

**Gerald S. and Patricia L. Langdon**

**v.**

**Town of Epping**

**Docket No.: 18010-99LC**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 79-A:10, the "Town's" September 19, 1999 land-use-change tax ("LUCT") of \$6,896.50 on a vacant, 4.5-acre portion of a 62.86-acre lot (the "Property"). The LUCT was based on a \$68,965 full-value assessment. 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. We find the Taxpayers carried their burden.

The Taxpayers argued the LUCT was excessive because:

- (1) the 4.5-acre parcel was taken out of current use to develop a golf driving range;
- (2) based on the opinion of the Town's assessor (Paul Brown) and the Town's zoning laws the LUCT is excessive;
- (3) the zoning classification of that portion of the Property that had been in the residential commercial zone had been changed, prior to the change in use, from residential commercial to rural residential so that the entire 62.86-acre parcel was then zoned rural residential;

- (4) the selectmen did not follow the recommendation of their former assessor when they denied the abatement request;
- (5) the selectmen did not have an independent appraisal of the Property performed when they denied the abatement application and they do not have appraisal backgrounds of their own; and
- (6) the LUCT should be based on the full and true value at the time of the change in use, not based on some future use.

The Town argued the LUCT was proper because:

- (1) the Town has known since May 1999, the Property would be changed in use to allow it to be used for a golf driving range;
- (2) the “Rural Residential” zoning district does allow for some type of commercial use, such as a golf driving range; and
- (3) the Property should be assessed based on its highest and best use.

### **Board's Rulings**

Based on the evidence, the board finds the proper LUCT for the disqualified Property to be \$4,500 based on RSA 79-A:7 and a market value finding of \$45,000 for the disqualified land.

RSA 79-A:7 reads as follows:

#### **79-A:7 Land Use Change Tax.**

I. Land which has been classified as open space land and assessed at current use values on or after April 1, 1974, pursuant to this chapter shall be subject to a land use change tax when it is changed to a use which does not qualify for current use assessment. Notwithstanding the provisions of RSA 75:1, the tax shall be at the rate of 10 percent of the full and true value determined without regard to the current use value of the land which is subject to a non-qualifying use or any equalized value factor used by the municipality or the county in the case of unincorporated towns or unorganized places in which the land is located. Notwithstanding the provisions of RSA 76:2, such assessed value shall be determined as of the actual date of the change in land use if such date is not April 1.

There is no disagreement between the parties that a disqualifying change in land use has occurred; however, the value of the disqualified land is disputed.

At the time of the change in use, the Property was zoned rural residential. The Property's frontage and first 1,000 feet of depth had previously been zoned residential commercial with only the rear portion in the rural residential zone. Due to a request by the Taxpayers, the classification of the entire 62.86-acre tract was changed to rural residential, enabling the Taxpayers to develop a portion of it as a golf driving range.

The testimony received at the hearing from both parties indicated an average rural residential lot in the Town would have a \$35,000 to \$40,000 market value.

The Taxpayers argued the proximity of the Property to New Hampshire Route 125 would make it less desirable as a residential building lot. However, while this may be the case for residential development, the board finds the Property's proximity and visibility from the highway improves its value as a golf driving range. Additionally, the amount of land (4.5 acres) taken out of current use, which is over and above that required for a building lot, coupled with the fact the Property had gone through the site-plan review process and received building permits for the golf driving range, enhances its value above that of a stand-alone, standard 2-acre, rural residential building lot.

For these reasons, the board finds the value of the disqualified 4.5-acre tract is \$45,000 and the proper LUCT should be \$4,500.

If the LUCT has been paid, the amount paid on the value in excess of \$45,000 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; 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

---

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Gerald S. and Patricia L. Langdon, Taxpayers; and Chairman, Board of Selectmen of

Page 5  
Langdon v. Town of Epping  
Docket No.: 18010-99LC

Epping.

Date: September 22, 2000

0006

---

Lynn M. Wheeler, Clerk