

William D. Rzepa

v.

Town of Dalton

Docket No.: 17397-97LC

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the "Town's" September 1, 1997 land-use-change tax (LUCT) of \$2,500 on 2 acres disqualified from current-use assessment from an 80-acre parcel. The LUCT was based on a \$25,000 full-value assessment. The Property contains a dwelling built in 1994 and two manufactured homes whose placement on the parcel in September 1997 triggered the LUCT under appeal. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the Town's LUCT assessment was erroneous or excessive. See TAX 205.07. The Taxpayer carried this burden.

The Taxpayer argued the LUCT was erroneous or excessive because:

(1) the developed area of the Property including driveways, septic systems and home sites for all three lots encompasses less than 1.0-acre of land;

(2) the current-use board rules do not require that three 1.0-acre primary sites be removed from current use; and

(3) when the Town assessed a LUCT in 1994 the land-use-change-tax lien release form (A-5) clearly indicated there were 3.0 acres not in current use (NICU).

The Town argued the LUCT was proper because:

(1) in November 1994, 1.0-acre of land was disqualified from current use for the Taxpayer's primary house site;

(2) the statute and current-use board rules require 2.0 additional acres need to be disqualified for the two manufactured home sites; and

(3) at the time of revaluation, the Town valued the primary house site and assigned 1.0-acre to each of the manufactured home sites.

At the conclusion of the hearing, the board requested a number of items including a copy of the original current-use application and any accompanying maps and earlier assessment-record cards of the Property.

Subsequent to the hearing, the board had its review appraiser, Mr. Scott Bartlett, review the file, visit the Property and make on-site observations and measurements of the area in contention around the several improvements on the Property. Mr. Bartlett filed his report on March 19, 1999, and adequate time was provided for the parties to comment on the report. (See order of March 22, 1999.)

Board's Rulings

The appeal before the board is a September 1, 1997 LUCT for the area the Town assessed

around the two manufactured homes. However, as is often the case with LUCT appeals, to determine the issue under appeal, the board must review past current-use assessments of the Property and earlier disqualified land to determine the proper remedy in this case.

Consequently, this decision addresses the following areas: 1) what areas were previously disqualified from current use on the Property; 2) what land is disqualified by the placement of two manufactured homes in 1997 on the Property; and 3) the value of the land disqualified due to the manufactured homes.

Previously Disqualified Land

This issue needs to be addressed initially because various LUCT lien release forms on this Property indicate three acres had been reserved from current use by a previous owner before any building had begun by the Taxpayer (see LUCT bill of December 21, 1994, to Taxpayer). The Town stated that it was unaware as to why the three acres was noted on the LUCT lien release form or where it physically was located on the Property. The Taxpayer argued that because the Town's LUCT lien release form indicated three acres had been previously disqualified, then that land could conceivably encompass the areas where the manufactured homes were placed in 1997.

Page 4
Rzepa v. Town of Dalton
Docket No.: 17397-97LC

After review of the available records submitted by the parties, the board concludes the only area of the Property previously disqualified from current use was one acre around the Taxpayer's home assessed in a LUCT on December 21, 1994¹.

¹ The board noted that a second LUCT was also assessed on one acre to a Kimberly Williams also on December 21, 1994; however, both sides agreed that

The board requested a copy of the initial application of this Property and any accompanying maps (RSA 79-A:5 and Cub 302.01) to determine whether any land had been reserved from current use at that time; however, the Town was not able to locate the original application or map.

At the board's request the Town did supply copies of 1987 - 1995 current-use assessment-record cards. Those records clearly show that this Property was never assessed with any land not in current use until 1995 when a one-acre home site was assessed around the newly constructed house (same one-acre home site which was the subject of the December 21, 1994 LUCT bill). There is no evidence or testimony before the board to explain the discrepancy between the assessment-record cards and the LUCT lien release form. The selectmen that were present at the hearing had no recollection of three acres being reserved from current use. Consequently, the board finds the assessment-record cards to be the best evidence as to the assessment history of the Property. Therefore, the board rules there was no residual land reserved out of current use that could be applied to the manufactured home sites.

Page 5
Rzepa v. Town of Dalton
Docket No.: 17397-97LC

Administrative Corrections

This decision by the board will not address whether the LUCT value assessed against the one-acre home site in 1994 was appropriate. For the board to have had jurisdiction over the 1994 LUCT, the Taxpayer would have had to appeal the LUCT within eight months of that bill which he did not. (RSA 79-A:10 and RSA 76:16-a (1994 Supp.)).

However, because there are past actions in the development of this Property and errors in administering current use that could potentially impact future parties determination of

this LUCT was subsequently abated, and therefore, need not be considered as an area that was previously removed from current use.

subsequent LUCTs, the board orders the Town to administratively correct its records in the following fashion. These administrative corrections should occur prospectively beginning for the 1999 tax year and shall not incur any additional LUCTs.

First, the “Carpenter right-of-way” and “Boyle right-of-way” to adjoining lots do not qualify for current use and those areas should be removed from current use and assessed at ad valorem values. Based on the submitted surveys (Taxpayer’s Exhibits 22 and 24), the board estimates the area for the Carpenter right-of-way to be approximately 1.51 acres (60 feet x 1,094 feet) and the area for the Boyle right-of-way to be .32 acres (50 feet x 276 feet). Based on evidence submitted by the parties, the Carpenter right-of-way was created in 1991, and the Boyle right-of-way in 1995. At that time the Town should have disqualified those lands under RSA 79-A:7 V (b) which provides for land not physically changed that is used “in the satisfaction of density, setback, or other local, state or federal requirements as part of a contiguous site plan ... shall be considered changed in use at the time the development site is changed in use.” Because both rights-of-way apparently were needed to provide access to residential and gravel uses on the

Page 6
Rzepa v. Town of Dalton
Docket No.: 17397-97LC

adjoining lots, the entire areas of the rights-of-way should have been removed from current use. The board finds it is reasonable and just to order this administrative correction at this point as opposed to a retrospective assessing of a LUCT. RSA 790-A:7 II (c) provides for the local assessing officials to have 12 months to assess a LUCT from the time they receive written notice of a change from a landowner or from the time they discover the change. Based on the evidence submitted at the hearing, the two rights-of-way appear to be the result of subdivision review by the Town and were subsequently incorporated in deeds related to the Property. The Town was on notice at those times that the rights-of-way were being created, and thus, had adequate opportunity to assess a LUCT at that time but did not.

Second, the area that was actually disqualified with the construction of the Taxpayer’s

house in 1994 needs to be administratively corrected to comply with current-use rules. The Town, at that time, removed one acre based on the Town's minimum zoning lot size. Cub 303.02 (b) specifically addresses this issue. "The dimensions of the building lot, for the purposes of current-use assessment shall be not be governed by local municipal ordinances, planning board requirements, or local zoning ordinances." Consequently, only the area that was physically changed in the development of the house site should have been removed from current use. Based on the evidence, including Mr. Bartlett's report, the board finds approximately .69 of an acre was physically changed and should have been removed from current use rather than the one acre. Specifically, this area is comprised of the following (references are to Mr. Bartlett's March 1999 report):

Page 7

Rzepa v. Town of Dalton

Docket No.: 17397-97LC

Total Land Area (measured by Bartlett) 43,160 sf
(Bartlett Report, page 2)

Approximate Area of Driveway 4,400 sf
Not Shown on Bartlett Report to
Carpenter Right-of-Way (16' x 275')
47,560 sf

Wooded Area in Loop of Driveway- 8,000 sf

Area A on Bartlett Diagram (page 2)- 4,375 sf

Area B (excepting the 44 x 80 fenced- 5,230 sf
area around sheds)

Total Area Not in Current Use 29,955 sf (approximately .69 of an acre)

Based on the photographs, the board finds Mr. Bartlett's estimate of the driveway being 16 feet wide is reasonable to include the travel way, ditch line, and in some cases, back slope of ditch. Further, the board agrees with the Taxpayer that the areas of the pasture shown as A and

B on Mr. Bartlett's diagram qualify as "farmland" (RSA 79-A:2 VI) and should not be considered part of the home site.

Size and Value of the Two Manufactured Housing Lots

As stated earlier, Cub 303.02 provides that the size of building lots disqualified from current use are not governed by local zoning ordinances. Further, Cub 301.04 - Curtilage includes only the area that is groomed and maintained around the structure necessary to support and service it. The board finds Mr. Bartlett's measurements of the two manufactured housing lots provide the best description for the size of the area to be disqualified from current use.

Further, the parties' photographs indicate that the areas shown as wooded in Mr. Bartlett's

Page 8
Rzepa v. Town of Dalton
Docket No.: 17397-97LC

diagrams for both manufactured housing lots have not been disturbed, and thus, have not been disqualified from current use. Consequently, the board determines the areas that are disqualified as manufactured housing sites are: 476 Harriman Road (Unit #1) 14,562 square feet or .33 of an acre; and 470 Harriman Road (Unit #2) 5,200 square feet or .12 of an acre.

One of the issues at the close of the hearing the board asked the Town to address was its assessment methodology for valuing lots that are less than one acre in size. The Town's response (letter of February 2, 1999), reduced the lot value in a straight-line relationship with the lot size. The board finds the Town's explanation is inconsistent with a review of other assessment-record cards and the board's general knowledge of assessment methodology and market phenomena and, thus, the board does not accept the Town's explanation. Therefore, based on the board's experience and general familiarity with other assessment methodologies, the board has reduced the base lot value \$100 for each tenth of an acre less than the basic lot size of one acre. Further, based on the photographs submitted of the two manufactured housing lots and the topography adjustment used by the Town for the rear land, the board has applied a -25% adjustment for the relatively steep topography and minimal yard area of the manufactured home

sites. Based on these adjustments, the board finds the following market value estimates:

476 Harriman Road .33 acre base lot value of \$11,800 x .75 = \$8,850

470 Harriman Road .12 acre base lot value of \$11,600 x .75 = \$8,700

One additional argument the Town raised was that the land associated with the spring and water line behind the manufactured housing sites that are for the benefit of a property on the

opposite side of Harriman Road should be removed from current use. The board disagrees. Cub

Page 9

Rzepa v. Town of Dalton

Docket No.: 17397-97LC

303.05 states that “the land supporting power lines, pipe lines, sewer lines, water lines and other utilities that are not for the sole benefit of the landowner, shall be eligible for current use....”

(Emphasis added.) Since the spring line is for the benefit of property other than that owned by the Taxpayer, the board finds the land associated with the spring and the water line is eligible for current use. Further, even without such a current-use rule, the board finds a single residential spring and a water line has such a *de minimis* effect on the utility of the associated current-use land that to argue an area encompassing the spring line should be disqualified from current use approaches the ridiculous. Segregating current-use land from noncurrent-use land oftentimes requires mental and assessing gymnastics, but should also always contain an element of common sense.

Conclusion

In summary, this decision orders the Town to: 1) abate the 1997 LUCT to a combined market value for the two manufactured housing lots of \$17,550; 2) correct the land area removed by filing an amended LUCT release form for the two manufactured houses for a total of .45 acres; 3) file a corrected LUCT release form for earlier actions relative to the Property showing .69 acres being disqualified from current use in 1994 due to the Taxpayer’s house construction and 1.83 acres not qualified for current use due to the Carpenter and Boyle rights-of-way; and 4) correct its 1999 ad valorem and current-use assessments to reflect the areas applicable to both in

this decision. The Town shall refund the difference in the LUCT with RSA 76:17-a interest (6% from date of payment to date of refund) within 30 days of the board's order and file at the county registry the amended lien release forms within the same time frame, copying the board.

Page 10
Rzepa v. Town of Dalton
Docket No.: 17397-97LC

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Page 11
Rzepa v. Town of Dalton
Docket No.: 17397-97LC

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to William D. Rzepa, Taxpayer; and Chairman, Selectmen of Dalton.

Date: July 1, 1999 _____

Lynn M. Wheeler, Clerk

0006

William D. Rzepa

v.

Town of Dalton

Docket No.: 17397-97LC

ORDER

This order responds to the “Taxpayer’s” July 19, 1999 motion for clarification and reconsideration (Taxpayer’s Motion) and the “Town’s” July 28, 1999 motion for rehearing (Town Motion). The board denies both the Taxpayer’s and the Town’s Motions and clarifies some of the issues raised in the Motions.

Taxpayer’s Motion

1) During deliberations the board did note the .34 acres was associated with the Bartlett house on the east side of Harriman Road not in current use (NICU). However, as noted in the board’s decision of July 1, 1999, (Decision) no conclusive evidence was submitted that any other NICU land of the original parcel had been either reserved, removed or assessed as such.

2) Regardless of the date of origin of the Carpenter and Boyle right-of-ways, the assessment-record cards submitted by the Town indicated those right-of-ways were not being assessed as NICU land. Therefore, the board’s administrative corrections (see pages 5 - 7 of

Decision) prospectively correct any improper assessment of those areas. As noted on page 5 of the Decision, RSA 79-A:7 V (b) addresses the Taxpayer's argument raised again in the Motion as to the area of the right-of-ways disqualified from current use.

3) The Taxpayer raises new evidence relative to the length of the driveway between the house and the Carpenter right-of-way. Generally, the board does not grant rehearings for evidence that could have been presented at the hearing but was not. Further, even if the board were to consider the new evidence, its affect on the resulting assessed value of the house site would be negligible. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) (Justice does not require the correction of innocuous errors that are not injurious to the taxpayer.)

The Taxpayer's Motion and a separate letter from the Taxpayer dated June 19, 1999, requested the board assert jurisdiction and review the ad valorem taxes from 1996 through 1999 due to the different size of the house site found by the board in its Decision and the imposition of ad valorem taxes on the Carpenter and Boyle right-of-ways. The board denies this request for two reasons. First, the Taxpayer did not file timely appeals for the 1996 - 1998 ad valorem assessments. The board cannot accept such requests now because the board does not have the authority to extend timelines. Appeal of Gillen, 132 N.H. 313 (1989); Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985) (Board's authority is strictly statutory). Daniel v. B & J Realty, 134 N.H. 174, 176 (1991) (lacking specific statutory authorization, municipalities have no discretionary authority to extend procedural timelines.) Second, the board was very aware that its Decision would prospectively affect the ad valorem assessments of the NICU areas

Page 3

Rzepa v. Town of Dalton

Docket No.: 17397-97LC

beginning with tax year 1999. The Taxpayer has the right to appeal the 1999 ad valorem assessment from the final tax bill. See RSA 76:16, 16-a and 17 and RSA 76:1-a (Date of notice of tax is the last mailing date of the final tax bill.) Because the Taxpayer's 1999 final tax bill has not yet been issued, any appeal at this time would be premature. The board would also remind

the Town that it should assist the Taxpayer in attempting to estimate the ad valorem assessments associated with the right-of-ways. This should be a relatively simple matter of reading and calculating those areas from the assessment-record card. We remind the Town it is its function to provide assistance to all its citizens. See N.H. CONST. Pt. 1, art. I; Charbbonneau v. Town of Rye, 120 N.H. 96, 99 (1980).

Town's Motion

1) The board's finding of differing manufactured home sites sizes is, as stated on pages 7 and 8 of the Decision, based on the curtilage and "disturbed" areas contained in Mr. Bartlett's report.

2) The board has again reviewed the Town's February 2, 1999 response as to the assessment methodology for valuing lots less than one acre. The board now understands the Town's methodology applies a second calculation of 10% to the proportionally reduced base lot value to result in a reduced value for the undersized lot. In short, the Town's methodology reduces the base lot value by \$125 for every .1 acre the lot is less than a full acre rather than the \$100 as found by the board. The resulting value of the lots using the Towns' methodology is \$8,750 and \$8,550 for 476 Harriman Road and 470 Harriman Road respectively, only \$100

Page 4

Rzepa v. Town of Dalton

Docket No.: 17397-97LC

and \$150 less than the values found by the board on page 8 of the Decision. The board finds these differences to be minor and thus not warrant any further reconsideration.

The justice to be administered is to be sufficiently exact for the practical purposes of the legislature, who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles. The points to be considered are such as the nature of each particular case presents. They cannot be fixed by an invariable rule. Manchester Mills v. Manchester, 58 N.H. 38, 39. (1876)

3) Both manufactured house sites were adjusted the same for topography and size. Both

factors were considered based on the board's review of the evidence and application of its experience and judgement. This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

Pursuant to RSA 541:6, any appeal of this order by the Taxpayer or the Town to the supreme court must be filed within thirty (30) days of the date on this order.

Page 5
Rzepa v. Town of Dalton
Docket No.: 17397-97LC

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to William D. Rzepa, Taxpayer; and Chairman, Selectmen of Dalton.

Date: August 16, 1999_____

Lynn M. Wheeler, Clerk

0006