

Donald P. Carroll

v.

Town of Derry

Docket No.: 6925-89

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessments on Lot 262 - \$96,200 (garage lot) and on Lot 263 - \$161,400 (house lot) (the Properties). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were 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 disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) the Properties are in a zone that allows residential and commercial uses;
- (2) the Properties are subsidized lots;
- (3) the structures are in poor shape; and
- (4) the unit values assigned by the Town are erroneous.

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The Taxpayer submitted several documents and made various arguments too numerous to reiterate here.

The Town submitted an appraisal report which included estimates of value by the cost and market approaches and an assessment comparison of comparable properties.

The Town argued the assessments were proper because:

- (1) they were supported by their analysis; and
- (2) its estimates on data were conservative.

At the hearing the board concluded the Properties should be assessed as one lot given the integrated use and the limitations in use of the garage lot. The Town calculated the Properties as one lot, resulting in a \$204,600 assessment (land, \$64,300; buildings, \$107,900).

Based on the evidence, we find the correct assessment should be \$204,600 as calculated by the Town. (The Town's allocation between land and building may be wrong, but the overall value is consistent with the evidence.) This assessment is ordered because \$204,600 captures all of the value. This property, when viewed as one lot with two uses, has a market enhancement from a single-use property.

After treating it as one lot, the Taxpayer's other arguments failed. The Taxpayer did not present any credible evidence of the Properties' fair market value. To carry his burden, the Taxpayer must make a showing of the Properties' fair market value. This value would then be compared to the Properties' assessment and

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the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986);

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Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

If the taxes have been paid, the amount paid on the value in excess of \$204,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

#### CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Donald P. Carroll, taxpayer; and Chairman, Selectmen of Derry.

Dated: June 17, 1992

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Valerie B. Lanigan, Clerk

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**v.**

**Town of Derry**

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**ORDER**

This order relates to the Taxpayer's rehearing motion, which is denied. The Taxpayer has not supplied any error of fact or law to support the request. See RSA 541:3.

The Taxpayer wishes to raise several issues, but he again has failed to recognize the burden upon him. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry his 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.

Having rejected the Taxpayer's arguments because of the Taxpayer's failure to prove, the board will not answer each issue raised in the Taxpayer's rehearing motion.

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Note: The lot size, 1.6 acres, is for both Lot 262 and Lot 263. The Taxpayer incorrectly assumed that only Lot 262 was considered.  
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Donald P. Carroll, Taxpayer; and Chairman, Selectmen of Derry.

Dated: August 28, 1992

0007 Melanie J. Ekstrom, Deputy Clerk