Brian D. and Maureen A. Kenyon

v.

Town of Brentwood

Docket No.: 10916-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:10, the 1991 $5,100 land-use-change-tax (LUCT) assessed on 5.4 acres of unimproved land (the Property) that was disqualified from current use on May 24, 1991. The Taxpayers did not challenge the imposition of the tax; they did, however, challenge the amount of the tax. The Town failed to appear, but consistent with our Rule, TAX 102.03(g), the Town was not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the LUCT assessment was excessive. We find the Taxpayers carried this burden.

The Taxpayers argued the LUCT was excessive because:

(1) the site that could be developed was over 600 feet from the road due to the wetness of the front portion of the lot;

(2) the cost of constructing the driveway and installing the utilities would have reduced what a purchaser would have paid for the lot;

(3) an appraisal done for the Taxpayers in June 1993 estimated the lot value at $35,000; and

(4) the Town's comparables generally are of lots having better and more accessible land

The Town did not submit anything to support the LUCT.

Board's Rulings

Based on the evidence, we find the correct LUCT should be $3,072

This assessment is ordered because:

The LUCT apparently was based on the lot's full-value assessment as shown on the property-record card. However, the full-value assessment ($51,200 used by the Town, $51,100 on the card) was an improved-land assessment. When the LUCT was due, the Property was not improved, and the full-value assessment should have been based on an unimproved-land value. To account for the required sitework, the board reduced the $51,200 base by 40%, resulting in a $30,720 full-value assessment and a $3,072 LUCT. This reduction is consistent with the Taxpayers' testimony concerning development problems and costs, especially the wet areas, of the installation of utilities and the long driveway.

If the LUCT has been paid, the amount paid on the value in excess of $3,072 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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 Brian and Maureen Kenyon, Taxpayers; and Chairman, Board of Selectmen, Town of Brentwood.

Dated: July 27, 1993

0008

Valerie B. Lanigan, Clerk