Allen R. and Jo Ann Wiggin

v.

Town of Moultonborough

Docket No.: 17866-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of $147,092 (land $146,092; buildings $1,000) on an 8-acre lot with a floating dock (the "Property"). The land assessment is comprised of two calculations: 1) a 50 x 150 (.17 acre) area assessed at an ad valorem value of $144,700 (Contested Area); and 2) 7.83 acres assessed in current use at $1,392. The Taxpayers also own, but did not appeal, three other lots with a total assessed value of $479,352. The parties agreed that the three non-appealed lots were appropriately assessed. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). The Taxpayers carried this burden by showing the Contested Area qualifies for current use and consequently, should not be assessed at ad valorem values.

The Taxpayers argued the assessment was excessive because:

1) the Town's ad valorem assessment of the Contested Area is incorrect; the land should be classified as it always has been, in current use under the farmland category with a recreational deduction;

2) a former shed on the Property was removed several years ago, thus, the only improvement on the Property is a seasonal, removable dock;

3) the Property is open to the public year round; and

4) but for the fact that the Squam Lake Association had a concern with the location of the fence (where the cows pastured), the fence would still be at the water line.

The Town argued the assessment was proper because:

1) the Contested Area does not meet the current use criteria because the land has been groomed along the beach and, thus, has not been left in its natural state with the natural ecological process; and

2) the definition of structure includes a portable dock.

Board's Rulings

Based on the evidence, the board finds the Taxpayers' use and improvement of the Contested Area do not exceed the passive recreational intent of the current-use statute (RSA 79-A:1). By arriving at this decision, the board looks to one of the purposes and the intent of the current-use statute which is "to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources." (Emphasis added). The board acknowledges that its finding

in this case might be viewed as contradictory to prior decisions; however, the board sees a significant distinction in this case to warrant current-use assessment of the 50 x 150 foot area.

In McDowell/Widerstrom v. Alton, Docket No. 6336-89, the board found the taxpayers' land was "used intensely for accessing and using the waterfront" and, thus, did not qualify for unmanaged forest land as the land had been improved (with a shed and dock and accessed by a camp road) and disturbed so as to interfere with the natural ecological process. Further, the recreational improvements and uses of the land were intensive and "single purposed."

In Soule v. Sunapee, Docket No. 14773-93PT, the board concluded a portion of the waterfront area did not qualify for current-use assessment because: 1) it had been cleared; 2) sand was brought in and deposited to form a beach; 3) a storage bin was placed on the beach area; and 4) a dock was installed on the beach area. While the waterfront area was devoid of woody growth, the board did not think the area was capable of "growing livestock, forage or food or fiber for human consumption." Thus, the waterfront area had been significantly altered from its natural state solely for the owner's use.

In both of the cases cited above, the intent of the property owners was for personal use of the land. In this case, the Property has been used as agricultural and public recreational access to the water for 100 years. The historical use of the Property was for agricultural purposes -- for pasturing cows, launching of animals for delivery to various island properties, and delivery of vegetables to various lake properties. Further, the Taxpayers have traditionally allowed the recreational use of the waterfront for citizens of New Hampshire. The only structure on the lot is a seasonal dock which rests on a piece of driftwood. The Taxpayers allow the public

recreational use of the waterfront to access the water to swim, launch boats and in general for all of the uses set forth in RSA 79-A:4 II (open to the public 12 months a year for recreational use without entrance fee). The only deterrent is a gate necessary to contain the livestock; however, the public is allowed to park outside the gate and walk to the water and when needed for launching of boats, the Taxpayers unlock the gate when requested. Until recently, there was no public swimming or boat launching facilities on Squam Lake available to the Town residents other than that permitted by the Taxpayers. But for the dock, there would be no question that this Property qualifies for current use assessment. The board sees a distinction in this case in that its historical use has been for raising and grazing of livestock and as open recreational space for the public. In this case, the board finds the existence of its seasonal dock, when considered with its use for agricultural and recreational purposes, does not disqualify the land from current use assessment.

Therefore, the board rules the use being put to the Contested Area satisfies the legislative intent of RSA Chapter 79-A of conserving the "land, water, forest, agricultural and wildlife resources..." to provide "a healthful and attractive outdoor environment for work and recreation of the state's citizens... ." The board orders the Town to classify the property in current use under the farmland category with a recreational deduction pursuant to RSA 79-A:4 II.

The board orders the Town to calculate the proper assessment and refund any amount paid in excess of the current-use values with interest at six percent per annum from date paid to refund date. RSA 76:17-a. A copy of the Town's refund shall be sent to the board. Pursuant to

RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1999.

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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Allen R. and Jo Ann Wiggin, Taxpayers; Brownie J. Jones, Representative for the Town of Moultonborough; and Chairman, Board of Selectmen of Moultonborough.

Date: August 3, 2000

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Lynn M. Wheeler, Clerk