

James Falconer and Doris Falconer

v.

Town of Kensington

Docket No. 4480-88

DECISION

A hearing in this appeal was held, as scheduled, on February 16, 1990. The Taxpayers were not represented. The Town was represented by Gary J. Roberge, Town Appraiser, and Alice MacKinnon, Town Appraiser.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$118,500 (land, \$61,600, buildings, \$56,900) placed on their real estate, located at 14 Moulton Ridge Road (Map 11, Lot 42), for the 1988 tax year.

The Taxpayers challenge the assessment of their above-ground pool, arguing it is not a structure; i.e., real property.

The Town argued the above-ground pool was realty and therefore taxable.

The Town argued the Taxpayers' pool was realty based on RSA 21:21 and real-estate literature. The literature cited referred to everything as attached to the earth as being real estate; improvements were defined as relatively permanent structures located on or attached to the land; fixtures were defined as former personalty that has been installed on or attached to the land or building in a rather permanent manner. The Town argued the subject pool was an improvement or a fixture, noting that (1) moving it would cause damage, (2) it was adapted to the real estate and enhanced the utility of the real estate, and (3) its permanence. The Town stated it had set standards for determining

if an above-ground pool was personalty or realty, these standards were uniformly applied, and the subject property came well within the standards for realty.

The Board rules as follows.

RSA 72.6 states: "**Real Estate.** All real estate, whether improved or unimproved, shall be taxed except as otherwise provided."

RSA 21:21 states:

- I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.
- II. Manufactured housing as defined by RSA 674:31 shall be included in the term "real estate."

Where the exclusive use of improvements is "intimately intertwined with the primary use of the land itself" the improvements are taxable, whether directly attached to the land or not. See King Ridge, Inc. v. Sutton, 115 N.H. 294, 299 (1975), Lin-wood Dev. Corp. v. Lincoln, 117 N.H. 709, 710-711, (1977).

"When property is appraised, all factors relevant to its value should be considered, Paras v. Portsmouth, 115 N.H. at 67-68, 335 A.2d at 308, including special architectural features and equipment. Although it may be difficult to estimate, the special features and equipment have some market value. "[T]o hold there is no market value . . . would mean that valuable property would entirely escape its just share of the burden of taxation." Public Service Co. v. New Hampton, 101 N.H. 142, 146, 136 A.2d 591, 595 (1957). 90 Realty Co., Ltd. v. City of Keene, 122 N.H. 284, 286 (1982).

The Board finds as follows. The subject pool is 572 square feet in area. It required site preparation for installation. The pool's base is

below ground level. The pool is partially surrounded by a permanent wooden

deck and stairs. Pools of this type normally remain in the ground year round and are normally sold with the real estate on which they are located.

Based on these facts the Board rules the subject property is taxable real estate under the statutory definitions, the New Hampshire Supreme Court's definitions, and the real-estate definitions set forth by the Town.

The Board therefore rules the Taxpayers have filed 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

March 8, 1990

Anne S. Richmond, Chairman

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within decision have been mailed this date, postage prepaid, to James and Doris Falconer, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Kensington.

March 8, 1990

Michele E. LeBrun, Clerk