

Peter and Marjorie J. Richter

v.

Town of Nottingham

Docket No.: 11281-91 LC

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 land-use-change tax (LUCT) assessment of \$27,000 on Lot 23, a vacant, 2.62-acre lot (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

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

Further arguments were made in a related case (James S. Fernald v. Town of Nottingham, Docket No. 11022-91LC) which was consolidated for hearing purposes with the Richter case. Therefore, the board takes official notice of

the following arguments made by the Taxpayer in the Fernald case:

- (1) the lots were listed prior to the auction with a realtor for \$20,000 to \$23,000, but none were sold prior to the auction;
- (2) Fernald held the auction to raise some money to fund the construction of a road in the subdivision;
- (3) 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 grantor financing the balance;
- (4) six lots in the subdivision sold prior to the auction in 1989 at \$23,000 to \$24,000; and
- (5) presently one lot is under contract for \$23,000 with the grantor holding the entire mortgage at 0% interest on demand.

The Town argued the assessment was 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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Board's Rulings

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 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 are not arms-lengths sales and thus are not proper indications of market value for the following reasons:

- 1) prior to the auction in 1989, six lots in the subdivision sold for approximately \$23,000 each;

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- 2) at present another lot within the subdivision is under contract for sale for \$23,000 with the grantor holding the mortgage at 0% interest on demand (while the 0% interest note held by the grantor does indicate that the \$23,000 contract price may be in excess of true market value, it does not account for the difference as claimed by the Taxpayer in market value);
- 3) the auction was held to liquidate four lots so as to obtain necessary funds to complete a road in the subdivision to facilitate the marketing of the subdivision; this indicates the grantor 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 reserves 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 greater price 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.

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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 Taxpayers.

We find the Taxpayers failed to prove the Property's LUCT assessment was disproportional. We also find the Town supported the Property's LUCT assessment.

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 Peter and Marjorie J. Richter, Taxpayers; and Chairman, Selectmen of Nottingham.

Dated: August 17, 1993

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Valerie B. Lanigan, Clerk