

**Jay S. Grumbling Revocable Trust**

**v.**

**Town of Lee**

**Docket No.: 21493-05LC**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 79-A:10, the “Town’s” 2005 land-use-change tax (“LUCT”) of \$13,000 on 3.0 acres removed from current use on Map 24, Lot 7 (the “Property”). The LUCT was based on a \$130,000 full-value assessment. 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 Town’s LUCT assessment was erroneous or excessive. See TAX 205.07. We find the Taxpayer did not meet this burden.

The Taxpayer argued the LUCT was erroneous or excessive because:

- (1) no more than 1.5 acres should have been removed from current use assessment;
- (2) the 1.5 acres should be valued as “back land” rather than as a residential lot;
- (3) the Town’s zoning ordinance precludes subdivision of the Property because it lacks the necessary road frontage having 50 feet rather than the 250 feet minimum requirement on Route 125; and

(4) the Property was developed as an accessory site to the main house.

The Town argued the LUCT was proper because:

(1) the Property has direct, legal access to Route 125 and, according to the Town building inspector's office, could use the substantial frontage on High Road to satisfy the minimum road frontage requirement for subdivision;

(2) the Town met with the Taxpayer and inspected the Property before concluding 3.0 acres were disturbed and ineligible for current use assessment when the driveway from Route 125, the barn and arena, and the barn's septic system, well and parking areas are taken into account;

(3) the Town established the value of the land removed from current use by comparing it to residential lot sales (Municipality Exhibit No. B); and

(4) the Taxpayer presented no market value evidence to support a lower LUCT assessment.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to prove that the Town's assessment of the \$13,000 LUCT was erroneous or excessive.

As in most LUCT cases the central issue is two fold: 1) the amount of land removed from current-use; and 2) the value of that land. The board will address each of those issues separately.

Initially, the Town estimated 4.5 acres had been disturbed and should be removed from current-use. Upon further inspection of the Property, the Town revised the area removed to 3 acres and assessed a LUCT based on the market value of that area. The Taxpayer provided the Town, copying the board, with a reduced (half size) site plan drawing depicting how the Property was to be improved. A review of the Taxpayer's plan shows the horse barn with its attendant riding arena and office space, an area for a future septic system, parking areas and roll-off pads for the people using the equine facilities along with the driveway leading from the Property

directly to Route 125. The Taxpayer asserted the area disturbed was no more than 1.5 acres and based its assertion on the area encompassed by the buildings plus a sufficient area for the driveway and some curtilage around the building for maintenance purposes.

The board has reviewed the plan submitted by the Taxpayer and concludes the Town's estimate of 3.0 acres to be reasonable, well-founded and the best estimate of the area needed to support the Property's current development. The plan notes a total disturbed area of 4.5 acres but the board estimates that approximately 1/3 of the disturbed area is pasture potentially eligible for current-use and 2/3 related to the improvements, utilities, parking and drives.

After establishing the amount of land removed from current use, the value of the land removed must be determined. As the board notes in a similar case, SW Farms, Inc. v. Town of Hollis, Docket No.: 17426-97PT,

[t]he exercise of having to value certain acres ("NICU") which are part of a larger tract in current use is a difficult assignment. However, the board has consistently held that the process of valuing such land should not be tied to technical mass-appraisal methodology<sup>1</sup>, but rather the exercise must be one in which the property rights embodied in the land NICU should be assessed at market value and those in the remaining land veiled by current use should not. (See John M. Lovett v. Town of Sutton, Docket No.: 15100-94PT; Virginia A. Soule v. Town of Sunapee, Docket No.: 14773-93PT; and John L. Arnold v. Town of Frankestown, Docket No.: 8718-90PT).

The Town testified that although the Taxpayer improved the Property with an equestrian center and leased it to a person who operates it as an ongoing business, the Town did not value the land for its commercial usage. Initially, the Town valued the Property as two residential sites encompassing 4.5 acres but revised that estimate to one site on 3.0 acres after the Town reviewed

---

<sup>1</sup> 'The statute makes the proceeding for the abatement of a tax a summary one, free from technical and formal obstructions. The question is, does justice require an abatement?... The justice to be administered is to be sufficiently exact for the practical purposes of the legislature, who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles. The points to be considered are such as the nature of each particular case presents. They cannot be fixed by an invariable rule.' Manchester Mills v. [City of] Manchester, 58 N.H. 38, 39 [(1876)].

the Taxpayer's abatement request. The Property is located in a residential zone and the Town stated it estimated the Property's value by comparing it to four sales of similar residential sites. The Town submitted evidence that recent sales of similar properties indicated they were selling in the \$130,000 to \$150,000 range (Municipality Exhibit No. B). The Town used the midpoint of this range (\$140,000) as a starting value and subtracted \$10,000 for the cost of the subdivision and permitting process. The board finds the Town's resulting \$130,000 value and subsequent \$13,000 LUCT to be reasonable.

Based on the parties' testimony and submissions, the board finds the methodology used by the Town's assessor provides the best evidence of the area removed from current use, the market value of that area and, consequently, the appropriate LUCT.

The Taxpayer has the burden to prove the area removed by the Town or the value of the area removed is something different than what the Town determined. The Taxpayer provided no evidence of the Property's market value other than to state it was "back land" and should have little value other than that assigned to back land on other properties. The board finds this position unreasonable given the fact the Property is being used as a commercial enterprise, has direct access and exposure from Route 125 and is operated as an ongoing business. While the Property has some legal access on High Road, this access is some distance from the Property. The Taxpayer's ability to utilize the 50 feet of road frontage on Route 125 proximate to the Property makes it clear to the board the Taxpayer made a conscious, prudent decision to develop this particular area due to its convenient access and visibility from Route 125. Properties such as this should not receive back land value as that would not reflect the full and true value the statute, RSA 79-A:7, states should be the basis for the assessment of the LUCT.

In summary, the board finds the Taxpayer has failed to prove the Town's assessment of the LUCT was erroneous or excessive and the appeal is therefore denied.

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: Jay S. Grumbling, Jay S. Grumbling Revocable Trust, Cornerstone Farm, 55 High Road, Lee, NH 03824, representative 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 03824; and Current Use Board, c/o Department of Revenue Administration, P.O. Box 457, Concord, NH 03302, Interested Party.

Date: September 25, 2006

\_\_\_\_\_  
Anne M. Stelmach, Clerk

**Jay S. Grumbling Revocable Trust**

v.

**Town of Lee**

**Docket No.: 21493-05LC**

**ORDER**

Upon review of the “Taxpayer’s” reconsideration motion (the “Motion”) and the “Town’s” October 24, 2006 letter, the board finds a hearing on the Motion is appropriate. The hearing is scheduled for November 20, 2006 at 9:00 a.m. at the board’s office, Johnson Hall, 107 Pleasant Street, 3d Floor, Concord, NH 03301.

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 Order 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 Current Use Board, c/o Department of Revenue Administration, PO Box 457, Concord, NH 03302, Interested Party.

Date: November 1, 2006

\_\_\_\_\_  
Anne M. Stelmach, Clerk