

Island Woodlands, Inc.

v.

Town of Chesterfield

Docket No. 8111-90

DECISION

This is an appeal by the Taxpayer, pursuant to RSA 79-A:10, from the Town of Chesterfield's (Town) assessment of a land use change tax on three lots and a portion of a fourth lot, all part of a six-lot subdivision on Route 63. Lot 6, not at issue in this case, consists of 26.09 acres and was sold by the Taxpayer on January 26, 1990. The remaining five lots ranged in size from 2.51 acres to 3.4 acres with each having slightly more than 200 feet of frontage on Route 63.

The parties stipulated that the land use change tax was triggered by the sale of Lot 2 on March 15, 1990, causing there to be less than 10 acres in contiguous ownership by the Taxpayer. The parties further agreed that all of Lot 2 and 1.34 acres of Lot 3 were not subject to the current use lien.

The Town's initial assessments were:

Lot 1	\$ 65,000
Lot 3	65,200
Lot 4	65,300
Lot 5	67,700

Total \$263,200

The Town subsequently abated \$34,850 for the 1.34 acres not subject to the current use lien on Lot 3, reducing the total assessment to \$228,350, and thus the land use change tax to \$22,835.

Taxpayer's arguments:

1) Bruce Treat, President of Island Woodlands, Inc., submitted a list of 72 sales in the Town of Chesterfield that occurred six months before and after March 15, 1990. He argued the median sale price of the 15 most comparable properties indicates a proper market value for the lots of \$40,000 each;

2) Mr. Treat testified that Lot 2, improved with a barn and herdsman apartment, sold for \$90,000 on March 15, 1990. Lots 1, 3, 4, and 5 sold either at auction or to abutters in 1991 for \$31,000 to \$35,000. He further testified that the company was under financial pressure to liquidate the property and that the prices paid were substantially below the asking prices; and

3) Mr. Treat further testified the market had declined from 1989 to March 1990, and thus the Town's reliance on the values established during the revaluation as of April 1, 1989, was in error.

Town's Arguments:

1) The Town stated the assessments were based upon the base values established during the 1989 revaluation, but it did not feel the market values for this type of property had substantially declined from 1989 to 1990.

2) The lots in question are all in an open field with expansive views into the state of Vermont.

3) The lots are most comparable to lots that sold in a development known as Chesterfield Heights, having similar good views. Lots in Chesterfield Heights were generally smaller (1 - 2 acres) and sold from \$52,500 to \$60,000.

Board Rulings:

The Board rules the proper assessments are as follows:

Lot 1	\$ 50,000
Lot 3	24,000
Lot 4	50,000
Lot 5	50,000
Total	\$174,000

This assessment is ordered because:

1) while the lots do have excellent views and are of open rolling terrain, they are not situated in as close proximity to Keene as the Chesterfield Heights lots;

2) the sales of the subject lots in 1991 are not a conclusive indication of their market value as they occurred under financial duress;

3) the real estate market in Chesterfield did decline from 1989 to 1990, as indicated by the six percent change between the equalized ratios for the two years; and

4) averaging sales, as done by the Taxpayer, is not a conclusive method of establishing market value since averaging ignores the unique characteristics of properties. Rather, analyzing, comparing, and weighing sales data and then correlating the most pertinent aspects of the sales to the subject property arrives at the best indication of market value.

Lastly, the Board would note that assessing is not a precise science; rather it is the general weighing of the available evidence with the scale of experience.

"Given all the imponderables in the valuation process, '[j]udgement is the touchstone.'" Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977).

"It has been said that 'the search for "fair market value" is a snipe hunt carried on at midnight on a moonless landscape.'" Fusegni v. Portsmouth Housing Auth., 114 N.H. 207, 211 (1974) (quoting Bigham, "Fair Market Value", "Just Compensation", and the Constitution: A Critical View, Vand. L. Rev. 63, 90 (1970)).

Therefore, the proper land use change tax is \$17,400. If the taxes have been paid, the amount paid in excess of \$17,400 shall be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg III, Chairman

Paul Franklin

Michele E. LeBrun

I certify that copies of the within decision have been mailed this date, postage prepaid, to Bruce C. Treat, President, Island Woodlands, Inc., and to the Chairman, Board of Selectmen of Town of Chesterfield.

February 7, 1992

Melanie J. Ekstrom, Deputy Clerk

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