

**Mary F. Barnes**

**v.**

**Town of Rye**

**Docket No.: 9590-90PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$131,200 (land \$85,500; buildings \$45,700) on a 9,350 square foot lot with a house (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the land assessment is nearly double the assessment on land owned and located on Brown Court;
- (2) the lot adjacent to the house was lost under the contiguous lot rule and cannot be developed or separately sold;
- (3) the building is 35 years old, lacks a modern bathroom, has no insulation,

a crawl space on cement blocks and has a small heating system and the driveway is shared with the abutter;

(4) in 1990, heavy equipment across the street on the O'Brien property detracted from the value of the Property;

(5) the Property is diagonally across the street from the rear of the Dunes Motel (restaurant, snack bar and grocery store) which is a disgrace and a detriment to the Property's value;

(6) extra sewer costs have been assessed based on a mandatory sewer hookup even though the septic system was more than adequate;

(7) the Property is on the market for \$189,000 including the back lot; and

(8) the proper assessment should be \$120,000.

The Town argued the assessment was proper because:

(1) land and buildings closer to the ocean have a higher dollar value than inland properties;

(2) the Atlantic Ocean is approximately 800-feet from the Property;

(3) the Property is close to 500-feet from the Dunes property;

(4) the back lot was never assessed; and

(5) the Property is on the market for \$189,000 which, when equalized, supports the 1990 assessment.

#### Board's Rulings

Based on the evidence, we find the correct assessment should be \$124,600 (land \$85,500; building \$39,100). This assessment is ordered because the board finds, based on the photographic evidence and testimony as to the condition of the house, that a 15% economic depreciation is warranted on the building. No further adjustments are warranted because 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 that lots were lost due to the contiguous lot rule. The change in zoning occurred in 1987 and the Town properly assessed the Property as one lot in 1990.

The Taxpayer argued that an adjustment should be made to address the unsightly rear of the Dunes Motel but offered no market evidence to justify a reduction in value.

The Taxpayer argued that the taxes had increased. Increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985). The Taxpayer also argued that a sewer fee was assessed but offered no substantive evidence regarding the conditions surrounding the assessment for the board to make any findings.

There was evidence introduced at the hearing that indicated a neighboring property may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on other

properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

If the taxes have been paid, the amount paid on the value in excess of \$124,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

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

Dated: July 5, 1994

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Valerie B. Lanigan, Clerk

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**ORDER**

This order relates to the "Town's" clarification request. The Town is correct in stating that economic depreciation is a loss of value due to forces outside the property which negatively impact value. However, the board's ruling that a 15% depreciation is warranted to the building stands and the board hereby amends page

2 of its July 5, 1994, decision as follows:

"This assessment is ordered because the board finds, based on the photographic evidence and testimony as to the condition of the house, that an additional 15% functional depreciation is warranted on the building."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
George Twigg, III, Chairman

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Michele E. LeBrun, Member

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I hereby certify a copy of the foregoing order has been mailed this date,  
postage prepaid, to Mary F. Barnes, Taxpayer; and the Chairman, Selectmen of Rye.

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Valerie B. Lanigan, Clerk

Date: August 5, 1994

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