

Leopold P. & Fona E. Piecuch Trustees

v.

Town of Alton

Docket No.: 16389-95CU

DECISION

The "Taxpayers" appeal, pursuant to RSA 79-A:9, the "Town's" 1995 denial of the Taxpayers' request to place additional land in current use. The Taxpayers own a 110-acre parcel with a garage thereon (the Property). All but 1 acre was in current use, and the Taxpayers sought to place three quarters of that acre in current use. The Town denied the request.

The Taxpayers did not appear but were granted leave consistent with board rule TAX 202.06. This decision is based on the evidence presented to the board.

The Taxpayers have the burden of proof to show the Town erred in not granting the Taxpayers' current-use request. TAX 206.06. For the reasons stated below, the appeal is denied.

The Taxpayers argued the assessment of the 1.0-acre of land not-in-current-use (NICU) was excessive and 0.25-acre would be more appropriate in terms of the needs and area groomed. The Taxpayers indicated the area is mowed twice a year for fire hazard.

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The Town argued denying the current-use application was proper because:
(1) 110-acres of land was placed in current use in 1977; at that time the Town did not inspect the Property; and

(2) in 1992, when current-use regulations changed, the Town required applications be resubmitted, and the Town, upon inspection, found there was a garage on the Property; therefore, 1 acre was removed from current use for the land under the building and the area around the building.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not show that the 1 acre retained by the Town out of current use was excessive.

The Taxpayers have the responsibility, as outlined in CUB 302.01, to submit with their current-use application a map that delineates the area NICU.

Neither the original application in 1977 nor the reapplication in 1992 (the municipality requested clarification from all current use landowners) contained any map showing the area necessary as curtilage (CUB 301.04) to contain the structure, driveway and land groomed and maintained around the structure.

Based on the photographs submitted by the Town and the measurement of the open and mowed area around the building, the 1-acre site or curtilage does not appear to be unreasonable. The Taxpayers stated the site was mowed only twice a year for fire purposes. The Town, however, testified the area appeared to be cut more frequently with the grass shorter than what two mowings a year would indicate.

If in future tax years the Taxpayers wish to reduce the area not in current use, they should comply with the application requirements of CUB 302.01 by: 1) submitting a detailed map showing the area in their opinion necessary to support the buildings; and 2) providing adequate proof to the municipality as to why the additional land should qualify as open space and

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not be treated as curtilage around the structure. However, for 1995 the board finds the Taxpayers did not submit such evidence to either the Town or to the board. Therefore, we find assessing the 1-acre site NICU was reasonable.

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 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

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Leopold P. & Fona E. Piecuch, Trustees, Taxpayers; and Chairman, Board of Selectmen of Alton.

Date: February 13, 1997

Valerie B. Lanigan, Clerk

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