

James S. Fernald

v.

Town of Nottingham

Docket No.: 11022-91 LC

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 land-use-change tax (LUCT) assessments as follows:

- 1) \$21,000 on Lot 23-4, a vacant, 2.64-acre lot;
- 2) \$21,000 on Lot 23-7, a vacant, 2.19-acre lot; and
- 3) \$21,000 on Lot 23-8, a vacant, 2.05-acre lot (the Properties).

For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden.

The Taxpayer argued the assessments were excessive because:

- (1) lots in the same subdivision sold at a public auction June, 1991 for \$13,000;
- (2) the fair market value of each lot, based on these sales, is \$13,000

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(3) the lots were listed prior to the auction with a realtor for \$20,000 to \$23,000;

(4) the Taxpayers held the auction to raise some money to fund the construction of a road in the subdivision;

(5) the lots were extensively advertised and four lots were offered for absolute sale at the auction with a \$3,500 minimum deposit required and the Taxpayer financing the balance;

(6) six lots in the subdivision sold prior to the auction in 1989 at \$23,000 to \$24,000; and

(7) presently one lot is under contract for \$23,000 with the Taxpayer (grantor) holding the entire mortgage at 0% interest on demand.

The Town argued the assessments were proper because:

(1) the subdivision has close access to Rte 152 via South Summer Rd;

(2) the Town's 1991 equalization ratio, as determined by the Department of Revenue Administration, is 100% and the assessed values of the lots for property tax purposes are all in excess of the market value assessed for the LUCT; and

(3) the Town reviewed vacant lot sales in the 1991 market time period and concluded the average sale price inclusive of auction sales was \$24,000 and exclusive of auction sales was \$27,000.

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The sole issue in this case is; are auction sales that occur within the same subdivision arms-lengths transactions and proper benchmarks from which determine the market value for assessing the land-use-change tax assessment.

The basis for assessing a land-use-change tax is contained in RSA 79-A:7 which in part reads "Notwithstanding the provisions of RSA 75:1, the tax shall be at a rate of 10% of the full and true value..." Full and true value or market value is commonly defined as stated in Property Appraisal and Administration, The International Association of Assessing Officers, copyright 1990, page 80:

"market value is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market and arms-length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which the property is adapted and for which it is capable of being used."

Based on the facts of this specific case, the board finds that the auction sales do not meet the test of arms-length sales and thus are not proper indications of market value for the following reasons:

- 1) prior to the auction in 1989 6 lots in the subdivision sold for approximately \$23,000 each;
- 2) at present another lot within the subdivision is under contract for sale for \$23,000 with the Taxpayer (grantor) holding the mortgage at 0% interest on demand (while the 0% interest note held by the Taxpayer does indicate that the \$23,000 contract price may be in excess of true market value, it does not

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account for the difference in market value as claimed by the Taxpayer;

3) the Taxpayer stated that the auction was held to liquidate four lots so as to obtain necessary funds to complete a road in the subdivision to facilitate

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the marketing of the subdivision; this indicates the Taxpayer was under some duress to sell the lots within a short period of time;

4) the auctioneer, Paul McGinnis, had partnership interest in the Property and this fact could have affected the consideration;

5) the auctioneer reserved the right, as is with the case of most auctions, to change the conditions of the sale as advertised on the day of the sale; this reservation enters an element of uncertainty surrounding the auction that can in some cases have a chilling effect on the consideration or on the number of potential purchasers at the auction; and

6) the Town presented evidence of other vacant lots selling in town for a price greater than the auction prices.

For the reasons stated above the board finds the auction sales did not meet the qualifications of an arms-length transaction and therefore, are not reflective of market value.

The board finds the Town's value of \$21,000 is reasonable based on the market evidence submitted by the Town and based upon the less than arms-length nature of the auction sales presented by the Taxpayer.

We find the Taxpayer failed to prove the Properties' assessments were disproportional. We also find the Town supported the Properties' assessments.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Earl L. Kalil, Jr., Esq., attorney for James S. Fernald, Taxpayer; and Chairman, Selectmen of Nottingham.

Dated: July 27, 1993

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Valerie B. Lanigan, Clerk