State of California

Board of Equalization
Legal Division

Memorandum

To : Mr. William B. Jackson

Date: February 17, 1994

From : Kristine Cazadd

K. Cazadd

Subject: Timberland Production Zone - Tax Recoupment Fee Application for Waiver, November 19, 1993 Letter

This is in response to your request that we review the November 19, 1993 letter from M requesting waiver of tax recoupment fees under the provisions of Government Code Section 51142, subdivision (e). Based on the information contained in the letter and attached documents, L and M L negotiated a boundary line agreement with the Louisiana-Pacific Corporation in which a TPZ 1.1-acre parcel owned by Louisiana-Pacific would be sold and merge into the adjacent residential 2.04-acre parcel owned by the Lances.

As a condition of approving the boundary line adjustment, the Mendocino County Board of Supervisors (1) amended the General Plan to redesignate the 1.1-acre parcel from Forest Land to Rural Residential-5 ((Resolution No. 92-191) and (2) adopted an immediate rezoning of the 1.1-acre parcel from TPZ (Timberland Production Zoning) to RR:L-5 (Rural Residential-5 acre minimum) by Ordinance No. 3861. The Mendocino County Assessor's Office thereafter reassessed the 1.1-acre parcel as rezoned and the Mendocino County Auditor's Office determined the tax recoupment fee to be $4,586.89, from which the L request a waiver.

Government Code Sections 51140 through 51146 set forth the procedures to be followed by counties when the removal of acreage from Timberland Production Zones is requested by timberland property owners. Section 51142 provides for the payment of a tax recoupment fee by such property owners upon the "immediate rezoning" of TPZ land. Section 51130 states that the purpose of these sections is to provide relief from zoning as timberland production when the continued use of land in the TPZ is neither necessary nor desirable to accomplish the purposes of Section 3(j) of Article XIII of the California Constitution. Further, Section 51131 states that a timberland production zone may not be "immediately rezoned" except pursuant to a request by a landowner and as provided in Sections 51130 et seq. Thus, a landowner who successfully pursues the immediate rezoning of his/her property from TPZ to another land use is required to pay a tax recoupment fee representing a "multiple of the difference between the amount of the tax levied against the property when zoned as timberland production and the amount equal to the assessed valuation of the rezoned

property times the tax rate of the current levy for the tax rate area." (Section 51141(b).)

The landowner may request a waiver from the tax recoupment fee under subdivision (e) of Section 51142, which states:

> In cases of immediate rezoning, an owner may make written application to the State Board of Equalization requesting waiver of tax recoupment fees and explaining the reasons therefor. The board, **if it determines that it is in the public interest**, may waive all or any portion of the fee. (Emphasis added.)

Based on the circumstances in this case and the foregoing statutory provisions, we are of the opinion that no evidence has been submitted which would establish that the public interest would be served by waiver of all or any part of the tax recoupment fee on this property.

The Mendocino County Board of Supervisors approved immediate rezoning of the subject parcel, finding that "immediate rezoning would be in the public interest," in that "the property has not been harvested for the past 80 years." (Mendocino County Board of Supervisors Minutes October 26, 1992, and Louisiana-Pacific Corporation/L 1-92-72 Page 3.) The County and Coastal Commission staff reports and accompanying documents indicate that the parcel never should have been designated TPZ originally, because it is too small to be logged and has utility lines and a stream bisecting it. The fact that it would be in the public interest to correct an incorrect zoning classification, however, does not mean that it is in the public interest to reduce the recoupment fee.

Thus, notwithstanding the above, the parcel has been zoned TPZ, and during all those years it was zoned as TPZ, Mendocino County did not receive the property tax revenues it would have received had the parcel not been zoned TPZ. The imposition of the full tax recoupment fee is justified in this case, since the TPZ designation on the subject parcel did not contribute to the long-term regional economic vitality and productivity of forest resources for which purpose the TPZ land use classification was created, per Section 51100 et seq., and since the parcel has received the benefit of lower taxes all these years as property zoned TPZ.

The fact that Mr. and Mrs. L state that they were unaware of their liability for the tax recoupment fee at the time of their purchase from Louisiana-Pacific and that they were required by the county to obtain the immediate rezoning as a condition of approval of their boundary line adjustment are not sufficient reasons, in our view, for waiver of the fee. As purchasers of the parcel, Mr. and Mrs. L presumably recognized that they were liable for any taxes and appurtenant fees related to the change in use and ownership of the property. The L represented to the County that they desired to own the Louisiana-Pacific parcel "in an unlogged condition," since they have a direct view of it from their home. (See Exhibit A, L - General Plan Amendment/Rezone.) Accordingly, to achieve the boundary line adjustment, they applied for the merger of contiguous

parcels under common ownership (Government Code Section 66499.20 et seq.) and sought approval for the merger under County ordinance and Coastal Commission permit.

The entire governmental approval process, including approval of the merger, General Plan amendment, Coastal Commission permit, and adoption of an ordinance for immediate rezoning, took approximately one year. This time period gave the Lances ample opportunity to discover any and all tax/fee obligations connected with the property and to renegotiate the purchase price with Louisiana-Pacific if need be. That Louisiana-Pacific received the benefit of the lower tax rate under the TPZ zoning on the parcel, and the L as the new property owners, must now pay the tax recoupment fee based on the immediate rezoning, remains a private matter between the seller and buyer and does not constitute a basis for waiver of the fee.

Accordingly, we believe denial of the waiver request by Mr. and Mrs. L is proper under the circumstances. The matter, when prepared, should be forwarded to John Hagerty for inclusion in the appropriate Property Tax Administration Non-Appearance schedule, and once the Board has acted upon that schedule, the taxpayers should be notified of the Board's action on their request. A proposed statement pertaining to the request is attached for your consideration/use.

KEC
Attachments

cc: Mr. Richard Ochsner
Mr. John Hagerty - MIC:63

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STAFF RECOMMENDATION

REQUEST FOR WAIVER OF TAX RECOUPMENT FEE.

Taxpayer	Amount of Fee
	$4,586.89

Section 51142, subdivision (a) of the Government Code provides that upon immediate rezoning of a parcel in a Timberland Preserve Zone (TPZ), as provided for in Government Code Sections 51130-51134, a tax recoupment fee shall be imposed on the owner of the land. Within 90 days following rezoning of land in a timberland preserve, the county assessor reassesses the rezoned parcel on the basis of the value of the property in its rezoned use. The assessor then certifies the value to the owner of the land and to the county auditor. Where the owner does not appeal this new valuation, after such certification the auditor computes a tax recoupment fee and certifies the amount thereof to the county tax collector, who then notifies the owner in writing of the amount and of the due date of the fee. The fee is due 60 days after receipt of notification.

Section 51142, subdivision (d) provides that tax recoupment fees are payable to the State and are to be placed in the Timber Tax Reserve Fund, but Section 51142, subdivision (e) provides that in the case of immediate rezoning, an owner may make written application to the Board requesting a waiver of the tax recoupment fee and explaining the reasons therefor. The Board may waive any or all portions of a fee. For the reasons hereinafter set forth, staff recommends denial of the taxpayers' request for waiver of the fee.

The Mendocino County Board of Supervisors approved immediate rezoning of the subject parcel, finding that "immediate rezoning would be in the public interest," in that "the property has not been harvested for the past 80 years." (Mendocino County Board of Supervisors Minutes October 26, 1992, and Louisiana-Pacific Corporation/ 1-92-72 Page 3.) The County and Coastal Commission staff reports and accompanying documents indicate that the parcel never should have been designated TPZ originally, because it is too small to be logged and has utility lines and a stream bisecting it.

Notwithstanding the above, the fact that it would be in the public interest to correct an incorrect zoning classification, does not mean that it is in the public interest to reduce the tax recoupment fee. During all those years that the parcel was zoned TPZ, Mendocino County did not receive the

property tax revenues it would have received had the parcel not been zoned as TPZ. The reason for the tax recoupment fee is to compensate the public, in part, for the lost revenues. This purpose is clearly served where, as here, the owner/seller of the TPZ land intends to rezone the land and sell it for profit to persons who desire to put it to a more beneficial use, but during the interim benefits from significantly lower property taxes while he awaits the rezoning. The imposition of the full tax recoupment fee is justified in this case, since the TPZ designation on the subject parcel did not contribute to the long-term regional economic vitality and productivity of forest resources for which purpose the TPZ land use classification was created, per Section 51100 et seq., and since the parcel has received the benefit of lower taxes all these years as property zoned TPZ.

The sole justification asserted by the taxpayers for the waiver is that they were unaware of their liability for the tax recoupment fee at the time of their purchase from Louisiana-Pacific and that the immediate rezoning was required by the county as a condition of approval of their boundary line adjustment. In staff's view, this is a not sufficient reason and does not any interest of the public for waiver of the fee. As purchasers of the parcel, taxpayers presumably recognized that they were liable for any taxes and appurtenant fees related to the change in use and ownership of the property. The taxpayers represented to the County that they desired to own the Louisiana-Pacific parcel "in an unlogged condition," since they have a direct view of it from their home. (See Exhibit A, L - General Plan Amendment/Rezone.) Accordingly, to achieve the boundary line adjustment, they applied for the merger of contiguous parcels under common ownership (authorized in Government Code Section 66499.20 et seq.) and sought approval for the merger under County ordinance and Coastal Commission permit.

The entire governmental approval process, including approval of the merger, General Plan amendment, Coastal Commission permit, and adoption of an ordinance for immediate rezoning, took approximately one year. This time period gave the taxpayers ample opportunity to discover any and all tax/fee obligations connected with the property and to renegotiate the purchase price with Louisiana-Pacific if they desired. That Louisiana-Pacific received the benefit of the lower tax rate under the TPZ zoning on the parcel, and the taxpayers, as the new property owners, must now pay the tax recoupment fee based on the immediate rezoning, remains a private matter between the seller and buyer, and does not constitute a basis for waiver of the fee.

A copy of the taxpayers' request for waiver is attached. The additional reasons set forth therein are not sufficient in staff's view, to waive the tax recoupment fee. Accordingly, staff recommends denial of the waiver request.

KEC
Attachment
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November 19,1993

State Board of Equalization
Property Tax Division
P.O. Box 942879
Sacramento, CA 94279-0001

Dear Sir or Madame:

Please consider this an application requesting a waiver of tax recoupment fees under Government Code Section 51142. We are asking for this exemption for the following reasons. (This parcel - see map - was sold to us this year and adjusted to our parcel.)

1) We were never aware that this fee would apply to us. There were no notices recorded or reported on our preliminary title report.

2) The property was not eligible to be under TPZ. (See Attachment A), or at least continued zoning as TPZ would be inappropriate.

3) The County Planning Department determined the Rezone would be "in the public's best interest". (See Attachment B)

4) We never requested this immediate Rezone. The County required it so that our parcel would not be mixed zoned.

5) This property was added to our parcel and can never be used for building, or sold separately.

6) We did not receive any benefits from the TPZ zoning.

7) We do not have the funds to pay this fee.

We seek your support of our request. Thank you for your time.

Sincerely,

C:C: County Tax Collector