

**Kevin and Elizabeth Marrinan
Virginia Phillips**

v.

Town of Rindge

Docket No.: 13082-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$227,250 (land \$192,850; buildings \$34,400) on a 1.8-acre lot with a house (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was 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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) an April 1992 appraisal prepared by Charles E. Werth estimated a \$153,000 market value for the Property;
- (2) the four comparables used in the appraisal are quite similar in location, access and frontage; and
- (3) the Property's larger acreage is not significant because roughly half of the lot has

little utility due to its long panhandle configuration.

The Town argued the assessment was proper because the Werth appraisal understated the land value by approximately \$30,000 because the Property does have more water frontage than the comparables used.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$191,200 (land \$156,800; building \$34,400).

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 (Bartlett 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 gives some weight to the analysis of market data contained in the Report and to its general conclusions. The specific evidence presented in this case indicates an abatement is warranted of a similar magnitude as the Report's general conclusions.

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%.

Two general issues are raised in this appeal:

- 1) the Town's argument of collateral estoppel; and
- 2) the market value evidence in the Werth Appraisal and Bartlett 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.

The sole evidence of market value presented by the Taxpayers was an appraisal performed by Charles E. Werth of Whitney Associates (Werth Appraisal), which estimated a market value of the Property as of April 1992 at \$153,000. The board gives the Werth appraisal considerable weight, but also gives some weight to the Bartlett Report.

This case is different than the several others heard the same day as the subject Property does not have significantly excess frontage or other locational factors to make it unique from most of the sales presented either in the Werth Appraisal or in Mr. Bartlett's Report. While the lot is larger in area than many of the sales, its configuration makes much of the area not highly useful and, therefore, not of great value. The majority of the value is in the waterfront and site associated with the improvements.

The difference in the parties' value conclusions are easily delineated. There is relatively no disagreement as to the value of the improvements. The Werth Appraisal estimated by the market approach a total value of \$153,000 and a site value alone of \$120,000; thus, a difference of approximately \$33,000 for the improvements is indicated. The Town's building assessed value and well and septic value, when added together and equalized, also equate to approximately \$33,000.

The difference between the parties is in the land value. The Town's land assessment equalized indicates a market value of \$159,400, while the Werth Appraisal estimates land value of \$120,000.

In attempting to determine which land value is more reasonable, the board reviewed the sales in the Werth Appraisal and all the sales contained in the Bartlett Report (four of the eight sales in the Bartlett Report are the same as those in the Werth Appraisal.) Independent of Mr. Bartlett's land residual calculations, the board performed their own on the four sales in the Werth Appraisal. These were simply calculated by subtracting from the sale price an estimated value of the improvements for each of the four comparables. The improvements of the four comparables were calculated in two ways. First, by applying the improvement adjustments of the four comparables against the Property's equalized building assessment value; and second by subtracting the equalized assessed value of the four comparables. In general, the land residual values for the sites were within a \$100,000 to \$115,000 range. (Two of the four sales showed an indicated site value of approximately \$105,000.) This range is quite similar to that found on page 3 of the Bartlett Report, where he analyzes all eight sales available to him. Consequently, the board concludes that a site value of \$105,000 for the primary site is reasonable. This "site" value captures the value of the land associated with the improvements and the water frontage. In this case, we find the amount of water frontage is fairly normal and similar to the amount of the sales; thus, no additional adjustment for frontage is necessary.

The board also finds the Werth Appraisal's adjustment of \$20,000 for the supplemental land is reasonable, given its configuration and utility as earlier stated. Consequently, the board finds the total estimated land value to be \$125,000 and that it is generally supported by the market data contained in the Bartlett Report. By adding the building market value of \$33,000 arrives at a total market value of \$158,000 and an assessed value of \$191,200 by applying the equalization ratio ($\$158,000 \times 1.21$).

If the taxes have been paid, the amount paid on the value in excess of \$191,200 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994 and 1995. 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 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

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Susan K. Wolterbeek, Esq., Counsel for Kevin and Elizabeth Marrinan and Virginia Phillips, Taxpayers; Ernest Bell, Esq., counsel for the Town of Rindge; and Chairman, Selectmen of Rindge.

Dated: May 23, 1996

Valerie B. Lanigan, Clerk