

**Salvatore V. Rabbia**

**v.**

**Town of Dunbarton**

**Docket No.: 17579-97PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$52,450 (land only) on a 5.01-acre vacant lot (the "Property"). 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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the market value of the Property is \$40,000 or less;
- (2) the Taxpayer paid \$30,000 when he purchased the Property in 1992;
- (3) a comparable property that abuts the subject Property has a lower assessment of \$43,750;
- (4) the Property should not be assessed as commercial;
- (5) there is no commercial zone in Dunbarton and manufactured housing could be placed on abutting parcels; and

Page 2

Rabbia v. Town of Dunbarton

Docket No.: 17579-97PT

(6) the front footage price of \$200 is too high.

The Town argued the assessment was proper because:

- (1) the comparables submitted by the Town support the Taxpayer's assessment;
- (2) the Property has commercial approval for a restaurant and convenience store;
- (3) the Property had been listed by a real estate broker for \$150,000; and
- (4) comparable lot sales support the \$200 for front footage on the subject Property due to the topography and the excess frontage.

### **Board's Rulings**

Based on the evidence, the board finds that the Taxpayer did not meet his burden because the Taxpayer did not show that the Property's assessment was higher than the general level of assessment in the Town. The board notes that neither party objected to the department of revenue administration's (DRA) equalization ratio in 1997 of 111%. This means assessments generally were higher than market value. The Property's equalized assessment in 1997 was \$47,252 (\$52,450 assessment ÷ 1.11 equalization ratio). This equalized assessment provides an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less than the \$47,252 equalized value. We find the Taxpayer did not satisfy this burden.

The Taxpayer contends that the Property should only be considered as residential due to the lack of any commercial zone in Dunbarton. This contention is contrary to the evidence in this case. The Property was approved as a commercial site for a restaurant and a convenience store in 1993 and the approval was still valid in 1997. The Property is generally level with good exposure on Route 77. The board notes that the Town acknowledged the assessment would be lower if the Property did not have the commercial potential with the existing approvals.

Page 3

Rabbia v. Town of Dunbarton

Docket No.: 17579-97PT

No sales of commercial property in Dunbarton were submitted by either party apparently due to the lack of any such sales. However, the evidence and testimony provided relative to residential lot sales in Town indicate a market value range for such lots from the mid \$30,000s to mid \$60,000s. The residential lot sales in the Taxpayer's neighborhood were in the mid \$30,000s for lots of two to four acres while the higher lot sales were in generally superior neighborhoods of five to seven acres in size. The Town's indicated market value of the Property (\$47,252) is \$10,000 to \$12,000 higher than the nearby residential lot sales and \$7,000 higher than the Taxpayer's estimate of its market value. The board finds this differential in value is appropriate considering the five acre size of the lot, its location on Rte 77 and its commercial potential.

The board finds the Town's comparable lot sales to be persuasive in supporting the \$200 per foot frontage assessment. The Town further argued convincingly that the level topography and the excess frontage justified the \$200 front foot figure.

The board considered the Taxpayer's argument that a potential does exist for manufactured homes to be built on surrounding properties. However, based on the higher quality residential development that has occurred on Old Fort Lane the board does not find that this factor adversely affects the Town's assessment of \$52,450.

For the foregoing reasons, the board holds that the appeal for an abatement on tax map I3, lot 4 is denied.

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

Page 4

Rabbia v. Town of Dunbarton

Docket No.: 17579-97PT

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. 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, Chairman

Steven H. Slovenski, Esq.

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Salvatore V. Rabbia, Taxpayer; Ralph J. Cutting, representative for the Town; and, Chairman, Selectmen of Dunbarton.

Date: December 7, 1999

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Page 5

Rabbia v. Town of Dunbarton

Docket No.: 17579-97PT

0006

Lynn M. Wheeler, Clerk