

R. Eric and Margaret J. Jones

v.

Town of Sandwich

Docket No.: 19761-03CU

FINAL DECISION

On June 16, 2004, the board issued a “Preliminary Decision” ruling that the “Taxpayers” land was eligible for current use and provided the “Town” and the Taxpayers an opportunity to submit further evidence as to the proper current use assessment for the Property. The Town submitted a letter filed on June 10, 2004 indicating it had determined the current use assessment should be \$3,210, but provided no basis for the calculations other than the current use matrix utilized by the Town indicating an “average” quality rating for slope, drainage, access and soil and a “good” rating for timber grade. The Town subsequently submitted a copy of a letter from Mr. Peter W. Pohl, Extension Educator, Forest Resources of Carroll County, dated June 14, 2004, to the Sandwich board of selectmen summarizing his observations of the specific forest characteristics of the Property. The Taxpayers responded in a letter dated June 16, 2004 indicating they accepted the assessment of \$3,210 for tax year 2003 but were objecting to the Town’s characterization of “average” to be used in future years.

Board's Rulings

The board incorporates by reference in this "Final Decision" the rulings made in its June 16, 2004 "Preliminary Decision."

Further, the board finds the proper current use assessment for 2003 should \$3,123. The board finds the Town's ratings contained in both its submissions are reasonable and generally comport with the testimony and evidence submitted at the hearing. While the access to the Property is via a discontinued road, it nonetheless is reasonable access for forestry purposes. However, utilizing the 2003 forest land assessment ranges determined by the current use board and employing the general numerical weighting process the board suggested in Town of Marlow (BTLA Docket No.: 18478-00RA) order ("Marlow order"), the board was unable to arrive at the current use assessment recommended by the Town. Thus, the board has calculated the current use assessment as follows.

Referencing the Marlow order and applying the numerical weighting process to the Town's matrix (which provides for four levels of quality and five property characteristics instead of the three levels of quality and three property characteristics in Marlow), the board has calculated the assessment for both hardwood and all other forest types would be at the 11/15th point or 73% within the range. The board finds the Town's placement of the Property at the 80% point in the range to be unsupported and contrary to its own matrix. The current use assessment ranges established by the current use board at Cub 304.03(h) for forest land without a stewardship plan indicates the range for hardwood to be \$55 to \$84 per acre and the range for all other forest types to be \$91 to \$137 per acre. The customary methodology for then estimating the assessed value is to take the difference between the high and the low end of the range, multiply it by the 0.73 factor, add the resulting number to the low end of the range, multiply it

times the number of acres and by the Town's most recent equalization ratio (in this case, is the Town's 2002 equalization ratio of 0.65). The mathematical calculations are summarized below.

Hardwood:

$$(\$84 - \$55) = \$29 \times 0.73 = \$21 + \$55 = \$76 \times 55 \text{ acres} = \$4,180 \times 0.65 = \$2,717$$

All other forest type:

$$(\$137 - \$91) = \$46 \times 0.73 = \$34 + \$91 = \$125 \times 5 \text{ acres} = \$625 \times 0.65 = \$406$$

In summary, the board rules the Taxpayers' 2003 current use assessment should total \$3,123. This conclusion is based on the evidence received during the record of this appeal. The Taxpayers can provide the selectmen in subsequent years additional information about the forest characteristics in accordance with CUB 304.03(1).

If the taxes have been paid, the amount paid on the value in excess of \$3,123 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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.

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 Final Decision has this date been mailed, postage prepaid, to: R. Eric and Margaret J. Jones, Post Office Box 64, Glencliff, New Hampshire 03238, Taxpayers; R. Eric and Margaret J. Jones, 1785 Chadwick Road, Englewood, Florida 34223, Taxpayers; Chairman, Board of Selectmen, Town of Sandwich, Post Office Box 194, 8 Maple Street, Center Sandwich, New Hampshire 03227; and Current Use Board, c/o Department of Revenue Administration, Post Office Box 457, Concord, New Hampshire 03302, Interested Party.

Date: 7/19/04

Anne M. Stelmach, Deputy Clerk