

**Raymond Laliberte**

**v.**

**Town of Auburn**

**Docket No.: 22549-06PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$459,500 (land \$283,500; building \$176,000) on Map 27, Lot 8, consisting of three residential dwellings and several garages on a 0.95 acre lot (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) a Commercial Competitive Market Analysis (the “Market Analysis”) prepared by a licensed realtor indicated the Property had a value in the range of \$359,900 to \$389,900 and should be marketed at \$379,900;
- (2) the Property’s lot is nonconforming due its small size (0.95 acre) and may not be able to be built upon if the current buildings were removed; and
- (3) he would be willing to “accept” \$390,000 as the assessment.

The Town argued the assessment was proper because:

- (1) New Hampshire case law requires the Taxpayer to provide evidence of the Property’s market value in order to carry his burden of proof;
- (2) the Market Analysis is “flawed” and does not provide a reliable estimate of the Property’s market value;
- (3) the Property is a multiunit residential property which is not owner-occupied; and
- (4) the Town made consistent adjustments for the road noise factor mentioned by the Taxpayer, no abatement is warranted and the appeal should be denied.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed and the appeal is therefore denied.

The Taxpayer did not present any credible evidence of the Property’s market value. See RSA 75:1. The board finds the Taxpayer’s evidence, especially the Market Analysis (Taxpayer Exhibit No. 1) discussed further below, is so cursory and generalized that it provides no basis to support an abatement of the Town’s assessment. To carry his burden, the Taxpayer should have made a showing of the Property’s market value. This value would then have been compared to

the Property's assessment and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). To succeed on a tax abatement claim, the taxpayer has the burden of proving by a preponderance of the evidence that he is paying more than his proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). This burden can be carried by establishing that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003).

The board finds the Market Analysis to be of no help in determining whether or not the Property was disproportionately assessed. The Market Analysis from Prudential Verani Commercial Realty was prepared and offered to the Taxpayer in the hope of convincing him to allow the real estate company to list and market his Property. The Market Analysis contained only one page of text that actually addressed any value opinions for the Property. The realtors involved merely gave a range of value for the Property and listed an estimated price they believed the Property should be targeted at for marketing. The realtors, apparently in support of their estimate of value, included several pages of listings of properties ranging in size from two units to 16 units that had sold. Many of these properties were not in the Town of Auburn and the mere listing of these other properties without any analysis to compare them to the Property with location, number of units per structure or for any other features adjustments is of no probative value; and, therefore, the board has given the Market Analysis no weight.

The Taxpayer testified there was a question concerning whether or not the Property given its small area (0.95) acres and its unique building configuration (being converted filling stations

and garages) could be rebuilt if destroyed by fire or removed for some other reason. While this may be a question for the Town to answer, the board finds no basis for making an adjustment to the assessment given the Taxpayer's burden of proof and the lack of documentation and market data to quantify the extent of this risk and how the market would evaluate it.

During its presentation, the Town pointed out many of the same flaws in the Market Analysis the board noted during its review of the Taxpayer's evidence. Further, the Town stated the Taxpayer's evidence supported the assessment on a per unit basis (if the information in the Market Analysis is applied without any adjustments) and the Taxpayer did not dispute this point.

For all these reasons, the board finds the Taxpayer has not carried his burden of proof to show the Property was disproportionally assessed and the appeal 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 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(g). 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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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Raymond Laliberte, 173 Old Candia Road, Candia, NH 03034, Taxpayer; Chairman, Board of Selectmen, Town of Auburn, PO Box 309, Auburn, NH 03032-0309; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: November 24, 2008

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Anne M. Stelmach, Clerk