

Eugene and Marilyn Jonas

v.

Town of Mason

Docket No.: 26061-11LC

DECISION

The “Taxpayers” appeal, pursuant to RSA 79-A:10, the “Town’s” 2011 land use change tax (“LUCT”) of \$7,500 on a 4.024 acre lot, Map J, Lot 76/4 (the “Property”). The LUCT was based on a \$75,000 full value assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the Town’s LUCT assessment was erroneous or excessive. See Tax 205.06. The board finds the Taxpayers carried their burden.

The Taxpayers argued the LUCT was excessive because:

- (1) the Property was purchased on March 31, 2011 for \$61,000;
- (2) an independent appraisal prepared by Brian Frost dated March 25, 2011 (the “Frost Appraisal”), completed after an inspection of the Property, indicated a market value of \$61,000;
- (3) the Town did not inspect the Property prior to issuing the LUCT, and had the Property been inspected, substantial wetlands would have been observed;

(4) 1.642 acres out of a total of 4.024 acres is designated as wetlands (see Frost Appraisal); and

(5) the LUCT should be abated to \$6,100 based on a market value of \$61,000.

The Town argued the LUCT was proper because:

(1) Richard Rockwood, assessor for the Town, testified a town-wide statistical update was performed in tax year 2011 (the “2011 Update”);

(2) the 2011 ad valorem value of the Property was determined to be \$79,100;

(3) the LUCT was based on a reduced value of \$75,000 because the Town recognized the Property included some wetlands but not to what extent;

(4) the Frost Appraisal should be given limited weight as it utilized sales from Milford, Temple and Brookline, all of which are not comparable, and it included adjustments without supporting documentation;

(5) the 2011 Update established a base land rate of \$79,000 for a 4-acre parcel in the Town; and

(6) the appeal should be denied.

Board’s Rulings

RSA 79-A:7, I requires land subject to a LUCT be assessed at its “full and true value” (market value). Based on the evidence, the board finds the Taxpayers met their burden of showing, by a preponderance of the evidence, the market value of the Property was \$61,000 at the time of the LUCT assessment and therefore the LUCT should be abated to \$6,100.

To determine whether a LUCT abatement is warranted, the board considers and weighs the market value evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge

in evaluating the evidence before it.”) Further, in making its findings where there is conflicting evidence, the board must determine for itself issues of credibility and the weight to be given each piece of evidence because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The Property is a 4.024 acre parcel that was subdivided from a larger, 122 acre parcel located on Reed Road at the intersection of Marcel Road. The larger parcel was put into current use in April 1985. According to a subdivision plan included in the Frost Appraisal (p. 12), the Property has 2.382 acres of buildable area and 1.642 acres of designated wetlands.

The Taxpayers testified they purchased the Property in March 2011 from the previous owner after they responded to a “For Sale” sign on the Property and no real estate brokers were involved. Mr. Jonas further testified the Seller told him he was asking \$61,000 and it was an acceptable sale price. There was no further negotiation and the sale closed on March 25, 2011.

While price does not equate to market value in all instances, the board has the discretion to determine whether the sale price reflects market 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). The sale price can be one of the “best indicators of the property’s value.” Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). In this case, the board finds the sale price is a good indicator of the Property’s value.

The sale price is supported by the Frost Appraisal which also estimated a market value of \$61,000. While Mr. Rockwood expressed his concern regarding several adjustments made in the appraisal (location, lot size, development appeal, etc.), he acknowledged Mr. Frost is a “good appraiser” and the board finds the concerns raised by Mr. Rockwood do not diminish the credibility of the Frost Appraisal.

Based on the above, the board finds the market value of the Property is \$61,000. If the LUCT has been paid, the amount paid on the value in excess of \$6,100 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Eugene and Marilyn Jonas, 27 Fairfield Lane, Wilton, NH 03086, Taxpayers; Chairman, Board of Selectmen, Town of Mason, 16 Darling Hill Road, Mason, NH 03048; Rockwood Appraisal Services, 685 Abbot Hill Road, Wilton, NH 03086, Contracted Assessing Firm; and Current Use Board, c/o Department of Revenue Administration, 109 Pleasant Street, Concord, New Hampshire 03301, Interested Party.

Date: February 17, 2012

Anne M. Stelmach, Clerk