

Gary Russell and Carole LaFond

v.

Town of Hill

Docket No.: 23330-07LC

DECISION

The “Taxpayers” appeal, pursuant to RSA 79-A:10, the 2007 land use change tax (“LUCT”) of \$4,500 assessed by the “Town” on a 3.32-acre lot (the “Property”). The LUCT was computed at 10% of a \$45,000 full value assessment of the Property. See RSA 79-A:7, I. For the reasons stated below, the appeal is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the Town’s LUCT assessment was erroneous. See Tax 205.06. We find the Taxpayers failed to meet this burden.

The Taxpayers argued the LUCT was erroneous because:

- (1) they purchased the Property for \$45,000, and the Town subsequently assessed the lot value at \$33,200 for tax year 2007, as shown in Taxpayer Exhibit No. 1; and
- (2) it is unfair for the Town to assess the LUCT on a higher value than the assessed value of the Property as determined by the Town.

The Town argued the LUCT was proper because:

- (1) a municipal revaluation was performed in 2004 (and another will be performed in 2008);
- (2) the assessed value of the Property (\$33,200) was derived using base rates established during the 2004 revaluation and the Town wide level of assessment, measured by the equalization ratio, was 74.8% at the time of the purchase in 2007;
- (3) the law (RSA 79-A:7, I) requires the LUCT to be assessed on the “full and true value” of the Property at the time of the change in use, not the assessed value;
- (4) as shown in Municipality Exhibit No. A, the Town did an analysis of comparable sales and estimated the Property had a value of \$45,000 at the time of the purchase by the Taxpayers, the price they paid for it; and
- (5) the appeal should be denied.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving the LUCT was erroneous.

RSA 79-A:7, I requires the Town to assess the LUCT “at the rate of 10 percent of the full and true value” of the Property at the time of the change in use. The board finds this value is reflected in the \$45,000 price paid for the Property by the Taxpayers and the Town did not err in assessing the LUCT at \$4,500.

The Taxpayers’ argument that the assessed value of the Property should be used to compute the LUCT is without merit. The assessed value was established at \$33,200 based on the Town’s tax year 2004 values and is not reflective of its “full and true value” at the time they purchased the Property in 2007. The Town noted the level of assessment, indicated by the computed equalization ratio, was 74.8% in 2007. This means that, on average, properties in the

Town were selling for about 25% less than their market value. Applying this ratio to the assessment, the Property had an indicated market value reasonably close to the purchase price paid by the Taxpayers.

In addition, the Town analyzed sales of other comparable properties before concluding the purchase price of \$45,000 reflected the Property's market value for purposes of assessing the LUCT. See Municipality Exhibit No. A (which includes correspondence from the Town to the Taxpayers explaining these facts, photographs and the listing sheet for the Property, showing its asking price and selling price, and the investigation and calculations performed by the Town to arrive at the value estimate and computation for the LUCT). Based on the evidence presented, the board finds the Taxpayers failed to prove the Town's determination of the LUCT was erroneous.

For all of these reasons, the appeal is 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

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: Gary Russell and Carole LaFond, 381 Blucher Street, Manchester, NH 03102, Taxpayers; Chairman, Board of Selectmen, Town of Hill, P.O. Box 236, Hill, NH 03243; Jim Rice, Granite State Municipal Assessing & Consulting Services, LLC, 1 Arrowhead Drive, Bow, NH 03304, Representative for the Municipality; and the Current Use Board, c/o Department of Revenue Administration, Post Office Box 457, Concord, New Hampshire 03302, Interested Party.

Date: April 2, 2008

Anne M. Stelmach, Clerk