

**H. Harrison Children's Trust**

**v.**

**Town of Henniker**

**Docket No.: 14995-94CU**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 79-A:9, the "Town's" April 13, 1994 denial of the Taxpayer's current-use application. The assessment was \$107,300 on a vacant, 88.8-acre lot (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the Town erred in denying its current-use application, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 79-A:9; TAX 206.06. We find the Taxpayer carried this burden.

The Taxpayer argued the Town erred in denying the current-use application because:

- (1) the application for current use was filed on April 13, 1994 and the attached maps indicated "all woodlands - mixed species;"
- (2) the fact that the Taxpayer did not submit a stewardship program should not be a reason for denial of the application;
- (3) in preparation for an appeal, a licensed forester prepared maps more clearly delineating the forest types in October 1994; and

(4) the denial of the application was unjust.

The Town did not appear at the hearing. The Taxpayer did submit a copy of the Town's denial which stated: "The reason for the denial is that the maps lack the necessary indication of the various species on the Property and also the application lacks a responsible stewardship program for the management for the forest."

### **INTRODUCTION**

The single issue in this case was whether the Town was proper in denying current-use assessment based on the Taxpayer's application not including: 1) evidence of responsible stewardship for the forest land (CUB 302.02 (c)(10)b.); and 2) an itemization of forest type categories (CUB 302.01(e)(3).)

### **FINDINGS**

The Taxpayer applied for current use on April 13, 1994 on form A-10. The Taxpayer indicated on question #7 of the form that no evidence of responsible stewardship for forest land was attached. Further the Taxpayer submitted two maps, one for the 88-acre parcel and one for the 8-acre parcel and indicated the land was "all current use and all forest." The Town denied the application on April 18, 1994 and gave for a reason for denial "lack of documentation." The Town further indicated in a letter to the Taxpayer on April 21, 1994 that the denial was because the maps lacked an indication of the various forest species and no responsible stewardship management program was submitted.

The board finds that neither of the reasons given by the Town are a basis for denying current-use assessment on the Property.

Docket No.: 14995-94CU

First, property owners when applying for current use have the option of applying for forest land managed by a land stewardship program or forest that is not managed by a land stewardship program. Preparing or obtaining a land stewardship program is not a prerequisite of obtaining current-use assessment for forest land. See CUB 304.03.

Second, CUB 302.01 does require the Taxpayer provide certain information with the application including the acreage of various forest type categories in current use. However, there is no provision in either Chapter 79-A or in the current-use board (CUB) rules that results in the denial of the current-use based on lack of full documentation in the application. Ideally the maps the Taxpayer subsequently had prepared by David Kent, a consulting forester, for the appeal and for the subsequent 1995 current-use application should have been submitted with the 1994 application. However, lack of submitting that further breakdown of the forest category is not a basis for denial.

The board understands that administering current use is a time consuming and detailed task. However, the assessors (selectmen) have the responsibility to determine the proper assessment of each taxpayer. Inherent in their assessing duties should be the ethic of working with individual taxpayers, educating them of the process and obtaining information necessary to fulfill both their RSA 75:1 and Chapter 79-A assessing responsibilities.

New Hampshire has two bases for determining how real property should be appraised. RSA 75:1 pertains to ad valorem assessment of all real estate while Chapter 79-A relates to the current-use assessment of qualifying open space. While the process of assessing current-use property (Chapter 79-A) is more defined by

statute and rules than ad valorem assessment under RSA 75:1, Page 4  
H. Harrison Children's Trust v. Henniker  
Docket No.: 14995-94CU

that alone does not place the entire burden with taxpayers to arrive at the proper assessment. Just as RSA 75:1 and Chapter 74 create a dialogue between taxpayer and assessors in the determination of RSA 75:1, so does Chapter 79-A require a dialogue between the parties to properly assess qualifying land in current use.

In this case, the board finds the Taxpayer's application was not so wanting to justify the Town's denial. The Taxpayer did submit a map which indicated the land was all forest and the A-10 form did indicate that they did not desire the stewardship program value range. The only item lacking was a further breakdown of the forest category into white pine, hardwood or the all other category. The board finds the Town had a responsibility to communicate with the Taxpayer and attempt to obtain the further information rather than flatly denying the application and noting the appeal provisions. The application was timely filed by the Taxpayer and properly responded to by the Town. There was adequate time for the parties to communicate and obtain the proper documentation before the final assessments were calculated and the tax rate set for the 1994 tax year.

### **VALUATION**

Because the Taxpayer failed to submit any breakdown as to what category of forest the Property contained, the board rules the assessment should be in the white pine category at \$121.00 per acre which multiplied times 88.8-acres and by the Town's 1994 ratio of 1.13 results in a final assessment of \$12,142. The Town shall also file a proper RSA 79-A:5 VI contingent lien with the registry of deeds for the 1994 tax year.

shall be refunded with interest at six percent annum from date paid to refund date.  
RSA 76:16-a.

### COSTS

Subsequent to the hearing the Taxpayer filed a motion for costs citing the Town's denial of the application for current use was frivolous. The Town filed a response to the motion on October 17, 1995 stating that the Town's denial was not frivolous because the trustees had a responsibility to the Taxpayer to ensure proper application for current use and because the current-use criteria booklet fully described the information needed for a complete application.

For the following reasons, the board grants the Taxpayer's request for costs relative to the \$65 filing fee but denies the balance of the request.

The board's authority to assess costs is contained in two statutes:

(1) RSA 76:17-b, which states, "(w)henever, after taxes have been paid, the board of tax and land appeals grants an abatement of taxes because of an incorrect tax assessment due to a clerical error, or a plain and clear error of fact, and not of interpretation, as determined by the board of tax and land appeals, the person receiving the abatement shall be reimbursed by the city or town treasurer for the filing fee paid under RSA 76:16-a, I."; and

(2) RSA 71-B:9, in part, which states, "(c)osts may be taxed as in the superior court."

Generally, the courts and this board do not have the authority to award costs against a municipality in a tax abatement case unless there is a  
Page 6  
H. Harrison Children's Trust v. Henniker  
Docket No.: 14995-94CU

specific statute authorizing such an assessment of costs. See Tau Chapter of Alpha XI Delta Fraternity v. Town of Durham, 112 N.H. 233, 235 (1978). RSA 76:17-b does

give the board specific authority to have the filing fee reimbursed by the Town if the tax assessment was due to a "clerical error or a plain and clear error of fact and not of interpretation as determined by the board of tax and land appeals \*\*\*."

In this case the board finds the Town had no statutory or regulatory basis for denying the application; thus, the refund of the filing fee is appropriate.

Under the board's RSA 71-B:9 authority to assess costs, the court has allowed the assessment of attorney's fees against the state or one of its political subdivisions only where bad faith is found in the process of securing "a clearly defined and established right". Harkeem v. Adams et al, 117 N.H. 687, 691 (1977). The court further states that bad faith is shown where the party in question has acted vexatiously, wantonly, obdurately or obstinately. The board finds the Town's actions in this case did not warrant bad faith. As the Town stated in its response to the motion, the application forms and the current-use criteria booklet do provide adequate explanation to the taxpayers as to information that is needed to support the application. Further, the Town did explain in their denial letter the basis for the refusal of granting current use. As has been discussed extensively in the findings section of this decision, the board finds there was some onus on the Taxpayer to have started a dialogue with the Town to make certain all the proper information was supplied.

A motion for rehearing, reconsideration or clarification (collectively Page 7 H. Harrison Children's Trust v. Henniker Docket No.: 14995-94CU

"rehearing motion") of this decision must be filed within thirty (30) days of 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

\_\_\_\_\_  
Michele E. LeBrun, Member

**CERTIFICATION**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David L. Kent, Agent for H. Harrison Children's Trust, Taxpayer; and Chairman, Selectmen of Henniker.

Dated: November 6, 1995

004

\_\_\_\_\_  
Valerie B. Lanigan, Clerk