

Bruce D. and Mary Feltus

v.

Town of Jaffrey

Docket No.: 11491-91 LC

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:10, the "Town's" March 29, 1991 land-use-change tax (LUCT) of \$4,600 on 8.319 acres (the Property). The Taxpayers challenged the amount of the tax, not the imposition of it. 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 Property no longer qualified for current use when Lot 1, a 3.459 acre parcel, was sold to Jackson in March, 1991 for \$45,000 and the Town arrived at a current use assessment of \$30,000 for Lot 1;
- (2) the Property has only 51.2 feet of frontage on Howard Hill Road and frontage on Carey Road, a Class VI road;
- (3) the shape of the lot, topography, and zoning regulations preclude the Property from being developed into more than 1 lot;
- (4) the Property was sold in April, 1992 for \$30,000; and
- (5) the fair market value as of March, 1991 is \$35,000.

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The Town argued the LUCT was proper because:

- (1) the original assessment of \$55,000 was abated to \$46,000 and was arrived at by assigning a site value of \$25,000 and a rear acreage value of \$3,000 per acre; and
- (2) comparable current use property transfers support the assessment.

Board's Rulings

Based on the evidence, we find the correct LUCT assessment should be \$35,000 with a resulting LUCT of \$3,500. This assessment is ordered for the following reasons:

(1) The board finds the highest and best use of the Property to be development as a single site due to its topography, wetland area and zoning, and the development costs relative to accessing the site;

(2) The original offer of \$35,000 and its subsequent sale for \$30,000 in 1992, is some evidence of the Property's fair market value. Although it could be argued that this was a distressed sale, the lack of a realtor's fee is an offsetting factor to the duress; and

(3) The comparable sales data submitted by the Town supports the board's finding of a fair market value of \$35,000.

If the LUCT has been paid, the amount paid on the value in excess of \$35,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bruce D. and Mary Feltus, Taxpayers; and Chairman, Selectmen of Jaffrey.

Dated: 8/17/93

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Valerie B. Lanigan, Clerk