

Richard Burley and Robert Chagnon

v.

Town of Pittsfield

Docket No.: 17302-96LC

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:10, the "Town's" 1996 land-use-change tax (LUCT) assessment of \$3,020 on Map R7, Lot 001B, a 7.41-acre lot (the Property). 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. See TAX 205.07. The Taxpayers carried this burden.

Parties' Arguments

The Taxpayers argued the LUCT assessment was excessive because:

- (1) they purchased, as a package, six lots in March 1995, for \$60,000, and the Property was one of these lots;
- (2) Vaughan purchased three of the lots in October 1996, for \$24,000 each;
- (3) Richardson purchased two of the lots in April 1997, for \$16,500 each;
- (4) the Taxpayers had also built and sold two other houses that were not part of the package, and these sales indicated a land value of approximately

\$20,000 per lot;

(5) the Town's assessments on the five lots vary but are all lower than the assessment on the Property; and

(6) the Property's lot value should be \$20,000; therefore, the LUCT should be \$2,000.

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The Town recommended revising the LUCT to \$2,740 and argued the revised assessment was proper because:

(1) two vacant lots in Town, currently under agreement, indicate a lot value of \$24,000 for a non-subdividable lot and \$35,000 for a subdividable lot;

(2) Vaughan may have paid a discounted price because he purchased an assemblage; and

(3) based on the sales and the listing agreements, a fair value would be \$27,400 for a LUCT assessment of \$2,740.

Board's Rulings

Based on the evidence, the board finds the LUCT should be \$2,200 based on a lot value finding of \$22,000. See RSA 79-A:7 I (Supp. 1996) (LUCT is 10% of property's full and true value).

1) Deciding this case requires weighing the Taxpayers' evidence and the Town's evidence and deciding which side's evidence most accurately reflects the Property's value. As explained below, we find the Taxpayers' evidence more reliable and more credible.

2) The Taxpayers' evidence concerning its development and sales activity demonstrated that the \$3,020 LUCT was excessive and that a \$2,200 would be

more appropriate.

The Taxpayers purchased six lots in 1995 through an FDIC sale. They sold three of these lots to one buyer in a single transaction in October 1996 for \$24,000 each. This sale occurred when a realtor brought an offer to the Taxpayers. The Taxpayers sold two of the remaining lots in April 1997 for \$16,500 each to a realtor for his own personal use. The Taxpayers stated that their involvement in real estate is not their main business, but a sideline. During this same approximate time period the Taxpayers built two residential dwellings on vacant lots and sold them. The selling prices, after removing the construction costs, indicated land values for the two lots of approximately \$20,000 each. The Taxpayers testified that they had 13 years of experience in real estate in the Pittsfield area and that they were life-long

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residents of the Town. It was the Taxpayers' testimony that through their experience in the Town, both buying and selling vacant lots and buying vacant lots and improving them with single family residences, that the most probable price for a single-family lot similar to the subject Property would be in the \$20,000 range.

3) The Town did not support the original \$30,200 value or the revised \$27,400 value.

The Town's original \$30,200 value was based on the \$30,200 land assessment from the assessment-record card. Using the assessment is permitted, RSA 79-A:7 III, but the assessment must reflect the property's "full and true value," RSA 79-A:7 I (Supp. 1996) when the change in use occurs. The Town, however, did not submit any evidence to support the

assessment.

Moreover, there were inconsistencies in the application of the amenity value on the Taxpayers' lots. The amenity value ranged anywhere from 1.0 to 2.0 with the predominant number being 1.25 to 1.75. The Property under appeal had a view factor of 2.0, which was inconsistent with the Town's testimony.

The Town's revised \$27,400 value was based on two current sales agreements, not on any sales. As the Taxpayers pointed out, the sales agreements are not comparable sales, and the 1998 values may not be representative of the 1996 market when the Property's change-in-use occurred.

The board agrees with the Taxpayers that the Town's evidence is not reliable for the two stated reasons. Moreover, the Town did not even know the exact sales prices but only knew the lots sold for the asking prices.

As stated above, the Taxpayers presented sales evidence, and as just stated, the Town did not. Therefore, we find for the Taxpayers.

4) The board concluded a \$22,000 full value was appropriate because it took into consideration all of the evidence presented to the board, including the Property's view, and it reflected the board's judgement. Paras v. City of
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Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

Therefore, after reviewing the testimony of the Town and the Taxpayers as well as the evidence submitted, the board finds that the appropriate assessment for the Property should be \$22,000, and the LUCT, as described in RSA 79-A:7 I (Supp. 1996), should be 10% of the full and true value or \$2,200.

Supporting this conclusion is the Taxpayers' testimony concerning the selling prices of the five lots that they sold similar to the subject lot for selling prices ranging between \$16,500 and \$24,000. The board did not find evidence of a discount due to a single purchaser. The fact that the selling price was determined through a realtor would tend to indicate that the selling price was closer to full market value rather than a discounted value. Also supporting a reduced value was the Town's inconsistent application of the view factor. It was the Town's testimony that all six of the lots previously owned by the Taxpayers should have the same view factor when in fact the appealed Property's view factor is significantly higher than any of the others.

If the LUCT has been paid for the tax year 1996, the amount paid in excess of \$2,200 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

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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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard Burley and Robert Chagnon, Taxpayers; and Chairman, Board of Selectmen of Pittsfield.

Date: May 27, 1998

Valerie B. Lanigan, Clerk

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