Keith Lazzaro

v.

Town of Sullivan

Docket No.: 16631-96LC

DECISION

The "Taxpayer" appeals, pursuant to RSA 79:A-10, the "Town's" July 26, 1996 land-use-change tax (LUCT) assessment of $3,130 on Map 5, Lot 55 (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the LUCT assessment was erroneous or excessive. See TAX 205.07. The Taxpayer carried this burden.

The Taxpayer argued the LUCT assessment was erroneous because:

(1) if due, the LUCT should have been assessed earlier and not to the Taxpayer;

(2) under RSA 79-A:7 II (a) (supp. 1996), the Town was required to bill the LUCT no later than 12 months after the change in use;

(3) in approximately 1980, the Town was aware of the lot-size issue; and

(4) equity warrants nonassessment.

The Town argued the LUCT assessment was proper because:

(1) the Town discovered the acreage discrepancy;

(2) the Town requested a survey, but the Taxpayer has not provided one; and (3) based on the above, the Town concluded the Property should not be allowed current use.

Board's Rulings

Based on the evidence and the arguments, the board finds the Taxpayer proved the Town erred in disqualifying the Property from current use and in assessing the LUCT.

As testified to by the Town selectmen, the Town's official documents show the Property has 11.3 acres. The current-use application shows that 10 acres of the Property was placed into current use and 1.3 was not placed in current use. The selectmen testified that it is the Town's policy not to change the official Town documents unless the Town receives sufficient evidence such as a survey. In this case, the Property has not been surveyed by a licensed land surveyor. Rather, the Property was surveyed by the predecessor's son who surveyed the Property using a 50-foot tape measure, sticks and then his mathematic skills to calculate the acreage. The board does not consider this sufficient to replace the official town records in this case. Therefore, the board finds the Property should be assessed with 10 acres in current use and 1.3 acres not in current use.

Additionally, one of the Clark sketches of the Property calculated the Property to have approximately 10.564 acres. Assuming, without deciding, that the Property consists of 10.564 acres, the Taxpayer should have been given an

opportunity to determine whether the 1.3 acres of not-in-current-use land could be reconfigured to .564 acres, leaving ten acres in current use. The Taxpayer was not given this opportunity. Rather, the Town placed the burden on the Taxpayer to obtain a survey of the Property. Yet, there was no requirement for a survey when the current-use application was filed and was approved. The Town should not disqualify a previously qualified parcel without more definitive information about the parcel's actual size.

Based on the facts presented, the board finds the Town erred by disqualifying the Property from current use. Therefore, the Town shall take the appropriate steps to correct the erroneous disqualification from current use. Specifically, the Town shall:

1) correct its internal records to show that 10 acres of the Property are in current use and 1.3 acres are not in current use;

2) correct the registry records by showing the current-use lien remains in effect on the Property; and

3) to the extent the 1996 taxes were based on an erroneous assessment given the Town's change in current use, the Town shall recalculate the 1996 assessment and issue a refund with interest at 6% from the date the taxes were paid until the refund date.

To accomplish the second step, the Town may either:

1) record a recision of its release of the current-use lien; or

2) file a second but approved current-use application (consistent with the original application).

In either case, the Town shall ensure that the corrective action is properly indexed by the registry under the Taxpayer's name so that the lien is in the Taxpayer's chain of title. This can probably be accomplished by recording the corrective documents in the grantor index under the Taxpayer's name. The Taxpayer shall execute any documents required by the Town to complete this corrective action. The Town shall carry out this corrective action within 45 days of the clerk's date below, filing with the board a compliance letter with all documents and copying that submission to the Taxpayer.

In addition to any 1996 property tax abatement due to correcting the Property's current-use status, the Town shall refund the LUCT if it has been paid by the Taxpayer. The refund shall include interest at 6% from the 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, <u>not the date this decision is received</u>. 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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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Larry S. Kane, Esq., Counsel for Keith Lazzaro, Taxpayer; Timothy M. Frazier, Esq., Counsel for the Town of Sullivan; and Chairman, Selectmen of Sullivan.

Date: September 11, 1997

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Valerie B. Lanigan, Clerk