

**Michael F. Thiel and Gail D. Richard**

**v.**

**Rye Water District**

**Docket No.: 16202-95PU**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 52:17, the "District's" 1995 water tax of \$357.44. The Taxpayers' "Property" is assessed at \$275,900 (land \$76,500; buildings \$199,400) and consists of a 33.05-acre lot with a single-family home. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing they are entitled to relief. See TAX 203.09 (a). Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the Property should be exempt from the District's tax because:

- (1) it is economically unfeasible to connect to the current system which is 2,225 feet from the house and the land is mostly ledge;
- (2) there is no benefit from the Rye Water District fire protection system as the nearest hydrant is 2,634 feet away;
- (3) the Taxpayers maintain and operate their own water system at considerable

expense;

(4) if they were to hook up to a municipal system, it would be the Portsmouth system because it is closer and accessible through less ledgy soil; and

(5) a comparable property (Junkins) received an abatement because it was hooked up to Portsmouth water.

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The Town argued the assessment was proper because:

(1) all taxpayers within the Rye Water District are assessed a precinct tax unless exempted;

(2) properties that do not abut a water main or a hydrant within 600 feet from the property are exempted;

(3) properties connected to the water main pay also based on usage;

(4) it may be expensive to tie in to the system; however, it is available to the Taxpayers;

(5) Rye fire trucks have 2,500 feet of hose and a tanker; and

(6) the Junkins property is not within the Rye Water District.

#### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers should not be exempt from paying the District's tax.

The District is a village district established in accordance with RSA Chapter 52. RSA 52:17 details the abatement and appeal provisions for taxes assessed under RSA Chapter 52.

**52:17 Abatement of Assessments.** The power to abate and correct the assessment of such taxes shall belong to the board authorized to assess them; and aggrieved parties shall have the same remedies for relief as in case of town taxes.

Because RSA 52:17 states the remedy of aggrieved parties is the same as that for town taxes, the board concludes the appeal follows the same timelines and procedures as RSA 76:16 and 16-a for property taxes. Normally under 76:16-a appeals the Property's market value and consequent assessment (RSA 75:1) is the common basis for the appeal. However, in this case, the Taxpayers are not arguing the disproportionality of their assessment but rather the District tax rate should not apply to the Property because of the lack of water supply or fire protection from the District. Therefore, the board's authority to fashion any remedy in this case is contained in RSA 76:16-a I to "make such order thereon as justice requires."

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The board finds that justice does not require exempting the Property from the District tax and thereby placing that tax on the balance of all other property owners within the District. The board finds the Property does receive some benefits from being located in the water District even though the dwelling on the Property is located a significant distance from the water main and the fire hydrant on Brackett Road.

First, the District testified that individual property owner's insurance rates within the District are determined on a community-wide basis based on the general level of service provided by the District. Therefore, the Taxpayers inherently benefit to that extent by being located within the boundaries of the District.

Second, the Taxpayers argued that fire protection for their dwelling would be very minimal due to the nearest District hydrant being 2,634 feet

from the Taxpayers' house. They further argued that because that distance exceeded the total length of 4 inch hose contained on the Rye Fire Department's trucks, the Rye Fire Department would not be able to effectively combat a fire if one were to occur. While there is no question that any fire department's ability to contain a fire at the Taxpayers' house would not be as good compared to dwellings located closer to the road and a fire hydrant, the existence of the hydrant does provide the fire department with a source of water which can be relayed through trucks and hoses to reach the Taxpayers' house. The Taxpayers made a point that only 2,500 feet of 4 inch hose existed on the three trucks of the Rye Fire Department. However, the fire trucks also have smaller dimensional hose which is used to attack a fire using water from either the truck's tank or water received through the larger hoses.

Consequently, the fire department has the capability, by relaying water from the hydrant through 4 inch lines and then through the smaller hoses, to provide fire protection to the Property. Certainly, the Taxpayers' narrow driveway is an issue that makes the logistics of laying hose and relaying water more difficult. However, such long drives are not uncommon

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in New Hampshire and is a situation that fire departments are generally aware of and specifically train for. In short, the board finds the fire hydrant certainly provides a greater level of fire protection for the Taxpayers' Property than if it weren't there.

Lastly, the availability of public drinking water for the Property, notwithstanding the high cost of connecting to it, does provide some benefit to the Property. While the Taxpayers presently are able to obtain adequate

water for domestic uses from their own well (after treatment for salinity), public water is at least available in the future if the Taxpayers' well, for any reason, no longer produced adequate quantity or quality of water. The board notes the estimated cost to connect of \$27,000 to \$35,000, while certainly significant, is of a similar magnitude as septic systems on difficult sites. Therefore, connection is not totally economically unreasonable if it ever becomes a necessity. Further, the possibility that the Taxpayers could connect to the Portsmouth Water Department's system for less money and a closer distance (after obtaining a private easement and permission from the City of Portsmouth), does not negate the inherent right that the Taxpayers have to connect to the Rye Water District.

In summary, the board finds that for the reasons stated above the District does provide the Property with access to drinking water and fire protection. To exempt the Property from paying the District's water tax would be unfair to all other District property owners including, we might note, all vacant lot owners who have no present need for potable water and minimal need for fire protection and yet pay the District tax.

Lastly, the board notes for the record that there is a question whether the statutes or caselaw provide any basis for the board to abate the District tax even if it had found that justice required it. First, RSA 72:6 states "all real estate ... shall be taxed except as otherwise provided." There exists no statute exempting certain properties due to lack of use of public services. Second, RSA 76:16 provides that taxes be abated "for good cause

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shown." The supreme court has held that "good cause" for an abatement maybe limited to "disproportionate assessment [and] inability to pay." Barksdale v.

Town of Epsom, 136 N.H. 511, 515 (1992). However, because the board has found that justice does not require abating the tax, it need not answer this question in this case. The board raises it simply as a question in the event an appeal is taken.

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 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 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael F. Thiel and Gail D. Richard, Taxpayers; Chairman, Selectmen of Rye; and Commissioner, Rye Water District.

Date: February 21, 1997

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Valerie B. Lanigan, Clerk

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