

Patrick J. McKeon and Helen V. McKeon
v.
Paul Narbonne and Jane Narbonne
and
Town of Rye

Docket No. 3869-87

DECISION

A hearing in this complaint was held, as scheduled, on March 2, 1989. The Complainants were not represented. The defendant taxpayers were not represented. The Town was represented by Valerie S. Arnold, Tax Collector and William R. Jenness, Building Inspector.

The complainants challenged, pursuant to RSA 71-B:5 and RSA 71:B-16-I, the assessments placed on property owned by the defendant taxpayers, Paul and Jane Narbonne, by the assessing officials of the Town of Rye for the 1987 tax year. The properties under complaint are a 7,500 square foot parcel of land on Robin Road assessed for \$60,000 and a second parcel of land on Triton Drive and Carver Street assessed for \$10,000.

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

Based on that ratio the assessments on the subject parcels equate to market values of \$83,300 for the Robin Road parcel and \$13,900 for the Triton Drive parcel, as of April 1, 1987.

The complainants argued by letter dated February 27, 1988, to the Board of Selectmen of the Town of Rye:

"My appeal concerns the abatement awarded the Narbottes on their property located on MAP 5 - Plot 266 on Robin Road and MAP 5, Plot 289 Triton Drive.

The appeal is based on the following reasons:

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1. The abatement proceedings were held in private not in public.
2. The awarded abatement is completely without substantiation of true values.
3. There is no record/minutes of the Board of Selectmen asking the Town Counsel to settle out of court.

When actions of this nature are not made in public one's civil rights are denied. There is a time limit to appeal and this could jeopardize another taxpaying resident to appeal within the time limit.

The awarded abatements were not made on any standard of value. A one time sale does not a value set. Both of these lots have no structure(s)/improvements. It is an historic fact that the courts have favored the assessor almost always in cases of this nature. On an unimproved lot the value is to the land itself.

It requires the Board of Selectmen to initiate any and all actions to have the Town Counsel to arrange an out-of-court settlement and provide unrefutable evidence that the abatement(s) can stand the light of day.

I trust that once the knowledge of these abatements are known to abutters and others in Rye, there will be requests for more abatements. Precedent is used in cases of law and this one certainly will be used in the future.

I therefore request that the Board reconsider these actions in this case and rescind this abatement in its entirety."

The Town's representatives argued the lot at 20 Robin Road was buildable and had been sold by the Narbonne's in April of 1987, for \$60,000. The Town argued the Department of Revenue Administration recommended this lot continue to be assessed at \$91,150.

The Town's representatives also stated the lot on Triton Drive was not buildable and had been purchased for \$10,000 by the Narbonnes in October of 1986. The Town's representatives further testified the Department of Revenue

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Administration appraiser recommended changing the assessment on the non-buildable lot to \$36,600.

The two representatives from the Town testified they had not been aware of the Department of Revenue Administration Appraisal Division recommendations regarding the assessments on the subject parcels. The Town's representatives stated the assessments had been lowered by the Selectmen on the advice of Town Counsel, J.P. Nadeau. The Town submitted exhibits of correspondence and abatement notices between Mr. Nadeau, state officials, and Town officials.

The two Town representatives testified the circumstances of the subject abatement process were somewhat unusual as they were carried out by Mr. Nadeau.

The Board finds the evidence and record before it demonstrates the Department of Revenue Administration correctly appraised and assessed the parcel on Robin Road for \$91,150 on April 1, 1986. The Board finds the sale in April of 1987, is not conclusive evidence of the general market value for the Town of Rye for the subject parcel. The Board finds the correct assessment for the subject parcel for the 1987 tax year is \$91,150.

The Board finds the evidence in the record indicates the Department of Revenue Administration correctly recommended an adjustment in the assessed valuation of the subject parcel on Triton Drive. The Board finds that the Department of Revenue Administration made its recommendations upon learning of the non-buildable status of this subject parcel. The Board finds the sale price of \$10,000 in October of 1986, in and of itself was not an indicator of the general market place for the Town of Rye. The Board finds the proper assessment for the subject parcel on Triton Drive to be \$36,600.

The Board therefore rules the correct assessments for the subject parcels are: \$91,150 for the subject land at 20 Robin Road and identified as Map 5, Lot 266 and \$36,600 for the parcel at Triton Drive and identified as Map 5, Lot 289.

SO ORDERED.

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BOARD OF TAX AND LAND APPEALS

— Anne S. Richmond, Esquire, Chairman

— George Twigg, III, Member

— Peter J. Donahue, Member

— Paul B. Franklin, Member

Date:

I certify that copies of the within Decision have this date been mailed,
postage prepaid, to Patrick J. McKeon, complainant; Paul and Jane Narbonne,
taxpayers; and the Chairman, Selectmen of Rye.

— Michele E. LeBrun, Clerk

Date:

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and
Town of Rye

Docket No. 3869-87

DECISION

A rehearing in this appeal was held, as scheduled, on August 23, 1989. The complainants were represented by Patrick J. McKeon. The defendants were represented by Valerie S. Arnold, Tax Collector, William R. Jenness, Building Inspector, and J. Paul Narbonne.

The complainants challenged, pursuant to RSA 71-B:5 and RSA 71-B:16-I, the assessments placed on property owned by the defendant taxpayers, Paul and Jane Narbonne, by the assessing officials for the Town of Rye for the 1987 tax year. The properties under complaint are a 7,500 square-foot parcel of land on Robin Road assessed for \$60,000 and a second parcel of land on Triton Drive and Carver Street assessed for \$10,000.

Neither party challenged the Department of Revenue Administration's assessment-sales ratio of 72 percent for the 1987 tax year for the Town of Rye. Based on that ratio the assessments on the subject parcels equate to market values of \$83,300 for the Robin Road parcel and \$13,900 for the Triton Drive parcel, as of April 1, 1987.

The complainants argued by letter to the Board of Selectmen of the Town of Rye dated February 27, 1988:

My appeal concerns the abatement awarded the Narbottes on their property located on MAP 5 - Plot 266 on Robin Road and MAP 5, Plot 289 Triton Drive.

The appeal is based on the following reasons:

1. The abatement proceedings were held in private not in public.
2. The awarded abatement is completely without substantiation of true values.
3. There is no record/minutes of the Board of Selectmen asking the Town Counsel to settle out of court.

When actions of this nature are not made in public one's civil rights are denied. There is a time limit to appeal and this could jeopardize another taxpaying resident to appeal within the time limit.

The awarded abatements were not made on any standard of value. A one time sale does not a value set. Both of these lots have no structure(s)/improvements. It is an historic fact that the courts have favored the assessor almost always in cases of this nature. On an unimproved lot the value is to the land itself.

It requires the Board of Selectmen to initiate any and all actions to have the Town Counsel to arrange an out-of-court settlement and provide unrefutable evidence that the abatement(s) can stand the light of day.

I trust that once the knowledge of these abatements are known to abutters and others in Rye, there will be requests for more abatements. Precedent is used in cases of law and this one certainly will be used in the future.

I therefore request that the Board reconsider these actions in this case and rescind this abatement in its entirety.

Mr. McKeon argued abatement hearings were held by the selectmen in private meetings without any knowledge by the public. Mr. McKeon further

testified there were no minutes of the meetings of the eight appealed to the

Board of Tax and Land Appeals or to the Rockingham County Superior Court. The complainant further noted the Narbonne abatement appeal was the only one settled out of court.

Mr. McKeon stated Mr. Nadeau was the town attorney and the reductions he settled and recommended to the selectmen were not proper. The complainant made the point that the location establishes the value and that other properties in the Town were uniformly appraised by the State of New Hampshire Department of Revenue Administration. Mr. McKeon also observed the Robin Road lot presently had a developed land assessment of \$104,750. Mr. McKeon also noted he is of the opinion the \$36,600 assessment on the Triton Drive parcel was proper and correct.

Ms. Arnold testified, in her opinion an abatement based on a single sale was not a proper method for determining an assessment. Ms. Arnold also noted the Triton Drive purchase by the Narbottes as abutters was a good deal.

Mr. Narbonne testified he had an appraisal from Jim Shanley for the Triton Drive property indicating a market value of \$55,000 and another appraisal from David Dolly indicating a market value for the Triton Drive parcel of \$45,000. The defendant taxpayer further testified he asked \$65,000 for the parcel and obtained \$60,000 after one year on the market.

Mr. Narbonne also stated the Triton Drive parcel was not buildable as he had purchased the property to build a house for his daughter but it failed the test for design and installation of the septic system.

Mr. Narbonne stated the complaint before the Board at this hearing should not be allowed as the settlement of the abatements before the Superior

Court was final. Mr. Narbonne reiterated the Board of Tax and Land Appeals had no jurisdiction to hear this complaint.

The Town's representatives testified there was a revaluation in 1986 and lots in the area of the Robin Road parcel were selling in the \$60,000 to \$70,000 range. The Town representatives acknowledged assessments of many parcels of land were higher than the actual sales prices but noted that Robin Road was 900 feet from the ocean.

The Town's representatives also testified zoning requires any non-conforming lot under 44,000 square feet to be reviewed by the Zoning Board of Adjustment and noted the Zoning Board of Adjustment's grant rate was about 70 percent of applications. The Town officials stated a lot is treated as buildable unless it is proven it is not buildable and noted there was high demand for those types of lots.

Mr. Narbonne stated the appeal was denied by the Selectmen so he opted to further his appeal in Superior Court and planned on arguing it pro se. Mr. Narbonne testified Mr. Nadeau contacted him prior to his court date in hopes of reaching a settlement. Mr. Narbonne stated Mr. Nadeau told him he did not have the authority to make the decision and that the Selectmen would make the decision on the settlement agreement in executive session. Mr. Narbonne testified Mr. Nadeau wrote a letter granting the abatement.

Mr. Narbonne also added he received approvals for the Robin Road property in 1986, after April 1, 1986, and prior to April 1, 1987.

The Board finds the evidence and the record before it indicate the

correct assessment for the subject parcel for the 1987 tax year is \$60,000.

The Board finds the evidence in the record indicates the Department of Revenue Administration correctly recommended an adjustment in the assessed valuation of the subject parcel on Triton Drive. The Board finds the Department of Revenue Administration made its recommendations upon learning of the non-buildable status of the subject parcel. The Board finds the sale price of \$10,000 on October of 1986 in and of itself was not an indicator of the general market place for the Town of Rye. The Board finds the proper assessment for the subject parcel on Triton Drive to be \$27,000.

The Board therefore rules the correct assessments for the subject parcels are: \$60,000 for the subject land at 20 Robin Road, identified as Map 5, Lot 266, and \$27,000 for the parcel at Triton Drive, identified as Map 5, Lot 289. The Board rules it has jurisdiction on this matter and rules:

Complaint dismissed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Chairman

(Mr. Twigg did not sit)

George Twigg, III

Peter J. Donahue

Paul B. Franklin

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and Town of Rye

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I certify that copies of the within decision have been mailed this date,
postage prepaid, to Patrick J. and Helen V. McKeon, the Complainants, to Paul
and Jane Narbonne, the Taxpayers, and to the Chairman, Board of Selectmen,
Town of Rye.

Michele E. LeBrun, Clerk

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