

William F. O'Brien

v.

Town of Rye

Docket No.: 9444-90PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$329,500 on a vacant, 2.44-acre lot (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property has been used as a parking lot to pay the taxes;
- (2) for-sale signs have been on the Property for ten years and only one \$50,000 offer was made;
- (3) in 1990, the zoning board gave approval for the building of a motel but interfered with the building requirements;
- (4) the Property is adjacent to the rear of the Dunes Motel (restaurant,

snack bar and grocery store) which is a disgrace and a detriment to the Property's value; and

(5) the fair market value of the Property is no more than \$100,000.

The Town argued the assessment was proper because:

(1) a special exception was granted in 1990 with certain restrictions and the potential to build a structure is still there;

(2) the value of the Property was derived based on residential sales;

(3) there is a scarcity of vacant land in the Town of Rye and the subject, if advertised aggressively, could be sold for its equalized value;

(4) the subject's property line is at least 110 feet from the Dunes property;

(5) the Property is within walking distance (700 feet) of the State beach;

(6) the Property is unique with a good location and ocean views; and

(7) the assessment is proper.

Board's Rulings

We find the Taxpayer failed to prove the Property's assessment was disproportional. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Taxpayer stated the Property was adversely affected by the dilapidated rear view of the Dunes Motel; however, the Taxpayer provided no

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market evidence to justify a reduction in value.

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William F. O'Brien, Taxpayer; and Chairman, Selectmen of Rye.

Dated: July 8, 1994

Valerie B. Lanigan, Clerk

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ORDER

This order relates to the "Taxpayers'" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William F. O'Brien, Taxpayer; and Chairman, Selectmen of Rye.

Dated: _____

Valerie B. Lanigan, Clerk

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