

**Keyes Hill Road Realty Trust
George C. Charest, Trustee**

v.

Town of Pelham

Docket No. 8460-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10 and RSA 76:16-a, the "Town's" June, 1990, assessment of an \$8,000 RSA 79-A:10 land-use-change tax (the Tax) on a portion (1.75 acres) of the Taxpayer's land (total of 15 acres). The Taxpayer did not challenge the imposition of the Tax, but the Taxpayer asserted the \$80,000 full-value assessment, upon which the Tax was based, was excessive. For the reasons stated below, the appeal is granted.

Facts

The Taxpayer purchased the unimproved, 15-acre tract for \$185,000 in July, 1989. After purchase, the Taxpayer began to develop the property for his home, performing significant site work and fill for a driveway approximately 375-feet long, costing \$13,800. The Town valued the 1.75-acre parcel at \$80,000 with an October, 1989, change-of-use date. The Taxpayer argued the value should have been closer to \$60,000.

In addition to the general issue of the parcel's value, the parties disagreed about whether the driveway costs should be considered in determining the parcel's basic value. The Town argued the Taxpayer's driveway costs were excessive and were not necessary and thus should not be considered. Basically, the Town said the driveway was installed not just to serve the parcel, but to also serve lots to be subdivided from the remaining land. The Town argued a much less expensive driveway could have been located elsewhere to serve the house lot.

The Taxpayer argued that the driveway costs should be considered because the work was necessary to the use of the parcel for a house lot.

This issue raises two questions: 1) was the driveway located where it was super improvement?; and 2) was the driveway, as built, a super improvement? These are related but distinct issues because the Town argues the location resulted in higher than needed costs. If the location was appropriate, the Town argued the driveway was built to accommodate more than just the single house. The board finds that all but 20% of the driveway costs should be considered. The board has reached this conclusion because the Taxpayer's placement of the driveway was the logical place to put the driveway and may have been the only place permitted by the state. First, while we attempt to look at the parcel as if it was a separate lot, the parcel was and is part of a larger lot, and anyone who owned the lot would have located the driveway as the Taxpayer did. Second, and more importantly, the property is on a state road, requiring a state driveway permit. In granting driveway permits, the state considers such factors as curve and line of sight. Here the northerly frontage is on a curve while the southerly frontage is on a straight-a-way. The department of transportation would probably not have permitted a driveway in the northerly location. The driveway permit authorized the driveway to be built where it was built.

Eight percent of the costs will be considered because the board accepted the Taxpayer's testimony that the costs were necessary given the topography and given the need for shoulders. However, the Taxpayer did improve the driveway because it did not run the driveway right to the house. Instead, the driveway goes around the house, and this was an overimprovement. Twenty percent was chosen because most of the fill and grading occurred near the road, not near the house. (We note that if the Taxpayer subdivides another lot, the value attributable to having ready access, if that is the case, would be reflected in the Tax imposed on the new lot(s) that would have a higher value than if there was no ready access.)

We must now decide what the parcel's basic value was in October, 1989. The Town stated \$75,000, and the Taxpayer stated approximately \$60,000 (or less) range. The Taxpayer asserted the lower range was more accurate since the

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comparable(s) were located in subdivisions with paved roads and required less site work.

After reviewing the Taxpayer's and the Town's comparables, giving great weight to the Town's sales analysis of the Taxpayer's and the Town's comparables, the board finds the basic lot, before adjustment for the driveway and site work, was \$75,000. From this, the board deducts the only evidence on the driveway and site work costs of \$13,800 reduced by 20 percent because the market would not have considered building the driveway "loop" as the Taxpayer's did. This results in a reduction of \$11,040 and a full-value assessment of \$63,960 (\$75,000 - \$11,040).

Therefore, the Tax should have been \$6,396. If the Tax has been paid, the amount paid grater than \$6,396 shall be refunded with six percent interest from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Mr. George Charest, trustee of Keyes Hill Road Realty Trust, taxpayer; and the Chairman, Selectmen of Pelham.

Melanie J. Ekstrom, Deputy Clerk

Date: February 6, 1992

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