

Jay S. Grumbling Revocable Trust

v.

Town of Lee

Docket No.: 21493-05LC

MODIFIED DECISION

The board held a hearing on November 20, 2006 regarding the “Taxpayer’s” October 23, 2006 “Motion for Reconsideration” (“Motion”) of the board’s September 25, 2006 Decision (“Decision”). The Decision denied the Taxpayer’s appeal of a \$13,000 Land-Use-Change Tax (“LUCT”) assessed by the “Town” on 3.0 acres removed from current use with an estimated full and true value of \$130,000. See RSA 79-A:7, I. Subsequent to the Decision, the Town in an October 24, 2006 letter, in what appeared to be a settlement, recomputed the LUCT to be \$701.25. Because of questions regarding the Town’s approach and calculations and issues raised in the Motion, the board decided to proceed with the hearing on November 20, 2006.

At the November 20, 2006 hearing, the Town and the Taxpayer argued the conservation easement held by the Town on the “Property” so substantially restricts the use of the acreage to agricultural purposes only with no further subdivision available (except potentially the reserved land on High Road), that even the acreage reserved out of the easement adjacent to the 50 foot frontage on Route 125 could only be used for agriculturally related purposes. Also submitted as evidence was the limited, restricted, summary appraisal performed by Scott Heath (“Heath

Appraisal”) which estimated the market value of the Taxpayer’s land and buildings before granting the conservation easement to be \$1,050,000 and after to be \$600,000.

Based on the evidence submitted at the original July 27, 2006 hearing and the November 20, 2006 hearing, the board modifies its earlier Decision affirming the Town’s \$13,000 LUCT and orders a revised LUCT of \$4,950 based on a market value finding of \$49,500 and the RSA 79-A:7 tax rate of 10%.

Before detailing the board’s valuation findings, two general comments are in order so the parties understand why the board has modified its earlier findings and not accepted the parties’ subsequent settlement (memorialized in the Town’s October 24, 2006 letter).

First, at the July 27, 2006 hearing, the Town was primarily represented by Avitar Associates of New England, Inc. (“Avitar”) which presented the sole evidence of market value relative to the 3.0 acres disqualified from current use (“Disqualified Area”) due to the construction of a horse riding and training facility. The Taxpayer presented no market value evidence, but simply asserted the Disqualified Area was being used for agricultural purposes and thus only had value as backland. While some testimony and written evidence as to the nature of the restrictions of the conservation easement were presented at the July 27, 2006 hearing, the Motion and the testimony at the November 20, 2006 hearing provided more detail as to the limiting effect of the conservation easement on the non-subdividable reserved acreage adjacent to Route 125. Thus the Decision was based largely on finding the Taxpayer had failed in its proof in showing the LUCT as assessed by the Town was disproportionate.

Second, the board’s authority to not accept a settlement, such as the one contained in the Town’s October 24, 2006 letter, is derived from RSA 71-B:16, II where the board can correct an assessment of a property that “has been fraudulently, improperly, unequally, or illegally

assessed.” Thus, given the recomputed LUCT being based on only 1.5 acres rather than 3 acres, the inappropriate application of an equalization ratio and the board’s rulings in the Decision, the board has proceeded with its RSA 71-B:16 authority to ensure the LUCT is properly assessed.

The board agrees with the parties’ characterization of the valuation exercise in this case as being very unique. Many LUCT valuations are because, as is here, the property rights embodied in the Disturbed Area are inextricably related to the rights of the larger parcel and substantial judgment is involved in valuing them.

In valuing the Disturbed Area, its highest and best use must be determined and all factors affecting value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975) and 590 Realty Co., Ltd. v. City of Keene, 122 N.H. 284, 286 (1982). Moreover, in valuing property, judgment is the touchstone. Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977). The Disturbed Area cannot be subdivided as a separate legal lot. Due to the provisions of the conservation easement, it must be part of the larger parcel associated with the existing dwelling and outbuildings on High Road. However, because the Disturbed Area was part of the acreage reserved out of the conservation easement, it has the capability of being developed, unlike the land encumbered by the conservation easement. But, because it must be associated with the larger parcel restricted to agricultural uses, its development potential is similarly constrained. On the other hand, the Disturbed Area is positively affected by its proximity and access onto Route 125. This allows an accessory agricultural use, such as the one that caused the disqualification, that is more intensive and valuable than open space agricultural uses (fields, pastures, horticultural crops or forestry). Consequently, the board concludes the Disturbed Area contains more valuable property rights than open space agricultural land but less than the unsubdivided residential site value submitted by Avitar.

Given this amorphous description of the Disturbed Area's property rights, how is it to be valued? Such types of accessory, developable agricultural sites rarely sell. Consequently, given the two bookends of value submitted as evidence, \$5,500 per acre¹ and \$43,333 per acre (\$130,000 site value divided by 3 acres), the board has utilized its judgment, experience and knowledge (RSA 541-A:33, VI) and estimated the Disturbed Area having the suitability of being developed with agricultural buildings (see broad definition of "agriculture" at RSA 21:34-a) to have a value approximately three times the \$5,500 average agricultural acre value. Thus the LUCT is \$4,950 (3 acres x \$16,500 per acre x 10%).

Any rehearing or appeal of this Modified Decision shall be in keeping with RSA ch. 541.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

¹ The Town's assertion of \$5,500 value for agricultural land is supported by a calculation discussed but not performed at the November 20, 2006 hearing. Utilizing the Heath Appraisal market value estimate for land and buildings of \$1,050,000, the board has deducted the equalized value of the existing improvements on High Road and the 1.95 acre site (curtilage) associated with them and divided the result by the remaining acreage: \$1,050,000 - \$317,529 [equalized building value] - \$130,000 [equalized 1.95 acre site value] divided by 122.05 acres. This calculation indicates an average undeveloped acre value of \$5,755, very similar to the Town's \$5,500 estimate.

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I hereby certify a copy of the foregoing Modified Decision has this date been mailed, postage prepaid, to: Charles F. Tucker, Esq. and Robert M. Derosier, Esq., Donahue Tucker & Ciandella, 225 Water Street, Exeter, NH 03833, counsel for the Taxpayer; Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, representative for the Municipality; Town of Lee, Chairman, Board of Selectmen, 7 Mast Road, Lee, NH 038241; and the Current Use Board, c/o State of New Hampshire Department of Revenue Administration, PO Box 457, Concord, NH 03302, Interested Party.

Date:

Anne M. Stelmach, Clerk