

Danielle M. Harrington

v.

Town of Francestown

Docket No.: 12670-91 LC

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 land-use-change tax (LUCT) assessment of \$25,000 on Lot 31-1, a five-acre lot (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the LUCT assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a) and 205.07; Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to meet the burden of proof.

The undisputed facts in this case are summarized as follows:

- (1) on February 10, 1992, a 15.71 acre parcel (parcel 31), owned by Marguerite Bourgeois, was purchased by the Taxpayer subject to current use;
- (2) Marguerite Bourgeois also owned three other parcels, parcel 31-1 (5.0 +/- acres) which abuts parcel 31 to the south, parcel 95 (6.0 +/- acres) which is divided from parcels 31 and 31-1 by Red House Road and parcel 79 which abuts parcel 31 to the north;

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(3) on March 26, 1992, the Taxpayer purchased parcel 31-1, 45 days after having purchased parcel 30; and

(4) a provision of the purchase and sales agreement between Marguerite Bourgeois and the Taxpayer required the Taxpayer be liable for any LUCT.

The Taxpayer argued the LUCT should not have been assessed because:

(1) the Taxpayer had spoken with a Town official prior to purchasing parcel 31-1 and had been told that there would be no LUCT assessed;

(2) only 45 days occurred between the transfer of parcel 31 and 31-1;

(3) since the transfers occurred within one tax year, it is not consistent with the purpose of the current-use statutes to assess a LUCT where there has been no diminishing of open space; and

(4) parcel 95 and parcel 31-1 are across Red House Road from each other and thus would qualify as contiguous land as defined in REV. 1201.02 and would thus allow the parcel to continue with its current-use assessment as the combined acreage of the two parcels exceeds 10 acres.

The Town argued the LUCT assessment was proper because:

(1) no statement had been made by any selectman that a LUCT would not be assessed;

(2) any misrepresentation by the Town's administrative assistant would not be binding on the Selectmen's authority to assess the LUCT;

(3) there are no provisions under the current rules that allow a "grace

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period" for transfers of abutting property to occur and not have the LUCT assessed if one of the parcels does not qualify for current use; and

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(4) parcels 95 and 31-1 are not directly across the road from each other; they are offset approximately 200 feet on opposite sides of the road and thus did not meet the contiguous land definition in REV. 1201.02.

Board's Rulings

Estoppel

The board rules that the Town was not estopped from assessing the LUCT because:

- (1) the Taxpayers did not establish that the estoppel elements as set forth in City of Concord v. Tompkins, 124 N.H. 463 (1984) had been met;
- (2) the material facts are not at issue here, rather it is a legal question of whether a LUCT should be assessed; and
- (3) the individual making the statement to the Taxpayer apparently did not have the assessing authority. See Id. at page 468.

Contiguous Land

The board rules that parcel 95 and 31-1 are not contiguous land as defined by REV. 1201.02 which reads: "(c)ontiguous land means a tract of land which is connected, disregarding whether or not it is divided by a highway, railbed, or the boundary of a political subdivision." Parcels 95 and 31-1 are not directly opposite each other on either side of Red House Road, rather they are offset by several hundred feet. The board rules some portion of the parcels must be directly opposite each other to qualify as contiguous land.

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Timing of Transfers

The board finds no current use rule which excludes parcel 31-1 from being assessed an LUCT when it became nonqualifying by having less than 10 acres due to the transfer of the intervening parcel 31.

The legislature and RSA 79-A:4 gave the current use advisory board authority to determine the criteria and acreage requirements for land to qualify for current use. The current use advisory board addresses the issue

of when land is subject to a LUCT in REV. 1203.02 which reads as follows: REV. 1203.02 When Is Land Changed. Land under current use

classification shall be considered changed and the use change tax imposed when a physical change takes place to the land, which is contrary to the requirements of the category under which the land is classified, such as but not limited to the following:

(a) Change in acreage.

(1) If a parcel of land is sold or transferred to another owner and no longer meets the minimum or other acreage requirements as described in the category in which the land is classified, that land shall be considered changed and the use change tax assessed, with the exception of contiguous land, as described in REV. 1201.01 as follows:

a. If a parcel of current use land is sold and is less than the minimum acreage but is contiguous to land owned by the purchaser who advises the local assessing officials, in writing within 60 days from the date of the sale, of an intent to file for current use on the entire parcel, the use change tax shall not be imposed at the time of the sale.

b. If the purchaser does not file an application as provided in REV.1020, on or before the next April 15th, the use change tax shall be imposed as of the date on which the sale or change in use occurred.

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- (2) If a parcel of land is sold or transferred to another owner and still meets the minimum or other acreage requirements as described in the category in which the land is classified, the encumbrance shall remain with the land.

REV. 1203.02 (1) a. allows land to be placed in current use if it is less than the minimum acreage and has been purchased by an individual who desires to put it in current use and so notifies the selectmen of that intent within 60 days of the sale. However, the current use advisory board has not promulgated a rule that would address the situation in this case. Even if one were to argue that an exclusion parallel to REV. 1203.02 (1) a. should apply, the Taxpayer stated they had no intent to purchase parcel 31-a at the time of their purchase of parcel 31. Consequently neither the Taxpayer, the owner nor the assessors would have envisioned on February 10, 1992 (the date that parcel 31 was purchased and severed parcel 31-1 from other formally contiguous current use land) that parcel 31-1 would shortly again become contiguous to other current use land and in the future be eligible for current use assessment.

Since the legislature has given broad authority to the current use advisory board, this board does not feel it has adequate jurisdiction to substitute itself for the current use advisory board in allowing such an exclusion.

For the reasons stated above, we find the Taxpayer failed to prove the

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Property LUCT assessment was improper.

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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 Silas Little, Esq., attorney for Danielle M. Harrington, Taxpayer; and Chairman, Selectmen of Frankestown.

Dated: September 28, 1993

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Valerie B. Lanigan, Clerk