

John A. and Frances L. Wirkkala

v.

Town of Lempster

Docket No.: 17321-96LC

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:10, the "Town's" June 27, 1997 assessment of a \$285 land-use-change tax (LUCT) on Map 5 Lot 401.087, a 60-acre lot in current use (the Property). The LUCT is based on a \$2,850 full-value assessment for .25 of an acre removed from current use. 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.

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

- (1) a 10' X 16' "primitive" sugar house was constructed for family use and pursuant to RSA 79-A:7 IV (a) the road to the sugar house does not have to be removed from current use;
- (2) the Town is removing too much land from current use and 1/40th of an acre is more appropriate; and

(3) the value of the land removed is approximately \$300 and the LUCT should be \$30.

The Town argued the LUCT assessment was proper because:

(1) the value of a standard 1-acre house lot in Town is approximately \$15,500 and the Assessor suggested a value of \$11,400 for the removal of .25 of an

acre;

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(2) the Selectmen felt the value was too high and reduced it to \$2,850 which is fair; and

(3) the acreage calculated by the Town includes the driveway to the sugar house.

Board's Rulings

Based on the evidence, the board finds the proper LUCT to be \$60 based on a market value finding of \$600 for the 1/40 acre of land disqualified from current use.

First, the board notes that this is a difficult property to value given its small size, location and nonresidential use. The Town's calculation in arriving at a market value of \$2,850 is not unreasonable based on a quarter acre curtilage. CUB 301.04. However, the board finds this quarter acre of curtilage inappropriate for two reasons. First, the Town included in their curtilage the road accessing the sugar house site from Route 10. The board finds the Taxpayers' non-commercial use of the road for accessing the sugar house and for forestry purposes are agricultural/forestry uses that exempt the road from a LUCT pursuant to RSA 79-A:7 IV (a). Second, the Taxpayers argued the curtilage necessary to support the 10 x 6 sugar house was very minimal and reasonably delineated by an area 10 feet outside the footprint of the sugar

house. Based on the photographs submitted and the minimal use of the Property, the board finds this curtilage appropriate.

Therefore, the area to be removed from current use is reduced from one-quarter of an acre to 1/40 of an acre. The selectmen shall submit a revised LUCT release form to the registry within 30 days of this decision correcting the area disqualified by the LUCT and the acres remaining in current use to reflect this decision.

The task of valuing 1/40 of an acre over 300 yards from a public highway accessed by a woods road is difficult and, at best, speculative. However, the board finds the value of such a site is only remotely related to any residential value and due to its size would be a very minimal value.

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The board was unable to find any logical assessment methodology to follow in valuing the Property based on the evidence submitted. Therefore, based on the board's experience and judgement, it finds a market value of \$600 to be appropriate. "Given all the imponderables in the valuation process, [j]udgement is the touchstone." Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977). While this value is twice the pro rata value that the Taxpayers calculated based on the Town's original valuation, the board finds it is reasonable because the curtilage site does at least embody the right to build a sugar house. As noted, there is no perfect answer. However, considering the ability to use the site for a sugar house, its location, its topography and its size, a \$600 estimate is reasonable.

Further, while the Taxpayers did not appeal the ad valorem assessment of the area not in current use, the board would suggest the Town, in the future,

use the board's \$600 estimate of market value for the ad valorem assessment of the land not in current use. (The board notes the Town's 1996 ratio of 105% is quite close to full market value, and thus, would have a negligible affect on the \$600 market value estimate.)

Consequently, if the LUCT has been paid, the amount in excess of \$60 shall be refunded with interest at 6 percent per annum from the date paid to the date of refund. 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

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John A. and Frances L. Wirkkala, Taxpayers; and Chairman, Selectmen of Lempster.

Date: April 6, 1998

Valerie B. Lanigan, Clerk

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