

**Paul A. O'Neal and Lorraine E. O'Neal**

**v.**

**Town of Deerfield**

**Docket No. 3732-87**

**DECISION**

A hearing in this appeal was held, as scheduled, on March 16, 1989. The Taxpayers were represented by Paul A. O'Neal. The Town was not represented.

The Taxpayer appeals pursuant to RSA 79-A:10 the current use change tax of \$6,000 based on the true value of \$60,000 of three acres of the Taxpayer's property on Old Center Road assessed as of July 18, 1987.

The Taxpayer testified that he felt he was overassessed and presented as evidence eight current use change tax bills with assessments ranging from a low of \$945 to a high of \$35,000 and covering a time period of March, 1984 to September, 1987.

The Taxpayer testified that three acres of the total 22 acres in this parcel (Map 8, Lot 11) were being assessed the current use change tax due to the construction of a dwelling and accessory buildings. The Taxpayer described the land as all being open field sloping down from the road with a southerly exposure. The Taxpayer testified that the land drops approximately 100' in elevation over the 680' distance from the road to rear line. The slope is such that in the building of the garage, eight feet of fill was needed over its 28' length to bring the site up to grade. The Taxpayer admitted the site afforded a good view and that the neighbors directly across the road were quiet, - they being a cemetery. The Taxpayer submitted four photographs of the site and neighborhood to support his description.

Paul A. O'Neal and Lorraine E. O'Neal v. Town of Deerfield

Upon questioning, the Taxpayer testified that five to seven acre lots in Deerfield were selling for about \$25,000, but that they were all wooded with no view but also not needing much fill. He further testified that he had sold, in 1986, nine lots at one time in a "bulk sale" for \$25,000 each. He testified that he knew of several "flat field lots" nearby that were listed for \$50,000, but that only one had sold in 1988 for an unknown price. He stated that while the views from these lots were not as good as his land, the land was easier to build on. The Taxpayer also read three listings in a local newspaper as of January 30, 1988, that generally described lots of three to 13 acres in size listing for \$39,900 to \$79,900.

The Taxpayer submitted a hand-drawn map of the land with dimensions of the "yards and grounds" associated with the new buildings.

In regard to the Taxpayers allegation that he is over assessed, the Board rules as follows.

The Taxpayers appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same . . . .

The Board finds that the eight current use change tax assessments as presented do not necessarily support the Taxpayers contention of overassessment as very minimal testimony was given as to how those parcels might compare to the O'Neal's land and as there is the possibility that some of the parcels may have been under assessed.

"The fact that the assessment method underassesses some properties and overassesses others does not relieve the present Taxpayers of their obligation to pay their fair share of taxes." Appeal of Michael D. Cannata, Jr. 129 N.H. 399 402.

Paul A. O'Neal and Lorraine E. O'Neal v. Town of Deerfield

The Board rules that the area subject to the change tax is not the minimum lot size of the zoning ordinance but rather the area physically changed in the development and day to day use of the property. The Board finds based on testimony and evidence of the Taxpayer that the area changed more closely approximates one and a half acres rather than three acres.

The Board finds that while the Taxpayer failed to prove that the \$60,000 assessment for three acres was excessive, the full value needs to be adjusted to reflect a lot size of one and a half acres. Lacking any specific testimony as to the market value of lots of this size, the Board finds, based on the "4-3-2-1 rule" of land valuation, (which essentially recognizes the first 25 percent of the area of a lot as contributing 40 percent of its value, the second 25 percent of the area of a lot as contributing 30 percent, etc.) the \$60,000 value should be adjusted by a 70 percent factor.

As a result, the Board finds the proper market value as of July 18, 1987, is \$60,000 x .70 = \$42,000.

If the current use change tax has been paid, the amount in excess of \$4,200 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Chairman Anne S. Richmond, Esquire,

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(Mr. Twigg did not sit.)  
George Twigg, III, Member

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Peter J. Donahue, Member

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Paul B. Franklin, Member

Date: March 28, 1989

Paul A. O'Neal and Lorraine E. O'Neal v. Town of Deerfield

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Paul A. & Lorraine E. O'Neal, taxpayers; and the Chairman, Selectmen of Deerfield.

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Michele E. LeBrun, Clerk

Date: March 28, 1989

0009