

Town of Gorham

v.

Town of Randolph

Docket No.: 15857-95CU

DECISION

"Gorham" appeals, pursuant to RSA 79-A:9, "Randolph's" April 24, 1995 denial of its current-use application. Gorham owns a vacant, 2567-acre parcel in Randolph assessed at \$365,309. Gorham applied to Randolph for current use on 265 acres of this parcel (the 265 acres to be called "the Property"). For the reasons stated below, the appeal for abatement is denied.

Gorham has the burden of showing Randolph erred in denying the application for current use. See RSA 79:A-9; TAX 206.06. Gorham failed to carry this burden.

Gorham argued the denial of its current-use application was erroneous because the Property was not within the "water works" area as used in RSA 72:11 and 11-a, and therefore, the Property should have been placed in current use. Gorham asserted the Property was not contributing to the water supply and was Gorham's town forest.

Randolph argued its denial of the current-use application was proper

because:

(1) the Property qualified as "water supply" property under RSA 72:11 and 11-a, and thus, the Property could not be placed in current use. (The Town cited RSA 79-A:2 IX (supp. 1995) in support of its position.);

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(2) Gorham has always treated this as part of the water supply area, but Gorham is now trying to constrict that area; and

(3) Gorham is trying to reduce its liability for taxes by calling parts of the Property "town forest."

Board's Rulings

Based on the evidence, the board finds Gorham did not show it was entitled to current-use assessment.

Under RSA 72:23 I, municipal-owned property is exempt. In Canaan v. Enfield Village Fire District, 74 N.H. 517 (1908), the supreme court held land owned by one town (for water purposes) but located in another town was exempt from taxation. Apparently, in response to this case, effective 1911, the legislature enacted RSA 72:11, which specifically makes taxable municipal-owned property that is located in another municipality and that is used for water supply. See also RSA 72:11-a. Additionally, RSA 79-A:2 IX (supp. 1995) states: "_open space land_ shall not include any property held by a city, town, or district in another city or town for the purpose of a water supply or flood control, for which payment in place of taxes is made in accordance with RSA 72:11." Given this consistent statutory scheme, a town that owns property in another town that is used for water supply purposes has a heavy burden to show the land is not taxable under RSA 72:11 and can be assessed in current

use under RSA 79-A:2 IX (supp. 1995).

In this case, the board finds Gorham did not carry this burden for the following reasons.

1) The Property was part of the land originally acquired for Gorham's water supply. The testimony was clear that in this area of the state, acquisition of such property would generally require the purchase of large parcels.

2) The Property was reasonably associated with water supply uses, and Gorham did not show sufficient distinction between the Property and the admitted water supply property. For example, it is reasonable to have some
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buffer area surrounding any water supply or watershed area, and the Property supplies this buffer. Additionally, the Property's delineation was based simply on a survey that showed a change in elevation away from the Gorham town line and the watershed area. This plan, Gorham Exhibit 1, shows a dotted line that indicates the highest point on the land. The Property is located on the side with a gradient away from the watershed. This line results in strange configuration of the Property with disconnected areas as small as .5 acres to as large as 225 acres. Gorham also did not show that the Property was not needed for ground water protection, i.e., the direction of the ground water flow may not be directly related to topography, and some of the water in the Property may well be in the watershed area.

3) Gorham apparently applied for current use simply as a way to skirt around RSA 72:11. Given the strong legislative mandate of RSA 72:11, 11-a and RSA 79-A:2 IX (supp. 1995), the board cannot find that the Town has shown that its actions were anything but an attempt to subvert the purpose of RSA 72:11.

For example, calling the Property the "Gorham Town Forest" does not protect this Property from RSA 72:11.

Based on the burden of proof and the issues discussed above, the board finds Gorham did not show it was entitled to avoid the application of RSA 72:11 and thereby take advantage of RSA Chapter 79-a.

A motion for rehearing, reconsideration or clarification (collectively "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

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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

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John J. Ratigan, Esq., Counsel for the Town of Gorham; Laurence F. Gardner, Esq., Counsel for the Town of Randolph; and Chairman, Selectmen of Randolph.

Date: December 11, 1996

Valerie B. Lanigan, Clerk

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