

Arthur Stevens, Richard Stevens, Walter Stevens, Robert Stevens,
Herbert Stevens and Marjorie Prina

v.

Town of Brentwood

Docket No. 6475-89

DECISION

This case arises from an appeal, pursuant to RSA 76:16-a, of the Taxpayers' 1989 assessment of \$12,388 (land, \$8,788; building, \$3,600). The property consists of approximately 16 acres of land accessed either by foot from Old Haigh Road or by the Exeter River and is improved with a 16-foot by 20-foot camp/storage building.

Facts

Prior to 1989, all sixteen acres were assessed in current use. Sometime prior to April 1, 1989, the Taxpayers constructed a 16-foot by 20-foot camp/storage building approximately 200 feet back from the Exeter River. The materials to build it were brought in by raft on the Exeter River.

The Town, as of April 1, 1989, assessed the camp for \$3,600 and removed one acre from current-use assessment. This one acre was assessed at \$8,500 and the remaining 15 acres continued in current use with a value of \$288.

It is from this assessment that the appeal was brought to the Board.

In April of 1990, Edward Elcik was employed by the Town to appraise the value of the land no longer qualifying for current use. He arrived at a market value of \$2,625 for one acre, upon which the Town assessed a land-use-change tax in May of 1990. The Taxpayers paid the land-use-change tax but did not appeal it.

Rulings

A. Jurisdiction

RSA 71-B:16 II authorizes the Board to order a reassessment of any previously assessed tax when it comes to the Board's attention from any source that the property has been improperly assessed. Consequently, this order will deal with both the 1989 property tax appeal and the land-use-change tax assessed in 1990, as the issues are related.

B. Size of land no longer qualifying for current use:

One acre, as removed by the Town, is excessive for the actual area disturbed by the building and use of the camp. The evidence is clear that only two trees were cut to provide space for the camp and that it is accessed by a path from the river. While no map was ever submitted, the Board estimates that .1 acre is a more reasonable estimate of the area on which a physical change occurred. Rev 1203.03(c) states:

- (a) Under the classifications of farm land, forest land, flood plains, and recreation land, only the number of acres on which an actual physical change has taken place shall become subject to the use change tax. Unless otherwise disqualified, that land not physically changed shall remain in current use.

The Taxpayers' argument that no land should have been removed from current use is without merit and not based in statute or regulation. While arguably the camp is of minimal impact, it is, nonetheless, a structure that

disrupts the preservation of open space that the current-use statutes are intended to encourage (RSA 79-A:1).

C. Market value and assessed value of land not in current use:

The Board rules that the access to the site is so remote and the intensity and frequency of the development and use of the site is so slight that its market value is estimated at \$1,300, or one half of the market value as estimated by the Town.

Therefore, the Town is ordered to refund the Taxpayers the amount paid on the land-use-change tax in excess of \$130, with interest at six percent per annum from date paid to refund date. Further, the Town is ordered to file a corrected current-use assessment lien release form with the registry of deeds, stating in the description of the land: ".1 acre of land encompassing camp/storage building and path to Exeter River on parcel Map 6.5, Lot 4.1; balance of 15.9 acres remain in current use."

Further, the Board rules the proper 1989 assessment is calculated as follows:

Land:

.1-acre site (\$1,300 x .42 (Brentwood 1989 ratio))	= \$	550
9.9 acres spruce/fir-type current use @ \$32/A	=	317
6.0 acres wetland current use @ \$12/A	=	<u>72</u>
Total land assessment	\$	939
Building value		<u>3,600</u>
Total Value		\$4,539

If the 1989 taxes have been paid, the amount paid on the value in excess of \$4,539 shall be refunded with interest at six percent per annum from payment date to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg III, Chairman

Paul Franklin

I certify that copies of the within decision have been mailed this date, postage prepaid, to Herbert E. Stevens, representing the Taxpayers, and to the Chairman, Board of Selectmen, Town of Brentwood.

March 3, 1992

Melanie J. Ekstrom, Deputy Clerk