

James Crandell and Betsy Crandell

v.

Town of Belmont

Docket Nos. 6863-89 and 8650-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$333,200 (land \$89,400; buildings \$243,800) and 1990 assessment of \$285,100 (land \$41,300 with 6 acres in current use; buildings \$243,800) on a 7.3-acre property with a house, garage, barn with 2 apartments, arena barn, hay barn and shed (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers' appeal also raised current-use taxation issues under RSA ch. 79-A. The board is ordering an adjustment in the 1990 assessment because 6 acres was placed into current use when it did not qualify for current use.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) When the Town corrected the lot size from 21.83 acres to the correct size of 7.32 acres, the Town reduced the land assessment by \$53,500 but then increased the building assessments by \$45,800;

(2) Similarly when the Town corrected the lot size, it increased the per-acre assessment from \$8,083 to \$9,850;

(3) In 1990 when part of the land was placed into current use, the Town increased the 3-acre basic site from \$18,667 to \$31,154; (4) There was a loss of road frontage when the road was expanded in 1987; and

(5) There is ledge and swamp in parts of the Property.

The Town's position was:

(1) The 1989 building assessment was correct, not the new 1990 building assessment;

(2) While the per-acre value on the basic site was higher for 1990 than 1989, the site value itself stayed the same for 1989 and 1990, and this occurred because some of the home site was placed into current use, reducing the size but not the value of the site; and

(3) 1.7 acres of land that was placed into current use should not have been given current use status.

For introduction, the board presents the following guiding principles. The overriding principles are proportionality and legality. If an assessment is disproportional, resulting in an over or under assessment of a property or if an assessment was arrived at contrary to the law, the board must act to correct the assessment. Thus, while the board acts in the context of individual appeals, it cannot lose focus on the question of proportionality and legality in terms of the appealing taxpayer and the other taxpayers in a municipality. If an appealing taxpayer's assessment is too low, the taxpayer is not bearing his/her share of taxes. Therefore, the board is not bound by a municipality's or a taxpayers' positions on what the proper assessment should be. No, the board must look at all the evidence and do what is right.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and building together) because this is how the market views the Property. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979); see also Marshall Valuation Service, Section 1, Page 2 (March 1989). This board, as a quasi-judicial body, must weigh the evidence and apply its judgement in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

In making a decision on legality, the board looks at all laws, regulations and cases that apply to a particular taxpayer. In this case, the first issue is the legality of the current use assessment on the Property

Current Use Land

The board is authorized by RSA 79-A:9 and RSA 79-A:12 to deny classification to land that was put into current use contrary to RSA ch. 79-A. The board may exercise this authority either upon a taxpayer's appeal, a third party's petition or upon the board's own motion. Here, the Taxpayers' appeals questioned the Town's application of the current-use law, thereby granting us jurisdiction under RSA 79-A:9. Even if the appeals cannot be so read, we have taken jurisdiction of this issue under RSA 79-A:12 II, which allows the board to do so "[w]hen [such improper or illegal current use classification] comes to the attention of the board *** from any source ***." At the hearing, the board learned of the improper grant of current use, and the error will be corrected by this order.

In 1989, 1.3 acres was assessed at ad valorem value. Additionally, 6 acres was assessed at current use values in the following classifications: 1) 3.5 acres in farm pasture; 2) .8 acres in horticultural land; and 3) 1.7 acres in forest land. We find none of the land qualified for current use status, and all of the land should have been assessed at the ad valorem value.

Farm Land. Under REV. 1205.02 (a), land can be placed in the farm classification under two circumstances: a) the lot is a "tract," i.e., consists of 10 acres or more, and is actively devoted to agricultural or horticultural use or b) the lot is of any size and is actively devoted to agricultural or horticultural use with an annual gross income of \$2,500 or more.

The evidence submitted by the Taxpayers to substantiate the provision of an annual minimum gross value of products of \$2,500 was a copy of the IRS 4797 form, which indicated a net gain of \$2,540 from the sale of the horses. The Taxpayers testified these horses pastured on the 3.5 acres of permanent pasture. No evidence was submitted on any income from the .8 acre of horticultural land.

Based on the evidence, the 4.3 acres of farmland does not qualify for current use. As current use assessment deals with only land, the product that must be measured to meet this \$2,500 provision is that which is being produced directly from the land desiring current use assessment. In this case, it is the value of the grass from the pasture, serving as an input in raising horses, that must be valued. Valuing the horses is not correct as most of the inputs (hay,

grain, supplements, etc.) in raising the horses were purchased and brought in rather than produced from the land. To interpret otherwise would allow small parcels of land that were not involved in significant production to be eligible for current use and thereby not fulfill the general purpose of the current use law.

Forest Land

To qualify as "forest land," the lot must be a "tract," i.e., 10 acres or more. REV. 1205.03(1); REV. 1201.07. The land here was only 1.7 acres, and therefore, was not entitled to be classified as forest land.

Ad valorem values

Based on the evidence that some of the rear land was included in the Town's wetland overlay zone and the parcel did not have a second potential lot due to its configuration and building placement, the Board rules the land should be assessed at \$65,400 (3 acre site: \$56,000; 3 acres excel. rear land: \$9,000; 1.3 acres wetland overlay \$400). Further, based on the assessment card evidence and photographs, the building assessment is reasonably estimated at \$243,800. To return to the previous building assessment of \$198,000, as suggested by the Town, would result in the Taxpayer being underassessed and all other taxpayers improperly shouldering some of the taxpayer's burden.

Therefore, for 1989 if taxes have been paid on a value in excess of \$309,200 (land, \$65,400; buildings, \$243,800) shall be refunded with interest at six percent per annum from date paid to refund date.

For the 1990 tax year, the Town shall issue a supplemental tax bill based on the proper assessment of \$309,200.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Date: October 21, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to James & Betsy Crandell, taxpayers; and the Chairman, Selectmen of Belmont.

Brenda L. Tibbetts, Clerk _____

Date: October 21, 1991

0009