

Ronald Witley and Thaddeus Rurak and Lynne Rurak

v.

Town of Atkinson

Docket No. 6706-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:10 and 76:16-a, the "Town's" 1989 assessment of the following land use change tax: 2/10/86 (bill dated 12/22/89) Witley \$5,260 and 2/10/86 (bill dated 12/22/89) Rurak \$7,740; Total \$13,000. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See 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 they were disproportionally taxed.

The Taxpayers argued the assessment was excessive because Mr. Witley took 200" of road frontage from an ad valorem portion of the property (approx. .5 acres) in order to subdivide the 7.24 acres in the rear current use portion. Mr. Witley sold the entire 7.74 acres to the Ruraks and agreed to pay the land use change tax assessed. Mr. Rurak, after a two year wait, obtained a variance from the Town to build a house on the former current use land. The Taxpayers testified the selling price for 7.74 acres was \$65,000. They were told the Town figured the land use change tax based on an estimated value of \$10,000 per acre. The Taxpayers testified they allocated \$25,000 of the \$65,000 purchase price for the land in current use and \$40,000 for 200" of road frontage (average depth 200") from land assessed ad valorem (necessary to satisfy zoning requirements for a legal [buildable] lot).

The Town was not represented. Atkinson was revalued in 1989 by Avitar. According to the property assessment card, \$4,000 per acre was attributed to rear acreage on the subject parcel in 1989.

Based on the evidence we find the correct assessment should be:

Witley

(5.76 acres in current use x \$4,000 = \$23,040 x .10 = \$2,300 (rounded)

These acres have value only as supplemental land to an existing homesite since there is only enough road frontage for one lot.

Rurak

The best evidence available as to the market value of the 7.24 with the potential to build is the sale of the 7.74 acre parcel for \$65,000 or \$8,398 per acre.

(7.74 acres total - .5 acres not in current use = 7.24 acres in current use. \$60,800 x .85 = \$51,700 x .10 = \$5,170 rounded.)

Total correct assessment (L.U.C.T.) \$2,300 + \$5,170 = \$7,470 rounded.

This assessment is ordered because the Rurak lot is mostly wetland, with one building site, obtained after two years of negotiation with the local planning and zoning adjustment boards. (They had to get 67" setback from brook approved.) The frontage of the former lot was assessed as if in current use.

If the taxes have been paid, the amount paid on the value in excess of \$7,470 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Mr. Ronald Witley and Thaddeus & Lynne Rurak, taxpayers; and the Chairman, Selectmen of Atkinson.

Melanie J. Ekstrom, Deputy Clerk

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ORDER TO SHOW CAUSE

At a January 3, 1992 hearing in Ronald L. Witley, Thaddeus Rurak and Lynne Rurak v. Town of Atkinson, Docket No. 6706-89, the board discovered that a map, as required by RSA 79-A:5 II and rules Rev. 1202.01(d), describing the land to be placed in current use had never been filed by the Taxpayer to date.

Since the document is critical in the determination of any subsequent land use change tax once land is granted current use assessment, and since it is the board's general experience that such maps have frequently not been submitted by taxpayers or required by the municipality during the application process, the board orders, pursuant to RSA 71-B:16 II and RSA 71-B:5 I, the Town to appear before the board on Tuesday, April 21, 1992, at 10:00 a.m. to show cause why the board should not order the Town to review its current use files and to obtain, from property owners whose land is current use, maps where ones do not presently or adequately exist.

At the hearing the Town shall inform the board of:

- 1) the number of parcels in current use; and
- 2) the number of parcels for which no map describing the land in current use exists.

The Town of Atkinson is ordered to post copies of this order in two public places in the Town and in a paper of general circulation upon receipt of this order.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Twigg III, Chairman

George

Franklin, Member

Paul B.

Michele E. LeBrun,

Member

I certify that copies of the within Order have been mailed this date, postage prepaid, to Ronald Witley and Thaddeus and Lynne Rurak, Taxpayers; and Chairman, Selectmen of Atkinson.

Melanie J. Ekstrom, Deputy Clerk

Date: February 19, 1992

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