

Thomas A. Bouffard

v.

Town of Deering

Docket No.: 22600-07LC

DECISION

The “Taxpayer” appeals, pursuant to RSA 79-A:10, the “Town’s” 2007 land-use-change tax (“LUCT”) of \$7,000.00 on a 1.1-acre building lot (the “Property”), based on a \$70,000.00 full-value assessment. For the reasons stated below, the appeal for abatement is granted but only to the Town’s recommended assessment of \$68,200.

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 carry his burden, but the assessment is abated to the amount recommended by the Town.

The Taxpayer argued the LUCT was erroneous or excessive because:

- (1) the Town had assessed the disqualified area as a 2.0 acre building lot but the actual area disturbed is only 1.10 acres; and
- (2) the \$70,000 assessed value for the 2.0 acre building site should be reduced by 45% (or to \$38,500) because its size is only 1.10 acre.

The Town, represented by Avitar Associates of New England, Inc. (“Avitar”), argued the assessment should be reduced to \$68,200 to account for the disturbed area being only 1.10 acre; the revised assessment is proper because:

- (1) sales indicate building lots were selling for approximately \$70,000 per site; and
- (2) the 1.10 acre area captures most of the rights contained in the minimum zoning lot size of 2.0 acres.

This appeal was consolidated for hearing with Richard Teeter v. Deering, Docket No.: 22907-07LC due to the similarity of issues and assessment. Thus, the board has considered all evidence submitted in both appeals.

Board’s Rulings

RSA 79-A:7, I requires land subject to a LUCT be assessed at its “full and true value” or market value. Based on the evidence, the board finds the Taxpayer did not submit any market evidence to indicate the recommended LUCT assessment of \$68,200 for the 1.10 acre house lot was not reflective of market value.

The Taxpayer’s primary argument was that if a 2.0 acre house lot was worth \$70,000, then a 1.10 acre house lot, being only 55% of the area, was worth only 55% of the value of a 2.00 acre lot. The board finds the Taxpayer's argument is neither supported by any market data nor supported by basic assessment or appraisal methodology. The only market evidence submitted was the six sales Avitar referenced in its abatement recommendation to the Town which both support the Town’s contention of a basic lot or site value of \$70,000 and a minimal value for acreage in excess of what is necessary for building a dwelling. To value the land using a straight line relationship, as argued by the Taxpayer, is not in keeping with market principles and would result in a disproportionate assessment. While acreage (for land) and square footage

(for buildings) are often the units of measure and comparison for valuing property, in reality it is the bundle of tangible and intangible rights embodied in the real estate that must be identified and valued. RSA 21:21¹ defines real estate as including all tangible and intangible rights associated with real property. Here, the rights to site and build a dwelling are what need to be assessed. Those rights are nearly equally embodied in either a 1.10 acre site or a 2.0 acre site. Thus, the board finds Avitar's recommended assessment of \$68,200 for the disturbed area of 1.10 acres is a reasonable estimate of its market value and no further abatement is warranted.

The Town shall file a revised A-5 form with the register of deeds reflecting the acreage disqualified by the LUCT is 1.10 acres rather than the 2.0 acres indicated on the LUCT bill sent to the Taxpayer.

Last, while not critical to the resolution of this appeal, because the parties essentially agree now as to the disqualified area, the board observes there is no overt statutory or rule requirement that a taxpayer, when developing a lot as here, must provide a site map to the assessing officials detailing the disturbed area. (We note that accompanying an initial application for current use the applicant must provide a detailed map showing land not in current use and categories of current use land. Cub 302.01(b)(1) and 309.01(b)(1)). While that may be desirable, lacking such a plan, assessing officials must determine, hopefully in cooperation and coordination with the taxpayer, the disturbed area so as to properly assess it rather than defaulting to the minimum zoning lot size. See Cub 303.02(b). This lack of any stated requirement in the statutes or rules of the process of maintaining or creating these subsequent curtilage carve-outs may result in unclear and insufficient current use records as time progresses.

(The board is aware that subdivision plans and non-residential site plans may provide in many

¹ RSA 21:21 Land; Real Estate states: "I. The words 'land,' 'lands' or 'real estate' shall include lands, tenements, and hereditaments and all rights thereto and interests therein."

instances, adequate records of the qualifying status of current use land. It is more the situation as here when large re-subdivided current use lots are developed on an individual basis.)

If the LUCT has been paid, the amount paid in excess of \$6,820 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Thomas A. Bouffard, 276 Old County Rd., Deering, NH 03244, Taxpayer; Chairman, Board of Selectmen, Town of Deering, 762 Deering Center Road, Deering, NH 03244; Christina Murdough, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Representative for the Municipality; and Current Use Board, c/o Department of Revenue Administration, Post Office Box 457, Concord, New Hampshire 03302, Interested Party.

Date: April 22, 2008

Anne M. Stelmach, Clerk