

Lawrence K. and Betty J. Cushman

v.

Town of Rumney

Docket No.: 19492-02CU

DECISION

The “Taxpayers” appeal, pursuant to RSA 79-A:9, the “Town’s” current-use classification on Map 11, Lot 02-10, which contains 63 acres of current-use land assessed at \$3,870 (the “Current-Use Property”) for tax year 2002. The Taxpayers were also assessed, but did not contest or appeal, the ad valorem valuation of \$99,300 for one acre not in current use with a dwelling and outbuildings.

The breakdown of the current-use assessment is as follows:

Classification	Acres	Unit Price	Current-Use Value
White Pine	15	\$95	\$1,425
Hardwood	20	\$30	\$ 600
All Other Forest Land	25	\$72	\$1,800
Unproductive	3	\$15	<u>\$ 45</u>
Total Current Use Value			\$3,870

While the board finds several corrections to the Town’s current-use assessment methodology are in order, their effects are offsetting and thus the Taxpayers’ appeal is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the Town erred in assessing their Current-Use Property. See RSA 79-A:9; and TAX 206.06.

The Taxpayers argued the Town erred in assessing the current-use land because:

- (1) the Current Use Property consists primarily of pine, hardwood, and all other forest land under a stewardship plan and some “unproductive land”;
- (2) while the Town acknowledged the stewardship plan, it applied a uniform rate of 5/6 (83%) of the maximum values set forth in the rules of the current-use board (“CUB”) for forest land with documented stewardship;
- (3) in effect, this practice ignores the object and purpose of a stewardship plan which distinguishes varying characteristics of the Current-Use Property; and
- (4) the proper current-use assessment for the Current-Use Property should be \$2,645.

The Town argued its classification decision was proper because:

- (1) since 2001, the selectmen have devoted considerable time to improving the assessment of land in current use;
- (2) two of the three selectmen have considerable experience as licensed foresters and surveyors;
- (3) the Town followed a consistent and rational methodology in evaluating the lots in the Town, including, for example, three adjacent properties;
- (4) there are two points of access to the Current-Use Property and one is quite good, even though it is very close to the house;
- (5) information submitted by the Taxpayers from their forester (Eben Beever) was considered by the Town, but experts can reasonably disagree in their conclusions about the proper classification of forest land;
- (6) on the whole, the Current-Use Property is of “pretty good” or “above average” quality; and
- (7) the Taxpayers failed to sustain their burden of proof.

Board's Rulings

This appeal raises three general issues:

- 1) is the Town's methodology correct in evaluating the entire current-use tract in determining the effect of "grade," "location" and "site quality" on the choice of the forest land assessment, or should specific information provided in a stewardship plan relative to each forest "type" within the overall parcel affect the current-use assessment?¹
- 2) should the assessor's valuations within the CUB 304.03 assessment ranges for forest land be based on relative quality between current-use tracts within a single town or on a state-wide basis?
- 3) did the Taxpayers carry their burden of showing the selectmen's valuations within the assessment ranges for forest land were in error based on the evidence submitted?

The first two issues relate to general current-use assessment methodologies in applying the current-use statutes and rules in the assessing of forest land and the third issue relates to the specific facts of the current-use tract owned by the Taxpayers in this appeal.

Before addressing the three issues, a general description of the land is helpful. The Taxpayers own a total of 64 acres, with one acre improved with a dwelling and several outbuildings; the remaining 63 acres is the Current-Use Property. Based on the stewardship plan submitted by the Taxpayers and accepted by the selectmen, the Current-Use Property was classified as follows:

White Pine – 15 acres

Hardwood – 20 acres

All Other Forest Land – 25 acres

Unproductive land – 3 acres

¹ "Type," "grade," "location" and "site quality" are terms defined in CUB 304.03.

The Taxpayers' appeal focuses on the first three forest land classifications and they assert the Town's practice of using the 83% (5/6) point in the CUB assessment ranges is contrary to their stewardship plan, general soil descriptions of the tract and the Taxpayers' and the selectmen's personal knowledge of the land. The selectmen argue that their choice at the 83% level is based on inter-parcel current-use comparisons within the Town and considered grade, location, and site quality of the parcel based on their personal knowledge and professional training.²

Assessment Methodology

The first question raised in this appeal is whether it is proper for the Town to disregard documented differences in forest land types located within a parcel and evaluate the entire parcel, regardless of tree species composition, as one unit for assessment purposes. The board finds such an approach is appropriate for parcels where no recognizable differences are shown, but not for others, such as the Current-Use Property.

Pursuant to RSA 79-A:2, V, the CUB establishes "the range of current use values" on a state-wide basis. The assessor in each municipality must then consider and determine where within the applicable range of values established by the CUB, particular forest land should be assessed, giving consideration to "class, type, grade and location" differences. CUB 304.03(h), (i) and (k). "Class" . . . means land enrolled in current use as forest land," and "Type" . . . means the mix of tree species." CUB 304.03(a)(1) and (5) and 304.03(e). The CUB rules further indicate it is proper to take into account different tree types within a parcel, if the distinct types of forest land consist of at least 10 acres each. Id.

² The Town was represented by Selectman Robert J. Berti, a licensed forester and a registered surveyor and a member of the current-use board. Mr. Berti also testified that another selectman has similar qualifications and between the two of them, they are very knowledgeable of most of the land in Town, and specifically, of the Taxpayers' parcel. Mr. Berti also testified that he oversaw a logging operation of the Current-Use Property in 1984, providing him firsthand knowledge and experience with the nature of the parcel under appeal.

The “2002 Current Use Handbook,” at page 24, states: “Not all forest land should be assessed at the high end of the range, nor at the low end”; and references the Marlow decision, discussed infra. The board understands this explanation to mean two things: first, that municipalities should not assess all current-use land at a uniform rate (whether it is high, low or in the middle of the range); and second, that especially in larger land parcels with more than one forest type and differences in grade, location and site quality features, current-use assessments should take these differences into account, rather than be based on a single point in the relevant range. Especially where a stewardship plan is presented that describes and delineates such differences, the board finds the municipality should apply the information presented to determine whether different levels within the assessment range are appropriate for land within a parcel as well as for separate parcels of land.

The board therefore finds the current-use statutes and regulations, when read as a whole, support the Taxpayers’ position that separate tree types within a parcel should be individually considered, if there are demonstrated differences in grade, location and site quality that affect the overall level of assessment. “Site quality” is defined in CUB 304.03(a)(4) and enters the mix of factors the assessor must consider, as provided in CUB 304.03(l) and (m).

In this case, the Taxpayers employed a forester to provide the Town with the specific information pertaining to three forest land types of significant acreage located on the Current-Use Property which differed in some degree in their respective characteristics. The board finds the Town should have considered the information presented pertaining to each forest type, rather than making a single overall determination.

The Town’s overall method of considering those characteristics on a parcel-wide basis for land with diverse forest types and topography such as the Current-Use Property does not appropriately recognize the varying grade, location, and site quality factors of the different forest

types. (For example, the evidence indicates the white pine stands on the Current-Use Property are located on deeper soils and, thus, have a better “site quality” generally than the hardwoods which are on steeper slopes and shallower, rockier soils.) While such an overall parcel analysis may be adequate for a lot that is relatively homogeneous as to its soil quality, accessibility, topography, and other factors, it does not produce the applicable discrete adjustments for the different forest type portions of a heterogeneous parcel as described in the Taxpayers’ stewardship plan. Even performing a weighted average approach on the overall parcel would not be appropriate because the weighted average conclusion gets applied to the different forest type assessment ranges that have significant differential value. (Forest land assessment ranges with stewardship plans range from a low of \$15.00 for hardwood to a high of \$115.00 for white pine.)

Consequently, the board finds the Town’s overall conclusion that all the forest types are at the 5/6 point, or approximately 83%, in the value range is inappropriate as it does not consider the individual grade, location, and site quality factors for each of the forest land types as enumerated by the Taxpayers in their application and described in their stewardship plan.

Scope of Assessment Comparison

The Town argued that one of the factors affecting its choice of value in the CUB 304.03(i) assessment range was a town-wide, inter-parcel comparison relative to the grade, location, and site quality of forest land. The board finds this is contrary to the general intent of the current-use taxation scheme that the value ranges be established “based upon the income-producing capability of the land in its current use,” (RSA 79-A:2, V) throughout the state. Because the current-use board is given the authority to establish the valuation ranges (RSA 79–A:4, I), such analysis must inherently pertain to all forest land throughout the state. Consequently, the determination of where within the valuation ranges any parcel lies must be based on a consideration of the property’s grade, location, site quality in qualitative terms as they relate to the best and worst of those factors

throughout the state, not just in each municipality. Mr. Berti, a Town selectman and licensed forester, recognized that difference when asked by the board if the location within the value range would have been 5/6 if considered in the larger scope of forest land throughout New Hampshire. He responded that it would still be an above-average lot but its valuation would likely be nearer the 4/6 spectrum of the assessment range as opposed to the 5/6 “localized” assessment estimate.

To allow the relative assignment of assessments within the ranges to be driven solely by an intra-municipal comparison would undermine the constitutional provisions of Pt. II, Art. 5 that assessments be proportional and reasonable and, further, Pt. II, Art. 5-b that permits the general court to “provide for the assessment of any class of real estate at valuations based upon the current use thereof.” The proportionality in assessing property not subject to current use (ad valorem assessments) is based upon the market value of the property pursuant to RSA 75:1. For current-use assessments to be proportional, they must be in compliance with the provisions established in RSA Chapter 79-A that authorize the current-use board to establish and annually review state-wide values for current-use land. Thus, proportionality of current-use assessments must be viewed from a state-wide perspective. Consequently, the Town’s choice of where to place specific land within the current-use assessment range established by the current-use board must be done within the context of the entire state, not just the individual town.

Specific Evidence Regarding Current-Use Assessment

Both parties presented testimony and evidence of where in the assessment range they believe the forest land assessments should be within the context of the qualitative matrix for land characteristics that the board suggested in the July 30, 2001 Town of Marlow Order, Docket No.: 18478-01RA, 2001 WL 1230883 (also included in the CUB Current Use Criteria Booklet). That matrix provides for a qualitative rating of the grade, location, and site quality as either good, average or poor in each instance for the forest land. Assigning the numerical ranking of 2

for good, 1 for average and 0 for poor and then summing the total for grade, location, and site quality “provides a relatively simple arithmetic basis for determining assessments within the CUB ranges.” Marlow at page 10.

Utilizing the matrix suggested in Marlow and reviewing the testimony and evidence submitted by both sides, the board has estimated the current-use assessment for the three forest types to be as follows. (The matrix identifies the three distinct forest land types owned by the Taxpayers and identified on the map submitted as evidence as part of the Taxpayers’ forest stewardship plan.)

Parcel Location & Number of Acres	Characteristics of Land			
White Pine 15 acres P3B	Grade Location Site Quality	Good (2) Good Good (2)	Average Average (1) Average	Poor Poor Poor
Hardwood 20 acres H2-3A	Grade Location Site Quality	Good Good Good	Average Average(1) Average	Poor (0) Poor Poor (0)
All Other Forest Land 25 acres	Grade Location Site Quality	Good Good Good (2)	Average (1) Average (1) Average	Poor Poor Poor

Based on the evidence, the board finds the location for all three forest types is average. The steep grade off the road to the landing is a negative aspect relative to access but, as Mr. Berti testified, is not unusual or prohibitive for harvesting timber. For the rating of grade and site quality, the board considered the general soils information submitted relative to each type, the observations of the Taxpayers’ forester, Mr. Beever, contained in the stewardship plan and the testimony of the parties based on their firsthand knowledge of the tract. Generally, the topography is less severe and the soils are deeper and less rocky near the road where the white pine predominates and the topography gets progressively steeper, the soils rockier, and more shallow towards the rear of the tract where hardwood predominates. The board has chosen the

“good” designation for the all other forest land based on the soil description (Monadnock and Herman soil complex) as being “loamy glacial till” and “sandy and gravelly glacial till” with depth to bedrock being more than five feet (notwithstanding the presence of some “seeps” in the forest type).

This matrix process of determining where in the forest land assessment range calculation these various ratings fall is fully discussed in the Marlow decision and in the partial “SPACE” document submitted by the Town as part of the record. To estimate where within the range the matrix rating indicates, the calculation must multiply the rating factor times the difference between the high end and the low end of the range and then add that to the low end of the range. The board notes the Town has made miscalculations because it applied the rating level directly to the upper end of the range rather than applying it to the difference between the low end and high end of each assessment range. The Town’s error actually understates the current-use value because doing so assumes the low end of each range of \$0 which is not the case as noted in footnote #3. This miscalculation offsets the Town’s application of the 5/6 factor to all the forest type assessments.

Based on the above qualitative ratings and these considerations, the board finds the per-acre assessments for the three forest types should be calculated as follows:³ white pine $5/6 \times (\$115 - \$63) + \$63 = \106 ; hardwood $1/6 \times (\$36 - \$15) + \$15 = \19 ; all other $4/6 \times (\$87 - \$44) + \$44 = \73 .

As the following summary of the resulting current-use assessments for the Current Use Property indicates, the Town’s under calculation of the assessments in each category acts as an offset to the board’s lower rating findings for the three forestland types to the extent that the \$30

³ The 2002 CUB rules at 304.03(i) set out the assessment ranges for forest land with documented stewardship to be: “(1) The assessment range for the category of white pine shall be \$63 to \$115 per acre; (2) The assessment range for the category of hardwood shall be \$15 to 36 per acre; (3) The assessment range for the category of all other shall be \$44 to \$87 per acre.”

difference in assessment (\$3,870 - \$3,840) is so de minimis as to not warrant ordering an abatement in this appeal.⁴

White Pine	15 acres x \$106 =	\$1,590
Hardwood	20 acres x \$19 =	\$ 380
All Other		
Forest Land	25 acres x \$73 =	\$1,825
Unproductive	3 acres x \$15 =	<u>\$ 45</u>
Total Current-Use Value		\$3,840

The Town shall, however, correct the Taxpayers' assessment calculations based on the board's findings. Revising the current-use assessment calculations for all properties in the Town also appears to be in order.

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(f). 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.

⁴ \$30 times the Town's tax rate of \$19.96 per thousand represents well below one dollar of actual taxes.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Lawrence K. and Betty J. Cushman, 1275 Old Route 25, Rumney, New Hampshire 03266-3616, Taxpayers; and Chairman, Board of Selectmen, Town of Rumney, Post Office Box 220, 79 Depot Street, Rumney, New Hampshire 03266.

Date: February 5, 2004

Anne M. Stelmach, Deputy Clerk

Lawrence K. and Betty J. Cushman

v.

Town of Rumney

Docket No.: 19492-02CU

ORDER

This order responds to the “Taxpayers” letter filed on February 13, 2004 requesting the board “reconsider their findings as to their assessment of my current use property.” The board treats this as a motion for rehearing (“Motion”) of its February 5, 2004 Decision (“Decision”) pursuant to RSA 541:3 and TAX 201.37. The board denies the Motion as it contains no points of law or facts that the board overlooked or misapprehended. See TAX 201.37(b).

Several of the Taxpayers’ requests for “clarifications” are issues that are outside the scope of the appeal or the board’s jurisdiction (e.g., Motion, paragraphs 1 and 2). Further, the Taxpayers assert that the board did not adequately consider Mr. Cushman’s testimony and evidence as to steepness of grade at the access point to Route 25, the “seeps” in the hardwood area of the parcel and the soil limitations of the land at the rear portion of the parcel. The board, during its deliberations, did consider those items and the Decision does make findings as to how those factors affected the board’s determination of current-use value for those portions of land. The Decision need not exhaustively enumerate all arguments made by the Taxpayers nor address each on a point-by-point basis. The Decision summarizes the Taxpayers’ arguments and then provides adequate detailed findings as to the basis of the board’s conclusions. Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board’s findings must “include specific, although not excessively detailed, basic findings in support of [its] ultimate conclusions. (Citations omitted.)”).

For these reasons, the board finds that neither a rehearing nor further clarification of the Decision is necessary.

Any appeal of the Decision must be by petition to the supreme court filed within thirty days after this Order. See RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Lawrence K. and Betty J. Cushman, 1275 Old Route 25, Rumney, New Hampshire 03266-3616, Taxpayers; and Chairman, Board of Selectmen, Town of Rumney, Post Office Box 220, 79 Depot Street, Rumney, New Hampshire 03266.

Date: March 3, 2004

Anne M. Stelmach, Deputy Clerk