

**Alexander Heimlich**

**v.**

**Town of Derry**

**Docket No.: 11580-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments as follows:

\$211,100 (land \$64,900; buildings \$146,200) on Lot 16, a .297-acre lot with a greenhouse/nursery;

\$53,400 on Lot 15, a vacant .322-acre lot; and

\$54,300 on Lot 14, a vacant .344-acre lot (the Properties).

The Taxpayer also owns another lot in the Town with a \$4,800 current-use assessment. For the reasons stated below, the appeal for abatements 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 203.09(a); 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) an appraisal for estate purposes as of Feb. 1991 estimated the value at \$180,000;

- (2) the building is minimally finished on the interior;
- (3) lot 14 has wet soils that would require extensive site work to develop; and
- (4) the fence is 24 years old and, while it provides security, it has deteriorated.

The Town argued the assessments were proper because:

- (1) the Taxpayer's appraisal was done for estate settlement purposes and the appraiser did not document and support his sales;
- (2) lots 15 and 16 are encumbered with the improvements and are considered as one marketable parcel; lot 14 could be marketed as a separate lot;
- (3) there are few commercial comparables similar to the Property due to the residential nature of Derry and the unique retail nature of the Property;
- (4) the building does have the first floor finished and heated and the second floor does have a lunch room and bathrooms partitioned off;
- (5) appraisals done for probate purposes generally tend to understate value;
- (6) an appraisal, based on the highest and best use assumption of lots 15 and 16 being used as one estate and lot 14 as a separate lot, estimated a 1991 market value of \$322,000;

During the hearing, the issue was raised as to the applicable zoning and any effect it may have on the three separately assessed lots. The board ordered the Town to submit copies of the applicable zoning ordinance subsequent to the hearing.

The Town submitted the zoning articles and further argued that, based on the minimum lot size of 30,000 square feet, the three lots were not separable but did have the greatest value by being considered in combination with each other.

Board's Rulings

Based on the evidence, the board finds the three separately assessed lots should be considered one estate (RSA 75:9) and the correct assessment should be \$256,200 (land \$110,000; building \$146,200). This assessment is ordered because:

1) based on the zoning requirements in effect in 1991, the three lots would most likely be viewed as one economic unit and should be assessed as one estate (the board's conclusion of treating the three lots as one parcel is further supported by the evidence that lot 14 had unstable soils that were improved for parking by the use of geo-textile fabric and gravel);

2) the Town's assessment record-cards indicate the base site value before any adjustments was \$100,000; because the three lots without a variance can only be considered to be one site, the additional .27 acres above the 30,000 square foot minimum lot size is considered not as an additional lot but rather as excess or a secondary land to the primary site; while there was no direct evidence submitted by either party as to the value of such supplemental land, the board, based on its experience and after reviewing all the assessment record-cards submitted in this case, concludes the additional land would have an assessed value of approximately \$10,000; therefore the total assessment of three lots is estimated at \$110,000;

3) the Town's revised building value which reflects the minimal finish on the first and second floor and the reduced utility due to the lack of finish reasonably accounts for the contributory value of the building; and

4) the board places little weight on either appraisal submitted by the Taxpayer or by the Town; the Taxpayer's appraisal was done for estate purposes

and the appraiser supplied no documentation of sales used or adjustments applied to arrive at his estimate of value; the Town's appraiser used the finished area of building as the unit of comparison in his sales approach, which in many cases might be appropriate but in this case overstates the value due to the minimal finish of the nursery building.

If the taxes have been paid, the amount paid on the value in excess of \$256,200 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992, 1993 and 1994. 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 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 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.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Alexander Heimlich, Taxpayer; and Chairman, Board of Assessors, Town of Derry.

Dated: March 22, 1995

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Valerie B. Lanigan, Clerk

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