Sugarbush, Inc.

v.

Town of Loudon

Docket No.: 6455-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the following land-use-change tax assessments (the Tax): Lot 50 - $4,662; and Lot 51 - $4,000. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the Tax was excessive. The Taxpayer argued the Tax was excessive because the Town's full-value assessments that were used to assess the Tax were excessive given the sales prices on the Properties and given the 1989 sales prices on 2-5 acres in the "Town." The Taxpayer also argued the financing it provided increased the sales prices above market value.

The Town argued the Tax was proper because it was based on the equalized assessment with an approximate 10% reduction.

The board finds the Tax was excessive. The correct Tax should be:
Lot 50 - $2,900 (on a $29,900 1988 full value); and
Lot 51 - $3,490 (on a $34,900 1988 full value). The parties' evidence of value consisted of the following:

(1)the Town's equalized assessment with an adjustment of approximately 10%;

(2)the Taxpayer's 1988 sales prices; and

(3)the Taxpayer's statement that 2-5 acre lots were selling for an average of $27,670.

We reject number 3 because the sales survey was not submitted, and thus, it could not be reviewed. Therefore, we are left with numbers 2 and 3. The Taxpayer testified the Properties were sold to third parties after being exposed to the market for a sufficient period -- Lot 50 - $29,900, and Lot 51 - $34,900.

We reject the Town's full-value assessments because they were based solely on the assessment divided by the equalization ratio with an adjustment. The Town did not submit any 1988 sales data to support its full-value assessments. RSA 79-A:7 requires that the full-value assessment be at "full and true value" based on the market. See RSA 79-A:7 I. Moreover, RSA 79-A:7 III authorizes the use of an assessment only if the municipality does not have market data on which to base the assessment. The evidence suggests market data was available and thus, should have been used. These sales are the best evidence before the board and shall be used in assessing the Tax. We reject the Taxpayer's argument that these prices were above market value. More evidence would have been required to support such a finding. Admittedly, a sales price is not conclusive as to a property's market value, but here there was no other evidence.

Any Tax paid in excess of the following -- Lot 50 - $2,900, and Lot 51 -

$3,490 -- shall be refunded with 6% interest from the date paid to the refund date.

Findings of Fact and Rulings of Law

Facts:
1. Granted
2. Granted
3. Granted
4. Denied
5. Granted
6. Granted
7. Granted
8. Granted
9. Granted
10. Granted
11. Granted
12. Granted
13. Neither Granted nor Denied
14. Neither Granted nor Denied
15. Granted
16. Denied
17. Denied

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Edwinna C. Vanderzanden, Esq., Representative for the Taxpayer; and Chairman, Selectmen of Loudon.

Dated: July 20, 1992

Valerie B. Lanigan, Clerk