Peter R. and Kathryn A. Cady

v.

Town of Rye

Docket No.: 12390-91 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 52-:17 and RSA 76:16-a, the "Town's" 1991 assessment of $227,100 (land $128,700; buildings $98,400) on an 8.21-acre lot with a house which includes a Rye Water District (District) precinct tax assessed pursuant to RSA 52:16 (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 201.04(e); 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 that they should be exempt from the precinct tax because:

(1) the District charges for the availability of water and fire protection, a usage fee if on the system and a basic fee for anyone in the District;

(2) an October, 1986 letter from the District restating their policy for determining precinct taxes indicated the tax would be assessed except in "areas where the water mains have not as yet been extended...property more than 600 feet from the last hydrant...";

(3) the Property line is 600 feet from the nearest fire hydrant and is not being served by water; and

(4) given the similar circumstances as the areas outlined in the October, 1986 letter, the Property should be exempt from the precinct tax.

The Town argued the assessment was proper because:

(1) the District has distinguished between areas clearly having no right to hook up to the line and those who are within the main distribution system;

(2) the Property owners have the right to petition to have the line extended;

(3) 600 feet was a somewhat arbitrary distance originally based on the insurance rating; and

(4) fire protection is available to the Property.

Board's Rulings

We find the Taxpayers failed to prove the assessment of the precinct tax was disproportional. Although the Taxpayers are not currently hooked up to the main distribution system, it is available to them upon petition to the District. The Taxpayers' argument that other properties in the district are exempt has merit; however, the District has the authority under RSA 52:16 to

assess the tax and its contention that other areas are exempt because of the significant cost to extend the system to those areas where there is no current distribution is reasonable. Further, fire protection is available to the Property.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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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 Peter R. and Kathryn A. Cady, Taxpayers; and Chairman, Selectmen of Rye.

Dated: August 19, 1993

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0008 Valerie B. Lanigan, Clerk