

Charles E. Phillips

v.

Town of Rindge

Docket No.: 13083-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$280,150 (land \$239,800; buildings \$40,350) on a 1.57-acre lot with a house (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town assessed at \$228,300. 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 and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) an April 1992 appraisal performed by Chapman Appraisal Company estimated a \$154,500 market value;
- (2) the Town's front-foot methodology overstates the Property's value because of the unique configuration of the lot; and

(3) the Property's view of the water is primarily of the cove, not the main body of the lake.

The Town argued the assessment was proper because:

(1) the Chapman appraisal did not adequately account for the Property's large amount of frontage; and

(2) revising the Chapman appraisal, using an adjustment of \$279 per-front foot and an effective frontage of 500 feet, indicates a market value of \$250,000.

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 Report) (Taxpayer's Exhibit #1) for the Property as of April 1, 1992, which estimated its market value at \$154,500.

In reviewing the Chapman Report, the board was unable to place any weight on its value conclusion for several reasons. The Chapman Report relied primarily on the direct sales comparison approach (see page 33). In reviewing the adjustments made in the direct sales comparison grid (page 22), the board notes the three sales used ranged in size from .40 acre to .55 acre and in frontage from 120 feet to 180 feet. The Property itself is comprised of 1.57 acres with 1,000 of water frontage (approximately 360 feet facing the main body of the lake and the balance on the cove side of the Property). The only adjustments made for the difference for either frontage or size was approximately \$11,000 to \$13,000 to the comparables for size only. The Chapman Report made no adjustment for the amount of frontage. The board finds this is not only inconsistent with the general appraisal practices of waterfront property, but also is inconsistent with earlier analyses within the Chapman Report, which reviews sales of waterfront property and analyzes them by various units of measurement, including frontage. The board finds the

Property's location on the tip of a peninsula with a view of both the lake and the cove and the privacy provided by the amount of frontage would need to be recognized and adjusted for in any sales comparison analysis. The configuration of the lot (peninsula) and its 1,000 feet of frontage provides views and privacy the more normal "pencil" lot of 100 feet - 150 feet of frontage would not have. The photographs submitted by the parties certainly indicate the uniqueness of the Property.

Further, other market data in the Chapman Report indicates that its value conclusion is inaccurate. Comparable land sale #2 in the Chapman Report's cost approach was for a half-acre, undeveloped lot with 110 feet of frontage, also on Lake Monomonac, which sold for \$125,000 in October of 1990. To believe that the Property, which is undeveloped, has extensive water frontage and a unique peninsula setting would sell for only \$30,000 more than an undeveloped lot of 1/3 the size and approximately either 1/10th or 1/3 the frontage (depending on whether total water frontage or just main frontage is considered) just does not make any sense.

While more analysis or market extraction may need to be done to be more accurate, the board finds the Town's reworking of the Chapman Report's sales comparison grid by using an estimated effective lake frontage of 500 feet and a frontage value from the Chapman Report does generally support the Town's assessment and its indicated market value.

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 Taxpayer nor Mr. Bartlett's report carried the Taxpayer's 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

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 Charles E. Phillips, Taxpayer; Ernest Bell, Esq., counsel for the Town of Rindge; and Chairman, Selectmen of Rindge.

Dated: May 23, 1996

Valerie B. Lanigan, Clerk