Frances S. McDowell and Marjorie S. Widerstrom

v.

Town of Alton

Docket No. 6336-89

DECISION

This is an appeal of an assessment of $254,220 (land, $244,520; buildings, $9,700), filed pursuant to RSA 76:16 and RSA 76:16-a and resulting from a denial by the selectmen for current use assessment pursuant to RSA 79-A:5 of one acre out of a total parcel of 17.9 acres.

FACTS

The facts of this appeal are not disputed and are as follows. In 1981 the Taxpayers applied for, were granted and received current use assessment on the entire tract until the Town conducted a reassessment of all property in 1989. During the reassessment, the selectmen reexamined all the current use assessments and determined, in the Taxpayers' case, that an acre should have been withheld around the shed and water frontage area of the tract. Consequently in 1989 the Town, assessed one acre at a market value of $243,500 and seventeen acres as unmanaged forest land with a current use value of $1,020 (total value $244,520). The improvements to the property consist of an 8' x 10' shed and a 312 square foot dock all located on or adjacent to the property's frontage on Lake Winnepesaukee and accessed from Roberts Cove Road by a "camp road."

ARGUMENTS

The Taxpayers argued that all the 17.9 acres should be assessed in current use as unmanaged forest land since the property did not contain any detrimental structures that were causing harm or interfering with the natural

ecological

process. The Taxpayers argued that the 8' x 10' shed was such a minimal structure so as not to be detrimental and that the dock by being located 16 feet off shore and connected only to the Taxpayers' property by a catwalk was therefore over state water and not detrimental to the land in question.

The Town argued that the recreational use of the tract was intensive and not consistent with the current use regulations because the use and improvements interfered with the natural ecological process of the unmanaged forest category.

BOARD'S RULINGS

The board rules that the Taxpayers' use and improvements of the property exceed the passive recreational intent of the current use statute (RSA 79-A:I) and do not meet the rules set forth by the current use advisory board for the 1989 tax year.

The board reaches this conclusion based on the following reasons:

1) In the current use board's rules, unmanaged forest land is under the heading of "Productive Wild Land" Rev. 1205.04(2), which states the land "shall be a tract of land upon which there are no detrimental structures. . .". However, nowhere in the current use regulations or statutes is the term detrimental structures defined. More specifically however, "unmanaged forest land" is defined as "a tract of unimproved land and which has been for at least the five years left in its natural state without substantial interference to the natural ecological process." Rev. 1205.04(a)(2)(a) Unimproved land is defined in Rev. 1201.09 as "any land which is devoid of structures or other improvements, and is not used in any way so as to disturb the natural ecological processes." Therefore, by a complete reaching of the current use rules, it is clear that the intent was for there to be no structures, improvements or uses that in any way significantly modified the land for it to qualify for unmanaged forest land.

2) The testimony of the Taxpayer's expert witness was that approximately 3,000 square feet adjacent to the waterfrontage was very unfertile due to high

water table and normally would only support woody shrubs four to twenty feet in height. However, it is clear from the photographs and the map submitted by the Taxpayers that this area has been cleared even of that woody growth and kept open for parking cars and the recreational uses associated with the waterfront;

3) The Taxpayers tried to argue that the shed was so small it was not a detrimental structure and that the dock by only being connected to the land by a catwalk was not a structure on the Taxpayers' land. The board disagrees with both those arguments. The current use statutes are clear in that to be eligible for unmanaged forest land there should be no structures present regardless of size. The dock is a structure related to the land in question regardless of the fact that it is located over state property because the right to construct that dock runs with the property on which the Taxpayers are requesting current use assessment See Dana Patterson, Inc. v. Town of Merrimack, 130 N.H. 353 (1988).

4) Because of the substantial alteration by the Taxpayers and their recreational use, the area adjacent to the structures and the camp road is no different than the yards and grounds around a camp or house area that would not qualify for current use assessment. Rev 1204.02.

5) Lastly, the board looks at the general intent of the current use statute, in arriving at this conclusion. In Michael H. Foster v. Town of Henniker, 132 N.H. 75, 82 (1989), the court reinforced the concept that rules do not modify a statute, but only serve to effectuate its purpose. The board does not believe it was the legislature's intent that intensely used land, for example in this case the road and cleared area adjacent to the two structures, should qualify as open space land under the current use statutes. The recreational improvements and uses of this land are intensive and single purposed as opposed to the complimentary passive uses the drafters envisioned for roadways to support agricultural, recreational, watershed and forestry uses of current use land, as suggested in RSA 79-A:7 IV (a).

6) Therefore the Taxpayers' land, which is used intensely for accessing

and using the waterfront in the area of the shed and the dock, does not qualify for unmanaged forest land as it has been improved and disturbed so as to interfere with its natural ecological process.

Conclusion

The board was unable to determine the exact area of the road and the cleared area adjacent to the water frontage that would not qualify for current use. Therefore, the board orders the Taxpayers in keeping with this decision to submit a map to the Town, with a copy to the board, within twenty days from the clerk's date on this decision delineating the access road area and the cleared area adjacent to the waterfront supporting the shed, the access to the dock and parking. This map shall show the approximate dimensions and total area of all those improved or altered areas of the tract. Within twenty days of the receipt of that map from the Taxpayers, the Town shall assess the area that does not qualify for current use at ad valorem rates and the balance as unmanaged forest land in current use. The Town shall send a copy of their calculations to the Taxpayers, with a copy to the board, and, if the board does not receive an objection from the Taxpayers within ten days of the receipt of the Town's assessment calculation, the Town's revised assessment shall be made a part of this order.

If an objection is received, the board will review the Taxpayers' map and the Town's assessment and issue a decision thereon.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Alfred J. McDowell, Esq., counsel for Frances S. McDowell and Marjorie S. Widerstrom, taxpayers; and the Chairman, Selectmen of Alton.

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Melanie J. Ekstrom, Deputy Clerk

Date: March 22, 1993

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