Sherrill B. Ayles

v.

Town of Rye

Docket No.: 11312-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $76,850 (land $45,000; buildings $31,850) on a condominium unit in the Cedar Ledge Condominiums (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 met her burden of proof and proved disproportionality.

The Taxpayer argued the assessment was excessive because the Property faces an abandoned and dilapidated restaurant building surrounded by trash, which has a negative impact on the Property's value and supplied several

photographs showing the view from her unit.

The Town argued the assessment was proper because:
(1) the Town did a study and lowered the condominium assessments throughout the Town, including the Property, to be more in line with market values;
(2) comparable sales indicate the condominium market is increasing and leveling off instead of declining; and
(3) the Property's assessment is well within the range of comparable properties' assessments.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, the board finds the condominium study and consequential reduction in condominium valuations "throughout the Town" did not include the negative neighborhood impact which the derelict "Rye on the Rocks" restaurant creates on the Cedar Lodge Condominium Units facing it.

The board rules an additional -10% adjustment should be applied to unit 10 owned by the appellant. This adjustment should be reviewed by the Town when the offending "Rye on the Rocks" property is upgraded or otherwise rehabitated by its owner.

In yearly arrivals at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The correct 1991 total assessment is therefore ($76,850 x .90), $69,165.

If the taxes have been paid, the amount paid on the value in excess of $69,165 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 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 "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 in 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

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

Dated: June 30, 1994

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Lynn M. Wheeler, Deputy Clerk

Sherrill B. Ayles

v.

Town of Rye

Docket No.: 11312-91PT

ORDER

This order responds to a motion by the "Town" for reconsideration/rehearing in the above captioned matter of a June 30, 1994 decision issued by the board.

The board hereby denies the motion.

The Town's original brief did not include any evidence that the Town's 1990 condominium study included a specific adjustment to the Ayles property for the negative impact of the derelict "Rye on the Rocks" restaurant. The fact that a general adjustment, across the board, was made to condominiums throughout the Town was not enough to recognize the exacerbated diminution in value to the subject unit #10.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

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

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Valerie B. Lanigan, Clerk

Date: August 10, 1994

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