

William W. Zechel

v.

Town of Rye

Docket No. 5114-88

DECISION

A hearing in this appeal was held, as scheduled, on October 26, 1990. The Taxpayer represented himself. The Town was represented by Tom Welch.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessments of \$852,750 placed on Map 15, Lot 93; \$372,050 placed on Map 15, Lot 95; and \$1,291,350 placed on Map 15, Lot 75. The Taxpayer also owns Map 15, Lot 100-1 assessed for \$222,350, which is not being appealed. The subject properties consist of commercial buildings located on the first-named property known as Saunders at Rye Harbor, which consists of an improved property on one side of the road with an approximately 6,600 square-foot restaurant building on approximately 3/4 of an acre of land and a parcel of vacant land on the opposite side of the road, improved with a parking area and a septic system serving the improved restaurant property. The second parcel consists of a parcel of land on Ocean Boulevard with approximately 290 feet of frontage on Ocean Boulevard improved with a restaurant building known as the Pilot House and a 16-unit motel building known as the Rye Harbor Motel. The third property, which is not being appealed, consists of a small residence and shed.

The Taxpayer argued the most important factor to consider in analyzing commercial property was the return on the investment which could be attained.

Mr. Zechel presented an analysis of return on investment for the Saunders at Rye Harbor property and the Pilot House and Rye Harbor Motel property (Taxpayer's Exhibit 1). Mr. Zechel testified that in his opinion the highest sales price which could be attained for the Saunders Restaurant property was \$725,000 and the highest sales price which could be attained for the Pilot House-Rye Harbor Motel property was \$610,000. Mr. Zechel also stated that David E. Gompers of Charter Development Company rendered an opinion that the Saunders property would attain a sales price of \$850,000 and the Pilot House-Rye Harbor Motel property might attain a sales price of \$750,000. Mr. Gompers' opinion (part of Taxpayer's Exhibit 1) did not present any comparable properties to support the opinions of values.

Mr. Zechel testified the two Saunders properties should be treated as one entity due to their integrated use where one could not function without the other.

Under questioning Mr. Zechel described the difficulty that one would encounter in obtaining a change of use for the Saunders property but acknowledged that someone might possibly pay more for the property to put it to another use.

Mr. Zechel also testified about the seasonal fluctuation in business at both Saunders at Rye Harbor and Pilot House restaurants. Mr. Zechel stated in his opinion this impacted the full use of the properties and thus resulted in a reduced attractiveness in the marketplace for the appealed subject properties.

The Town argued that the Taxpayer did not use the market-data approach to valuing the subject properties. Mr. Welch stated most of the sales in Rye used in the revaluation were residential in nature and that the factors, such as value for road frontage, were derived from those types of sales. Mr. Welch further stated this methodology was used uniformly throughout the Town in appraising commercial-type property.

Upon inquiry Mr. Zechel responded that his analysis did not account for appreciation of the real property and its subsequent financial return to the owner-investor. Mr. Zechel also observed that the cost that would be incurred to replace the subject properties would not be justified by the income stream produced by the business activities.

The Board finds the marketplace has undergone some change in the Rye area and that the factors derived from essentially the analysis of residential sales are not completely applicable to property of a commercial nature. The Board also finds the cost to create the improvements could never be justified based on the income to be derived from the operation of those improvements. The Board also finds the two parcels of land comprising the Saunders at Rye Harbor restaurant have unity of use and should be evaluated as inseparable even though they are two separately deeded parcels.

The Board rules the correct assessment for Map 15, Lot 93, and Map 15, Lot 95, should be adjusted to reflect the unity of use and seasonal restriction on full income potential. The Board therefore rules the proper assessment on Map 15, Lot 93, is, land, \$424,550; paving, \$29,250; water and septic, \$1,000, for a total land value of \$454,800, and building total value of \$229,550, for a total assessment of Map 15, Lot 93, of \$684,100. The Board

finds Map 15, Lot 95 should be reduced to adjust for the unity of use with Map 15, Lot 93, to \$255,800.

The Board also rules Map 15, Lot 75, should be adjusted with the land assessed at \$659,200 and the motel building and restaurant building assessed at \$74,050 and \$328,450, respectively, for a total of \$1,061,700. This assessment reflects the overbuilt nature and seasonal-income restrictions on the Pilot House restaurant building as well as the adjustment for the land due to survey.

The Taxpayer did not appeal and the Board finds no change in assessment for the property identified as Map 15, Lot 100-1, which the Board rules is properly assessed at \$222,350.

If the taxes have been paid, the amount paid on the value for all of the Taxpayer's properties in the Town of Rye in excess of \$2,223,950 is to be refunded with interest at 6 percent per annum from date of payment to date of refund.

November 2, 1990

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue

Paul B. Franklin, Acting Chairman

Ignatius MacLellan

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

November 2, 1990

Michele E. LeBrun, Clerk

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AMENDED DECISION

The Board's Decision dated November 2, 1990, in the above referenced appeal, is hereby amended as follows:

Page 3, paragraph 4:

The Board rules the corrected assessment for Map 15, Lot 93, and Map 15,

Lot 95, should be adjusted to reflect the unity of use and seasonal restriction on full income potential. The Board therefore rules the proper assessment on Map 15, Lot 93, is, land, \$424,550; paving, \$29,250; water and septic, \$1,000; for a total land value of \$454,800, and building total value of \$229,550, for a total assessment of Map 15, Lot 93, of \$684,350. The Board finds Map 15, Lot 95, should be reduced to adjust for the unity of use with Map 15, Lot 93, to \$255,800.

Page 4, paragraph 3:

If the taxes have been paid, the amount paid on the value for all of the Taxpayer's properties in the Town of Rye in excess of \$2,224,200 is to be

refunded with interest at 6 percent per annum from date of payment to date of refund.

November 20, 1990

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

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

November 20, 1990

Michele E. LeBrun, Clerk