

Jerome Bey and Irene Bey

v

Town of Conway

Docket No. 6430-89 and 8781-90

DECISION

The individuals, named above, appeal, as trustees for the owners of the property, Jerome Bey 1983 Trust and Irene Bey 1983 Trust, pursuant to RSA 76:16-a, 79-A:9 and 72:34-a the 1989 and 1990 assessments listed as follows:

<u>Map and Lot</u>	<u>Land Assessment</u>	<u>Building Assessment</u>	<u>Total Assessment</u>
8/9-1	80,000	80,000	
8/9-2	79,000	79,000	
8/9-3	81,900	81,900	
8/9-4	45,600	45,600	
8/9-5	15,500	15,500	
8/9-7	51,200	51,200	
8/9-12	176,800	18,700	195,500
8/9-13	124,500	124,500	
8/9-14	204,000	111,800	315,800
8/9-15	121,500	121,500	
8/9-16	123,000	123,000	
8/9-17	121,500	121,500	
8/9-18	81,000	81,000	
8/9-19	45,600	45,600	
8/9-20	49,500	49,500	
8/9-21	40,900	40,900	
8/9-22	47,300		<u>47,300</u>
Total		1,619,300	

The property consists of seventeen subdivided lots, off Brownfield Road on Conway Lake. Lots 12 and 14 front on Conway Lake and are developed with a camp and a year-round dwelling, respectively. Lots 13, 15, 16, 17 and 18 are undeveloped and front on Conway Lake. Lots 1, 2 and 3 are undeveloped and

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front on an inlet of Conway Lake where Page Brook enters. Lots 4, 7, 19, 20, 21 and 22 are undeveloped and front only on private gravel and dirt roads. Lot 5 fronts on Conway Lake but has a restriction placed upon it at time of subdivision that no habitable structure or sewage disposal system can be built upon it.

There are four general issues before the Board:

- 1) Was Lot 18 properly appealed in 1989?
- 2) Was Jerome Bey eligible for a veterans exemption for 1990?
- 3) Should 10.9 acres have been granted current use assessment in the managed forest category for 1990?
- 4) Was the ad valorem value of the Taxpayers' property reasonable and proportional for 1989 and 1990?

1) Lot 18:

The Taxpayers' 1989 application to the Board and the application to the Selectmen omitted Lot 18 in the list of property being appealed. Therefore, despite the Taxpayers' testimony that it was their intent to appeal Lot 18, the Board has no jurisdiction for 1989 on Lot 18.

The Board does not have the authority to deviate from the statutory requirements. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (Board cannot deviate from statutes.), Arlington Sample Book Company v. Board of Taxation, 116 N.H. 575, 576 (1976) (Board cannot even deviate from deadlines when there has been accident, mistake or misfortune.), see also, Daniel v. B & J Realty, \_\_\_ N.H. \_\_\_ (April 26, 1991).

2) Veterans Exemption:

Jerome Bey, prior to April 15, 1990, filed a permanent application for veterans exemption with the Town. As he had received the exemption from the City of Manchester previously, the Town requested he obtain a letter from Manchester stating he was no longer receiving the exemption there. When he did not obtain the letter until June 14, 1990, the Town denied his exemption for 1990 as the letter was received after April 1, 1990.

The Board finds that Jerome Bey filed his application timely with the Town and met all the eligibility requirements for the exemption. Mr. Bey

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signed the application under penalty of perjury that the property on which

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exemption was sought was his principal place of abode. While it is not unreasonable for the Town to have requested verification that Mr. Bey was no longer receiving a veterans exemption in Manchester, it was unreasonable of them to deny the exemption claiming the letter from Manchester was unclear that he was removed from their tax rolls as of April 1, 1990. The letter is clear enough. Surely a letter to that effect in June clearly indicated Manchester was dropping Mr. Bey's veterans exemption for that tax year, and conversely such letter gave the Selectmen of Conway adequate time to be assured of Mr. Bey's eligibility and to approve the exemption well before the setting of the 1990 tax rate in the fall.

Therefore, Jerome Bey qualifies for a veterans exemption in 1990.

3) Current Use:

Facts

The Taxpayers, after inquiring about current use in the fall of 1989, applied for current use for 1990 on an application dated May 29, 1990. The Taxpayers' applied for 10.9 acres under managed forest and .9 acres under unmanaged forest. After an initial denial of their application by the town assessor, James Fennessy, on July 26, 1990, the Town (on September 24, 1990) approved 10.9 acres under the unmanaged forest category. (Apparently the .9 acres applied under unmanaged forest was denied because it was not a continuous parcel.) However, the Town did not assess the 10.9 acres in current use, waiting instead for the Taxpayers to file a new application under the unmanaged forest category. The Taxpayers did not refile and disagreed, arguing the land does not qualify for unmanaged forest land as timber stand improvement has been done on the land during the past five years.

Rulings

RSA 79-A:5 II states:

No owner of land shall be entitled to have a particular parcel of his land classified for any tax year under the provisions of this chapter unless he shall have applied to the assessing officials on or before April 15 of said year, on a form approved by the board and provided by the commissioner, to have his parcel of land so classified. If any owner shall satisfy the

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assessing officials that he was prevented by accident, mistake or misfortune

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from filing said application on or before April 15, said officials may receive said application at a later date and classify the parcel of land hereunder; but no such application shall be received after the local tax rate has been approved by the commissioner for that year.

The Taxpayers' application is dated May 29, 1990, after the April 15 deadline for filing. Despite the disagreement between the parties as to the appropriate category, the Town did accept the late application. While no specific evidence was submitted to the Board as to any mistake, accident or misfortune, the Town did receive the application after the April 15 deadline, but before the setting of the tax rate. Because of the Town's acceptance of the application, the Board rules the application was timely filed with the Town.

The Board rules the 10.9 acres qualifies for managed forest land. The record is replete with evidence from the county forester that the Taxpayers have been weeding and thinning and generally improving the woods. This work and the forester's letters are surely "evidence that the owner...is taking steps to bring stocking of commercial forest trees to levels reasonable for (the) site." Rev. 1205.03(b). The land does not qualify for unmanaged forest land as it has not been "left in its natural state without substantial interference to the natural ecological process" for the past five years (Rev. 1205.04).

The Board rules that the original application and map requesting 10.9 acres controls the area that should be placed in current use. The Taxpayers' revised maps of August 1991 showing a total of 10.7 acres is a modification which, if the 10.9 acres had properly been placed in current use, would not have been allowed without change in the use of the .2 of an acre on Lot 14 disqualifying it from current use.

The Board rules that the land should be valued at \$54 per acre, the top end of the "all other" forest category, due to the good access to the land.

The Taxpayers are not eligible for current use for 1989 since they did not apply in 1989.

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#### 4) Valuation:

##### Buildings

###### House:

Based upon the evidence, the Board rules the town graded the house correctly. The Taxpayers' comparison to a comparable that is underassessed is not a basis for an abatement.

Based on evidence of the age of the house, the lack of a basement and the electric heating system, the proper depreciation should be 5 percent physical and 10 percent functional, resulting in a value of \$98,600.

Based on the evidence of the condition and utility of the cottage, the Board rules its proper contributory value is \$15,000.

Again the Taxpayers' comparison of their shed to another shed that appears to be underassessed does not prove disproportionality. The shed value of \$900 is reasonable based on its condition and utility for storing trailers and camp supplies.

###### Land

In general, the Taxpayers' attempt to determine a per acre price analogous to the Town's \$200,000 base price for lake frontage, \$150,000 for "brook" lots and \$75,000 for "back" lots, fails as their calculation is derived from the final adjusted value of land sales while the Town's base values are for the hypothetical perfect acre prior to any adjustments such as topography, undeveloped, etc. Therefore, the Town's basic unit values are not unreasonable given the limited sales evidence presented.

However, there are two general adjustments needed to the Town's base values: a "marketing" adjustment to recognize the common ownership of lots not fully marketed (many times poorly dubbed the "developers discount") and adjustments for physical improvements needed to be done to the lots (e.g. topography corrections, power, roads, etc.).

The Board rules that on all the undeveloped lots owned by the Taxpayers, an additional 10 percent adjustment is needed to account for the marketing costs, taxes and other carrying costs and risk needed to take the lots to their full retail value. As these lots are fully subdivided, only a 10

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percent adjustment is necessary.

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Therefore, the Board determines the proper lot values as follows:

Lot 9-1

For 1989 and 1990, an additional 10 percent "marketing" adjustment:  
\$123,000 (Town unimproved base value) x .55 = \$67,650

Lot 9-2

For 1989 and 1990, an additional 10 percent "marketing" adjustment:  
\$121,500 (Town unimproved base value) x .55 = \$66,850

Lot 9-3

For 1989 and 1990, an additional 10 percent "marketing" adjustment:  
\$126,000 (Town unimproved base value) x .55 = \$69,300

Lot 9-4

For 1989 and 1990, an additional 10 percent "marketing" adjustment:  
\$60,750 (Town unimproved base value) x .65 = \$39,500

Lot 9-5

This lot was restricted at time of subdivision approval not to allow any habitable structures or sewage disposal. The Town's value of \$15,500 is reasonable for what an abutter would pay for either additional protection or for a "garage" lot or what any owner in the neighborhood would pay for access to the lake.

Lot 9-7

For 1989 and 1990, an additional 10 percent "marketing" adjustment:  
\$68,250 (Town unimproved base value) x .65 = \$44,350

Lot 9-12

While this lot is developed with a seasonal cottage, the road is not developed to the lot. For 1989 and 1990, an additional 10 percent for the lack of direct access to Woodpecker Lane is warranted.  
\$208,000 (Town unimproved base value) x .75 = \$156,000

Lot 9-13

1989: an additional 10 percent "marketing" adjustment and 10 percent for lack of direct access to Woodpecker Lane.  
\$166,000 (Town unimproved base value) x .55 = \$91,300  
1990: the entire lot is in current use:

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1.4 acres x \$54 = \$75

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Lot 9-14

1989: the lot and buildings have reasonable access to Woodpecker Lane via a short drive across Lot 15; thus, no adjustment to the land value is warranted.

1990: .6 of an acre composes the yards and grounds around the buildings and is not in current use. The Board estimates the .6 acre site has approximately 75 percent the value of a full 1 acre site; thus, the Town's base value of \$200,000 is reduced by 25 percent to \$150,000.

The remaining .7 acre is in current use and has a value of \$40.

Lot 9-15

1989: an additional 10 percent "marketing" adjustment and 5 percent for being one lot removed from electric service.

\$162,000 (Town unimproved base value) x .60 = \$97,200

1990: the entire lot is in current use:

1.3 acres x \$54 = \$70

Lot 9-16

For 1989 and 1990, an additional 10 percent "marketing" adjustment and 10 percent for no electric service to lot.

\$164,000 (Town unimproved base value) x .55 = \$90,200

Lot 9-17

For 1989 and 1990, an additional 10 percent "marketing" adjustment and 10 percent for no electric service to lot.

\$162,000 (Town unimproved base value) x .55 = \$89,100

Lot 9-18

1989: no jurisdiction

1990: an additional 10 percent "marketing" adjustment and 10 percent for no electric service to lot.

\$162,000 (Town unimproved base value) x .30 = \$48,600

Lot 9-19

For 1989 and 1990, an additional 10 percent "marketing" adjustment and 10 percent for no electric service to lot, and an additional 10 percent for topography.

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$\$60,750$  (Town unimproved base value)  $\times .45 = \$27,350$

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Lot 9-20

For 1989 and 1990, an additional 10 percent "marketing" adjustment and 10 percent for no electric service to lot, and an additional 10 percent for topography.

\$66,000 (Town unimproved base value) x .45 = \$29,700

Lot 9-21

1989: an additional 10 percent "marketing" adjustment and 5 percent for being one lot away from electric service.

\$81,750 (Town unimproved base value) x .35 = \$28,600

1990: 2 acres not in current use.

\$67,500 (calculated Town unimproved base value) x .35 = \$23,650

1.9 acres in current use x \$54 = 100

1990 total land value 23,750

Lot 9-22

1989: an additional 10 percent "marketing" adjustment:

\$94,500 (Town unimproved base value) x .40 = \$37,800

1990: entire lot in current use.

5.6 x \$54 = \$300

In summary, the Board rules the proper assessments are:

LandBuildingTotal

<u>Lot</u>	<u>1989</u>	<u>1990</u>	<u>1989</u>	<u>1990</u>
9-1	\$ 67,650	\$ 67,650	\$ 67,650	\$ 67,650
9-2	66,850	66,850	66,850	66,850
9-3	69,300	69,300	69,300	69,300
9-4	39,500	39,500	39,500	39,500
9-5	15,500	15,500	15,500	15,500
9-7	44,350	44,350	44,350	44,350
9-12	156,000	156,000	15,900	171,900
9-13	91,300	75	91,300	75
9-14	204,000	150,040	98,600	302,600
9-15	97,200	70	97,200	70
9-16	90,200	90,200	90,200	90,200
9-17	89,100	89,100	89,100	89,100
9-18	no jurisdiction	48,600	no jurisdiction	48,600
9-19	27,350	27,350	27,350	27,350
9-20	29,700	29,700	29,700	29,700
9-21	28,600	23,750	28,600	23,750

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9-22 37,800      300 37,800      300

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If the taxes have been paid, the amount paid in excess of the above listed values shall be refunded with interest at six percent per annum from date paid to refund date.

The Board declines to award costs as requested by the Taxpayer as the case was not frivolously continued by the Town.

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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Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Jerome Bey and Irene Bey, Taxpayers; and Chairman, Selectmen of Conway.

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Melanie J. Ekstrom, Deputy Clerk

Date: February 7, 1992

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