

Vincent & Mary DiRago

v.

Town of Rye

Docket No.: 9591-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$196,800 (land \$166,500; buildings \$30,300) on a 15,000 square-foot lot with a house (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers failed to prove the Property was disproportionately assessed.

The Taxpayers 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 lots adjacent to the house were lost under the contiguous lot rule and cannot be developed or separately sold;
- (3) the building assessment is fair as the house lacks insulation, modern wiring with circuit breakers and the kitchen is antiquated;

(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; and

(7) the proper assessment should be \$85,000 - \$90,000.

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 600 feet from the Property;

(3) the Property is close to 300 feet from the Dunes property; and

(4) the Property has 150 feet of road frontage and received a 15% undeveloped adjustment on the entire lot.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers 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 Taxpayers stated that lots were lost due to the contiguous lot rule. Page

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The change in zoning occurred in 1987 and the Town properly assessed the Property as one lot in 1990. The Taxpayers 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 Taxpayers 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 Taxpayers 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 Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' 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.

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;
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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

CERTIFICATION

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

Dated:

Valerie B. Lanigan, Clerk

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