John Gonzalez

v.

Town of Salisbury

Docket No.: 25503-11LC

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the "Town's" 2011 land use change tax ("LUCT") of $11,400 on one acre removed from current use from a 12.03 acre parcel (the "Property"). (The LUCT was based on a $114,000 full value assessment by the Town for the one acre.)

The Taxpayer has the burden of showing, by a preponderance of the evidence, the Town's LUCT assessment was erroneous or excessive. See Tax 205.06. For the reasons stated below, the board finds the Taxpayer did not carry his burden and therefore, the appeal for abatement is denied.

The Taxpayer argued the LUCT was erroneous or excessive because:

(1) the five lot sales described in Taxpayer Exhibit No. 1 indicate the Town overvalued the land taken out of current use because this exhibit shows what people were paying for lots with a view and indicates the range of value is $60,000 to $80,000;

(2) the Taxpayer purchased the Property because it had additional land (approximately 11 acres) which provides increased privacy and buffer;

(3) this additional land contributes more value than the Town recognized, separate and apart from the value of the view associated with the one acre lot on which the house was built; and

(4) the LUCT should be abated based on a "$60,000 - $80,000" range of value for the house lot, rather than the $114,000 value assessed by the Town.

The Town argued the LUCT was proper because:

(1) the Taxpayer purchased the Property for $192,000 and this is the best indicator of market value;

(2) the multiple listing sheets describe the Property as having 360 degree views and other amenities which support the $114,000 contributory value of the one acre house lot arrived at by the Town;

(3) the Town used an "extraction method" to determine the value of the one acre lot and a LUCT based on this value is fair and reasonable; and

(4) the Taxpayer failed to meet his burden of proof.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet his burden of proving the LUCT was erroneous. The appeal is therefore denied.

The Taxpayer purchased the Property, a 12.03 acre parcel in current use, on July 30, 2010 for $192,000. The Taxpayer acknowledged he purchased the Property because of its location and substantial view and because of the privacy and buffer afforded by having substantial excess land surrounding the planned one acre home site. Of utmost importance to the Taxpayer was to

find a place to build a home which afforded a view, privacy and an area to allow "peace, tranquility, buffer from neighbors and natural resources."

The parties do not dispute the $192,000 purchase price reflected the market value of the Property as a whole, but disagree as to the value of the one acre house lot taken out of current use which is the basis of the LUCT assessment. (See RSA 79-A:7.) Essentially, the Taxpayer contends the one acre house lot has less relative value and the residual land remaining in current use has more relative value than reflected in the LUCT assessment. The board finds the Taxpayer did not meet his burden of proving the value of the house lot was less than $114,000 at the time the one acre was removed from current use.

The board considered, but could not accept, the arguments presented by the Taxpayer in support of a lower value (in the $60,000 to $80,000 "range"). These arguments are summarized below.[1] The Taxpayer also researched five small lot sales (in Danbury, Gilford and Franklin, shown in Taxpayer Exhibit No. 1) [2] to support a site value in this range for a house lot with views.

The board finds these arguments do not meet the Taxpayer's burden of proving the LUCT was too high and should be abated. The evidence at hearing supported the fact the

[1] When the Taxpayer purchased the Property, it was already comprised of a cleared building site with driveway access, an approved four bedroom septic system and a site plan. Noting the approximately $35,000 of improvements the seller had already made prior to the sale, the Taxpayer argued this amount should be deducted from the $192,000 purchase price to calculate an unimproved value of the entire 12.03 acre parcel to be $157,000. When this is divided by the acreage, the value per acre is $13,000, rounded. The Taxpayer then argued adding the $35,000 investment to the $13,000 per acre value indicated a value of $48,000 for the one acre removed from current use. He also noted the driveway leading to the house lot was very steep and was approximately 1,000 feet long, which requires continual maintenance, and also testified a significant amount of money was spent on "blasting" to put a foundation in because the lot was mostly ledge.

[2] These sales are of little help in determining the value of the one acre piece of land subject to the LUCT. Although the Taxpayer submitted photos of the views from these sales, no assessment-record cards were submitted for the board to review, no evidence was presented as to the whether the sale prices were arm's-length transactions indicative of market value and no evidence was presented as to what, if any, adjustments should be made for differences in the sales to the subject was submitted.

property could not be subdivided; therefore, a contributory value of excess/rear land of $13,000 per acre (or $10,000 per acre as the Taxpayer later stipulated at hearing) is unreasonable. There is no question the excess land affords the privacy, views and buffers the Taxpayer is seeking; however, the market evidence presented simply does not support this high a value for the excess land surrounding the house lot.

The Town argued the property has views of Mt. Kearsarge, Ragged Mountain and other valleys and distant hills and submitted photos in support (Municipality Exhibit B) and asserted the purchase price is the best indicator of market value. Further, the Town submitted the multiple listing sheet of the Property (Municipality Exhibit C) which states "[w]orld class views. Almost 360 degrees. Level house site area with unspoiled, full view of all area mountains from valley floor summits and Blackwater River. Total privacy. $30K+ site work incl. driveway, etc. Approved 4BR Septic design. Survey avail. Best views NH has to offer."

Because the driveway on the Property had been installed for agricultural access, the Town did not consider its installation to be a trigger for the LUCT. Instead, the Town considered the building permit to be the trigger which caused it to assess the LUCT on January 5, 2011 (date of change – September 23, 2010). The Town relied on three sales in determining the LUCT and the board reviewed the assessor's testimony regarding these sales.[3]

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[3] His testimony can be summarized as follows:

> of the three sales, Map 237 Lot 7 was considered to be at the low end of the range and discounting this sale for the fact it has access issues (no frontage) and its size (0.6 acres), the Town derived a $34,000 lot value (without a view) using the other two sales as a guide;
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> considering the Property's purchase price of $192,000 and deducting the Town's estimated value of $2,500 per acre (approximately $27,400) for excess (rear) land indicates a residual value for one acre lot removed from current use of $164,600 ($34,000 for the lot without view site value and a value of $130,600 for the view); and
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> the Town then gave further consideration for the access issues and costs to develop the Property and, based on its best judgment, assumed $50,000 for these costs which it deducted, resulting in an estimated value for the one acre site of $114,000 (rounded) and a LUCT of $11,400.

In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

The board has the discretion to evaluate and determine the credibility of the sales price being indicative of market value and finds the purchase price of the Property is the best evidence of value. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length transaction, the sale price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

Based on a review of all the evidence, the board finds the Town's analysis is reasonable and supportive of the value of the one acre site removed from current use. 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. Thus, the board finds an assessment of $114,000 with a LUCT of $11,400 is proper.[4] The appeal is therefore denied.

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[4] Although not determinative of its findings, bus as a check on reasonableness, the board applied 60% of the value of the purchase price to the building lot which equates to a lot value of $115,200. Attributing the balance of the value to the rear land arrives at a value of approximately $7,000 per acre. The board finds this analysis is supportive of the Town's value.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John Gonzalez, 289 W. Salisbury Road, Salisbury, NH 03268, Taxpayer; Chairman, Board of Selectmen, Town of Salisbury, PO Box 214, Salisbury, NH 03268; Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm; and Current Use Board, c/o Department of Revenue Administration, 109 Pleasant Street, Concord, New Hampshire 03301, Interested Party.

Date: 3/12/12

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Anne M. Stelmach, Clerk