

George and Rosemary Robertson

v.

Town of Rindge

Docket No.: 16148-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 adjusted assessments of:

\$289,600 on Lot 18, a 2.0-acre lot with a single-family home; and

\$149,300 (land \$96,700; buildings \$52,600) on Lot 18-1, a 1.8-acre lot with a single-family home (the Properties).

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

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment on Lot 18 was excessive because:

- (1) the land has a wet area near the drain pipe;
- (2) land values for comparable properties with similar or larger lot sizes are assessed significantly less; and
- (3) some of the comparable sales have basements or central heating systems and the Property has neither.

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The Taxpayers argued the assessment on Lot 18-1 was excessive because:

- (1) there are severe cracks in the foundation;
- (2) some of the land is seasonally wet;
- (3) there is little or no beach area as this portion of the lake is weedy;
- (4) the Property has been listed for sale with a realtor for the past two years with an asking price of \$149,900; very few people have visited the Property and there have been no offers; and
- (5) the selling price will probably be approximately \$125,000 from which the realtor will receive a 6% commission.

The Town reviewed the Property on Lot 18 prior to the hearing and recommended a revised assessment of \$215,250. The Town argued the revised assessment on Lot 18 was proper because:

- (1) there were two dwellings on the Property as of April 1, 1995;
- (2) the Property has 347 feet of lake frontage with a sandy beach; this is much better than the typical lot on Lake Monomonac; and
- (3) the Taxpayer's comparable sales had dissimilarities that account for the differences in the assessments.

The Town argued the assessment on Lot 18-1 was proper because:

- (1) the Property is listed for sale through a realtor with an asking price of

\$149,900 and the equalized assessment indicates a market value of approximately \$142,190; and

(2) the assessment as abated takes into consideration all the issues raised by the Taxpayer.

Board's Rulings

Map 21 Lot 18

Based on the evidence, the board finds the proper assessed value to be \$215,250. This assessment is based on a market value finding of \$205,000 and the Town's 1995 equalization ratio of 1.05 ($\$205,000 \times 1.05$). The board finds

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the best evidence of market value is the Town's Exhibit C, a comparable sales analysis estimating the Property's 1995 market value at \$205,000.

As of April 1, 1995, this Property contained two dwellings. Thus, any comparison to either the Town's comparables or the Taxpayers' comparables needs to recognize not just the remaining dwelling (one dwelling burned in January 1996) but the presence of two dwellings. In fact, as the Town pointed out, this assessment, if adjusted for the cottage that burned in 1996 and equalized by the Town's estimated 1996 equalization ratio of 1.07, results in an indicated market value of approximately \$172,000, quite similar to the Taxpayers' \$165,000 opinion of market value. Further, the board finds the Town's adjustments to the comparable sales in the analysis are reasonable and reflect many of the comparable sales' features noted by the Taxpayers. (For example, the Taxpayers stated the Town's comparable sale #2 was significantly larger and had more rooms. The Town did reduce the sales price of comparable

#2 by approximately \$53,000 to reflect the presence of a basement, its finish and the additional living area square footage.)

Map 21 Lot 18-1

Based on the evidence, the board finds an assessed value of \$141,800. This assessment is based on a market value finding of \$135,000 and the Town's 1995 equalization ratio of 1.05 ($\$135,000 \times 1.05$).

The board gives significant weight to the Taxpayers' testimony that the Property has been listed for the past two years at \$149,900 with no offers being made. The Taxpayers stated it was listed with a realtor and has been advertised. This testing of the market certainly indicates the Property is most likely worth less than the asking price of \$149,900. In addition to the lack of action at the asking price, the board also finds the combination of the various factors affecting the Property affect its desirability and marketability (the configuration and utility of the lot, the weedy, shallow

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water frontage, the physical condition of the house and the drainage easement for the leachfield). The market value estimate of \$135,000 is also supported by the comparable sales submitted by the parties.

The board has not allocated the value between the land and the building and the Town may make this allocation in accordance with its assessing practices.

Lastly, the Taxpayers complained about the increase in the assessment and the increase in their taxes as a result of the reassessment. A greater percentage increase in an assessment following a town-wide reassessment is not

a ground for an abatement because 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. The amount of property taxes paid by the Taxpayers was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See generally International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor, i.e., the board decides if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See The Bretton Woods Company v. Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

If the taxes have been paid, the amount paid on the value in excess of \$215,250 for Lot 18 and \$141,800 Lot 18-1 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 1996.

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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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George and Rosemary Robertson, Taxpayers; and Chairman, Selectmen of Rindge.

Date: May 22, 1997

Valerie B. Lanigan, Clerk