

Paul Longueil

v.

Town of Nottingham

Docket No.: 17350-97LC

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the "Town's" October 1997 assessment of a \$2,500 land-use-change tax (LUCT) on a 1.2-acre lot (the Property). The Town adjusted the LUCT to \$1,740 on December 22, 1997. For the reasons stated below, the appeal for abatement is granted.

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

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

(1) the Property was purchased from an abutter in December 1996 for \$3,000, and the Property's additional acreage was needed to subdivide an existing parcel owned by the Taxpayer;

(2) the new combined lot of 5.7 acres was then subdivided into a 2.95-acre lot and a 2.82-acre lot; the 2.95-acre lot sold in July 1997 for \$24,900, and the 2.82-acre lot sold last winter for \$22,600 after expenses for septic

design (\$1,000) and clearing of the lot (\$800) were incurred;

(3) the costs associated with acquiring the Property, combining it with the original lot and the resubdivision was approximately \$7,500; and

(4) the value of the Property was \$3,000, and the LUCT should be \$300.

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The Town argued the LUCT assessment was proper because:

(1) the Taxpayer's purchase of the Property was not at market value because the seller was under duress to sell and was unaware of the Property's value based on its highest and best use;

(2) the 1.2-acre purchase occurred as a boundary line adjustment and was not a buildable lot;

(3) because of the lot's topography, the only viable location for a homesite on the 2.95 acre tract was on the 1.2 acre tract; and

(4) the contributory value of the Property was approximately \$17,400, resulting in a LUCT of \$1,740.

Board's Rulings

Based on the evidence, the board finds the market value of the Property to be \$10,000, and thus, the LUCT to be \$1,000.

Facts

In 1996 the Taxpayer owned a 4.57-acre parcel at the corner of North River Lake Road and Cooper Road. The Taxpayer attempted to subdivide the parcel into two lots but was unable to meet the Town's subdivision requirement of contiguous nonwetland area and wetland setbacks for both lots. The Taxpayer then approached Mrs. Donna Cooper, an abutter, to purchase and annex

a 1.2-acre parcel to gain additional nonwetland area and enable subdivision into two lots. The Taxpayer agreed to purchase 1.2 acres for \$3,000 contingent upon the Taxpayer receiving subdivision approval from the Town. On December 4, 1996, the planning board approved a subdivision of the Taxpayer's original 4.57-acre tract plus the 1.2-acre annexation into two lots: lot 69A of 2.95 acres (inclusive of the 1.2-acre annexation) and lot 69B of 2.82 acres. (See addendum for copy of plan of lot 69A denoting the 1.73-acre original parcel and the 1.2-acre Property.) The deed transferring the 1.2-acre parcel to the Taxpayer was executed on December 26, 1996. On October 20, 1997, the Town assessed a LUCT of \$2,500 with a date of change of November 6, 1996. The Town subsequently abated the LUCT to \$1,740 based on an assessment

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of \$17,400.

Findings

The initial step to any real property valuation is determining what are the real estate rights (property) to be valued and what is the highest and best use. In this case the LUCT was triggered on December 26, 1996, with the transfer of the 1.2 current use acres to the Taxpayer. RSA 79-A:7 IV (c) (land use change tax is imposed when a parcel no longer conforms to the minimum acreage requirement of 10 acres). At that time, the Property's highest and best use was as the developable portion of lot 69A, which had received subdivision approval on December 4, 1996. Consequently, as of this date of change, December 26, 1996, the parcel certainly had more value than a nonbuildable, nonconforming lot or as a portion of a larger unsubdivided parcel. Its value is its contributory value to subdivided lot 69A of which it

is part.

It is difficult to estimate what the Property's contributory value is because of the resulting synergy by its annexation with the original 4.57 acres. However, the board is convinced that neither the \$3,000 estimate of the Taxpayer nor the Town's \$17,400 estimate accurately reflects the Property's market value.

First, the board is not convinced by the Taxpayer's arguments. Adding the cost to subdivide to the "cost" of the two portions of lot 69A falls far short of the lot's ultimate sale price of \$24,900. Both the Taxpayer's testimony and the Town's assessment-record card indicated that the 1.73 portion of lot 69A had a value of \$2,000 to \$3,000 as supplemental land to the original parcel. (See the assessment-record card of lot 69, the original lot, prior to annexation and subdivision, supplemental land valued at \$1,500 per acre; thus, 1.73 acres x \$1,500 = \$2,600.) Combining this supplemental value to the Taxpayer's \$3,000 purchase of the 1.2 acres with the addition of some associated engineering and survey costs (approximately \$2,000 to \$3,000), the resulting sum falls far short of the subdivided lot market value of \$24,000 to

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\$25,000. Consequently, the contributory values of both the 1.73-acre portion and the 1.2-acre portion are likely more than their respective contributory values as part of a larger unsubdivided parcel.

Second, the board finds the Town's estimate may not adequately account for the contributory value of the 1.73-acre original portion of the lot 69A and the marketing costs, risks and time to achieve the retail value of the lot. While the 1.2-acre portion of lot 69A provided the building site and a

good share of nonwetland area, the 1.73-acre portion also contributes to satisfy the dimensional and nonwetland subdivision requirements. The board find this portion contributes more than just supplemental land value -- again the synergy concept. The purchase, annexation and subdivision had occurred at the time of the change in use. However, there was additional risk and marketing costs and time to be incurred before the ultimate retail value of lot 69A (sale price of \$24,900 in July 1997) could be realized.

The real question to be asked is how much would a knowledgeable owner of an adjoining parcel be willing to pay for this 1.2-acre tract to then be able to combine it with other land to make it a marketable lot. The board's \$10,000 estimate recognizes its contributory real estate rights and the remaining marketing costs, time and entrepreneurial effort to market the resulting lot.

As earlier stated, while the board is unaware of any definitive way in which to calculate the value, we find the \$10,000 estimate to be more reflective of what the market would pay in an arm's-length transaction for the Property with subdivision approval at the time of the transfer.

If the LUCT has been paid, the amount paid in excess of \$1,000 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;

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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

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 Paul Longueil, Taxpayer; and Chairman, Selectmen of Nottingham.

Date: August 4, 1998

Valerie B. Lanigan, Clerk

1.73-acre
Original
Parcel

1.2-acre
Annexation