

Joel and Linda Singer

v.

Town of Rindge

Docket No.: 13028-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessments of:

\$297,750 (land \$202,850; buildings \$94,900) on "Lot 14-1", a 2.5-acre lot with a house; and

\$18,850 on "Lot 13-29", a vacant, .29-acre lot (the Properties).

For the reasons stated below, the appeal for abatements is denied.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers failed to carry this burden.

The Taxpayers argued the 2 parcels are inseparable in that the smaller lot (Lot 13-29) is used simply to gain access to the larger (Lot 14-1) island property and is nonbuildable due to its lack of setback area from the lake for a septic system and lack of sufficient distance from the property lines abutting. Further, the Taxpayers stated the assessments were excessive because:

- (1) the access lot (Lot 13-29) has a very steep grade; island access is dangerous during thunderstorms, inclement weather and in late October because a portion of the lake heaves;
- (2) only 17% of the island is cleared for use and the internal location of the house limits its view;
- (3) island properties sell for 1/3 to 1/2 less than similar mainland properties due to the difficulty created by water access;
- (4) Candice Starrett Real Estate estimated a \$225,000 to \$235,000 opinion of value in June 1990;
- (5) a June 1992 appraisal by Appraisal Professionals estimated a \$181,000 fair market value;
- (6) Lot 13-29 has a figured frontage of 50 and average depth of 212 not 55/230 as noted by the Town;
- (7) Lot 14-1 should be measured as 176 figured frontage and 620 average depth with access discount of .40 as opposed to 620 figured frontage and 176 average depth and access discount of .50; and
- (8) a total assessment of \$195,966 is fair.

The Town argued the assessments were proper because:

- (1) no objections were ever made by the Taxpayers with regard to metes and bounds;
- (2) the house is of above-quality construction and condition and the Taxpayers' appraiser in his cost approach considered the house to be of average construction and condition;
- (3) the Taxpayers' appraiser's estimated site value of \$50,000 was low and

comparable sales support a site value of \$120,000; and

Page 3
Singer v. Town of Rindge
Docket No.: 13028-92PT

(4) a review and adjustment of the appraiser's comparables 1 and 3 indicates a value range of \$239,800 to \$246,700.

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.

Page 4
Singer v. Town of Rindge
Docket No.: 13028-92PT

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 Taxpayers' evidence consisted of: (1) a

June 1990 opinion of value by Candice Starrett Real Estate (Starrett); (2) a June 1992 appraisal by Daniel J. Valliere (Valliere); and various comparables, charts and sketches prepared by the Taxpayers.

In reviewing the Starrett opinion, the board was unable to place any weight on its conclusion because it was merely an opinion of value, not an appraisal, and was based on sales which took place between February and May 1989. Further, no adjustments were made to the sales to compare them to the subject Property for its land size, location, topography, for quality, condition and size of the house and the sales were not time adjusted to the date of assessment, April 1992. Additionally, there was no mention of the mainland lot and its value in relation to the island property.

In reviewing the Valliere appraisal, the board was unable to place any weight on its conclusions because of the following.

1) Valliere did not assign any value to the access lot on the mainland nor did he include as part of his consideration of comparable #1 (Davini Island) the May 1992 purchase of a 1/3-acre lot for \$45,000 for control of the right-of-way and access to Davini Island.

2) Valliere made no adjustments and failed to factor in any consideration for water-frontage or lot sizes. The subject Property is a 2.5-acre island property (and a .29-acre mainland lot) with approximately 1,200 feet of water frontage and Valliere compared this Property to comparable 1, which has 260 feet of frontage and comparable 3, which has only 100 feet of frontage. The lot sizes compared to the subject was .39 acre, .45 acre and 1.0 acre. Some adjustment is necessary.

3) Valliere considered the quality of the house to be average. The board finds, based on the Town's evidence and the photographs, that this is an above-average home and is very similar in quality to comparable 3. Therefore, an upward adjustment should be made to comparable 1 for quality and no quality adjustment should be made to comparable 3.

4) Valliere gave little or no explanation for the adjustments made to the comparable sales and the minimum comments made were not supported with any market or cost evidence.

5) Based on the evidence (including the assessment-record cards) and testimony, the board finds Valliere's gross living-area adjustment of \$13.00 per-square foot was low and not supported by any sales data.

6) Valliere also performed a cost approach to value the estimated reproduction cost new of the improvements. The board finds that, when equalized, the Town's estimate of value of the improvements and Valliere's are within a reasonable range (Town = \$78,400; Valliere = \$86,400). However, the board finds Valliere's estimated site value of \$50,000 is low and is not supported by any sales evidence provided.

With respect to the additional data submitted by the Taxpayers, the board finds that the Town's method of calculating the figured frontage for the island property (dividing the circumference in half) and its use of the triangulation method to value the mainland lot were reasonable, appropriate and consistent with the methodology used for other waterfront properties.

In arriving at its decision, the board considered the total equalized value of the mainland lot and the island property. The Property is unique in that it offers many benefits to the owners such as privacy, seclusion, views,

etc. The detriments are obvious in that the island is not accessible by vehicle and not always by boat. However, the Town has adjusted the land value by 50% to account for its inadequacies. The board finds the 50% adjustment is reasonable. Further, based on the evidence and the board's judgment and experience¹, the board finds the total equalized value of \$261,750 ($\$297,850 + \$18,850 = \$316,700 \div 1.21$ equalization rate = \$261,750 rounded) is reasonable. To the extent that there may be minor errors on the assessment-record cards, the board finds that "Justice does not require the correction of errors of valuation whose joint affect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217 quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899). In other words, the board looks at the overall assessment and asks whether the assessment, regardless of how it was calculated, fairly valued the property. In this case, the board finds the assessment is proper.

The Taxpayers argued that municipal services were not available to the Property. Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

¹ The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); Appeal of Nashua, 138 N.H. 261, 264-265 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

Further, the Taxpayers argued that the taxes have increased 69% over 6 years. A greater percentage increase in an assessment following a town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

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.

CONCLUSION

In conclusion, the board finds that neither the market evidence submitted by the Taxpayers nor Mr. Bartlett's report carried the Taxpayers' burden to show the Property was disproportionately assessed.

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 Joel and Linda Singer, Taxpayer; Ernest Bell, Esq., counsel for the Town of Rindge; and Chairman, Selectmen of Rindge.

Dated: May 23, 1996

Valerie B. Lanigan, Clerk

Joel and Linda Singer

v.

Town of Rindge

Docket No.: 13028-92PT

ORDER

This order responds to the "Town's" motion for reconsideration (Motion) received by the board on August 19, 1996. The Motion 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, 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 19, 1996 rehearing motion (Motion). After 10 days from this order, the board will deliberate on the Taxpayers' Motion considering any objection filed by the Town.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Page 2
Singer v. Town of Rindge
Docket No.: 13028-92PT

CERTIFICATION

I hereby certify a copy of the foregoing order has this date been mailed, postage prepaid, to Joel and Linda Singer, Taxpayers; Ernest L. Bell, Esq., Counsel for the Town; and Chairman, Selectmen of Rindge.

Date: September 16, 1995

Valerie B. Lanigan, Clerk

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Joel & Linda Singer

v.

Town of Rindge

Docket No.: 13028-92PT

Decision Re: Motion for Rehearing

On June 20, 1996 the Board received the "Taxpayers'" request for rehearing (Request) of the Board of Tax and Land Appeal's (board) decision (Decision) of May 23, 1996. After the Town's attorney, Ernest Bell, received a copy of the Taxpayers' Request, the Town filed a reply and objection (Objection) on September 25, 1996.

The Taxpayers argued in their Request that (1) access is impossible during November/December and March/April preventing the "Property" from being sold for year-round use; (2) island properties typically sell for 1/3 to 1/2 less than similar mainland properties; and (3) the "Starrett" opinion of value and "Valliere" appraisal should have been given weight.

The Town argued in its Objection that (1) the Request raised no errors of law or new evidence; and (2) because Chairman Franklin did not participate in the original Decision, he should not participate in the deliberation of the Request.

The board first responds to the Town's objection to Chairman Franklin participating in the Request deliberation. The board rules that it is permissible for Chairman Franklin to participate due to former Chairman George Twigg, III retiring between the time of the original Decision and the Request 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 "logical analysis, credentials, database, and other factors readily discernible to one who reads the record." Appeal of Dell, 140 N.H. 484, 495 (1995), quoting, Appeal of Seacoast Anti-Pollution League, 125 N.H. 708, 716 (1984).

After such a review of the evidence, Members Franklin and LeBrun have determined that the Decision overlooked or misapprehended some facts, in particular the Town's statement that the Property was slightly overassessed. Consequently, the board grants the Taxpayers' request and amends its Decision in accordance with TAX 201.37(f) by finding the proper assessments to be: Lot 14-1 - \$268,000 (land, \$182,600; buildings, \$85,400) and Lot 13-29 - \$17,000.

The board bases this order on the following: (1) a review of the Starrett opinion; (2) a review of the Valliere appraisal; and (3) Bartlett's report.

Starrett Opinion of Value

In its May 23, 1996 decision, the board placed no weight on the Starrett opinion of value because it was an opinion, not an appraisal, was based on unadjusted 1989 sales and made no mention of the mainland lot. Based on the reasons detailed in the Taxpayers' request for rehearing on page 2, the board
Page 3
Singer v. Town of Rindge
Docket No.: 13028-92PT

finds that some weight should be given to the Starrett opinion because:

(1) Starrett sold the property to the Taxpayers; (2) Starrett owned the abutting

property to the Taxpayers' mainland lot; and (3) Starrett listed many of the properties on the lake and, thus, would have a good general knowledge of selling prices. Further, although Starrett made no adjustments to the sales, her opinion of value was a range which if adjusted by the equalization ratios for time would suggest an even lower value.

Valliere Appraisal

Again, in its decision, the board stated that it was unable to place any weight on the Valliere appraisal. However, based on the Taxpayers' rehearing request and a review of the record, the board finds that although the appraisal cannot be accepted without some adjustments, that it does warrant weight after adjustments. The board reviewed Municipality Ex. F which was a reworking of the Valliere grid by the Town. This reworking included classifying the house as average/good, excluding comparable #2 which was located in Massachusetts, and adjusting comparables #1 and #3 for location and quality and construction of the buildings. The Town also refigured the cost approach. Both approaches, when adjusted, indicated a value of \$240,000 for the property as a whole (island and mainland). The Town stated at the hearing that the property was slightly overassessed and recommended an assessment of \$290,000 ($\$240,000 \times 1.21$ ratio).

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

Page 4
Singer v. Town of Rindge
Docket No.: 13028-92PT

Lake Monomonac. The board found that such ratio studies alone do not conclusively establish that an individual property is disproportionately assessed because while

ratio studies can be general evidence of overassessment, property specific market data has to be presented to prove disproportionality. The board finds that Bartlett's report is supportive in a general fashion of the specific evidence in this case and, thus, we give some weight to his report's conclusion that the median of the sales indicates waterfront properties were overassessed by 10%.

Conclusion

Valuing this property was not and is not an easy or a precise science. Because it is on an island with its only access by boat, the Property can only be used certain times of the year. It was and is understood by the board that this is not a year-round property. However, the Taxpayers purchased the land (island and mainland lot) and constructed a nice home on the island. This suggests that there are positive features to the Property, not just the negatives stressed by the Taxpayers. This is, however, a unique property to value and the market for this type of property is limited. It has been said that "the search for fair market value is a snipe hunt carried on at midnight on a moonless night." Fusegni v. Portsmouth Housing Authority, 114 N.H. 207, 211 (1974) (citations omitted.). This is not to say the board's search for a proper value is unguided and without basis. Rather, finding value involves informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also

Page 5
Singer v. Town of Rindge
Docket No.: 13028-92PT

Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). We have done so here after careful consideration.

The board has weighed all of the evidence and finds that an abatement was warranted. The board finds that a 10% adjustment to the value is reasonable given the evidence presented and is supported by Bartlett's report. This adjustment results in a total assessment (for both lots) of \$285,000 which when equalized by the revenue administration's ratio of 1.21 for the 1992 tax year indicates an equalized rounded value of \$235,500 ($\$285,000 \div 1.21$).

Further, the board also reviewed the Town's new 1995 assessed values and adjusted them for the general change in the market as indicated by the assessment ratios. This review indicated a value in the range of \$235,000 to \$240,000. It should be noted that the board placed little weight on this analysis, but merely performed it to confirm its findings.

The board reviewed but did not consider the Taxpayers' calculations on page 2 of the rehearing motion because the Town's land value of \$297,750 already included a 50 percent deduction for access (island); therefore, an additional deduction of 1/3 or 1/2 from that value is inappropriate. The board also reviewed but did not consider the calculations on page 4 because of misapplication of the ratios.

Page 6
Singer v. Town of Rindge
Docket No.: 13028-92PT

If the taxes have been paid, the amount paid on the value in excess of \$268,000 for Lot 14-1 and \$17,000 for Lot 13-29 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.

If either party wishes to challenge this board's order and its effect on the Decision, they should consult with counsel. It appears: 1) the Taxpayers' review would entail an appeal, within 30 days of the clerk's date below, to the supreme court, see RSA 541:6; and 2) the Town's review would be by an RSA 541:3 rehearing motion, see Appeal of White Mountains Education Association, 125 N.H. 771, 775 (1984) (newly losing party must file rehearing motion).

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 decision has been mailed this date, postage prepaid, to Joel and Linda Singer, Taxpayer; Ernest Bell, Esq., counsel for the Town of Rindge; and Chairman, Selectmen of Rindge.

Date: October 23, 1996

Valerie B. Lanigan, Clerk

0006