Michael and Michelle Magee

v.

Town of Ossipee

Docket Nos.: 19992-03LC and 20001-03LC

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:10, the following land-use-change tax ("LUCT") assessments:

#19992-03LC – Map 15/Lot 35.2, LUCT bill in the amount of $3,000 dated January 26, 2004; and

#20001-03LC – Map 15/Lot 35.3, LUCT bill in the amount of $3,000 dated January 26, 2004.

The two "Properties" identified above are located within an 84.7-acre tract in current use and each LUCT was based on a $30,000 "full and true value" assessment as required by RSA 79-A:7, I. For the reasons stated below, the consolidated appeals for abatement are granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the Town's LUCT assessments were erroneous or excessive. See TAX 205.07. The board finds the Taxpayers carried this burden.

The board consolidated these two cases for hearing and issues this joint decision as the parties, facts and outcome in each case are the same.

Board's Rulings

Based on a review of the Taxpayers' submissions and the testimony presented at hearing by the parties, the board finds the Taxpayers are not liable for the two LUCT assessments.

The board makes this ruling based on the Town's noncompliance with RSA 79-A:7, II(c), which states in pertinent part:

> Upon receipt of the land use change tax warrant and the prescribed forms; the tax collector shall mail the duplicate copy of the tax bill to the owner responsible for the tax as the notice thereof. Such bill shall be mailed, at the latest, within 12 months of the date upon which the local assessing officials receive written notice of the change of use from the landowner or his agent, or within 12 months of the date the local assessing officials actually discover that the land use change tax is due and payable. (Emphasis added)

At the hearing, both parties agreed the Town mailed the LUCT bills to the Taxpayers on October 28, 2003, more than 12 months after the Town received written notice the land had changed to a non-qualifying use.

At the hearing, the Taxpayers stated that when they went to the town hall to file building permit applications in August 2002, they inquired about the LUCT process and were told by Town officials they should build the house first and then the LUCT would be determined. During the hearing, Mr. Wiley stated there were changes made in the Town's assessing office that created some confusion during the relevant timeframe. He agreed with the Taxpayers that the change in the Properties from land that qualified for current use assessment to a non-qualifying use occurred in August 2002. In support of this recognition by the Town, the board notes Mr. Wiley trended all the sales used to estimate the full and true value upon which the LUCT should be based to August 2002, further evidence the Town should have and ultimately did consider August 2002 the date of change in use and the date the LUCT should have been assessed.

Consequently, the board finds the Town did not comply with RSA 79-A:7, II(c). The board finds the wording of the statute is unequivocal that the assessing officials have 12 months from a change in use to a non-qualifying use to issue a LUCT bill to the landowner. The inflexible nature of the deadline is emphasized in the statute by the phrase "at the latest" and creates a certain timeframe and finality to the issuance of a LUCT bill by the assessing officials. Because the Town's October 28, 2003 mailings of the LUCT bills are well beyond (by approximately 2 months) the 12-month statutory deadline, the board finds no authority exists for the selectmen to have assessed and issued the LUCT bills after the deadline had passed. The board does not have the authority to waive statutory deadlines and the ruling in this case is consistent with other board rulings concerning the LUCT statutory deadline. See, e.g., Brothers v. Town of Rumney, BTLA Docket No.: 19414-02LC (July 23, 2003).

The board, therefore, orders any LUCT payments made by the Taxpayers on the Properties be abated in their entirety and refunded by the Town to the Taxpayers with interest at 6% per annum from the date the taxes were 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(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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Michele E. LeBrun, Member

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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: Michael and Michelle Magee, Post Office Box 241, Ossipee, New Hampshire, 03864, Taxpayers; David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, New Hampshire 03301, Town Representative; Chairman, Board of Selectmen, Post Office Box 67, Center Ossipee, New Hampshire, 03814; and Current Use Board, c/o Department of Revenue Administration, Post Office Box 457, Concord, New Hampshire 03302, Interested Party.

Date: February 25, 2005

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Anne M. Stelmach, Deputy Clerk