

**Deacon Family Limited Partnership and
Arthur F. Howard & Virginia L. Howard Trust**

v.

Town of New London

Docket No.: 26627-12CU

ORDER

The board has reviewed the “Taxpayers” August 28, 2013 Motion For Rehearing (“Motion”) of the August 5, 2013 Decision and the “Town’s” September 5, 2013 “Objection” to the Motion. The suspension Order entered on September 6, 2013 is hereby dissolved. The Motion is denied for the reasons stated below.

As evident in the specific findings in the Decision, the board does not agree with many of the premises and arguments presented in the Motion. The Decision is quite clear in stating the Taxpayers had appealed the denial of a single “application” for current use, not multiple applications, but that this application involved land situated on two contiguous lots.

The Taxpayers are on record representing to the board that it made economic sense for them to place one lot in current use (Lot 5, the undeveloped “back lot”) only if they could also obtain current use classification for part of the land on the contiguous lot (Lot 2, the “waterfront lot”). Lot 2 contains a number of extensive improvements, including an “existing house, garage, well, septic tank, leach field, driveway and tennis court.” (Decision, pp. 1-2.) The board found

no error in the Town's decision that Lot 5 could be approved for current use but that the parts of Lot 2 (approximately 1.7 acres) for which the Taxpayers also sought current use classification did not qualify. The remainder of the Motion states disagreements with the board's findings pertaining to Lot 2 and is briefly discussed below.

The Taxpayers contend that because they only seek current use classification for those portions of Lot 2 that do not have "improvements" on them, it is improper for the Town (in its arguments summarized on page 2 of the Decision) to refer to Lot 2 as "residential waterfront property." The board does not agree. The board took a view of the Property and noted Lot 2 has substantial improvements designed for the exclusive use of a residential waterfront property owner. These improvements include a very large house, a tennis court, a long driveway and a septic field (made necessary because of this residential use), in addition to the boat house and dock that serve Lot 2. Nor was it error requiring correction or a rehearing for the board (in summarizing the Town's arguments on page 2 of the Decision) to refer to the "chronology" of events presented by the Town, even if the Taxpayers wish to dispute the accuracy of several details in the Town's chronology that were not material to the board's findings and rulings.

Further, the board does not agree with the Taxpayers that the physical location of the boat house and dock (on the waters of Lake Sunapee adjacent to the land, but still physically connected to it) means it is not an improvement associated with the land. While these structures (built some time ago by family members) can be seen to be on the water rather than "on the land," no one but the owners of Lot 2 (the Taxpayers) have access to them and they are in every sense private, not public property (unlike the water in Lake Sunapee, which is public property). The boat house and dock are clearly real estate improvements intended to enhance the enjoyment and value of Lot 2, including the single family residence built on it, and therefore is properly

considered part of the development of Lot 2. The Town properly assessed the boat house and dock for a substantial value as part of the real estate owned by the Taxpayers. (Decision, p. 5). See also RSA 72:7 (wharves, like buildings, “are taxable as real estate”); and, e.g., Sturgis v. City of Portsmouth, BTLA Docket No. 15697-94PT, at p. 4 (“the mere fact that these structures exist over state waters does not diminish their taxability” as real estate, where the structures “solely benefits the [t]axpayer and enhances the [t]axpayer’s real estate bundle of rights”).

The Decision fully recognizes that parts of Lot 2 (especially areas on the periphery) have not been developed with improvements and that Mr. Howard, a licensed forester, wishes to conserve them in their “natural” state. These facts are not sufficient to qualify those areas for current use. It is hard to imagine any parcel of residential or other land in New Hampshire, however intensely developed, which does not have at least some areas (in the front, side or backyard) left in what could be called an undeveloped (or natural) state. Given the single family residential waterfront development of Lot 2 that has already taken place, any further “development” referenced in the Motion would be ancillary to this residential use. According to the Motion (p. 1), such improvements could include “small outbuildings, [sic] and an additional tennis court.” Such further “development,” however, would not change the character of Lot 2 as a developed, single family waterfront lot. Based on the evidence presented and the board’s view, the board finds a further subdivision of the “undeveloped” land areas on Lot 2 to create a second house lot, for example, is not physically possible.

The Town is correct in arguing “good reason” is required for the board to grant a rehearing motion and the Taxpayers have not satisfied this burden in the Motion. (See RSA

541:3 and Tax 201.37.) Mere disagreement with the findings and conclusions stated in the Decision is not sufficient to warrant a rehearing.¹

The Town further notes the Motion attempts to present additional evidence available to the Taxpayers at the time of the original hearing (in the form of two maps of other properties with current use land). This attempt violates Tax 201.37(g): “rehearing motions shall not be granted to consider evidence previously available to the moving party but not presented at the original hearing or to consider new arguments that could have been raised at the hearing.”

For all of these reasons, the Motion is denied. Pursuant to RSA 541:6, any appeal of the Decision must be filed in the supreme court within thirty (30) days of the date on this Order with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Certification

¹ The board accepts the statement in the Motion, not previously made, that CUB 303.05 recognizes that land supporting utility lines “not solely for the benefit of the landowner shall be eligible for current use assessment,” but this provision does not impact the board’s findings that the Town did not err in denying the Taxpayers’ current use application for other reasons. In addition, the board acknowledges the obvious, but inadvertent “repetition” of one line in the Decision (pp. 5-6) noted by the Taxpayers (Motion, p. 3), but this typographical error is innocuous and does not alter the board’s rulings.

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I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Deacon Family Limited Partnership, c/o John Deacon, PO Box 1468, New London, NH 03257; and Arthur F. Howard & Virginia L. Howard Trust, c/o Andrew Howard, PO Box 1468, New London, NH 03257, Taxpayers; Chairman, Board of Selectmen, Town of New London, 375 Main Street, New London, NH 03257; and Current Use Board, c/o Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301, Interested Party.

Date: September 19, 2013

Anne M. Stelmach, Clerk