

James and Stephanie Hancock

v.

Town of Chesterfield

Docket No.: 27203-14LC

DECISION

The “Taxpayers” appeal, pursuant to RSA 79-A:10, the “Town’s” 2014 land use change tax (“LUCT”) of \$5,580 on 0.63 acres of land removed from current use (the “LUCT Land”) on a parcel of land located at 202 Welcome Hill Road, Map 14, Lot B10 (the “Property”). The LUCT was assessed at 10% of the \$55,800 full value assessment for the LUCT Land. For the reasons stated below, the appeal for abatement of the LUCT is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the Town’s LUCT was erroneous or excessive. See Tax 205.06. For the reasons stated below, the board finds the Taxpayers did not carry their burden.

The Taxpayers argued the LUCT was erroneous or excessive because:

(1) they purchased the Property (consisting of a total of 47.96 acres in current use) for \$165,000 on September 30, 2013 and then (in order to construct a house) removed the LUCT Land from current use which the Town improperly valued at \$55,800 (as of December 1, 2013, the date of change of use shown on the LUCT bill);

- (2) the Town has many parcels of land in current use and is placing excessive values on land taken out of current use to compensate for the fact that so much land cannot be taxed at full (ad valorem) value;
- (3) market values have been adversely impacted by economic changes in the area (especially the closing of the Vermont Yankee plant, a “major employer,” which resulted in “the loss of hundreds of jobs”);
- (4) the comparable sale properties the Town utilizes to support the LUCT are not appropriate as they were “cherry picked,” older sales (before economic conditions deteriorated) and are in superior locations (near a golf course and/or near Spofford Lake);
- (5) the Town’s assessor concedes the listing prices of the lots in Municipality Exhibit A have dropped and, in general, properties are selling at prices about 15% lower than their listing prices;
- (6) as evidenced by the sales in Taxpayer Exhibit No. 1, the market value of the LUCT Land was in the range of \$27,000 to \$31,000 before making a 25% positive adjustment for view (which the Taxpayers do not dispute) and, when further adjusted for wetlands on both sides of the Property and size differences, the LUCT Land had a market value of \$33,700; and
- (7) the LUCT should be abated to \$3,370 and the appeal should be granted.

The Town argued the LUCT was proper because:

- (1) the Town performed a municipal-wide revaluation in 2013 and established land values at that time;
- (2) the “market” values buildable lots similarly and places less value on excess acreage associated with each lot and, in addition, the Town’s land value curve is not linear and a smaller lot may have a higher per square foot assessment associated with it;

(3) the Property is located on a private road and the house was sited on the “best spot for the best view overlooking the Connecticut River Valley”;

(4) the Town utilized five comparable land sales to estimate the market value of the LUCT Land (see Municipality Exhibit A);

(5) while there were very few land sales in the Town, these five comparables, after adjusting for differences in physical characteristics, support the conclusion the LUCT Land had a market value of \$55,800, making the LUCT proportional, and 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. The appeal is therefore denied.

At issue in this appeal is the market value of the LUCT Land when it was disqualified from current use as of December 1, 2013. The Taxpayers challenge the \$55,800 market value assessed by the Town, contending the market value of the LUCT Land was only \$33,700.

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 Taxpayers purchased the Property, a 47.96-acre parcel of land in current use, on September 30, 2013 for \$165,000. The Property was listed for sale with an asking price of \$199,900 and was sold by a local developer, who the parties agree has knowledge of the

residential real estate market in the Town and “knows the value of the land”. The Property was described as rural with very good views of the Connecticut River Valley and a plan depicts a small pond. (See Taxpayer Exhibit A.)

The board has the discretion to evaluate and determine the credibility of the sales price as an indication of 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). 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). In this case, the board finds the \$165,000 sale price for the Property is a good indication of its market value as it was exposed to the market, was the result of an arm’s-length transaction between a knowledgeable seller and buyer, and was transacted within approximately 60-days of December 1, 2013 (the date the LUCT Land was disqualified from current use). The evidence presented indicates the Taxpayers sited their new home in one of the most desirable areas of the Property; therefore, it was not unreasonable for the Town to conclude a substantial portion of the Property’s market is attributable to the LUCT Land.

The Taxpayers did not present an appraisal or any other independent valuation of the LUCT Land, but relied instead on their own analysis of the local real estate market and presented some information regarding several sales and listings of vacant land. The board could place little weight on this information as the Taxpayers did not present enough specifics regarding how these properties physically compare to the Property and what, if any, qualitative or quantitative adjustments should be made to estimate market value.

The Taxpayer also argued the LUCT Land was assessed for more on a per square foot basis than other lots in the Town. The board could place no weight on the Taxpayers' arithmetical methodology because "assessment per square foot" is not a proper unit of comparison for the LUCT Land and does not result in a credible opinion of market value; the market does not make measurable value distinctions for house lots with non-material size differences and therefore some variation in square foot assessment values is not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per square foot prices for small lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), assessments on a per square foot basis can differ to reflect this market phenomenon.

The Town presented five comparable land sales to support the LUCT. Two of these sales occurred in 2011, two occurred in 2012 and one occurred in 2013. The board was unable to place significant weight on the earlier 2011 and 2012 sales, as the parties generally agreed the market value of vacant land in Town had declined in recent months due in part to the closure of a large regional employer. (See Municipality Exhibit A.)

After reviewing the assessment-records cards for comparable sales presented by the Town, the board finds the Town used similar methodology to assess other vacant lots (specifically those lots on Valley Park Drive), which is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Based on a review of all the sales and listings presented, and corresponding assessment data, the board finds the best evidence of market value for the LUCT Land was the sale of 2.51 acres on Split Oak Circle which sold in February, 2013 for \$125,000. According to the Town, and the Taxpayers generally concurred, this is the "best comparable" and has "similar views" to

the Property. After making the appropriate adjustments for size (not in a linear fashion, but with a significant amount of the value in the house site), the board finds this sale is supportive of the Town's \$55,800 market value estimate of the LUCT Land, resulting in a proportional LUCT assessment of \$5,580.

For all these reasons, the appeal is denied.

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(g). 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

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: James and Stephanie Hancock, 16 Ash Street, North Walpole, NH 03609, Taxpayers; Chairman, Board of Selectmen, Town of Chesterfield, PO Box 175, Chesterfield, NH 03443; Commerford Nieder Perkins, LLC, 556 Pembroke Street - Suite #1, Pembroke, NH 03275, Contracted Assessing Firm; and Current Use Board, c/o Department of Revenue Administration, 109 Pleasant Street, Concord, New Hampshire 03301, Interested Party.

Date: February 20, 2015

Anne M. Stelmach, Clerk