

Estate of Edna G. Wilcox

v.

Town of Greenland

Docket No. 6050-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10 the "Town's" assessment of an RSA 79-A:7 land-use-change tax of \$7,000, which was assessed with a August 1988 change-of-use date.

The Taxpayer has the burden of showing the Tax was improperly assessed. See RSA 79-A:10; RSA 76:16-a; TAX 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985). We find the Taxpayer carried this burden. The facts are as follows.

The "Property" consists of a 6.3 acres of which 4.92 acres +/- were in current use and 1.38 acres +/- were not in current use. The Property was originally part of a larger tract that was divided when the highway was put in.

Despite not being 10 or more acres, the Property, being part of a larger tract was entitled to current-use classification. See REV. 1201.07, 1201.02. The Property was conveyed in August 1988, losing its current-use status since it was not 10 acres on its own. See REV. 1203.02 (a)(1). The Town fully valued the current-use land at \$70,000, resulting in a \$7,000 tax.

The Taxpayer argued the Tax was excessive because:

1. The entire 6-acre parcel with improvements was assessed for \$230,000 in 1988;
2. The Property sold in August 1988 for \$175,000, the price based on a December 1987 appraisal; and
3. The Town erred by treating the 4.92 acres as a separate lot when it was part of the 6.3-acre lot and thus was not subdivided and could not be conveyed

without subdivision approval.

The Town argued the Tax was correct because:

1. The Tax was correctly figured treating the 4.92 acres as a separate lot and not as part of the 6.3-acre lot;
2. The 4.92 acres was assessed as if one lot with back land when the 4.9 acres could have been valued as 2 lots since the 4.92 acres could be subdivided into 2 lots; and
3. The value arrived at was based on the 1988 assessment with adjustments made as deemed appropriate.

RSA 79-A:7 states, "the tax shall be *** 10 percent of the full and true value ***" of the land. Numerous cases have interpreted this language, and many have been reviewed in making this decision. E.g., Appeal of Sawmill Brook Development Co., 129 N.H. 410 (1987); Appeal of Town of Hollis, 126 N.H. 230 (1985). The clear mandate is to value the property at its highest and best use with due consideration for all factors that affect the property's value on the change date. Appeal of Sawmill Brook Development Co., 129 N.H. at 412; Appeal of Town of Hollis, 126 N.H. at 234. So, while the Town was correct in valuing the 4.92 acres as a separate lot, it could not be blind to the lack of subdivision approval as of the change date. Therefore, an adjustment of 15% is warranted. Additionally, a 10% adjustment should have been made for the utility right-of-way since it affected the frontage of the 4.92 acres.

To what base value should these adjustments be made? We do not adopt the Town's value because no documents were presented explaining how the \$70,000 was calculated. Similarly, we do not adopt the Taxpayer's value because the Taxpayer's appraisal was not an appraisal of the 4.92 acres but rather was an appraisal for the entire 6.3 acres with improvements. The appraisal does, however, support the conclusion that a lot would sell for at least \$60,000.

The board has determined the 4.92 acres' value as of August 1988 is \$66,588 calculated as follows:

basic site	60,000 square feet	\$66,600
additional land	3.54 acres	\$20,443
adjustment for subdivision		x .85
adjustment for easement		<u>x .90</u>
TOTAL		\$66,588

Therefore, the Tax should have been \$6,659. If the Tax has been paid, the amount paid in excess of \$ 6,659 shall be refunded to the Taxpayer with interest at six percent per annum from the date paid to the rate refunded.

SO ORDERED.
BOARD OF TAX AND LAND APPEALS

Paul Franklin, Member

Ignatius MacLellan, Esq., Member

Date: October 16, 1991

I certify that copies of the within Decision have been mailed this date, postage prepaid, to David Sanderson, Esq., counsel for the Estate of Edna G. Wilcox, taxpayer; and the Chairman, Selectmen of Greenland.

Brenda Tibbetts, Clerk

Date: October 16, 1991

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