

Joseph F. Fitzgerald

v.

Town of North Hampton

Docket No.: 12350-91LC

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the "Town's" September 26, 1991 land-use-change tax (LUCT) of \$6,000 on a vacant, 2-acre lot (the Property). The LUCT was based on a \$60,000, full-value assessment. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the LUCT assessment was erroneous or excessive. TAX 205.07. We find the Taxpayer failed to prove the assessment was erroneous or excessive.

The Taxpayer argued the LUCT was erroneous or excessive because:

- (1) the Town's full-value estimate was erroneous;
 - (2) a September 1991 appraisal estimated the Property's full value at \$20,000;
- and
- (3) the Property lacked utilities (electric, water, sewer, phone) and lacked Town services.

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The Town submitted a report, the contents of which will not be restated here. The thrust of the Town's argument was that the full-value assessment was consistent with the market data. Moreover, the Town argued the proper full-value assessment should have been \$70,000, which would have resulted in a \$7,000 LUCT.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to carry his burden of proof. The foundation of the Taxpayer's position was the \$20,000 appraisal. The board, however, was unable to place any weight on that appraisal for several reasons. First, the document was not actually an appraisal but rather was an abbreviated analysis. Additionally, the Taxpayer apparently gave the appraiser instructions about which properties to analyze rather than the appraiser making an independent determination about what properties to use in the analysis. Second, the appraiser relied heavily on the category C properties, which were located in Penniston Woods. Such reliance was incorrect because the sales prices for the Penniston Woods properties were not based on lot sales but were based on the purchase of eight lots totalling 16 acres for \$276,000. Further, the Taxpayer was unaware about whether the Penniston Woods lots had been legally subdivided as of the sale date. Additionally, the category C Penniston Woods lots lacked frontage while the Property had road frontage. The Taxpayer's appraiser, however, did not make any adjustment to the comparables to bring them up to the level of the Property. Overall, the board found the appraisal to lack serious analysis,

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and thus, the board has not relied upon the appraisal. Having rejected the Taxpayer's appraisal, there was insufficient evidence remaining to find the Taxpayer had carried his burden. While the Taxpayer was correct to point out that the Property lacked utilities and that \$4,500 was required to bring electric and telephone service to the lot, the Taxpayer failed to show what the basic lot value was to which an adjustment might have been made for the lack of utilities.

In terms of the Town's request for a \$70,000 full-value assessment, the board denies that request. While the Town's comparable vacant land sales supported the appealed full-value assessment, those sales do not necessarily support increasing the full-value assessment. Specifically, the Town should have done a sales comparison grid, making adjustments for the varying attributes, including the lack of electrical and telephone services to the Property. Overall, the board did not find the Town's request for a \$70,000 full-value assessment persuasive.

As stated above, we find the Taxpayer failed to prove the Property's LUCT was erroneous or excessive.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs

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clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

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 Joseph F. Fitzgerald, Taxpayer; and Chairman, Selectmen of North Hampton.

Dated: March 15, 1994

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Valerie B. Lanigan, Clerk