

Anthony Turchin
v.
Town of Tilton

Docket No. 3611-87
(Rehearing)

DECISION

A rehearing in this appeal was held, as scheduled, on September 6, 1988. The Taxpayer was present and was represented by Leonard M. Drucker, Esquire. The Town was represented by James W. Dodge, Selectman; John L. McCarthy, Selectman; Robert J. MacInnis, Selectman; Betty J. Pierce, Administrative Assistant; Charles W. Chandler, Esquire; and Paul J. Doucette, a real estate appraiser.

The rehearing was held per the Board's Order granting a motion for rehearing from the Taxpayer to hear evidence from either party as to what physical changes triggered the land use change tax and when they occurred. The rehearing was held to determine the question of the proper date for the change in use and the market value on that date.

The Taxpayer argued the date of change was in 1980 and the market value at the time of change was \$10,000.

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The Town argued the proper date of change of use was March 21, 1986, as determined by state police aerial photographs. The Town argued the market value was 10 - 15 percent less than \$340,000 for a range of \$306,000 down to \$289,000.

The Taxpayer argued the best evidence of change of use was a cherry tree growing through the body of an old Studebaker truck located on the subject property. The Taxpayer presented evidence (Taxpayers Exhibit 1), a section of said cherry tree, and argued the number of rings in that section would prove the minimum length of time the Studebaker truck had been on the subject premises. The Taxpayer testified the subject property was last reassessed at least 10 years ago and also testified he did not know when the "merchandise" was first placed on the subject Lot 26-10.

Selectman Dodge testified for the Town the state police photographs taken on March 21, 1988, (Town's Exhibits A-1 - A-6) show materials spread out throughout the subject property.

Selectman MacCarthy testified he concurred with Selectman Dodge as a result as having walked the perimeter and zig zagging through the property in April, 1987. Selectman MacCarthy also testified he saw color photographs taken in 1986 and concurred that date was the closest he could substantiate the change in use.

Mr. Doucette testified the market value of the subject property in April, 1987, was \$340,000 and the market value in March, 1986, would be 10 - 15 percent less. Mr. Doucette testified further the subject property was an

existing non-conforming use as a commercial property. Mr. Doucette also testified if there was hazardous waste on the subject property the removal and subsequent sale of

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the material on the subject property might cover the cost of both the removal of the hazardous material and other material. Mr. Doucette also testified there would be no value if hazardous material on the site met the worst case scenario.

The Board finds the date of change of use of the subject property was March 21, 1986, which date is supported by the first credible and concrete evidence of change in use. The Board finds the market value on the date of change in use not encumbered by hazardous waste or other material to be \$297,500. The Board also finds the subject property encumbered by potential hazardous waste and other scrap materials to the extent that the subject property is subject to 75 percent depreciation in its market value.

The Board therefore rules the value on the date of change in use is \$74,375 and the land use change tax is \$7,437.50.

If the land use change tax has been paid, the amount paid in excess of \$7,437.50 is to be refunded with interest at six percent per annum from the date of payment to the date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

(Concurred, unavailable for signature.)

Anne S. Richmond, Esq., Chairman

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(Mr. Twigg did not sit.)

George Twigg, III, Member

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Raymond J. Damour, Member

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Peter J. Donahue, Member

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Date: December 9, 1988

I certify that copies of the within Decision have this date been paid, postage prepaid, to Leonard M. Drucker, Esquire, counsel for Anthony Turchin, taxpayer; and the Chairman, Selectmen of Tilton.

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Michele E. LeBrun, Clerk

Date: December 9, 1988

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