

Raymond E. and Josephine Reed

v.

Town of Rumney

Docket No.: 13777-93LC

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:10, the "Town's" August 9, 1993 land-use-change tax (LUCT) of \$483.50 imposed on .1 acre (the Property) of a 55.7-acre lot. The LUCT was based on a \$4,835 full-value assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the Town's LUCT assessment was erroneous or excessive. Tax 205.07. We find the Taxpayers carried this burden.

The Taxpayers argued the LUCT was erroneous or excessive because:

- (1) the actual acreage that should have been removed was .056 acre (A sketch was submitted.);
- (2) the full-value assessment was excessive based on the limited market data and one assessment on another lot;
- (3) the Town's highest-and-best-use determination was incorrect;
- (4) the Property is too small to support any type of residential structure;
- (5) the access to the Property is via a steep Class VI road; and

(6) the Property was only worth \$500, and thus the LUCT should have only been \$50.

The Taxpayers also requested reimbursement of costs.

The Town argued the LUCT was proper because:

- (1) Colburn Road only encompasses the cleared portion of the roadway, and thus, the Taxpayers erred in assuming part of the cleared area was in the right-of-way;
- (2) the Taxpayers cleared an area of 75 feet by 50 feet; and
- (3) the highest and best use was as a site for a pole barn and parking area.

The Town testified about ten points of disagreement with the Taxpayers' report.

BOARD'S RULINGS

Based on the evidence, the board finds the correct LUCT is \$160, which is based on a \$1,600 full-value assessment.

Neither party presented the board with conclusive evidence concerning the value of the Property. Therefore, the board, in reliance upon RSA 79-A:7 III, has based the decision on:

- (1) the equalized assessment from the Property's assessment card, see RSA 79-A:7 III; and
- (2) the contributory value the Property had to the Taxpayers' land across Colburn Road.

Equalized Assessment

RSA 79-A:7 states as follows.

- III. Whenever land of nonuniform value shall be subject to the land use change tax under this section, or whenever the full value assessment for the land subject to the tax shall not be readily available then the local assessing officials shall assess the RSA 75:1 full value of such land and the land use change tax shall be paid upon such assessed value.

The equalized assessment of the Property was \$1,450 calculated as follows: fair rear acre \$2,500/acre x .70 (DRA adjustment)* = \$1,750 ÷ 1.21 (DRA equalization ratio) = \$1,450 (rounded).

* On the assessment card there was a .35 adjustment. The .35 adjustment included a size and a quality adjustment. Because we are dealing with only quality once the acre is removed, only a quality adjustment was used here.

Contributory Value

An alternative way to value the Property would be to calculate its contributory value to the Taxpayers' Property that is across Colburn Road. This calculation is as follows: \$18,600 (appraised value for 200 x 200 site) x 1.10 (to adjust to per-acre value) = \$20,460/acre x .1 acre = \$2,046 ÷ 1.21 = \$1,690.

Based on the above, we have selected a \$1,600 value, resulting in a \$160 LUCT.

The parties spent considerable time arguing about whether the Town should have removed .1 acre from current use (the Town's position) or .056 (the Taxpayers' position). The board concludes the precise measurement of the Property is not essential to deciding this case. However, the Taxpayers did not carry their burden to show the Town erred in its calculation of the

disqualified area, especially given the questions concerning the location and ownership of the right-of-way.

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The Taxpayers also requested reimbursement from the Town for the costs incurred in this appeal. This request is denied because the Taxpayers did not show that the Town acted in such a manner as to justify the awarding of costs.

Refund

If the LUCT has been paid, the Town shall refund any LUCT in excess of \$160 with 6% interest from date the LUCT was paid to the refund date.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 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

Ignatius MacLellan, Esq., Member

Hon. Arthur Bean, Temporary Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Glen C. Smith, Agent for Raymond E. and Josephine Reed, Taxpayers; and Chairman, Selectmen of Rumney.

Dated: March 10, 1995

Valerie B. Lanigan, Clerk

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