

Robert W. Blucke

v.

Town of Rindge

Docket No.: 13021-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$308,600 (land \$214,600; buildings \$94,000) on a 1-acre lot with a house (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 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.

The Taxpayer argued the assessment was excessive because:

- (1) an April 1992 appraisal estimated a \$198,000 value;
- (2) the Town has applied inconsistent "segmentation" of the frontage;
- (3) the Property has steep slopes, suffers tremendous erosion and rocky shores and the topography adjustment is not consistent with other properties;
- (4) the excess frontage adjustment is inconsistent;

- (5) there is no adjustment for the difference between properties on Lapham Lane (private, single-lane road) and E. Monomonac Road (Town maintained);
- (6) there is no plumbing connection to the house; and
- (7) the April 1992 fair market value should be \$198,000.

The Town argued the assessment was proper because:

- (1) the Taxpayer's appraiser inappropriately adjusted the water frontage in his direct sales comparison approach, and comparable #2 was in fact a 2-story property in relatively poor condition at the time of the sale;
- (2) the Duvernay property has a more severe slope than the Taxpayer and the 15% slope adjustment applied by the Town was appropriate;
- (3) the Town made no adjustment for differences on Lapham Lane and E. Monomonac Road; and
- (4) the assessment is proper.

BOARD'S RULINGS

Subsequent to the hearing, the board requested its inspector, Mr. Scott Bartlett, to review the four appeals heard on November 16, 1995 and to file a report. Mr. Bartlett filed his report on February 28th after having reviewed the files, the appraisals and the appealed properties. As will be discussed further, Mr. Bartlett's report is not an appraisal. The board reviews the report and treats it as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board generally rejects the inspector's recommendation because his general recommendations do not apply to the specifics of this Property.

The parties agreed that the 1992 level of assessment in the Town of Rindge was reasonably represented by the department of revenue administration's (DRA) 1992 ratio of 121%.

Three general issues are raised in this appeal:

- 1) the Town's argument of collateral estoppel;
- 2) market value evidence; and
- 3) the applicability of Mr. Bartlett's Report.

Collateral Estoppel

The Town argued the Taxpayer should be collaterally estopped from raising the same issue of disproportionality that they raised in a 1989 superior court proceeding and did not prevail. The board finds the Taxpayer is not collaterally estopped for several reasons.

The arguments raised in the 1989 superior court decision were relative to DRA's basic methodology and unit rate; those arguments were not presented at the present hearings. Rather, market value evidence relevant to each property was presented.

Regardless of whether the Taxpayer's arguments are the same or different, proportionality of each taxpayer is determined on an annual basis, see RSA 75:1, 8 and 76:2. Ascertaining proportionality includes several main steps: a) determining if the property is real estate (RSA 72:6 and RSA 21:21); b) determining if the property is taxable or tax exempt; c) determining the property's market value (RSA 75:1); and d) determining the Town's level of assessment. To prove disproportionality in any year, a taxpayer must consider each one of these steps. Consequently, an earlier finding of proportionality

of the same assessment may not be appropriate in a later tax year if either the statutes, the property, its market value or the Town's level of assessment have changed.

In short, the board finds the Taxpayer is not collaterally estopped due to the different arguments and the possibility of changes in the market and the Town's level of assessment.

Market Value Evidence

For a taxpayer to carry their burden, they must make a showing of the property's fair market value, which will then be compared to the property's assessment and the level of assessment within 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. In this case, the sole evidence of market value was an appraisal performed by Chapman Appraisal Company (Chapman) (Taxpayer's Exhibit #1) for the Property as of April 1, 1992, which estimated its market value at \$198,000.

In reviewing the Chapman report, the board was unable to place any weight on its value conclusion for the following reasons. Chapman primarily relied on the sales comparison approach in arriving at his determination of the Property's fair market value. In reviewing the comparable sales grid on page 23, the board noted that adjustments were made for frontage and the second house (guest house). On page 26, Chapman performed a paired sales analysis (Jeffers and Blackhall sales) to determine a water-frontage adjustment of \$414 per-front foot. Chapman also performed a paired sales analysis (Jick and Blackhall sales) to determine an adjustment of \$8,500 for the second house.

The Property has 397 feet of water frontage on 1.0 acre of land. Chapman made adjustments to the comparables only up to 200 feet of frontage, not the actual frontage of the subject. Therefore, upward lake frontage adjustments should have been made as follows: comparable 1 - \$48,900; comparable 2 - \$102,300; and comparable 3 - \$123,000. Correct calculations of the frontage adjustments significantly affects the indicated range of value of the Property.

On page 26, in his determination of the adjustment for the guest house, Chapman adjusted the Jick and Blackhall sales for their differences. Among them was the difference in lake frontage - 279 feet versus 100 feet. Here, Chapman applied the \$414 front-foot adjustment to the total difference of 179 feet. Had he been consistent in his methodology, the lake frontage adjustment would have been \$41,400 (not \$74,106) and an indicated adjustment for the second house of \$41,400 (not \$8,500).

Several other inconsistencies were noted in the grid. The Jeffers sale was in fact a 2-story home with 1,440 square feet of living area. Chapman listed the sale as a ranch with 720 square feet. Chapman stated on page 25 that several pages of support were needed to justify adjustments and "market sales data of houses were used, and not costs." However, the board could not find any market data in the report to support the various other adjustments.

The board finds the reworking of Chapman's frontage adjustment alone generally supports the Town's assessment and its indicated market value of \$255,000 ($\$308,600 \div 1.21$).

Bartlett's Report

As stated earlier in this case, the board is unable to place any weight on Mr. Bartlett's report. Mr. Bartlett's report is in essence a sales ratio study based on eight sales obtained through reviewing the appraisals of five appeals on Lake Monomonac. Mr. Bartlett arrived at a mean and median ratio from the sample of eight sales, which, depending on which group of sales and what time adjustment is applied, indicated a trend of properties on Lake Monomonac being assessed 10% to 20% in excess of their market values. We find such ratio studies alone do not conclusively establish that an individual property is disproportionately assessed. While ratio studies can be general evidence of overassessment, property specific market data has to be presented to prove disproportionality.

Ratio studies are statistical analyses that are intended to determine trends for a population of properties based on a sample of sales from that population. In this case, the population can be defined as all waterfront properties on Lake Monomonac. The sample used was the eight sales derived from five appeals. The conclusions are general in nature as opposed to being property specific. Usually, ratio studies are used as tools to measure overall assessment equity within a town or a portion of the town or to measure performance during a reassessment but not for determining the assessment equity of a singular property. International Office of Assessing Officials, Property Appraisal and Assessment Administration, 23-24, 308, 518-519 (1990).

Even if the board were to give some weight to the general conclusions of Mr. Bartlett's ratio study, the sales in the sample would need to be fairly representative of the four properties under appeal. While the sales could be

fairly representative of Lake Monomonac properties (more research is needed to be certain), in this case, the sample is not representative of three of the four properties under appeal (the exception being Marrinan/Phillips v. Rindge, BTLA Docket No.: 13082-92PT) due to the generally larger size and amount of frontage. Specifically, the size of the lots in Mr. Bartlett's sample range from .3 acres to 1.8 acres and the frontages range from 85 feet to 279 feet. The four properties under appeal ranged in size from 1 acre to a total of 2.79 acres and the frontages varied from 185 feet to 1,240 feet. Generally, the properties under appeal are larger and contain more frontage than the sales in the Bartlett ratio study. See id. at 525-526.

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(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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert W. Blucke, Taxpayer; and Chairman, Selectmen of Rindge; and Ernest Bell, Esquire, counsel for the Town of Rindge.

Dated: May 23, 1996

Valerie B. Lanigan, Clerk

Robert W. Blucke

v.

Town of Rindge

Docket No.: 13021-92PT

Decision Re: Motion for Rehearing

On June 17, 1996 the Board received the "Taxpayer's" request for reconsideration of the Board of Tax and Land Appeal's (board) decision of May 23, 1996. Because Chairman George Twigg, III who previously sat on this case has retired, Chairman Paul Franklin has reviewed the evidence and now sits with Member Michele LeBrun on this case. The "Town" did not file an objection to the request for rehearing in accordance with TAX 201.37(e). While the board doesn't treat the Town's failure to file an objection as acquiescence, the Town had a chance to raise their concerns and didn't raise any. Therefore, the board grants the Taxpayer's request for reconsideration and amends its decision in accordance with TAX 201.37(f) by finding the proper assessment to be \$265,700 (land \$171,700; buildings \$94,000).

The Taxpayer argued in his rehearing request that this "Property" had an irregular shoreline and the assessment should not be based on its actual water frontage of 397 feet but rather on a figured frontage of 200 feet because (1) the Town had a long-standing policy of recognizing irregularly shaped parcels; Page 2

(2) Appraiser "Chapman" found the figured frontage of 200 feet to be correct; and (3) the board's own review appraiser (Bartlett) adjusted the frontage in his analysis.

The board bases its amended decision on the following: (1) the sales and comparable assessment data submitted; (2) a review of Chapman's appraisal report and a reworking of his direct sales comparison grid; and (3) Bartlett's report.

Sales and Comparable Assessment Data

The board has reviewed all of the comparable sales and assessment data submitted and finds that three sales were primarily used to determine the value of the subject Property -- Jick/Duvernay, Jeffers/Hadley, and Blackall/Wei. The Taxpayer also submitted assessment-record cards and photographs of several nearby properties to support his assertion that the Town recognized irregularly shaped parcels by using an effective frontage and to show overassessment of the Property. In reviewing and reanalyzing the data, the board does find overassessment as discussed below.

Chapman Report

A review of the hearing tape supported the board's memory that Chapman had stated upon questioning that the adjustments for comparables 2 and 3 were determined by taking the difference between the frontage of the sales (150 feet and 100 feet respectively) and the 397 feet of frontage for the subject and multiplying it times \$414. However, Chapman did state at the close of the hearing that he was assuming 200 feet of frontage which the Town used despite the 397 feet. However, there is no mention of an effective frontage in Chapman's report.

The board received no evidence from the Town as to how the effective frontage was derived. Mr. Bartlett viewed and photographed the Property and used an effective frontage of 300 feet in his analysis.

The board reviewed Chapman's analysis of the contributory value of lake frontage on property sales in Rindge (page 17 of his report) and concurs with his findings that as the front footage increases, the value per front foot drops. Further, the board finds that the paired-sales analysis on page 26 of Chapman's report which indicates a \$414 per front foot adjustment is reasonable if based on an effective frontage of 200 feet. The questions we must ask are: (1) should the actual frontage of 397 feet or something less than the actual frontage be used in this analysis; and (2) if an effective frontage of 200 feet is appropriate, should any additional value be placed on the Property.

The board reworked Chapman's direct sales comparison grid in two ways: (1) based on an effective frontage of 200 feet with front foot adjustments of \$414 per foot; and (2) based on the actual frontage of 397 feet using a front foot adjustment of \$200 per foot. Corrections/changes were made to the grid for the style and size of comparable #2 (2-story ranch with 1,440 feet); condition of the comparables' improvements (-10%/superior for sales #1 and #3; +10%/poor for sale #2); an adjustment for the subject's jacuzzi; and a \$10,000 adjustment for the guest house because the board finds Chapman's \$8,500 adjustment was low based on his indicated value by the cost approach (\$11,000) and the Town's equalized value (\$14,900 rounded). Further, in its analysis based on an effective frontage of 200 feet, the board determined that an additional 10% should be added to the values to

account for the lot's greater Page 4
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utility. The board finds the lot has the enhancement of being on a point with water

frontage on three sides, potentially better views and more privacy. The two analyses (following) indicated closely related value ranges of \$198,990 to \$221,210 based on an effective frontage of 200 feet and \$198,900 to \$224,700 based on actual frontage of 397 feet.

	Subject	Sale #1	Adj.	Sale #2	Adj.	Sale #3	Adj.
Sale Price		\$230,000		\$135,000		\$135,000	
Date		5/92		3/93		12/92	
Location		Lapham Rd		Lake Monomanoc		Monomano c Terrace	
Grantor		Jick		Jeffers		Blackall	
Grantee		Duvernay		Hadley		Wei	
Tax Map	18-6	19-10		22-02		14-28	
Acreage	1 A	1.8 A		.4 A		.5 A	
Lake Frontage	200' (\$414ff)	279'		150'	20,700	100'	41,400
Style	2 story	ranch		2 story		ranch	
Size	1,380sf	1,700sf	-6,400	1,440sf	-1,200	1,080sf	6,000
Rooms	4-1-2	7-4-2		5-3-2		5-2-1.5	
Age/Cond.	45 yrs	9 yrs/sup	-23,000	60 yrs/poor	13,500	9 yrs/sup	-13,500
Full Bsmt.	yes	Full		Full		Full	
Fin. Bsmt.	Full	no	2,500	no	2,500	no	2,500
Fireplace	yes	no	2,000	no	2,000	no	2,000
Deck	no	yes	-1,500	no		no	
Scr. Porch	Encl.	yes		no	2,500	yes	
Garage	none	2 car	-5,000	1 car	-2,500	2 car	-5,000
Jacuzzi	yes	no	2,500	no	2,500	no	2,500
Gst. House	yes	yes		no	10,000	no	10,000
Total Adj.			-28,900		50,000		45,900
Adj. S.P.			201,100		185,000		180,900
+ 10% for greater utility of lot			221,210		203,500		198,990

	Subject	Sale #1	Adj.	Sale #2	Adj.	Sale #3	Adj.
Sale Price		\$230,000		\$135,000		\$135,000	
Date		5/92		3/93		12/92	
Location		Lapham Rd		Lake Monomanoc		Monomano c Terrace	
Grantor		Jick		Jeffers		Blackall	
Grantee		Duvernay		Hadley		Wei	
Tax Map	18-6	19-10		22-02		14-28	
Acreage	1 A	1.8 A		.4 A		.5 A	
Lake Frontage	397' (\$200ff)	279'	23,600	150'	49,400	100'	59,400
Style	2 story	ranch		2 story		ranch	
Size	1,380sf	1,700sf	-6,400	1,440sf	-1,200	1,080sf	6,000
Rooms	4-1-2	7-4-2		5-3-2		5-2-1.5	
Age/Cond.	45 yrs	9 yrs/sup	-23,000	60 yrs/poor	13,500	9 yrs/sup	-13,500
Full Bsmt.	yes	Full		Full		Full	
Fin. Bsmt.	Full	no	2,500	no	2,500	no	2,500
Fireplace	yes	no	2,000	no	2,000	no	2,000
Deck	no	yes	-1,500	no		no	
Scr. Porch	Encl.	yes		no	2,500	yes	
Garage	none	2 car	-5,000	1 car	-2,500	2 car	-5,000
Jacuzzi	yes	no	2,500	no	2,500	no	2,500
Gst. House	yes	yes		no	10,000	no	10,000
Total Adj.			-5,300		78,700		63,900
Adj. S.P.			224,700		213,700		198,900

Bartlett Analysis

The board stated in its decision that it was unable to place any weight on Mr. Bartlett's report because it was in essence a sales ratio study based on eight sales

obtained through reviewing the appraisals of five appeals on Lake Monomonac. The board found that such ratio studies alone do not conclusively establish that an individual property is disproportionately

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assessed because while ratio studies can be general evidence of overassessment, property specific market data has to be presented to prove disproportionality. Upon review of both the market data submitted and Bartlett's report, the board finds that Bartlett's report is useful in this case in that he determines through an analysis of sales 1 through 4 (3 of which were used by Chapman), that waterfront properties are overassessed in a range of 16 to 20 percent.

Conclusion

The board has correlated all of the data and finds that an abatement was warranted. The board finds that an adjustment to the land value of 20 percent is reasonable given the market evidence presented and is consistent with Bartlett's findings. This adjustment results in an assessment of \$265,700 (land \$171,700; buildings \$94,000) which, when equalized by the revenue administration's ratio of 1.21 for the 1992 tax year, indicates an equalized value of \$219,600 ($\$265,700 \div 1.21$).

If the taxes have been paid, the amount paid on the value in excess of \$265,700 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 1993 and 1994.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert W. Blucke, Taxpayer; Ernest L. Bell, Esq., counsel for the Town; and Chairman, Selectmen of Rindge.

Date: August 9, 1996

Valerie B. Lanigan, Clerk

0006

Robert W. Blucke

v.

Town of Rindge

Docket No.: 13021-92PT

ORDER

This order responds to the "Town's" motion for reconsideration received by the board on August 19, 1996. The Town's motion for reconsideration raised several issues the board will address in this order.

Foremost, the Town stated that the "Taxpayer" did not properly copy the Town's attorney, Ernest L. Bell, as required by TAX 201.08 (e). The board agrees and, therefore, suspends its August 9, 1996 revised decision and grants Attorney Bell 10 days from the clerk's date on this order to respond to the substantive issues raised in the Taxpayer's June 15, 1996 letter to the board. Second, the board treated the Taxpayer's June 15, 1996 letter as a request for rehearing (Request) because it alleged the board's decision was erroneous in fact and the accompanying documentation was intended to show how the board had misapprehended the facts. As stated in the previous paragraph, because the Town's attorney may not have had adequate time to respond to the substantive issues of the Request (objection must be filed within 10 days

of board receiving a request; TAX 201.37 (c)), the board is providing additional time for the Town to respond to the Taxpayer's claim that the board misapprehended certain facts.

Third, due to former Chairman George Twigg's retirement, a second board member needed to participate in deliberating on the Request. Chairman Paul Franklin listened to the entire tape recording of the hearing and read and reviewed the entire record. Short of having a complete new hearing, there is no other logical and efficient way for the board to meet its quorum requirements under RSA 71-B:6 and resolve any remaining issues on cases that involved Mr. Twigg.

Lastly, the Town incorrectly read a portion of the board's August 9, 1996 revised decision on page 1. The board stated that it did not treat the Town's failure to file an objection as acquiescence to the Request. Now that the board is aware of the lack of the Request being available to the Town's attorney, the board is providing adequate time and remedy for the Town to respond.

In conclusion, the board rescinds its revised decision of August 9, 1996 and provides the Town with 10 days to file objections to the substantive issues raised in the Taxpayer's request for reconsideration. The board will then deliberate and issue a new decision considering the Town's objections. This subsequent decision could be either a reinstatement of the board's original May 23, 1996 decision, a reinstatement of the revised decision of August 9, 1996, or could be an entirely different decision.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing order has this date been mailed, postage prepaid, to Robert W. Blucke, Taxpayer; Ernest L. Bell, Esq., Counsel for the Town; and Chairman, Selectmen of Rindge.

Date: September 16, 1996

Valerie B. Lanigan, Clerk

0005

Robert W. Blucke

v.

Town of Rindge

Docket No.: 13021-92PT

Decision Re: Motion for Rehearing

This order responds to the Taxpayer's June 17, 1996 request for reconsideration (Request) and the "Town's" September 25, 1996 reply and objection to Taxpayer's Request (Objection). As noted in the Board's order of September 16, 1996, the board's August 9, 1996 Decision Re: Motion for Rehearing has been rescinded and is not in effect.

After reviewing the Town's Objection and Mr. Chapman's appraisal, the board agrees with the Town that Mr. Chapman's appraisal is so fraught with inconsistencies that its value conclusions are given no weight. Therefore, the board denies the Taxpayer's request. The board's May 23, 1996 decision controls the disposition of this appeal along with this denial for rehearing. The Town raised in their Objection the issue of the propriety of Chairman Franklin participating in the review of the Request. While this issue is largely mooted by the board's reinstatement of its earlier decision, the board will respond to the Town's Objection.

The board rules that it is permissible for Chairman Franklin to participate due to former Chairman George Page 2

Twigg, III retiring between the time of the original decision and the Request was filed. Franklin has reviewed the evidence, listened to the recording of the hearing, and reviewed the Request and the Objection. The board rules that the evidence in this case does not turn on the credibility of the witnesses' testimony but rather turns on the objective analysis of Mr. Chapman's appraisal. Appeal of Dell, 140 N.H. 484, 495 (1995), quoting Appeal of Seacoast Anti-Pollution League, 125 N.H. 708, 716 (1984) (The process of determining who to believe and the quality of their work product does not require the participating board member to be present at the hearing if such a function is based on "logical analysis, credentials, database, and other factors readily discernible to one who reads the record.")

If the Taxpayer desires to appeal this order and the board's decision, the Taxpayer should consult with an attorney. Because the board rescinded the prior rehearing order, the board assumes any appeal should be filed with the supreme court within thirty days of the clerk's date below. See RSA 541:6. This board will not accept any further rehearing motions. See RSA 541:2-6 (singular motion); see also Petition of Ellis, 138 N.H. 159, 161 (1993) (party allowed one rehearing motion).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Docket No.: 13021-92PT

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert W. Blucke, Taxpayer; Ernest Bell, Esq., counsel for the Town of Rindge; and Chairman, Selectmen of Rindge.

Date: October 23, 1996

Valerie B. Lanigan, Clerk

0006