

William W. Zechel

v.

Town of Rye

Docket No's. 3341-86 and 3731-87

DECISION

A hearing in these two appeals, having been consolidated for hearing, was held, as scheduled on July 14, 1988. The Taxpayer represented himself. The Town was represented by Mary E. Pinkham, Appraiser, State of New Hampshire Department of Revenue Administration.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessments of \$1,291,350 (land, \$742,150; buildings, \$549,200) Map 15, Lot 75; \$852,000 (land, \$596,350; buildings, \$255,650) Map 15, Lot 93; and \$327,250, Map 15, Lot 95. The Taxpayer also owns Map 15, Lot 100-1 assessed for \$222,350 (land, \$163,300; buildings, \$59,050), which is not being appealed. The subject properties consist of commercial buildings located on the first named property known as the Pilot House Restaurant and The Rye Harbor Motel; commercial buildings on the second named parcel known as Saunders Restaurant; and a parking lot of 35 spaces and a septic system in the third parcel of two acres, which serves Saunders

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Restaurant. The three parcels are in close proximity to each other, and the fourth not appealed parcel.

Neither party challenged the Department of Revenue Administration's assessment-sales ratios of 96 percent for the 1986 tax year and 72 percent for the 1987 tax year for the Town of Rye.

The Taxpayer argued there had been enormous inflation in Rye real estate values, and that there had been no major real estate transactions in Rye of properties comparable to the subject properties in recent years. The Taxpayer testified the subject properties had been zoned commercial for years and that he had no dispute on the valuation placed on his residential property.

The Taxpayer argued that when an investor evaluates a commercial property, the investor's primary concern is return on investment. The Taxpayer testified he based his evaluation of the subject properties on three years income of the commercial operations on the subject properties, and claimed that would be the basis of an investors evaluation of the appealed properties.

The Taxpayer argued the Saunders Restaurant lot and the parking lot and septic system across the road cannot be separated. He testified at one point he tried to obtain a permit for a building on the two acre parcel but was denied a permit by the Town.

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The Taxpayer argued Saunders Restaurant is a seasonal business. With the net income it produces, an investor is requiring a 12.5 percent return which indicates a market value of \$750,000. The Taxpayer testified Mr. Summer's opinion of value, (without financial data), indicated a price of \$850,000 in 1986. The Taxpayer argued an assessed valuation of \$700,000 to \$800,000 is proper for the two properties comprising Saunders Restaurant including its septic system and parking lot.

The Taxpayer then stated the property with the Pilot House Restaurant and Rye Harbor Motel was quietly on the market. It was shown three times to people who might have been willing to pay around \$700,000. The Taxpayer testified this subject property was in the Rye water district and that the Taxpayer had installed an eight inch main to serve the property which was turned over to the water district. The Taxpayer also said oversized septic systems serving the motel and restaurant had been installed at the Taxpayer's expense.

The Taxpayer argued real estate and the restaurants would be viewed together and reiterated return on investment was the determining factor in the sale of a restaurant. He testified Saunders Restaurant was on Rye Harbor while the Pilot House and Rye Harbor Motel were on Ocean Boulevard, some distance from the harbor and the ocean. The Taxpayer also said he might accept an offer

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of \$900,000 for the Pilot House, Rye Harbor Motel property, but doubted if such an offer would be forthcoming.

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The Town's representative argued the income approach to value was not used in the appraisals done for the tax assessments for the Town of Rye. She further argued sales survey and analysis was used to determine front foot prices and that most of these sales were residential in nature. The Town's representative further argued several commercial sales were used, including a motel cabin property. The Town's representative further argued the Marshall Swift Appraisal manual was used during the revaluation process. The Town's representative also maintained the Taxpayer should look to the marketplace for rental values for the subject properties, instead of relying solely on the income generated and contract rent paid to the Taxpayer.

The Town argued the land of the subject properties was valued the same as other land in the taxing district.

The Board finds the Taxpayer relied primarily on income generated by the existing management of the enterprises in place while disregarding other approaches to value determination. The Board finds this problematic determination of the value of the real property. The Board finds the single use by the Taxpayer of the subject properties restrictive in the Rye market place. The Board finds the Town properly used derived values in determining its assessments for the subject properties. The Board notes the

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dearth of sales activity for these types of properties. The Board finds these types of properties have values in excess of those values that might be placed on these

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types of properties by a purely rational investor. The Board finds the change in assessment-sales ratios in the time period of these two consolidated appeals constitute evidence of the appreciation of property in the Town of Rye.

The Board therefore rules the Taxpayer has failed to prove that the assessment is unfair, improper or inequitable or that it represents a tax in excess of the Taxpayers just share of the common tax burden. The ruling is, therefore: Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Esq., Chairman

George Twigg, III, Member

(Mr. Damour did not sit.)

Raymond J. Damour, Member

—

(Concurred, unavailable for

Peter J. Donahue,

signature.)

Member

Date:

I certify that copies of the within Decision have this date been mailed, postage prepaid, to William W. Zechel, taxpayer; and the Chairman, Selectmen of Rye.

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Date:
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Michele E. LeBrun, Clerk