Arthur and Patricia Bonnevie

v.

Town of Kensington

Docket No.: 19921-03LC

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:10, the "Town's" August 5, 2003 land-use-change tax ("LUCT") of $18,500 on a 3.423-acre lot designated as Map 11, Lot 40-8 (the "Property"). The LUCT was based on a $185,000 full and true value determination. See RSA 79-A:7, I. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the Town's LUCT assessment was erroneous or excessive. See TAX 205.07. We find the Taxpayers failed to carry this burden.

The Taxpayers argued the LUCT was erroneous or excessive because:

(1) they purchased the Property in November, 2002 for $185,000 and the Town based the LUCT on this selling price;

(2) the selling price overstated the market value and was simply a reflection of what the developer demanded, with no room for negotiation;

(3) the Property would not be worth $185,000 until the road was constructed and utilities were installed, which did not occur until one year later (November 2003);

(4) the purchase was motivated by the need to move to the Town from out-of-state (Lynn, Massachusetts) for personal, family reasons; and

(5) the LUCT should be abated to $14,000 (10% of the Taxpayers' $140,000 market value estimate).

The Town argued the LUCT was proper because:

(1) the tax map (Municipality Exhibit A) indicates comparable lots on either side of the Property (Lot 40-7 and Lot 40-9) sold for $185,000 and $200,000 in November 2002 and February 2003, respectively;

(2) sales of other lots, as well as offerings of lots for sale, within the same development support the position that the purchase price of $185,000 is reasonable and reflective of the Property's market value;

(3) the Property is a "select" wooded lot in an appealing location within the subdivision;

(4) conversations with the developer's wife revealed no promises were made to potential purchasers regarding when the road to the Property would be constructed;

(5) the Property is in a more desirable subdivision than lots that are available in another subdivision in the Town; and

(6) the Taxpayers failed to meet their burden of proof.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the LUCT was erroneous or excessive.

The Taxpayers testified they purchased the Property in November, 2002 for $185,000. The Taxpayers stated they attempted to negotiate a lower price, but were unsuccessful. Although they paid the full listing price, the Taxpayers stated they did not think the selling price was an accurate indication of the Property's market value at the time of sale in November, 2002 and that the market value of the lot was $140,000 at that time. In their opinion the $185,000 would represent the Property's market value only after the road and utilities had been installed to the Property. They further testified they felt a sense of urgency to purchase a property as they were relocating from their previous home in Lynn, Massachusetts due to some unfortunate family circumstances. The Taxpayers, however, did not testify the sale was not an arm's-length transaction. Where it is demonstrated that the sale was an arm's-length market sale, the sale price is one of the "best indicators of that property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988) quoting Poorvu v. City of Nashua, 118 N.H. 632, 633, 392 A.2d 138, 139 (1978). The board finds the principle of anticipation is applicable in this case. The principle of anticipation means that value is created by the expectation of benefits to be derived in the future.[1] Here, the Taxpayers and other purchasers of lots in the subdivision were willing to pay a price, prior to complete construction of the road to the respective lots, that reflected all the anticipated benefits of access, etc., afforded by roads. The sales indicate no discount occurred for any uncertainty or risk in the anticipated completion of the road.

[1] The Appraisal Institute, The Appraisal of Real Estate p. 331 (12th ed. 2001).

As additional support for their position, the Taxpayers presented the sales of several other lots that sold within the same subdivision with selling prices ranging from $150,000 to $175,000. The Taxpayers testified each of these lots were assessed a $15,000 or $17,500 LUCT based on their selling prices. In the Taxpayers' opinion the Property's LUCT should not have exceeded the LUCT assessments on these other lots given the fact the road and utilities were not available to the Property.

In response to the Taxpayers' testimony, the Town stated the comparable sales presented by the Taxpayers were sales of lots from one developer to another and that a plausible explanation for the lower selling prices was that a developer's discount may have been given between the developers involved. The lots identified as Map 40, Lot 16 and Map 40, Lot 17 sold for $150,000 from one developer to another and the lots identified as Map 40, Lot 1; Map 40, Lot 2; and Map 40, Lot 3 were sales at $175,000 between two developers. The Town further testified the earlier sales of some of these lots, located near the beginning of the entrance to the subdivision, were consummated to allow the developer of the overall subdivision to develop a cash flow in order to finance the rest of the construction. Further, the Town testified the lots that sold for $150,000 near Amesbury Road reflected their proximity to the busy highway and the commercial development across the street, including a general store, pizzeria and gas station.

The board finds there are various motivating factors that cause sales to occur. For the Taxpayers, they selected and purchased the Property due to its location and amenities, such as having trees and a more secluded location within the subdivision. The board finds the sale of the adjoining lot, Map 40, Lot 9, to the Taxpayers' sister for $185,000 and the sale of the adjoining lot on the other side, Map 40, Lot 7, to an unrelated entity for $200,000, are other indications of

the market value of lots in this area of the subdivision and supports the Town's contention that the Property's selling price is an accurate indication of its market value and the appropriate basis for the LUCT.

There was testimony the Town removed one of the lots in the subdivision from current use and assessed a LUCT prematurely. When the lot was later removed from current use using the correct procedure, the LUCT was raised to more accurately reflect the lot's selling price and value. While it is possible other lots that transferred may have been underassessed for the purposes of determining their LUCT, these transfers are not probative evidence of the Property's market value in November 2002.

The Taxpayers mentioned sales that occurred in another subdivision (Rose Petal) within the Town which were selling for approximately $150,000. The Taxpayers testified this was some evidence the lots in the subdivision where the Property is located are overassessed. The Town rebutted this testimony by stating the Rose Petal subdivision was not advertised or viewed by the market to be the same quality as the subdivision where the Property is located. The Town submitted a picture of the first house when entering the Property's subdivision from Amesbury Road showing a very nice home with extensive landscaping (Municipality Exhibit C). The home was built by the developer to showcase the subdivision and it was his intention to build high-end, quality homes. The Town submitted a listing sheet (Municipality Exhibit D) listing home sites for sale and the headline states: "KENSINGTON PLACE!" with the next line reading "3 EXECUTIVE HOME SITES STILL AVAILABLE!" The Town further testified one of the lots within the subdivision, Map 40, Lot 15, sold for $300,000 in July 2002. This higher selling price, in relation to the selling prices of other lots within the subdivision, was due to this lot having a substantial view. The board finds the sales for $150,000 and $175,000 and the sale of

one lot for $300,000 set the "bookends" for the range of selling prices for the various lots within the subdivision. The Taxpayers' lot falls within this range, further supporting the Town's LUCT assessment.

For all these reasons, the board finds the Taxpayers did not carry their burden of proving the LUCT was erroneous or excessive and 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 evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(f). 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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Arthur and Patricia Bonnevie, 10 French's Lane, Kensington, New Hampshire 03833, Taxpayers; and Chairman, Board of Selectmen, Town of Kensington, 95 Amesbury Road, Kensington, New Hampshire 03833.

Date: June 15, 2004

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Anne M. Stelmach, Deputy Clerk