Richard H. Nolin and Sharon E. Nolin
v.
Town of Pembroke

Docket No. 3615-87

DECISION

A hearing in this appeal was held, as scheduled, on July 19, 1989. The Taxpayers were not represented. The Town was represented by Donald W. Dollard, Assessor.

The Taxpayers appeal, pursuant to RSA 79-A:10 and RSA 76:16-a, the land use change tax of $3,621 (land only) imposed on their 2.31 acre lot (Map 258, Lot 1-1) as of September 24, 1987. The land use change tax was imposed pursuant to RSA 79-A:7.

The Taxpayers, by letter, argued they were overassessed based on the road condition, lack of services and topographical problems.

The Town stated home sites were selling for a minimum of $40,000 in 1987 and that the Town depreciated that figure 5% for topographical problems and 10% for the status of the dirt road on September 24, 1987. The Town stated that the property was now improved by a dwelling and the purchase price of $15,000 in 1987 involved family and was not an arms length transaction. The Town argued services were only relevant to the extent they affected market value.

The Board rules as follows.

The Taxpayers' appeal is based on RSA 79-A:7, I which states:

> Land which has been classified as open space land on or after April 1, 1974 pursuant to this chapter shall be subject to a land use change tax when it is changed to a use which does not qualify for open space assessment. Notwithstanding provisions of RSA 75:1, said tax shall be at the rate of 10 percent of the full and true value determined without regard to the open

space assessed value of the land changed to other than open space use or any equalized value factor used by the municipality in which the land is located. Notwithstanding the provisions of RSA 76:2, such assessed value shall be determined as of the actual date of the change in land use if such date is not April first. This tax shall be in addition to the annual real estate tax imposed upon such property, and shall be due and payable upon the change in land use. Nothing in this paragraph shall be construed to require payment of an additional land use change tax when the use is changed from one non-qualifying use to another non-qualifying use.

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board finds as follows. The change in use occurred on September 24, 1987. The subject property was a buildable lot and had a market value of $36,212 on September 24, 1987. The $15,000 sale of the subject property involved family and is not evidence of market value.

The Board therefore rules the Taxpayers have failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in excess of the Taxpayers' just share of the common tax burden. The ruling is therefore: Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_ Anne S. Richmond, Esquire, Chairman

_ George Twigg, III, Member

Richard H. Nolin and Sharon E. Nolin v. Town of Pembroke

_ Peter J. Donahue, Member

_ Paul B. Franklin, Member

Date:

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Richard H. & Sharon E. Nolin, taxpayers; and the Chairman, Selectmen of Pembroke.

_ Michele E. LeBrun, Clerk

Date:

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