

**Marston Construction Co., Inc.**

**v.**

**Town of Merrimack**

**Docket No.: 5750-89**

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the "Town's" assessment of an RSA 79-A:7 land-use-change tax totaling \$21,720 for four parcels identified as follows:

<u>Tax Map Identification</u>	<u>Acreage</u>	<u>Assessed Value</u>	<u>Land Use Change Tax</u>
Parcel 3B/A	2.78	\$ 60,000	\$ 6,000
Part of 3B/155-5-3	1.47	\$ 37,200	\$ 3,720
Parcel 3B/155-5-2	2.39	\$ 60,000	\$ 6,000
Parcel 3B/155-5-1	3.45	\$ 60,000	\$ 6,000

At the initiation of the hearing, the Taxpayer stated their appeal focused only on Lot 3 and Lot A.

The Town stated that it had been their understanding that the appeal was for not only the four lots listed in the appeal, but for additional land owned by the Taxpayer adjacent to the four lots that also had been assessed a land-use-change tax.

The board then recessed to give the parties an opportunity to clarify the appeal and to settle the appeal. The parties returned from the recess and

stated they had stipulated to the following: (1) that Lot 3 and Lot A as of the date of change were not buildable and that the Town had therefore overassessed the Property; and (2) an abatement totaling \$4,000 was warranted to reflect both the overassessment of these two lots and any accrued interest.

Board's Rulings

Therefore, the board orders an abatement of \$4,000 in line with the parties stipulations.

The board would note that this appeal could very likely have been settled had the Town acknowledged and focused on the Taxpayer's contentions. The Taxpayer's petition for abatement of land-use-change tax filed with the board with a certified copy to the Town Assessor clearly focuses the appeal to only Lot 3 and part of Lot A and clearly states the sole basis for the appeal is the building status of those lots. The Town should have reviewed this petition and, seeing the simplicity of the dispute, attempted to resolve this with the Taxpayer. Instead, the Town apparently did not communicate with the Taxpayer and proceeded to prepare its case on the misplaced assumption that the Taxpayer was appealing all the properties for which the land-use-change tax had been assessed.

The board finds the Town's lack of diligence was wasteful of the Taxpayer's time, the board's time and, indeed, the Town's own time and resources. Therefore, the board would entertain any motion from the Taxpayer for costs.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Andrew C. Bauer, Jr., Esq., Representative for the Taxpayer; Jay L. Hodes, Esq., Town's Representative; and Office of the Assessor of Merrimack.

Dated: February 25, 1993

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Valerie B. Lanigan, Clerk

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