

Paul R. Galloway

v.

Town of Walpole

Docket Nos.: 11027-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:9, the "Town's" 1991 assessment of Map 006/Lot 013, a parcel of 129 acres assessed in current use.

For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried his burden.

The Taxpayer argued the assessment was excessive because the Town used their own ratio of 56% in equalizing the current use rates rather than using the most recently available ratio (1990) of 41% as determined by the Department of Revenue Administration (DRA).

The Town argued the assessment was proper because RSA 79-A:5 only states current use values should be equalized, not how they should be equalized. The Town calculated its own ratio of 56% and argued it is more applicable to the general level

of assessment as of April 1, 1991.

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Board's Rulings

The singular issue in this appeal is whether towns in equalizing a current use valuation pursuant to RSA 79-A:5 must use the equalization ratio determined by the DRA or whether towns have the latitude of determining their own ratio for this purpose.

In 1968 the New Hampshire Constitution was amended (pt. 2 art. 5-B) to allow assessments based on current use.

pt. 2 art. 5-B. [Power to Provide for Tax Valuations Based on Use.] The general court may provide for the assessment of any class of real estate at valuations based upon the current use thereof.

The legislature enacted chapter 79-A to carry out the provisions of art. 5-B. In particular RSA 79-A:5 (supp. 1991) states current use valuations shall be equalized.

79-A:5 Assessment of Open Space Land.

I. The selectmen or assessing officials shall appraise open space land, as classified under the provisions of this chapter, excluding any building, appurtenance or other improvement on the land, at valuations based upon the current use value established by the board. The valuations shall be equalized for the purpose of assessing taxes. The selectmen or assessing officials shall use the soil potential index when available, to determine the value of farm land within the ranges established by the board. It shall be the duty of the owner to provide the soil potential index to the selectmen or assessing officials. [Amended 1991, 281:8, eff. Aug. 17, 1991.] (Emphasis added.)

The legislature gave the current use advisory board (presently current use board) authority to promulgate rules to further facilitate the administration of current use assessment. Rev. 1205.01 of the current use advisory board 1991 rules states the current use value shall be adjusted by the equalization ratio as determined by the DRA.

Rev 1205.01 Adjustment for Equalization Percentage. All use values shall be at 100 percent valuation and shall be adjusted according to the prevailing equalization percentage which exists in the taxing jurisdiction according to the equalization ratio as determined by the department under RSA 21-J:9,I,(f).

It is clear by the legislature's amendment in 1991 to RSA 79-A:5, it intended current use values to be equalized. Rev. 1205.01 clearly states that municipalities shall use the DRA equalization ratio that exists at the time current use assessments are being assessed to adjust the current use values. The selectmen in Walpole as in any town are in the process of determining the current use assessments from April 15th up to the time the tax rate is set (RSA 79-A:5II). Thus, the DRA ratio that existed in 1991 during that time period was actually the 1990 equalization ratio reported by DRA in the spring of 1991. It is the board's understanding of the DRA's RSA 21-J:9,I,(f) equalization methodology that the 1990 ratio was derived from an analysis of sales that occurred from October 1, 1989 to September 30, 1990. However due to the time in analyzing all the taxing jurisdictions of the state and the appeal timelines for towns to appeal their equalized valuations, DRA does not report the equalized valuations and ratios until April or May of the following year, in this case 1992. Thus the only DRA ratio that existed for the selectmen to use during the summer of 1991 was the 1990 ratio of 41%. The 1991 ratio (52%) which in theory would be more applicable to the general level of assessment during the 1991 tax year was not available until the spring of 1992 well after the 1991 final tax notice had been sent.

The board understands the Town's desire to adjust the current use values to be as equitable as possible to the ad valorem assessments. However, the current use rules do not allow for such an independent calculation by the

Town. See Blue Mountain Forest Ass'n. v. Town of Croydon, 119 NH 202, 205 (1979) (the town is bound by the values established by the current use board). The board rules that the Town should use the most recent DRA ratio which existed during the summer of 1991 to adjust the current use values. This ratio was the 1990 ratio of 41%. Therefore, the Town shall adjust the current use assessments for Map 6 Lot 13 using the 41% ratio.

The board is not entirely comfortable with this decision. However under the existing statutes and rules, it is the method mandated and may be the best method available to create some parity between the two concurrent value bases. RSA 75:1 assessments are based on market value. Chapter 79-A assessments are based on value in current use of property. These are two very different ways of determining a value for property. Equalization ratios are derived based on assessment to sales analyses which reflect the swings in the real estate market relative to assessments. Current use values are set by the current use board "based upon the income producing capability of the land in its current use" (RSA 79-A:2V). Thus clearly the equalization ratio applies a market derived adjustment to a value that is not related to the market. However in practical terms this adjustment results in a relatively insignificant difference in the actual tax burden due to current use rates being significantly less, in most cases, than the market value assessments.

In conclusion, the Town shall recalculate the current use assessment using the 41% ratio and shall refund with interest at 6% per annum from date paid to refund date the taxes on the excess value. RSA 76:17-a.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of Page 5
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the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul R. Galloway, Taxpayer; and Chairman, Board of Selectmen of Walpole.

Dated: July 26, 1995

Valerie B. Lanigan, Clerk

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