairman, Selectmen of Alstead.

Dated:

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Valerie B. Lanigan, Clerk

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**ORDER**

Following the hearing, the board had its inspector review the property. His report is included with this order. If the parties have any comment to the report, they shall file those comments within 14 days of the clerk's date below. When the 14 days has run, the board will issue a decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**CERTIFICATION**

I hereby certify the foregoing order has been sent postage prepaid, to Richard

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Pelletier, President of Glass and Aluminum Construction Svcs., Inc.; and Chairman,  
Board of Selectmen of Alstead.

Dated:

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Valerie B. Lanigan, Clerk