

John B. Dirrane

v.

Town of Rumney

and

John J. Killion, Jr.

Docket Nos.: 20647-05CU and 20648-05CU

DECISION

These appeals, filed by John B. Dirrane (the “Complainant”) an owner of other property in the “Town”, concern 11.03 acres of land on Map 13, Lot 05-21 and 16.02 acres of land on Map 16, Lot 05-15 (the “Properties”) that were assessed in current use and owned by John J. Killion, Jr. (the “Taxpayer”). The appeals challenge the Town’s March 2005 decision to remove all acreage of the Properties from current use and assess the land-use-change tax (“LUCT”). The board accepted these appeals under its authority contained in RSA 71-B:16, I and II. RSA 71-B:16, I authorizes the board to act upon “a specific written complaint . . . by a property owner,” within a town, challenging whether “a particular parcel of real estate . . . not owned by him has been fraudulently, improperly, unequally or illegally assessed.” Further, RSA 71-B:16, II allows the board to investigate and order a new assessment “[w]hen it comes to the attention of the

board from any source, . . . that a particular parcel of real estate . . . has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed.”

Board’s Rulings

The board denies the Complainant’s challenge and the appeals.

The Complainant’s primary argument is the Town should have only removed those portions of the Properties that had a change in use and assessed the LUCT incrementally to those portions. Lot 16-5-15 contains 16.02 acres, has frontage on New Hampshire Route 25, abuts the secondary display lot and is used as a staging area for new recreational vehicles as they arrive and await preparations for sale and delivery, and as an additional winter storage area for some vehicles. Lot 13-5-21 is a rear lot containing 11.03 acres that abuts Lot 16-5-15 and is used as a snowmobile racing and training area, a dirt bike racing area, and by recreational vehicle clubs touring the area, to park their recreational vehicles and have access to the Baker River for swimming and canoeing.

The Taxpayer also owns two other properties in the Town that are not under appeal. The first, Map 16-5-15-1 is the primary showroom and sales area for the recreational vehicle business, however, it is owned under a different title (Gilman Outdoor Equipment, Inc.) than the Properties and will not be considered in this appeal. The second, Map 16-5-15-2, is owned under the same title as the Properties, abuts them and is fully used as a secondary display lot for the recreational vehicles, however, it was removed from current use prior (2003) to the Properties’ removal and is not part of this LUCT appeal.

Based on the wording contained on the LUCT lien release form (Form A-5), the Town incorrectly removed the Properties from current use at the “owner’s request.” The Town testified the removal of the Properties from current use and the assessment of the LUCT was

triggered after one of the selectmen, Mr. Robert Berti, noticed changes to the Properties while traveling along Route 25. Ms. Anne Dow, the Town's Administrative Assistant, testified she wrote the phrase on Line 10 of the Form A-5 without being fully aware of the ramifications of her choice of words. In a July 5, 2005 letter to the board and again during the hearing the Town stated it was acting on its own to remove the Properties from current use and to assess the LUCT rather than at the request of the Taxpayer. After the Properties were removed from current use, the Taxpayer contested the LUCT assessment and requested the selectmen hold in abeyance the assessment of the LUCT until such time as the Taxpayer could have an independent real estate appraisal of the Properties performed. The appraisal was subsequently completed and submitted to the Town and, after further negotiations the Taxpayer paid any resulting and outstanding LUCT due.

The Complainant testified the Town should have removed only the areas that had an actual change in use rather than the entire area of the Properties. In response, the Town testified it reviewed the Properties and found their use was so mixed and varied and rarely in the same location from month to month that it would be impossible to try to accurately identify the exact acreage that may not have been "changed" in use. For this reason, the Town found it appropriate to remove the entire area of the Properties as at various points in time it is used in such a way as to disqualify it for eligibility for current use assessment. Regarding the Complainant's arguments, the board agrees that in most current use situations, there is a readily apparent physical change to a property that would trigger the necessity of the assessment of a LUCT. The board understands the Complainant's concerns and acknowledges the "grey" area the Properties may be in relative to the current use statutes, rules and regulations. In this case, however, the

intensity of the use on the rear of lot 16-5-15 and on lot 16-5-21 was significantly increased warranting their removal from current use by the Town.

After a thorough review of the testimony and other evidence from all the parties, the board finds the Town did not act unreasonably when it removed the Properties in their entirety from current use and assessed the LUCT.

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John B. Dirrane, 648 Quincy Road, Rumney, NH 03266, Complainant; John J. Killion, Jr., 9 Pond Place Lane, Concord, NH 03301, Taxpayer; Chairman, Board of Selectmen, Town of Rumney, PO Box 220, Rumney, NH 03266; and Current Use Board, c/o New Hampshire Department of Revenue Administration, Post Office Box 457, Concord, New Hampshire 03302, Interested Party.

Date: 5/12/06

Anne M. Stelmach, Clerk