

Howard and Kimberly Seckendorf

v.

Town of Barrington

Docket No.: 16675-96LC

DECISION

The "Taxpayers" appeal, pursuant to RSA 79:A-10, the "Town's" September 10, 1996 land-use-change tax (LUCT) assessment of \$2,600 on Map 8, Lot 20 (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the LUCT assessment was erroneous or excessive. See TAX 205.07. The Taxpayers failed to carry this burden.

The Taxpayers argued the LUCT assessment was erroneous or excessive because:

- (1) under the current-use regulations, the Town should not have assessed the value attributable to the road costs;
- (2) the Town abated the LUCT on lots 9 and 10 because the roadwork had not been finished;
- (3) the Property's roadwork had also not been completed, and the Taxpayers had ongoing obligations concerning the road until the Town accepted the road

(something not guaranteed); and

(4) Appeal of Sawmill Brook Development Co., 129 N.H. 410 (1987), supported an abatement.

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The Town argued the LUCT assessment was proper because:

- (1) the lot 9 and 10 sales were made before those lots could be built on;
- (2) the Property was not entitled to any set off for the road betterments because no work was done on the Property; and
- (3) the LUCT was based on a \$26,000 value when the Property had sold for \$29,000.

Board's Rulings

Based on the facts and the arguments, the board finds the Town was correct in assessing the LUCT, and the Taxpayers did not carry their burden to show error.

The Taxpayers did not raise any question about the starting value placed by the Town on the Property. Moreover, the Town demonstrated why the value placed on the Property was proper. Nonetheless, the Taxpayers argued the Town erred in assessing the LUCT because the Town did not make a deduction from that value for the costs incurred by the developer for building the road to the Property. The Taxpayers argued that under current-use board rules CUB 308.01 (b) the Town should have offset the Property's value by a proportionate share of the road costs.

The board disagrees with the Taxpayers' reading of CUB 308.01 (b). CUB 308.01 (b) simply states that when assessing a LUCT, the value of betterments made to the land being assessed the LUCT should not be included. In this case, there were no betterments made to the Property itself. Rather, betterments were made to other land, namely the land within the road area. The board has not and does not now read CUB 308.01 (b) as requiring an offset to a lot's value for betterments made off the lot even if those improvements provide access.

The Taxpayers asserted Appeal of Sawmill Brook Development Co., 129 N.H. 410 (1987), required a deduction for the road betterments. The board simply notes that case was decided under a different statutory and regulatory scheme concerning the disqualification of land from current use. The Taxpayers'

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appeal here is governed by the 1991 statutory amendments and CUB rules based on those amendments, and therefore, the Sawmill case is not controlling on this appeal.

The Taxpayers also argued that the value upon which the LUCT was based should have been reduced to reflect the additional road work needed. The same analysis just discussed -- no offset for off-site betterment -- applies to this argument. Further, the board notes that the Property's sales price was \$29,000, but the value used to calculate the LUCT was \$26,000. This \$3,000 difference approximated (by proportionate share) what the Taxpayers stated needed to be done to complete the off-site improvements.

Concerning the Town's treatment of the LUCT on lots 9 and 10, the Town correctly pointed out that these lots were not yet buildable because roadwork had not been completed up to the point that the lots would be qualified for a

building permit. The Property, on the other hand, did have sufficient road improvements to allow the issuance of a building permit even though the road work had not been completed. The acres available, as of a sale date, obviously affect value. Moreover, these sales were not market sales but were conveyances to the Taxpayers separately.

Overall, the board finds the Town was correct in assessing the LUCT when the Property was conveyed, and thus, no longer qualified because it was then less than 10 acres. Additionally, the \$26,000 value assigned to the Property was reasonable. Therefore, the board denies the appeal.

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

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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

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Whitney L. Scott, Agent for Howard and Kimberly Seckendorf, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Date: September 11, 1997

Valerie B. Lanigan, Clerk

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