

Morgan Ryan Enterprises

v.

Town of Epping

Docket No.: 15908-95LC

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the "Town's" April, 1995 land-use-change tax (LUCT) assessments on the following properties.

Lot No.	LUCT Amount	LUCT Date	Change Date	Description
127	\$ 57.50	4/14/95	12/15/94	2.15-acre lot
127-1	\$ 3,980.00	4/07/95	12/15/94	2.10-acre lot
127-2	\$ 3,960.00	4/07/95	12/15/94	2.00-acre lot
127-3	\$ 4,180.00	4/07/95	12/15/94	3.01-acre lot

The Taxpayer appeared at the hearing.

The Municipality, however, did not appear, but consistent with board rule TAX 202.06(h), the Municipality was not defaulted. This decision is based on the evidence presented to the board.

For the reasons stated below, the appeal for abatements is granted.

The Taxpayer has the burden of showing the Town's LUCT assessments were

erroneous or excessive. TAX 205.07. We find the Taxpayer carried this burden.

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The Taxpayer argued the LUCT assessments were erroneous or excessive because:

- (1) the entire parcel was originally thought to be 18 acres, and in 1976, all but six acres were placed in current use;
- (2) in November 1994 (the survey completion date) it was discovered that the total acreage was 9.26 acres not 18 acres;
- (3) the Town assessed the LUCT on 9.26 acres when the LUCT should have only been assessed on 3.26 acres (9.26 total acres minus 6 acres that was never in current use); and
- (4) the total LUCT for the 3.26 acres should have been approximately \$3,300.

While the Town did not appear, the Taxpayer provided a copy of Paul Brown's memorandum to the Town Administrator. This document was marked as Taxpayer Exhibit 2 and outlined the Town's positions.

#### **Board's Rulings**

Based on the evidence, the board finds the proper LUCT to be \$3,300, which is based on a finding that the 3.26 acres had a value of approximately \$33,000 on November 1994.

The board concludes November 1994 was the date of change because that is

when the survey was completed, which revealed that the total acreage was not 18 acres but was only 9.26 acres. Because the total parcel did not contain the 10-acre minimum, it no longer qualified for current use. However, in 1976 6 acres were never placed in current use, and these acres had, since 1976, been assessed at ad valorem values. Therefore, the just result is to assess the LUCT on only 3.26 acres. The evidence from both the Town and the Taxpayer pointed to a value of approximately \$33,000 for this acreage, resulting in a \$3,300 LUCT.

The Town was in error to assess a LUCT against the four subdivided lots for two reasons. First, 6 acres were never in current use, and therefore, some of the land encompassed by the subdivided lots was not in current use.

Second, as of November 1994, the Property had not yet received subdivision  
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approval. The subdivision plan had been preliminarily presented to the Town, but the subdivision approval was not obtained until February 1995. Therefore, the LUCT should have been assessed against an unsubdivided 3.26 acres.

If the LUCT has been paid, the amount paid on the value in excess of \$3,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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 in 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kevin Hatch, Agent for Morgan Ryan Enterprises, Taxpayer; and Chairman, Selectmen of Epping.

Dated: February 13, 1997

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Valerie B. Lanigan, Clerk