

Walter K. Wornick  
v.  
Town of Alstead

Docket No. 4499-88

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 79-A:9, the "Town's" denial of his application for current use status, as wild land, productive unmanaged forest and farm, on his property at Highland View (the Property). The Taxpayer has the burden of showing the Town's denial was improper. See TAX 202.04. For the reasons stated below, the board finds the Taxpayer has carried this burden, and the appeal is granted.

The Town failed to appear at the hearing, but consistent with our rule, TAX 102.03(g), the Town was not defaulted. This decision is based on the evidence presented to the board.

On April 14, 1988, the Taxpayer applied to place 10 acres of the Property in current use. The Town denied the application solely because it concluded the Taxpayer did not have sufficient land to meet the 10-acre requirement in REV. 1201.07 and 1205.04. It further appears the Town reached this conclusion because of the amount of land being used as the "house lot," as defined by REV. 1202.02, which cannot be included in the 10-acre tract. The board has concluded that after allocating land to the house lot, the Property has sufficient acres to qualify for current use classification.

The board reviewed the Taxpayer's deeds, plans and other evidence. The board finds the Property consists of a total of approximately 10.54 acres and the house lot consists of approximately .32 acres (as determined by the Town).

The Taxpayer submitted 3 deeds: 1) Perkins to Taxpayer with 5.38 acres; 2)

Whitcomb to Taxpayer with 4.94 acres; and Stern to Taxpayer with .23 acres.  
The Taxpayer

also presented a plan showing the Property along with a surveyor's letter concerning the acreage in the land conveyed by the last-mentioned deed. The board concludes the Taxpayer has met the 10-acre requirement, and the Town should have granted the application.

The Town is ordered to classify the 10 acres of the Property as wild land, productive, unmanaged forest with an effective date of April 1, 1988. The Town shall revise the Taxpayer's 1988, 1989 and 1990 property record cards, and it shall record the current use classification with the registry. See RSA 79-A VI. The Town shall also refund the amount of taxes paid on the value of the land in excess of the current use assessment that should have been used in determining the taxes owed. This refund shall be made for 1988, 1989 and 1990 because if the Town had properly granted the application, the Taxpayer's taxes would have been based on the current use values, not the full value.

The board may award costs as in the superior court. RSA 71-B:9; TAX 201.05(c); see also RSA 76:16-a. The board is also mandated by RSA 76:17-a to refund the filing fee when the board grants an appeal for plain error. Based on the facts in this appeal, the board awards the following costs: filing fee \$25; mileage \$19, totalling \$44. The Town shall pay these ordered costs and fees with the tax refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Ignatius MacLellan

Date: March 22, 1991

I certify that copies of the within order have been mailed this date, postage prepaid, to Walter K. Wornick, taxpayer; and the Chairman, Selectmen of Alstead.

Michele E. LeBrun, Clerk

Date: March 22, 1991

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