

**Martin S. Berman**

**v.**

**Town of Wolfeboro**

**Docket No.: 12780-92PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$274,300 (land \$49,400; buildings \$224,900) on 1.28-acre lot with a warehouse (the Property). The Taxpayer also owns, but did not appeal, two other properties in the Town with a combined, \$1,209,500 assessment. 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 carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is a single purpose property and a replacement cost estimate indicates a value of \$234,400;
- (2) an estimate by the income approach, using the actual rent of \$25,400 and subtracting expenses of taxes and insurance and applying a capitalization rate of 10%, indicates a value of approximately \$200,000; and

(3) the Property was purchased for \$316,600 in 1989 based on a negotiated triple net lease that supported that value; that lease, however, did not last and subsequent leases support a value of approximately \$200,000.

The Town argued the assessment was proper because:

(1) an opinion of value performed for the Taxpayer as of December 1993 estimated a value range of \$205,000 to \$250,000;

(2) the Property was purchased by the Taxpayer in September 1989 for \$316,600;  
and

(3) applying the 1993 ratio of 1.19 to the assessment results in an indicated market value estimate within the range of the Taxpayer's opinion of value.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to carry his burden for two general reasons: 1) the preliminary opinion of value performed by Property Appraisals as of December 1993 indicated the Property had a value range of \$205,000 to \$250,000; and 2) the three-year average of the Taxpayer's triple net rents indicate the assessment is reasonable by the income approach.

The Taxpayer's preliminary opinion of value performed by Margaret O'Connell as of December 1993 estimated a market value range of \$205,000 to \$250,000. As stated by the Town, if the 1993 equalization ratio of 119% is applied to the assessment ( $\$274,300 \div 1.19 = \$230,500$ ), the indicated market value by the assessment falls within that preliminary value range.

The Taxpayer submitted in his appeal that the 1991 triple net rent was \$38,400, the 1992 triple net rent was \$25,400, and the 1993 triple net rent was \$19,200. Averaging those three rents arrives at an average gross income of \$27,670.

reserves, 4% for insurance and ½% for management results in a net operating income of \$25,871. The board assumed no vacancy as the Property by its nature would be rented to a single entity and would be fully occupied. The board determined a 10% capitalization rate is appropriate because of the relatively low-risk nature of the Property. Capitalizing the net operating income of \$25,871 by the cap rate of 10% indicates a market value of \$258,710. Equalizing the market value finding by the Town's 1992 ratio of 110% indicates an assessed value of \$284,600 (rounded)(\$258,710 x 1.10) which supports the assessed value.

During the hearing, the Town stated they felt the Taxpayer's other two properties were underassessed but did not submit any evidence of their underassessment. While this issue is essentially moot because the board has found no disproportionality on the appealed Property, we will respond to the Town's assertion of the underassessment of the other parcels.

In determining the proper and proportional tax burden of any taxpayer, the board must "consider" all of the taxpayer's property in the municipality whether each property was appealed or not. Appeal of Town of Sunapee, 126 N.H. 215, 217 (1985); see also Bemis Bro. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954); Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200 (1899). The court has not defined the meaning of "consider" or which party has the burden of proof or the burden of persuasion with respect to assessments on non-appealed properties. However, because the burden of proof is with the Taxpayer and the law assumes that the municipality has done its job and the assessments are proportional, the Town needs to do more than just raise the red flag of underassessment. They need to provide some evidence. In this case, they

provided no evidence. The board, however, to fulfill its responsibility to "consider" the other properties requested its appraiser inspect the other properties and determine, without doing a full appraisal, if there appeared to be any gross underassessment of the Taxpayer's other properties. Mr. Bartlett filed his report on January 22, 1996 (copy enclosed). The report indicates that without more extensive market review he was unable to determine the question of the underassessment of the Taxpayer's other two properties.

Consequently, because the Town supplied no evidence as to the underassessment claim and because the board determined that the appealed Property is not overassessed, the underassessment issue in the final analysis has no bearing in this case.

At the hearing, the Taxpayer requested to reserve his right to appeal the board's denial of his request for continuance. See Taxpayer's request dated October 31, 1995 and the board's letter of November 8, 1995 denying the motion attached. If the Taxpayer wishes to appeal the board's denial of the continuance, such appeal shall be from this decision and the timelines predicated by the clerk's date.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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

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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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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David D. MacArthur, Temporary

Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Martin S. Berman, Taxpayer; and Chairman, Selectmen of Wolfeboro.

Dated: February 14, 1996

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Valerie B. Lanigan, Clerk

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