

Brown Et Al
v.
Town of Rye

Docket No. 3401-86

DECISION

A hearing in this appeal was held, as scheduled, on May 17, 1988. The Taxpayer was represented by Nathaniel N. Brown, Esquire. 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:

Map 15, Lot 213	\$39,400
Map 18, Lot 31	\$31,900
Map 18, Lots 33, 34, & 50	\$132,900
Map 18, Lot 46	\$22,200
Map 19, Lot 91	\$54,500
Map 19, Lot 92	\$43,300
Map 18, Lot 205	\$27,000

The subject properties consist of small, undeveloped lots.

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

Mr. Brown argued he considered the lots as three parcels composed of non-conforming contiguous small lots. Mr. Brown presented maps as evidence

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(Taxpayers Exhibit 1, 2 & 5) to assist the Board and the Town's representative in understanding the location and proximity of the lots.

The Taxpayer argued parcels known as Map 15, Lot 13 and Map 18, Lot 205, are contiguous lots at the corner of Surf Lane and Jenness Avenue, which are non-conforming in the residential district, which requires a minimum of 44,000 square feet for a lot, minimum frontage of 150 feet and minimum depth of 150 feet. The Taxpayer argued the two parcels each 50' x 100' combined would not meet the minimum zoning requirements. The Taxpayer further argued the two lots should be treated as one lot.

The Taxpayer then argued parcels identified as Map 19, Lot 91 and Map 19, Lot 92 located on Oak Avenue and Spruce Avenue, respectively, should be considered as two lots. The Taxpayer further argued the assessment values determined by the Town were high considering the access and non-conforming nature of the lots.

The Taxpayer then argued that the parcels in the third area known as Brown Court (Taxpayers Exhibit 2) identified as Map 18, Lots 31, 33, 34, 35, 46 & 50 were over assessed. The Taxpayer further argued he was not sure of the ownership of Lot 35, and also testified he believed the Taxpayer owned the WAY separating Lot 31 from the other lots. The Taxpayer argued further, the

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property known as the "WAY", between Lots 30 and 36, had been sold.

The Taxpayer argued the five parcels should be treated as one lot. The Taxpayer testified Brown Court was a dirt road, presented a photograph (Taxpayers Exhibit 8) illustrating this road condition.

The Taxpayer testified that no building permits had been applied for for any of the non-conforming lots.

The Town's representative argued the two lots on Surf Lane and Jenness Avenue were grandfathered, according to the Town's building inspector. The Town's representative argued further the lots were separate lots of record and might lose their grandfathered status if they were combined. The Town's representative testified if these two lots were combined, she would recommend a topographic depreciation of 60 percent, an excess frontage depreciation of 10 percent and an undeveloped depreciation of five percent, be applied to the combined lot.

The Town's representative testified she had inspected the two lots at Oak Avenue and Spruce Avenue and felt there was no substantial disagreement with the Taxpayer as to the value of these two lots.

The Town's representative testified the building inspector for the Town was of the opinion that the Browns Court Lots 33, 34 & 50, were non-conforming,

non-buildable lots. The Town's representative further testified Lots 31 and 36 were not contiguous but had a value to abutters. The Town's representative presented evidence of an abutters sale of a 6,713 square foot lot for \$10,000 in October of 1986. The Town's representative argued the Taxpayer was not able to prove ownership of the "WAY" separating Lot 31 from the other lots. The

Town's representative testified the value of the frontage of Lot 46, on Browns Court, should be adjusted closer to the value of the comparable abutter sale presented.

The Town's representative argued Lots 33, 34 and 50 should be considered combined and warranted a 30 percent topographic depreciation.

The Board finds the Taxpayer did not present evidence other than his opinion of the market value of the subject properties, as of April 1, 1986. The Board finds the Taxpayer failed to present sales data which would support the opinions of value of the subject parcels. The Board finds the Town based it's valuations on a sales survey and analysis. The Board finds the Town, upon subsequent inspection and analysis of the subject parcels, came to conclusions and offered recommendations appropriate to the market place, as of April 1, 1986. The Board finds Map 18, Lot 31 and Map 18, Lot 46 are not contiguous with Map 18, Lots 33, 34 & 50. The Board finds there was no evidence presented of ownership of the "WAY". The Board finds Map 18, Lot 31 has no frontage, therefore, no access, but has abutter value. The Board finds Map 18, Lots 33, 34 & 50 should be considered as combined into one parcel.

For the above stated reasons, the Board rules that the proper assessments for the 1986 tax year are:

Map 15, Lot 213 and Map 18, Lot 205 (combined)	\$59,800
Map 19, Lot 91	\$54,500
Map 19, Lot 92	\$43,300

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Map 18, Lot 31	\$ 5,750
Map 18, Lot 46	\$15,000
Map 18, Lots 33, 34 and 50 (combined)	\$65,000

If the taxes have been paid, the amount paid on the value in excess of \$211,950 is to be refunded with interest at six percent per annum from date of payment to date of refund.

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, Member

signature)

Date: December 22, 1988

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Nathaniel N. Brown, Esquire, counsel for Brown Et Al, taxpayers; and the Chairman, Selectmen of Rye.

Michele E. LeBrun, Clerk

Date: December 22, 1988

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