Paul Geddes

v.

Town of Roxbury

Docket No.: 19394-02CU

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:9, the "Town's" May 13, 2002 denial of the Taxpayer's application for current use on Lot 4-46-0, a 30.2-acre vacant lot (the "Property") assessed at $37,600. Present at the hearing were: Paul Geddes, Taxpayer; and Peter Stuhlstatz and Thomas Benson, selectmen for the Town. For the reasons stated below, the appeal is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the Town erred in denying his application for current use. See 79-A:9; TAX 206.06. The Taxpayer carried this burden.

The Taxpayer argued the Town erred in denying the current-use application because: (1) he submitted a copy of the relevant Town tax map showing the Property's location with his application;

(2) the "registered survey" required by the Town is not mandated in either the current-use statute

(RSA 79-A) or in the current-use board regulations; and

(3) when the Taxpayer acquired the Property in 1957, no survey existed, nor does one exist now; instead the size of the lot was determined by other means, including perambulation of the Property, the description in the deed and physical markers, including an interior stone wall.

The Town argued its denial of the current-use application was proper because:

(1) a long-standing Town "policy" has been to require a survey prepared by a registered surveyor with each current-use application;

(2) the accuracy of a registered survey is appropriate when someone seeks the tax relief provided by the current-use laws;

(3) the Town's tax maps were prepared by a surveyor who relied on prior work from another company and this surveyor later lost his license, raising doubts about the maps' accuracy; and

(4) the Taxpayer failed to meet his burden of proof.

Board's Rulings

Based on the evidence, the board grants the Taxpayer's appeal and remands the case to the Town for processing according to the current-use regulations and the applicable statutes.

The Taxpayer provided the board with copies of the completed A-10 application form along with other supporting documents, provided to the Town at the time of application, including a copy of the Town tax map depicting the Property. Additionally, the board was provided a copy of a May 13, 2002 letter from the Town selectmen stating "[w]e have reviewed your current use application for the parcel noted above. In accordance with long standing requirements, a survey performed by a New Hampshire Registered surveyor is required. When this is complete we will process your application as soon as possible." The selectmen testified

they have two concerns about the Taxpayer's application. The first, which they considered to be a major issue, is the long-standing Town policy of requiring a survey map performed by a registered surveyor as part of the current-use application. The second issue, considered minor by the Town in comparison to the first, is the inadequacy of the relevant Town tax map supplied by the Taxpayer with his application. The board will address the issues separately.

Town's Map Requirement Policy

The selectmen testified that, at the time they joined the board of selectmen, a long-standing policy was in place requiring a map drawn by a registered surveyor before considering any taxpayer's application for current use. Further, they stated although some applicants had in the past expressed misgivings about the need to provide a survey map, all had eventually complied, except the Taxpayer. In other words, the Taxpayer was the first person to challenge the long-standing requirement. The selectmen felt a registered survey map was important to provide accuracy for and improve upon the Town's tax maps.

The board understands the selectmen were following a long-standing Town policy handed down to them by prior boards of selectmen requiring a map drawn by a registered surveyor before a property could be placed in current use (see Town's November 30, 2002 letter to the board). The board finds, however, this policy conflicts with the relevant statutes and the current-use board regulations. RSA 79-A (the current-use taxation statute) does not require a survey by a registered surveyor. If the legislature had intended such a requirement, it would have been explicitly stated in the statute. Similarly, the current-use board does not place such a requirement in its regulations. Specifically, CUB 302.01 (d) (Form A-10 Application for Current-Use) states: "[f]orm A-10 shall be accompanied by a map or drawing of the entire

parcel." It does not state the map or drawing must be performed by a registered surveyor. In fact, the current-use handbook under Application Procedures, Section I, Subsection A, paragraph 2 notes: "[t]he acreage, frontage and other information provided on the applicant's map should agree with the municipality's tax map. (A copy of the town's tax map may be used.)" Therefore, the board finds a registered survey map is not required.

Inadequate Map

At the hearing, the selectmen stated the Taxpayer's tax map is inadequate to fulfill the mapping requirements for current-use. They testified the map does not delineate the boundaries of the various wood types in different areas within the Property's boundaries. The board directs the Town to CUB 304.03 (e) which states: "[f]orest land shall be classified to a minimum of 10 acres in accordance with the majority of the type of trees growing on the land. Once the dominant forest type has been determined, forest types of less than 10 acres shall be classified with the dominant forest type." On the Taxpayer's application under the heading "Category," the Taxpayer placed 26 acres in "hardwood" and 4.2 acres (+/-) in "all other." The Taxpayer testified the dominant forest type on the Property was hardwood with some soft wood (mostly Hemlock) mixed in but there were no stands of timber of more than 10 acres other than hardwood; therefore, it was not necessary to breakout the small sections of Hemlock. The board finds under the current-use rules, delineation of small sections of timber other than the dominant type are not necessary and should not preclude the Taxpayer from placing the Property in current use under the dominant forest type of "hardwood."

Summary

The board has noted the selectmen's reasoning and the long-standing policy in the Town

of requiring a registered survey with each current-use application. This policy may improve the overall accuracy of the Town's tax mapping. Unfortunately, however, such a requirement exceeds the authority given to the Town by the relevant statutes and regulations. For these reasons, the board finds the Taxpayer's application was not deficient and the Property should be placed in current use.

The board remands the case to the Town. To assist the Town in determining the current-use value the Town should review a previous board decision in a current-use case involving the Town of Marlow (BTLA Docket No.: 18478-01RA) (copy enclosed). Further, within 30 days of this decision, the Town shall:

1 accept the Taxpayer's April 15, 2002 current-use application and accompanying tax map;

2 assess the 30.2 acres as hardwood (without stewardship plan per application) in accordance with CUB 304.03 and, in particular, 304.03(c);

3 notice the Taxpayer of the revised assessed value;

4 file the "notice of contingent lien" with the Cheshire County Registry of Deeds (RSA 79-A:5 VI);

5 provide copies of taxpayer notice and lien filing (items 3 and 4) to the board; and

6 if taxes have been paid, refund the taxes paid on the value in excess of the current-use assessment, including interest at six percent per annum from date paid to refund date. RSA 76:17-a.

The board will provide an additional 30 days (i.e., 60 days from decision date) for the Taxpayer to file any motion disputing the Town's compliance with this decision or challenging the selectmen's determination of assessed value within the hardwood assessment range.

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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Douglas S. Ricard, 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: Paul Geddes, Post Office Box 462, Marlboro, New Hampshire, 03455, Taxpayer; and Chairman, Board of Selectmen, Middletown Road, RR4, Roxbury, New Hampshire, 03431.

Date: March 10, 2003

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Anne M. Bourque, Deputy Clerk