

Eber Currier and Trudy Currier

v.

Town of Merrimack

Docket No. 4207-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:10 and RSA 76:16-a, the "Town's" July 1988 assessment of \$7,000 land use change tax (the Tax) pursuant to RSA 79-A:10 on a 1.75-acre lot (the Property). The Taxpayers asserted the Town's opinion of full-market value (\$70,000) on which the Tax was based was excessive. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the tax was excessive. See RSA 79-A:10; RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved the Tax was excessive because the Town's opinion of full value was excessive.

As an initial issue, the board finds the change in use occurred in April 1987 when the Taxpayers first began actual physical work on the Property. See RSA 79-A:7 I; Dana Patterson, Inc. v. Town of Merrimack, 130 N.H. 353, 356 (1988).

The Taxpayers testified that as of April 1987, the following work had been done on the property: 1) hammer head; 2) drainage culvert; 3) extended water line; and 4) timber cut part of the property. Clearly, the Taxpayers' actions in 1987 triggered the tax.

The Criteria for Current Use Classification Part One, IV, A (1987)

stated:

IV. CHANGE IN LAND USE

A. What Constitutes Change in Use: (Reference RSA 79-A:7, IV)

1. When actual construction begins.
2. Building of a road, (roads for agricultural, recreational, watershed or forestry purposes are exempt).
3. Installation of sewer, water, or electrical utilities.
4. Excavating or grading for future construction.
5. Excavation of topsoil, gravel or minerals, other than for use per RSA 79-A:7, IV (b).

The Taxpayers argued the change occurred in 1986 when they performed test pits and obtained state septic approval. To find so would be contrary to REV. 1204.06 (1987), which stated:

Test pits to determine whether or not the land would be suitable for building; to detect the presence of water sources; or to identify the mineral content of the land shall not cause the land to be disqualified from current use.

The Town's position, that the change did not occur until final subdivision approval was obtained, is also contrary to the law. See Dana Patterson, Inc., 130 N.H. at 355-56. Having concluded the change occurred in April 1987, we turn now to the question of value.

The Taxpayers argued the Town's opinion of full value was excessive because of:

- (1) the considerable costs for off-site and on-site improvements;
- (2) the wetlands area of the Property;
- (3) the Property's proximity to an orchard with all the fears of

pesticide pollution;

- (4) the Property's location on a class VI road; and
- (5) the liability assumed on the extended class VI road.

The Town argued its opinion of full value was proper because sales data demonstrated that buildable lots were selling for \$60,000 to \$70,000 regardless of what improvements and inconveniences existed.

Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Marshall Valuation Service, Section 1, Page 3, March (1989). 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).

Based on the evidence, we find the correct full-value assessment as of April 1987 to be \$39,000, resulting in a tax of \$3,900. This full-value figure is based on the board's opinion that the market would consider the issues raised by the Taxpayers, especially the improvement costs to create a truly buildable lot and the Property's problems and limitations would be considered.

If the tax was paid, the amount paid on the value in excess of \$39,000 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

May 2, 1991

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to Eber and Trudy Currier, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Merrimack.

Michele E. LeBrun, Clerk

May 3, 1991

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