

**English & Son, Inc.**

**v.**

**Town of Effingham**

**Docket No. 4167-88**

**DECISION**

A hearing in this appeal was held, as scheduled, on March 27, 1990. The Taxpayers were represented by Jeanne L. Berger and Dominic N. Berger, both of English & Son, Inc.. The Town was represented by Robert Camp, Appraiser.

The Taxpayers appeal, pursuant to RSA 79-A:9, the denial by the selectmen to grant current use assessment on a 4.5 acre parcel located on the north side of new Rt. 25 being part of a parcel identified on the Effingham tax map as Map 31, Lot 8 for the 1988 tax year and having an assessment of \$1,374,700 (Land, \$1,111,350; buildings, \$263,350).

The Taxpayer argued that:

"On April 14, 1988 we submitted one application and the appropriate three dollar fee to the Town of Effingham for a 54.5 acre tract of land located on both sides of new route 25 to be considered for current use.

July 11, 1988 the selectmen saw fit to allow current use application to the land situated on the south side of new 25, but not the strip on the north side.

The 4.5 acre strip that they excluded has not been, nor are there any plans to develop it, i.e. add campsites. It has been a buffer zone between the highway and the camping area since the highway was rerouted in the late 1960's, providing privacy for campers and maintaining the rural character of the local scenery. The nearest structure to the edge of the right of way of 25 is over 150 feet."

In summary, the Taxpayer stated that had the new Rte. 25 not been built, it is quite likely that all the land applied for current use assessment would have been granted.

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Mr. Camp testified that the frontage of the parcel in question along Rt. 25 was 1950 feet of which approximately 1750 feet were undeveloped and 200 feet were developed as a drive for the campground abutting the parcel in question to the north. Mr. Camp submitted a sketch of measurements taken by the Selectmen that indicated a shed was located 110 feet from Rte. 25 right of way. He stated that the selectmen had denied current use assessment as it appeared the shed was within the depth needed from Rt. 25 to account for the 4.5 acre area requested by the Taxpayer. Specifically, he stated that an area of 1750 feet times 112 feet deep was needed to equate to the 4.5 acre area requested.

The Board rules as follows:

Chapter Rev 1205.04(2) a

Unmanaged forest land shall be a tract of unimproved forest land and which has been for at least the last 5 years left in its natural state without substantial interference to the natural ecological process. Harvesting of trees for the landowner's personal domestic use for fuel wood purposes shall be allowed, subject to compliance with generally accepted forest management and utilization practices.

Chapter Rev 1201.07

"Tract" means land which is contiguous and qualifies for current use assessment in any category or combination of categories as described under PART Rev 1205, totaling ten acres or more unless otherwise specified within this chapter.

Chapter Rev 1201.02

"Contiguous Land" means a tract of land which is connected, disregarding whether or not it is divided by a highway, railbed, or the boundary of a political subdivision.

It is clear from these regulations that the presence of a highway splitting land otherwise eligible for current use does not alter its eligibility.

The next question is whether all of the 4.5 acres requested was "unimproved forest land". The Town's argument that a shed 2 feet within the 112 feet depth disqualifies all 4.5 acres is entirely spurious. First, the map submitted to the town by the Taxpayer with the current use application, clearly

indicates the depth from Rt. 25 of the 4.5 acres desirous of being in current

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use is only 100'. Second, even if a shed was on part of the acreage, the entire parcel would not be disqualified.

Further, the Taxpayer's current use application map included in the 4.5 acres the access drive to the campground on the north. Both parties agreed that the drive and associated drainage and clearing for it encumbered approximately 200 feet of the total 1950 feet of frontage on Rt. 25. This 200 feet being improved as it is does not qualify for current use.

Chapter Rev 1201.09

"Unimproved land" means any land which is devoid of structures or other improvements.

Therefore, the Board rules that an area of 100 feet by 1750 feet or 4.02 acres of Map 31, Lot 8 qualifies as unmanaged forest land for the 1988 tax year.

The Board finds that there was no evidence as to the per acre current use value used by the selectmen for the 50 acres that was granted current use assessment. However, based on the limited description of unmanaged forest land on the Taxpayers current use map, the Board rules that an assessment of \$60 per acre is reasonable and further that this value needs to be adjusted by Effingham's 1988 equalization ratio of 65 percent.

Rev 1205.01 Assessment Rates: all use values shall be at 100% valuation and shall be 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.

Therefore, the Board rules that the 1988 assessment should be calculated as follows:

Current use:

$$4.02 \text{ acres} \times \$60 \times .65 = \$150$$

Ad valorem:

Frontage:

$$.92A \quad 200 \quad 200 \quad \$100 \times .80 \times .55 \times .80 = \$7,050$$

(frontage) (depth) (unit price) (topo) (excess frt) (undev adj)  
4.02A 1750 100 \$100 x .30 x 20 x 55 x .80 =  
\$4,600

(frontage) (rear (unit price) (depth adj) (topo) (excess frt)(undev adj)  
portion of  
depth)

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2.98A	1300	As assessed by town	=	\$859,550
Rear land:				
30A	Excellent	As assessed by town	=	\$
	30,600			
6.07A	Poor	As assessed by town	=	\$
	1,100			
3 A	Wetland	As assessed by town	=	\$
	350			
	Sites	As assessed by town	=	\$187,300
	Utilities	As assessed by town	=	\$
	<u>10,000</u>			
		Total land value	=	
	\$1,100,700			
		Total building value	=	\$
	<u>263,350</u>			
		Total assessment	=	
	\$1,364,050			

If the taxes have been paid, the amount paid on the value in excess of \$1,364,050 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

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Anne S. Richmond, Esq., Chairman

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George Twigg, III, Member

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(Mr. Donahue did not sit.)  
Peter J. Donahue, Member

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Paul B. Franklin, Member

Date: April 5, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to English & Son, Inc., taxpayer; and Chairman, Selectmen of Effingham.

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Michele E. LeBrun, Clerk

Date: April 5, 1990

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