

Elizabeth Huggins Trust

v.

City of Dover

Docket No.: 21477-05LC

DECISION

The “Taxpayer” appeals, pursuant to RSA 79-A:10, the “City’s” 2005 land-use-change tax (“LUCT”) of \$27,500 on a 1.27-acre riverfront house site (the “Property”), based on a \$275,000 full-value assessment. See RSA 79-A:7, I. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the City’s LUCT assessment was erroneous or excessive. See TAX 205.07. We find the Taxpayer failed to meet this burden.

The Taxpayer argued the LUCT was erroneous or excessive because:

(1) the Property is part of a farm that has been in the family since 1929 and great efforts to conserve and preserve the undeveloped nature of the surrounding land have been made, as well as to minimize the disturbances (such as tree-cutting) caused by the building of a modest house for a family member;

(2) in valuing the Property, the City erred in not using the sale price of the “Hoitt” property, which consists of 7 acres, as a benchmark to assess the LUCT;

(3) the Property is not similar to the luxury (so-called “mega”) developments in other areas of the City where purchasers are paying large sums for retaining walls, bridges and other amenities; and

(4) the LUCT should be no more than \$8,600 (10% of \$86,857), as calculated in Taxpayer Exhibit No. 2.

The City argued the LUCT was proper because:

(1) the Property is a buildable lot with frontage on the Bellamy River;

(2) residential waterfront lots in the City have a ‘minimum’ market value of \$350,000 each;

(3) the City prepared an appraisal report (Municipality Exhibit No. A) estimating a value of \$355,800 for the Property through a sales comparison approach;

(4) the City worked with the Taxpayer over a lengthy period to determine 1.27 acres of land was subject to the LUCT assessment and the City even ‘waived’ the LUCT on other land taxed in but “non-qualifying” for current use (the balance from 3.445 disturbed acres; see Municipality Exhibit No. A, p. 6);

(5) the Taxpayer neither disputes the 1.27 acre computation nor the liability for a LUCT, but only the amount due based upon a disagreement regarding the market value;

(6) in this regard, the City examined the details of the Hoitt sale before concluding its price is not reflective of the Property’s market value; and

(7) the LUCT assessment is reasonable in light of the evidence submitted, which reflects an even higher market value for the Property.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to satisfy its burden of proof that the LUCT of \$27,500 (based on a market value of \$275,000) was erroneous or excessive.

The parties do not dispute the amount of land removed from current use for purposes of computing the LUCT or that RSA 79-A:7, I requires a 10 percent tax on "the full and true value" of the Property. They also agree the relevant date for assessment purposes should be July 1, 2003. The Taxpayer contends the LUCT should be no more than \$8,600. The board disagrees and finds the City's assessment of \$275,000 is more reflective of the market value of the Property for the reasons briefly noted below.

The City presented evidence the Hoitt property is not truly comparable to the Property due to some significant access (right of way) issues that limited its development potential. The City's assessor stated that, at the time the Hoitt property was marketed, there was even a threat of a lawsuit by the abutter (the Taxpayer's representative and/or a cousin) if someone other than a conservation group had purchased it. The Hoitt property sold for somewhat less than the asking price (\$450,000) in the MLS listing and the land is being conserved, not developed with a residence. These factors seriously weaken the market value comparisons the Taxpayer attempted to make.

The board finds the City's analysis contained in Municipality Exhibit No. A to be well-reasoned and to give the best indication of the market ("full and true") value of the Property. The value conclusion reached by the City based on the sales comparison approach (\$355,800) is well above the assessed value for LUCT purposes (\$275,000).

The Taxpayer testified its desire was to minimize the amount of disturbance that occurred on the Property and to conserve, as much as possible, the natural features of the land, rather than cutting down more trees and using it more intensively in a manner comparable to a “mega development.” These desires and intentions, however, cannot serve to change the focus of the appeal, which is the market value of the Property as of the time of the LUCT assessment.

In summary, the board finds the Taxpayer failed to meet its burden of proof that the LUCT was disproportionately assessed.

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

Michele E. LeBrun, Member

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: Elisha Huggins, Trustee, Elizabeth Huggins Trust, 29 Moose Mountain Lodge Road, Etna, NH 03750, representative for the Taxpayer; City of Dover, Chairman, City Council, 288 Central Avenue, Dover, NH 03820, and Current Use Board, c/o New Hampshire Department of Revenue Administration, Post Office Box 457, Concord, New Hampshire 03302, Interested Party.

Date: November 28, 2006

Anne M. Stelmach, Clerk