

Robert W. Rieseberg

v.

Town of Marlow

Docket No. 3665-87

DECISION

A hearing in this appeal was held, as scheduled, on May 3, 1988. The Taxpayer represented himself. The Town was represented by Joseph N. Feuer, Chairman, Board of Selectmen; Maurice Ronayne, Former Selectman; and Frances R. Strickland, Secretary to the Board of Selectmen.

The Taxpayer appeals, pursuant to RSA 76:16-a and RSA 79-A:9, the assessment of \$99,220 (land, \$11,600; land in current use, \$4,920; buildings, \$86,700) placed on his real estate, located on Honey Road and the "unilateral and illegal changes in current use assessments by sole action of Chairman, Board of Selectmen". The subject property is a 53.5 acre parcel improved with a homestead, two barns, and related betterments.

The parties agreed that the assessment-sales ratio for the Town of Marlow for the 1987 tax year was 64 percent.

The Taxpayer argued the subject property was burned by fire 25 - 30 years prior to the date of this hearing. The Taxpayer further argued the subject property was now scrub growth and very wet. The Taxpayer also testified he

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received a forester's report in 1978 which indicated a timber stand improvement program was not practical for the subject property.

The Taxpayer submitted a map (Taxpayers Exhibit 1) and a fact sheet (Taxpayer Exhibit 2) outlining events relating to the subject property since its purchase by the Taxpayer in 1978.

FACT SHEET

Property purchased in 1978. Total acreage 53.5 acres. Town removed 1 acre and assessed separately as a house lot.

1979 Board of Selectmen approved current use of 52.5 acres as follows:

Permanent pasture 22.2 a.
Unproductive Wild Land 30.3 a.

Taxes paid on above for 1979, 1980 and 1981.

1981 20 x 40' barn built. Assessed as a barn.

1982 Board of Selectmen approved an amended current use application for the 52.5 acres as follows:

Permanent pasture 9.96 a.
Unproductive Wild Land 42.54 a.
52.50 a.

Taxes paid on above for 1982, 1983, 1984, and 1985.

1985 40 x 90' barn built. Assessed as a barn.

1986 A 10 ton grain silo was constructed to back of barn at a cost of \$2,000.

Taxes were paid on the amended current use assessment above.

1987 (December) Chairman, Board of Selectmen unilaterally and without consultation with the property owner changed the current use categories as follows:

Permanent pasture 10.0 a.
Unmanaged forest land 10.0 a.
Unproductive wild land 31.0 a.
51.0 a.

Removed 1 1/2 acres from current use and

placed in current market category valued
at \$400 p/a

1.5 a.

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Assessed current use penalty tax on the 1 1/2 acres.

52.5 a.

1987 Taxes were paid in full based on the 1982 current use amendment approved by the Board of Selectmen.

The Taxpayer testified the subject property was used for his sheep breeding and lambing operation and that a grain truck comes once a year to fill the silo. The Taxpayer testified he received a permit from the Water Resources Board to fill along drive 60 feet to create a level area for electric fence (Taxpayers Exhibit 4).

The Taxpayer argued the Chairman of the Board of Selectmen, Mr. Feuer, was not a qualified assessor, even though Mr. Feuer is an assessor by law in his role as a Selectman. The Taxpayer also argued the assessments on the land in current use were not adjusted according to the prevailing equalization percentage which exists in the taxing jurisdiction according to the equalization ratio as determined by the Department of Revenue Administration.

The Taxpayer testified building permits had been issued for the barns and the silo.

Mr. Feuer, Chairman of the Board of Selectmen of the Town, opened his argument with reference to a letter to the Board, dated March 21, 1988, from the Board of Selectmen of the Town of Marlow.

"To begin with, we wish to assure the board that no "unilateral or illegal changes in current use assessments" occurred. The corrections which were made were done with the full knowledge and consent of the entire Board of Selectmen. The board relied upon the chairman's determinations in these matters because of his general knowledge and familiarity with the town's terrain and the

current

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use regulations. The board is in complete agreement with the actions taken.

These actions were twofold. First, the majority of the acreage was tentatively reclassified as unmanaged forest and farm land. This was negotiable. In a subsequent meeting with the board, Mr. Rieseberg presented evidence to modify this determination and agreed to accept a final decision by the board based upon a physical tour of the property by the chairman accompanied by Mr. Rieseberg. As a result of this tour, the board found that the boundaries were not marked and that Mr. Rieseberg could not definitely define them beyond a vague indication. However, due to the nature of the area in question (grassland bounding a brook with ample evidence of previous forestation), Mr. Rieseberg was given the benefit of the doubt and the determination outlined in the board's letter dated January 25, 1988 was arrived upon.

The second determination involved disqualifying and removing one and one-half (1 1/2) acres from current use and this is not negotiable.

This area is not in its natural state and based upon the current use criteria does not qualify to remain in current use, and has not qualified for several years. It presently contains a silo, and two sheep barns, one is 20' x 32' and the other is 40' x 96'. It also has a well and has received extensive fill. We are presently awaiting the arrival of our assessor for the spring pick-up work to help us arrive at a realistic fair market value for this area so that we may assess the correct use change tax against it.

We wish to bring to the board's attention that Mr. Rieseberg served as a selectman in Marlow for two terms, and that such changes were made during his term as a selectman. when this disqualification was brought to his attention by the previous board, Mr. Rieseberg refused to allow the board to remove the one and one-half acres from current use.

Enclosed please find current use assessment cards, with exclusions for the non-qualifying acreage for farm buildings and for a commercial venture, in conformance with II. General Rules Applying to All Tracts of Land, D. "yards and grounds around the buildings, together with the buildings shall be assessed at market value". Rev 1204.05 as stated in the guidelines for 1987, page 3."

Mr. Feuer argued the Town conducted a study in the summer of 1987, of all of the land in current use in the Town. Mr. Feuer testified some portions of the subject property were not left in its natural state. Mr. Feuer then argued

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the Taxpayer had agreed with the Selectmen's classification of the land in current use on the subject property as outlined by letter to the Taxpayer dated January 25, 1988:

"In reviewing your rather unique terrain for the purpose of updating the current use status of your property, this board has arrived at the following determination of categories:

Total acreage:	53.5 acres
House lot:	1.0 acre
Barn lot	1.5 acres (2 barns & 1 silo)
In current use	51.0 acres

The breakdown of the acreage in current use is as follows:

Permanent pastures:	10.0 acres @ \$120 = \$1200
Unmanaged forest land:	10.0 acres @ \$ 50 = \$ 500
Unproductive wild land:	31.0 acres @ \$ 15 = \$ 465

Please be advised that the final value of the 1.5 acres disqualified for current use will be determined by the town's assessor this spring and the use change tax will be based on that figure".

Mr. Feuer testified he agreed that current use assessments should be adjusted by the equalization ratio in the taxing district.

The Board finds the Taxpayer properly applied for and received current use assessments in 1978 or 1979 (documents in the Board's file do not make this clear), which current use taxation was recorded for Map 11, Lot 83, at Cheshire County Registry of Deeds, Volume 926, Page 728. The Board finds the Taxpayer and the Selectmen agreed on an amended current use plan in 1982. The Board finds the Taxpayer constructed a barn on the subject property in 1981 and another barn on the same subject property in 1985, and a grain silo on the same

subject property in 1986. The Board also finds the structures required land

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area beyond the size of their footprints to support their use as improvements.

The Board finds the Town belatedly recognized the change in use of the subject property. The Board finds the Town properly recognized the change in use of 1.2 acres of permanent pasture and .3 acres of unproductive wild land to land supporting the farm buildings and roadways. The Board finds the Town failed to apply the equalization ratio as required to the current use assessments.

For the above stated reasons the Board rules that the proper assessment for the 1987 tax year is:

	Land	
\$7,600		
	Land in current use	
	permanent pasture	21 acres at \$120 x .64 =
\$1,613		
	wild land (unproductive)	30 acres at \$120 x .64 =
\$2,304		
	Buildings	
<u>\$86,700</u>		
	Total	
\$98,217		

If the taxes have been paid, the amount paid on the value in excess of \$98,217 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

(Ms. Richmond did not sit.)
Anne S. Richmond, Esq., Chairman

—

George Twigg, III, Member

—

Raymond J. Damour, Member

—

Acting Chairman

(Concurred, unavailable for
Peter J. Donahue, Member

signature)

Date: December 22, 1988

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I certify that copies of the within Decision have this date been mailed, postage prepaid, to Robert W. Rieseberg, taxpayer; and the Chairman, Selectmen of Marlow.

—
Michele E. LeBrun, Clerk

Date: December 22, 1988

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AMENDED DECISION

The Board of Tax and Land Appeals received two requests for rehearing in the above captioned matter. The Taxpayer by letter dated December 30, 1988, and the Town by letter dated January 6, 1989. The subject property contains 53.5 acres.

The Board finds the Town is correct with respect to the fact that when Mr. Rieseberg developed .3 acres of unproductive wild land he triggered a land use change tax of ten percent on the ad valorem value of the entire 31 acres classified as unproductive wild land.

The Board finds the Town is incorrect for not applying the equalized ratio to the current use valuation of the land. The equalized ratio should be applied to the adjusted classification value for each new tax year. Errors and omissions are correctable by the Board of Tax and Land Appeals even though they may not have been specifically raised by the Taxpayer on his appeal to the local assessing authority in the original complaint.

The Board rules the correct 1987 assessment as follows:

Ad Valorem

site value	1.0 acre		\$7,600
.31 acres	<u>unproductive wild land</u>	31 a. x \$400 =	12,400
1.5 acres	<u>permanent pasture</u>	1.5 a. x \$400 =	<u>600</u>

\$20,600

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Current Use

10 acres <u>permanent pasture</u>	10 a. x \$120 x .64 = \$768
10 acres <u>unmanaged forest</u>	10 a. x \$80 x .64 = <u>512</u>

1,280

\$

Buildings

\$86,700

\$108,580

1987	Total	Assessment
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In addition, the Board orders that a one time land use change tax of ten percent of the ad valorem (fair market) value shall be imposed on the 31.3 acres which no longer qualify under the current use classification of unproductive wild land (See 1987 DRA Booklet "Criteria for Current Use Assessment Pg. 6)

"C. WILD LAND

1. Criteria

a. "Unproductive" Wild Land

(1) A tract of unimproved land of at least ten (10) contiguous acres upon which there are no detrimental structures, which by its nature is incapable of producing commercial agricultural or forest crops, and which is being left in its natural state without interference with the natural ecological process.

(2) Once accepted as "unproductive" wild land and assessed as such, the development of any portion of the qualified parcel disqualifies the entire parcel for classification as "unproductive" wild land."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Esquire, Chairman

George Twigg, III, Member

Peter J. Donahue, Member

Date:

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I certify that copies of the within Amended Decision have this date been mailed, postage prepaid, to Robert W. Rieseberg, taxpayer; and the Chairman, Selectmen of Marlow.

Michele E. LeBrun, Clerk

Date:

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