

**David and Linda Kinson**

**v.**

**Town of Marlow**

**Docket Nos.: 17926-99CU/18335-99PT**

**DECISION**

On November 15, 2000, the board consolidated for hearing separate current-use (Docket No. 17926-99CU) and property-tax (Docket No. 18335-99PT) appeals filed by the “Taxpayers.” At the hearing on March 2, 2001, the board heard testimony on each appeal by Taxpayer David Kinson and by Selectmen Karvosky and Feuer for the “Town.” The current-use appeal is granted and the property-tax appeal is denied, for the reasons set forth below.

**Issues on Appeal**

Current-Use Appeal. The Taxpayers, pursuant to RSA 79-A:9, appeal the Town’s 1999 current-use assessments on the following property, consisting of a total of approximately 387 acres:

Lot 405-94, a vacant 171-acre lot assessed at \$10,813;

Lot 402-23.002, which includes 5.2 acres assessed at \$452;

Lot 402-22, a vacant 139-acre lot assessed at \$9,721;

Lot 201-29, a vacant 1.9-acre lot assessed at \$111;

Lot 405-75, a vacant 2.6-acre lot assessed at \$268;

Lot 405-76, a vacant 11.4-acre lot assessed at \$1,174; and

Lot 405-79, a vacant 56-acre lot assessed at \$3,068.

The Taxpayers argued the Town erred because:

- (1) in each instance, the Town applied the highest dollar value in the ranges permitted by current-use board (“CUB”) regulations; and
- (2) the Town failed to consider evidence that the values should be set much lower in these ranges.

The Town argued its denial of the Taxpayers’ valuation requests was proper because:

- (1) the Town had no obligation to apply lower values in the CUB ranges;
- (2) the Town followed a uniform practice with respect to these lots and other current-use properties in the Town.

The Taxpayers have the burden of showing the Town erred in denying its applications regarding current-use values. See TAX 206.06. The Taxpayers met this burden and their current-use appeal is therefore granted, as specified below.

Property-Tax (Ad Valorem) Appeal. The Taxpayers also appeal, pursuant to RSA 76:16-a, the Town's 1999 assessments on the following lots:

Lot 201-15 - \$117,500 (land \$65,300; buildings \$52,200) a cottage on a .84-acre lot (referred to by the Taxpayers as the “waterfront lot”); and

Lot 402-23.1 and Lot 402-23.2 purchased by the Taxpayer in 1994, which the Town has

assessed as one lot: Lot 402-023-002 (6.2 acres in total, with one acre not in current use, assessed at \$15,300 -- land \$10,300, building \$5,000; the remaining 5.2 acres, as noted above, are in current use).

The Taxpayers argued to change the assessments because:

- (1) while the building value of the waterfront lot may have been proper, the land was overassessed because the lot had less favorable water frontage attributes than other properties; and
- (2) the Town should treat the other two lots separately, regardless of the level of assessment.

The Town argued its actions were proper because:

- (1) neither the land nor the building assessments were incorrect and the Taxpayer failed to prove disproportionality; and
- (2) in 1994, the Town granted the Taxpayers' request to have the other two lots assessed as a single lot, and the Town is not obligated to change the assessment back to two lots now simply because the Taxpayers changed their minds.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments on the appealed lots were disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); and Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the assessments were higher than the general level of assessment in the municipality. Id. In addition, to maintain a property-tax appeal, the Taxpayers must show that they are "person[s] aggrieved" by the tax and the Town selectmen's 'neglect or refusal' to "abate" the tax. RSA 76:16-a. The Taxpayers failed to meet these burdens and their property-tax appeal is denied.

### **Board's Rulings**

Current Use. The board grants the Taxpayers' current-use appeal because they demonstrated they were entitled to have their lots in current use assessed at substantially less than the maximums prescribed in the CUB regulations for 1999. The board concludes assessment based on 25% of the maximum differential for each range of values for forest land is proper in this case.

The Taxpayers submitted extensive information on the grade, location and site quality of their forest land in current use. CUB 304.03(a) and (k), respectively, defines what each of these factors entails and requires that "the local assessors shall consider the class [forest land], type, grade and location when determining where within the forest land range of assessments a particular parcel of land is placed." These regulations are consistent with the statute. See RSA 79-A:5 ("The selectmen or assessing officials shall appraise open space land . . . at valuations based on the current-use values established by the [CUB].")

The Taxpayers demonstrated their forest land in current use had: grade disadvantages because of steep slopes, rock outcrops, ravines and wetland; locational disadvantages with only two means of access (Stone Pond Rd. and Sand Pond Rd.), water barring direct access to Route 10, and most of the standing timber being from "½ to 1 mile from public access"; and relatively poor soil quality, in part because of higher elevation and the residual after-effects of the massive Marlow fire in 1940.

The Town did not present any evidence to challenge these conclusions, except for questioning the effects of the Marlow fire 61 years ago on the Taxpayers' Property. The Town's overall position was based instead on the principle of uniformity, since the selectmen apparently

followed a consistent practice of valuing all current-use land within the Town at the highest values established in the CUB regulations, irrespective of possible grade, location and site quality adjustments.

The board finds the Town's position to be in error. As noted above, under RSA 79-A:5 and the CUB regulations the Town is obligated to consider these factors in assessing forest land in current use rather than ignore them and applying the maximum specified values in each case. The supreme court has specifically held that the board and municipalities are "bound by the range of values set by the current use board for forest land" and that "Once land is classified in current use, the role of the local assessor is limited to determining the level of valuation within the guidelines issued by the current use advisory board." Tri-State Timberland Corp. v. Town of Croydon, 119 N.H. 193, 194 (1979), citing Blue Mountain Forest Assn. v. Town of Croydon, 119 N.H. 202, 204-05 (1979).

The board has reviewed the property assessment-record cards for each lot. In every case, the Town applied the highest values permitted for forest land with documented stewardship specified for 1999 in CUB 304.03(i) [white pine: \$55 - \$103; hardwood: \$15 - \$33; and "all other": \$40 - \$81]. The Town disregarded detailed information regarding site quality, grade and location submitted by the Taxpayers, contrary to CUB 304.04 (l) and (m), which requires consideration of such information. The Taxpayers presented a grid showing the quality of their forest land ranged from 15% ( grade) to 20% (for location and site quality), but Taxpayer David Kinson indicated at the hearing that he would be satisfied ("happy," in his words) with a 25% overall rating. Based on the evidence, the board concludes a 25% factor is reasonable and should be applied to the CUB ranges for forest land with documented stewardship, resulting in

the following corrected values per acre:

The board rules the Town should apply these corrected values for 1999.

In addition, the board notes the Town failed to take into account the effect of the equalization ratio. RSA 79-A:5, I specifically states the CUB values for open space land “shall be equalized for the purpose of assessing taxes.” See also CUB 304.03(g): “In accordance with RSA 79-A:5, I, the assessed value of forest land shall be equalized by multiplying the assessment by the municipality’s most recent equalization ratio.” The “most recent equalization ratio”

available to the Town for 1999 current-use assessments was 1.02.<sup>1</sup> After reviewing the assessment cards for the current-use properties, the board has made appropriate corrections using

---

<sup>1</sup>This was the equalization ratio calculated for the Town by the DRA for 1998. Because of time lags in the calculation and reporting process, the 1999 ratio (1.10) was not published by the DRA until mid-year 2000.

this ratio.

A summary of the corrected assessed values for each lot owned by the Taxpayers is shown on Addendum A to this Decision. For example, on Lot 405-76, the property-assessment card shows 11.4 acres assessed at \$103 per acre (for white pine with stewardship), for a total of \$1,174. The board finds the assessment should be abated to \$779 (11.4 acres x \$67 per acre x 1.02, rounded), a reduction of \$410. For the seven lots, the net result is a reduction in the current-use assessments of \$9,013 for 1999.

Property Tax (Ad Valorem). For the land not in current use, the board finds the Taxpayers failed to prove disproportional assessment. While the Taxpayers contended their waterfront lot (Lot 201-15) should have a lower assessment because of its steepness and the boulders on the shoreline in comparison to other property, they conceded that the market value was at least equal to the assessed value. The underassessment of other properties does not prove the overassessment of the Taxpayers' property. See Appeal of Michael D. Cannata, Jr., 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden market value is the proper yardstick to determine proportionality, not just comparison to other properties. Id. The Town's equalization ratio shifted upward to 1.10 in 1999 from 1.02 in 1998, which implies that on average assessed values in the Town were higher than market values. The Taxpayers, therefore, failed to prove they were disproportionately assessed on the waterfront lot.

On the other two lots (Lot 402-23.1 and 402-23.2), the Taxpayers did not dispute the level or amount of assessment but instead argued the lots should be assessed as a singular unit. The board agrees with the Town that it was not required to do so because of the following facts.

In 1994, the Taxpayers themselves asked the Town's selectmen "to have the two parcels of land . . . assessed as a single lot." (Municipality Exhibit B). The Taxpayers apparently changed their minds and, in 1999, petitioned the Town's Zoning Board of Adjustment with a request that "these two parcels must be assessed separately." The ZBA denied this request and indicated the Taxpayers could appeal this denial to the superior court. (Municipality Exhibit C.) See also RSA 677:4 ("person aggrieved by any order or decision of the zoning board of adjustment" may seek relief from superior court).

The Taxpayers failed to do so, but instead ask the board to grant such relief concerning what is essentially a matter of zoning and subdivision rights. The board must deny this request. The board's authority in this case is limited by statute to deciding property-tax appeals by any "person aggrieved" when the Town's selectmen "neglect or refuse" to grant an abatement. See RSA 76:16-a and 76:16.<sup>2</sup> Here, the Taxpayers are clearly not complaining about the amount of the assessment or the Town's 'neglect or refusal' to grant an abatement, but rather a decision by the ZBA not to allow them to "rescind" their earlier request to have the two lots assessed as a single unit. Consequently, the Taxpayers lack standing to maintain their appeal to the board under these abatement statutes.

### **Further Proceedings**

---

<sup>2</sup> A "person aggrieved," within the meaning of these statutes, is someone who has "allegedly suffered the injury of being disproportionately assessed." Cf. Appeal of Town of Plymouth, 125 N.H. 141, 145 (1984), quoting from Langford v. Town of Newton, 119 N.H. 470, 472 (1979).

If the taxes have been paid on the lots in current use, the amount paid on the value in excess of the corrected assessed values for 1999 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. The board notes the range of values for forest land established by CUB regulations changed in 2000 and may change in future years, as did the Town's equalization ratio in each year, and the Town is required to take these changes into account "in good faith," consistent with its overall assessment responsibilities. See RSA 76:17-c and RSA 79-A:5.

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

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to David and Linda Kinson, Taxpayers; and Chairman, Board of Selectmen of Marlow.

Date: April 13, 2001

---

Lynn M. Wheeler, Clerk

Page 11  
Kinson v. Town of Marlow  
Docket Nos.: 17926-99CU and 18335-99PT

Page 12

Kinson v. Town of Marlow

Docket Nos.: 17926-99CU and 18335-99PT

Page 13

Kinson v. Town of Marlow

Docket Nos.: 17926-99CU and 18335-99PT

**David and Linda Kinson**

**v.**

**Town of Marlow**

**Docket Nos.: 17926-99CU and 18335-99PT**

**ORDER**

This order responds to the “Taxpayers” May 14, 2001 request for clarification to have the two \$65 filing fees relative to the above-captioned appeals reimbursed by the “Town.”

The board grants the request for Docket No. 17926-99CU, the current use (“CU”) appeal, but denies the request for Docket No.18335-99PT, the ad valorem appeal.

RSA 76:17-b reads:

**76:17-b Filing Fee Reimbursed.** Whenever, 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 76:16:16-a, I.

The board finds the Town’s application of the high end of the CU range to the Taxpayers’ property (and to all other CU properties within Town) is a “clear error of fact” considering the

type of property in question. The CU statutes and regulations clearly require the assessors to take into account the quality of the land in the determination of the CU assessment.

The board denies the request for the ad valorem appeal because the Taxpayers did not prevail, and thus, does not meet the provisions of RSA 76:17-b.

The board orders the Town to reimburse the Taxpayers the \$65 filing fee within 20 days of the clerk's date on this order, providing proof thereof to the board.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to David and Linda Kinson, Taxpayers; and Chairman, Board of Selectmen of Marlow.

Date: June 4, 2001

---

Lisa M. Moquin, Temporary Clerk

**David and Linda Kinson**

**v.**

**Town of Marlow**

**Docket No.: 17926-99CU**

**ORDER**

This order responds to the “Taxpayers” July 10, 2001 request for clarification (“Request”) which, according to TAX 201.37(a), is considered a rehearing motion. Pursuant to RSA 541:3, rehearing motions must be filed within thirty (30) days of the date of the decision (April 13, 2001). Therefore, the Request is untimely and will not be considered by the board.

Further, the Taxpayers filed an earlier request for clarification on May 14, 2001. A party may file only one rehearing motion and it should address all issues the party is raising for reconsideration. Petition of Ellis, 138 N.H. 159 (1993).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Lisa M. Moquin, Clerk

**CERTIFICATION**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to David and Linda Kinson, Taxpayers; and Chairman, Board of Selectmen of Marlow.

Date: August 6, 2001

Page 17  
Kinson v. Town of Marlow  
Docket Nos.: 17926-98CU and 18335-99PT

orders\rehearg\17926cla

Lisa M. Moquin, Clerk