

**Estate of Robert J. Bonin**

**v.**

**Town of Rye**

**Docket No.: 11651-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of \$105,750 on Lot 3, a vacant 5.86-acre lot; and 649,600 (land \$531,350; buildings \$118,250) on Lot 63, a 32,300 square foot lot with a house. The Taxpayer also owns, but did not appeal, another lot in the Town assessed at \$387,200. (An additional lot owned by the Taxpayer under the name of Sleepy Hollow Motel, Inc. is under appeal in BTLA Docket No. 11652-91PT.) For the reasons stated below, the appeal for abatements is granted on Lot 3 and denied on Lot 63.

The Taxpayer has the burden of showing the assessments were 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 their burden and proved disproportionality on Lot 3 and failed to prove Lot 63 was disproportionately assessed.

The Taxpayer argued the assessment on Lot 3 was excessive because:

- (1) the lot abuts the Coakley landfill superfund site (listed among the top 10; and
- (2) the lot was appraised along with the abutting 2.48 acre lot with motel (Docket No. 11652-91PT, Sleepy Hollow Motel, Inc.) for \$250,000 in April 1990, for \$195,000 in September 1991 and a recent offer of \$195,000 for the motel and vacant lot was made by an abutter.

The Town argued the assessment on Lot 3 was proper because:

- (1) the lot was assessed as 3.7 acres and actually contains 5.86 acres, is a separate lot of record, can be separately sold and should be assessed separately;
- (2) the 1991 assessment does not show discounts made for the power line;
- (3) based on the testimony, a 50% reduction to the rear land is appropriate because the rear land will not support a building; and
- (4) a recommended assessment of \$100,000 is appropriate.

The Taxpayer argued the assessment on Lot 63 was excessive because:

- (1) the house was not winterized and its use was as a seasonal property;
- (2) a September 1990 appraisal estimated the value to be \$545,000;
- (3) the Property was sold for \$670,000 in February, 1993; and
- (4) the Property was subsequently sold (July 1993) and the owner raised the building and has built a new home.

The Town argued the assessment on Lot 63 was proper because:

- (1) a neighboring property sold in November 1992 for \$685,000; several other comparables which occurred in 1992 and 1993, when equalized, support the assessment;

- (2) the strength of oceanfront sales is documented by the ratios; and
- (3) the assessment is proper.

### **Board's Rulings**

**Lot 3** - Based on the evidence, we find the proper assessment on Lot 3 to be \$75,600. As stated in the board's decision in Sleepy Hollow Motel, Inc., Docket No. 11652-91PT, the board must consider this lot separately from the Sleepy Hollow Motel because the property is a separate lot of record and can be separately sold. Therefore, this decision deals solely with a determination of the proper assessment on Lot 3.

This lot is sandwiched between the Sleepy Hollow Motel and the Coakley site, has 271 feet of frontage on Lafayette Road of which 100 feet is encumbered by a power line easement and also a large embankment on the property. The Town stated the incorrect acreage was applied in 1991 and the board is basing this decision on the correct acreage of 5.86 acres.

The Town stated that they did not consider the existence of the Coakley site and therefore made no reduction in value for any impact on the value of the lot. As of April 1, 1991, the lot had no water or sewer and testimony established that the water on the abutting motel lot was contaminated and the motel was in the process of securing water from the Town of Hampton. The board concludes the property's location abutting the Coakley site impacts its value. The standard is clear: in arriving at a proper assessment, the board (and the Town) must consider all relevant factors. RSA 75:1 (must consider all evidence relative to property value); Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). There is a simple way to decide when adjustments are warranted. Envision two identical properties, except one property

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(the subject) is in a superfund site and the other is not. Then, ask would the market

pay the same for the subject as for the other property? Certainly, the market would pay less for the subject and therefore some adjustment must be made. To ignore the negative impact of being in a superfund site would require abandonment of judgment and common sense.

Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). Finally, judgment is the touchstone of reaching a value conclusion.

We find the Town's material insufficient to overcome this common-sense approach. Specifically, none of the evidence dealt with properties impacted by the superfund site. Based on the evidence presented and the board's own judgment, the board finds an assessment of \$75,600 is proper. The board has made a 10% topography adjustment for the public service easement and embankment on the lot, a 50% adjustment to the rear land because it will not support a building, and has determined that a 30% economic adjustment to the

lot is appropriate based on its location abutting the superfund site. The board has calculated the assessment as follows:

Figured Front	Avg. Depth	Unit Price	Unit Percent	Front foot Price	Basic Value	Topo. Dep.	Excess Frontage	Undev. Dep.	App. Value
271	400	600	x 100	600	162,600	x .90	x .84	x .82	100,800

Classification	No. of Acres	Unit Price	Basic Value	Topo. Dev.	Size Dep.	Appraised Value
Rear - Good	3.38	5,000	16,900	x .50	x .85	7,200

Subtotal \$108,000  
 $\times .70$   
 Total Assessment \$ 75,600

**Lot 63** - Based on the evidence, the board finds the Taxpayer failed to prove the property was disproportionately assessed. The property sold in February 1993 for \$670,000 (estate sale) and resold in July 1993 for \$750,000. The Department of Revenue Administration (DRA) calculated the equalization ratios for 1991 through 1993 as follows: 1991 - 81%; 1992 - 88%; 1993 - 89%). The DRA ratios indicate that the overall change in the market from April 1991 through April 1993 was -9% or -

the  
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property sold five months later for 11% more indicates the substantial value that this type of ocean-front property has on the market.

Further, the board finds that the Town supported the assessment of this property through the sales evidence presented, specifically comparable sale #1 which had only 70 feet of water-frontage and sold in November 1992 for \$685,000. The subject property has 180 feet of water-frontage which significantly increases its value.

If the taxes have been paid on Lot 3, the amount paid on the value in excess of \$75,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992, 1993 and 1994. 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 thirty (30) 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

stated in the rehearing motion. RSA 541:6.

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 John M. O'Connor of Marvin F. Poer & Co., Agent for the Estate of Robert J. Bonin, Taxpayer; and Chairman, Selectmen of Rye.

Dated: June 22, 1995

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Valerie B. Lanigan, Clerk

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**ORDER & AMENDED DECISION**

This order responds to the Town's rehearing motion which is granted. The board inadvertently neglected to calculate the depth adjustment factor for Lot 3.

The board amends pages 3, 4, 5 and 6 of its decision as follows:

Page 3

"Lot 3 - Based on the evidence, we find the proper assessment on Lot 3 to be \$86,900."

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"...Based on the evidence presented and the board's own judgement, the board finds an assessment of \$86,900 is proper."

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Figured Front	Avg. Depth	Unit Price	Unit Percent	Front foot Price	Basic Value	Topo. Dep.	Excess Frontage	Undev. Dep.	App. Value
271	400	600	x 116	696	188,616	x .90	x .84	x .82	116,950

Classification	No. of A cres	Unit P rice	Basic Value	Topo. Dev.	Size Dep.	Appraised Value  7,200
Rear - Good	3.38	5,000	16,900	x .50	x .85	

Subtotal \$124,150  
x .70  
Total Assessment \$ 86,900 Page 2

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"If the taxes have been paid on Lot 3, the amount paid on the value in excess of \$86,900 shall be refunded with interest at six percent per annum from date paid to refund date.

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 John M. O'Connor of Marvin F. Poer & Co., Agent for the Estate of Robert J. Bonin, Taxpayer; and Chairman, Selectmen of Rye.

Dated: August 9, 1995

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Valerie B. Lanigan, Clerk

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