Jeffrey S. and Sandra A. Major[1]

v.

Town of Plaistow

Docket No.: 20000-03LC

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:10, the "Town's" November 25, 2003 land-use-change tax ("LUCT") of $14,330 on a vacant 1.8-acre lot (the "Property"). The LUCT was based on a $143,300 full-value assessment. 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) the date of change in use was August 20, 2003, when the Property was transferred to the Taxpayers;

(2) the Town's annual property tax assessment was $89,700 for the Property last year;

[1] As discussed at the hearing, the original caption for this appeal, Norman L. and Brenda E. Major, has been changed to Jeffrey S. and Sandra A. Major, inasmuch as the LUCT was billed to these individuals because the lot was transferred to them from Norman and Brenda. Cub 301.08 ("[I]n the case of a change in use resulting from a sale of land, [the owner at the time of the change] means the person or persons who purchased the land.") Norman Major appeared at the hearing essentially on behalf of his son and daughter-in-law and argued the appeal.

(3) the Town denied the Taxpayers' abatement application and later indicated the LUCT was based on sales of similar lots, including the sale of 4 Major Lane for $139,900 in February, 2003;

(4) the Property is adjacent to a four-acre industrial property which contains an electrical substation and is next to an operating railroad track which collectively diminish its value by $10,000;

(5) the Property required extra development and foundation costs (totaling $31,301, approximately one-half of total site development and foundation costs) to meet requirements pertaining to the leach field, water table and wetland setback, as shown in Taxpayer Exhibit 1;

(6) in comparison, 4 Major Lane did not have these additional costs because it is across the street at a higher elevation;

(7) the Town's January 11, 2005 submission ("Summary Report," Municipality Exhibit A) to the board does not account for the extra difficulty and cost in developing the Property with a single-family home;

(8) there should be some consistency between assessed values (adjusted by the level of assessment) and the LUCT value;

(9) the developer's letter submitted by the Town (Municipality Exhibit B) is based on questionable intent (and his bias is reflected in his improper request for additional payment for the site work performed); and

(10) the market value of the property at the time of the LUCT was approximately $100,000 to $110,000.

The Town argued the LUCT was proper because:

(1) the Town's Summary Report supports the conclusion the Property's full and true value at the time of the change in use (August 20, 2003) was actually above $143,300;

(2) the Town found no negative impact on market value from the railroad track abutting the Property;

(3) while no two lots are the same in New Hampshire, the terrain in this area of the Town is fairly level;

(4) recent land sales in the Town show rapid appreciation and a 15% annual rate of appreciation adjustment is conservative;

(5) Municipality Exhibit B, a letter from the "developer" of the Property (who did the site work) to the Town Manager (John Scruton), refutes the Taxpayers' evidence and indicates any extra development costs resulted from the preferences of the homeowner rather than from any limitations in the land;

(6) a sale referenced in this letter (25 Hale Spring Road) was of an inferior, smaller lot which sold for $99,900 (Municipality Exhibit C) and required an additional $20,000 in site work; and

(7) with respect to the abutting industrial property beyond the railroad tracks, the house constructed on the Property is situated on the easterly half of the lot, there is a buffer of trees between the house and the abutting property and the distance is approximately 200 feet to the railroad tracks.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not carry their burden in showing the $143,300 LUCT assessment exceeded market value.

RSA 79-A:7 establishes market value as the basis for assessing an LUCT.

> 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.

The Taxpayers argued the Property's market value as of the date of change was between $100,000 and $110,000. This estimate was based on a reduction of the Town's $143,300 market value estimate by approximately $30,000 to $40,000 to account for "extra" site and foundation development costs and "depreciation" for the lot's proximity to an active rail line and a lighted substation on the westerly side of the rail line. For the reasons that follow, the board finds the Taxpayers' market value estimate is substantially less than what the general market would pay for the Property.

The Taxpayers argued the topography of the lot necessitated additional development and foundation costs compared with flatter lots with less wetland issues. The board has reviewed the Taxpayers' construction site elevation profile, the Town's photographs and the various maps submitted of the Property and concludes the "extra" development costs relate more to the Taxpayers' preference as to how to develop the Property as opposed to what the general market would recognize. The board reaches this conclusion independent of similar observations contained in the developer's (Richard E. Paul) letter (Municipality Exhibit B) to the Town. The Taxpayers raised questions as to the motivation of the developer in writing this letter; however, the board need not rule on the letter's objectivity because the board arrives at its decision independent of the developer's observations. The Town submitted adequate evidence to show that other lots in Plaistow and in the area, also have tight building envelopes and often entail significant site work to accommodate town and state development requirements relative to set back from wetlands and septic elevations above seasonal high water tables. One of the

Taxpayers' arguments to support their contention of extraordinary site work was the fact the Property is below road grade, and thus, is less desirable than lots with land at or above road grade, such as 4 Major Lane. The board notes, however, many lots that slope slightly below grade, as the Taxpayers' lot does, are very suitable for a "walk out" basement type of development just as the Taxpayers did, at least for the house portion of the improvements. Further, based on the photographs and maps submitted by the Town, the board does not find the topography difference between the Property and other nearby lots was so severe or different that the market would recognize an adjustment. As the Town indicated, land is in short supply in Plaistow, and thus, these differences between lots are minimized due to the high demand for available land.

The board was also not convinced by the Taxpayers' argument that the Property's proximity to the railroad line and a substation on the west side of the rail line have a measurable effect on the Property's market value. The Town testified it has reviewed the sale of lots adjacent to active rail lines, not only in Plaistow but also in other towns in southern New Hampshire, for any adverse effects on value and has found none. Based on the photographs and maps, the board also finds the house and garage were located on the eastern side of the lot thus providing a treed buffer on the western side of both the active rail line and lighted substation on the adjoining property. The Taxpayers also positioned the garage on the west side of the house, so to the extent there is any effect of the substation's lights, the impact on the living area is minimized. Further, supporting the board's finding that the rail line and substation have no effect on market value is the fact that 4 Major Lane, which is on the southern side of the same cul-de-sac accessing the Property and, thus, similarly situated relative to both the rail line and

lighted substation, sold for $139,900 in February of 2003, indicating no market recognition of those factors.

The board finds the Taxpayers submitted no evidence to support their assertion that the older cape on the adjacent "parent" lot negatively affects the Property's value. Again, the sale of other lots utilized in the Town's market analysis on the southern side of the cul-de-sac do not indicate any negative effect due to the proximity of the older dwelling.

The Taxpayers also argued the assessed value for the LUCT is significantly different than the equalized land assessment of the annual property tax assessment. RSA 79-A:7 requires the LUCT be based on the current market value as of the date of change and assessed values are generally not considered. In addition to the RSA 79-A:7 cite on p. 4, RSA 79-A:7, III further states:

> III. Whenever land of nonuniform value shall be subject to the land use change tax under this section, or whenever the full value assessment for the land subject to the tax shall not be readily available then the local assessing officials shall assess the RSA 75:1 full value of such land and the land use change tax shall be paid upon such assessed value.

In this case, the Town submitted the Summary Report that relied upon three sales, all in the immediate neighborhood, for estimating the market value as of the date of change. This comparable sales method, with appropriate adjustments, is more appropriate in estimating market value than equalizing the annual property assessment by the local equalization ratio. As the Town testified, the Town's assessments were last updated in 2001. Further, the 2003 equalization ratio of 76.7%[2] is largely derived from improved sales which, while having appreciated since 2001, have not appreciated to the extent that land only parcels have.

[2] The Town testified from memory that the 2003 median ratio calculated by the department of revenue administration ("DRA") was 71%; however, a review of the DRA's 2003 equalization statistics indicates the actual 2003 median ratio was 76.7%.

Consequently, while equalizing the annual property tax assessed value of $89,500 by 76.7%, indicates a market value of $116,688, it still underestimates the Property's market value due to the ratio being the overall median ratio of the Town, not one related to land only parcels. Again, the board emphasizes this exercise is not a preferable method of estimating value if comparable sales exist, as they do in this case.

Last, the board reviewed the numerous LUCT bills submitted by the Taxpayers, largely of lots of less than one acre and from a different subdivision in 2002. The board also finds these do not carry the Taxpayers' burden as those are of LUCT assessments a year to a year and a half earlier, and thus, reflect lower values that have since rapidly appreciated, especially for land, as was testified to by the Town.

In conclusion, the board finds the Town's assessment of $143,300 is a reasonable estimate of the Property's market value based on the market evidence submitted by the Town and the Taxpayers' arguments that the value should be adjusted for any unique aspects of the lot is not supported by any probative market data.

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, <u>not the date this decision is received</u>. 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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Michele E. LeBrun, 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: Jeffrey S. and Sandra A. Major, 5 Major Lane, Plaistow, New Hampshire 03865, Taxpayers; Norman and Brenda Major, 12 Kingston Road, Plaistow, New Hampshire 03865, representatives for the Taxpayers; Chairman, Board of Selectmen, Town of Plaistow, 145 Main Street, Plaistow, New Hampshire 03865; Wil Corcoran, Corcoran Consulting Associates, Post Office Box 1175,Wolfeboro Falls, New Hampshire 03896, representative for the Town; and Current Use Board, c/o Department of Revenue Administration, Post Office Box 457, Concord, New Hampshire 03302, Interested Party.

Date: February 17, 2005

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Anne M. Stelmach, Deputy Clerk