

**Edgar R. and Beverly J. Crete**

**v.**

**City of Concord**

**Docket No.: 12552-91 LC**

DECISION

The "Taxpayers" appeal, pursuant to RSA 79:A-10, the "City's" September 3, 1991 land-use-change-tax (LUCT) assessment of \$73,500 on a vacant, 5.20-acre lot at 291 Mountain Road (the Property), which resulted in a \$7,350 LUCT. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the traffic noise from I-93 negatively affects the value of the lot;
- (2) a May, 1992 appraisal of the Property, after improvements, estimated the site value at \$30,000; and
- (3) the Property has a high-seasonal-water table.

The City argued the assessment was proper because:

- (1) an appraisal conducted by the City assessing department, as of the September 3, 1991 change date, estimated the value of the unimproved lot at \$73,500;
- (2) the comparables in the appraisal were adjusted for location, utilities, view, size and time;
- (3) the Taxpayers' comparable sales indicating sale prices from \$37,000 to \$55,000 are not comparable due to different zoning, inferior locations, inferior views or being abutter sales;
- (4) the Taxpayers' appraisal was done in 1992 for financing purposes and no adjustments were made for the Property's view; and
- (5) the noise from I-93 is noticeable, but not obtrusive.

**Board's Rulings**

Based on the evidence, we find the correct LUCT assessment should be \$66,150. This assessment is ordered because:

- (1) the proximity of the lot to I-93 and the attendant traffic noise is a factor that would affect value. See Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (all relevant factors affecting value should be considered);
- (2) the City's comparables were not located near or affected by I-93 and, thus, should have been adjusted for that factor; and
- (3) the board finds a -10% adjustment for the I-93 traffic noise is reasonable.

No further reduction is warranted because:

- (1) the Taxpayers' appraisal did not contain market data relative to the value of the lot as vacant, only as subsequently improved;

(2) the Taxpayers' appraisal did not account for the view from the Property;  
and

(3) the City adequately rebutted the list of sales submitted in a letter from  
TMB Appraisal Associates to the Taxpayers' attorney.

If the LUCT has been paid, the amount paid in excess of \$6,615 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

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this  
date, postage prepaid, to Edgar R. and Beverly J. Crete, Taxpayers; and  
Chairman, City of Concord Board of Assessors.

Dated: July 27, 1993

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Valerie B. Lanigan, Clerk