

**R. Eric and Margaret J. Jones**

**v.**

**Town of Sandwich**

**Docket No.: 19761-03CU**

**PRELIMINARY DECISION**

The “Taxpayers” appeal, pursuant to RSA 79-A:9, the “Town’s” June 30, 2003 denial of the Taxpayers’ application for current use on Map R13, Lot 15, a 60–acre vacant lot assessed at \$25,000 (the “Property”).

The Taxpayers have the burden of showing, by a preponderance of the evidence, the Town erred in denying their application for current use. See RSA 79-A:9; TAX 206.06.

The Taxpayers argued the Town erred in denying the current use application because:

- (1) a timely and complete application was submitted in compliance with RSA 79-A:5;
- (2) the Taxpayers followed the matrix suggested in the Town of Marlow order (BTLA Docket No. 18478-01RA) (“Marlow Order”) with minor modifications;
- (3) the Taxpayers believe their characterization of the land as “poor” is accurate;
- (4) the Town requested additional and different information because it did not agree with the Taxpayers’ characterization rather than because the application was incomplete;

- (5) if the Town disagreed, it had both the right and the obligation to establish the proper classification and assessment of the land, but never did so;
- (6) while the Taxpayers did not supply additional information when requested to do so by the Town, it did not relieve the Town of its obligation to classify the land;
- (7) while the Taxpayers met with the board of selectmen to discuss the denial, the Town did not change its mind and, thus, no resolution was reached, resulting in this appeal; and
- (8) the Town has sole responsibility to perform a proper assessment of property, with or without the assistance of its taxpayers.

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

- (1) when the Town's current use review committee receives a current use application, it checks the application for completeness;
- (2) the matrix submitted by the Taxpayers with their current use application was so different from the matrix developed by the Town's assessing contractor, Avitar Associates, that the Town requested the Taxpayers to resubmit the application using the Town's matrix;
- (3) the Town sent several additional written requests to the Taxpayers, but none were complied with;
- (4) the Town was advised by Peter Pohl, a member of its committee familiar with the land, that the Taxpayers had been overly pessimistic in their characterization of the quality of the land;
- (5) with over 300 properties in current use, the Town was quite busy during the certification review process conducted by the department of revenue administration ("DRA") and, therefore, sought compliance with its requirements to make the process more manageable;
- (6) the Town felt it would be unfair to other taxpayers to relax its requirements for a current use application;

(7) the Town's interpretation of the Marlow Order relied upon by the Taxpayers is that the language quoted applies only to land already enrolled in current use, not to a new application; and

(8) in 2004, the Taxpayers filed another current use application and submitted additional information, which makes their application complete for that tax year.

### **Board's Rulings**

As the board ruled orally at the conclusion of the hearing, its decision in this matter is bifurcated into the following Preliminary Decision, which contains the board's ruling that the Taxpayers' land was eligible for current use, and a Final Decision which will address the Property's proper current use assessment after review and on-site inspection by the Town. This bifurcation is intended to allow the Town to review the Taxpayers' 2003 application concurrently with the Taxpayers' pending 2004 current use application in a fashion consistent with the Town's ongoing current use review and assessment process. The Town stated that it was performing a complete reassessment in 2004, and that part of the reassessment was a review and assessment of all current use properties and submission of those values to Avitar Associates by June 14, 2004. As the board indicated orally, while it could arrive at a current use assessment based on the testimony received at hearing, the board believes the Town's review and inspection process is thorough and is likely to arrive at a more detailed and accurate determination of the assessment and that is consistent with other current use assessments within the Town.

As detailed below, the board finds the Town should not have denied the Taxpayers' current use application on the ground that it was incomplete. Aside from this lapse, however, the board commends the Town for what appears to be a thorough review process including on-site inspection of current use properties.

The Town argued that its June 30, 2003 denial of the current use application was proper based on the fact the Taxpayers did not submit the requested documentation and information about the Property on the matrix format specifically being utilized by the Town. The board finds there is no basis in the statute or current use rules that requires taxpayers to submit such information in any specific format or even that they submit such information initially to have property enrolled in current use.

RSA 79-A:5, II provides that taxpayers shall apply “on a form approved by the [current use] board . . .” (“A-10” form). CUB 302.01 details the information landowners must submit to the town on or accompanying the “A-10” form when applying for current use. Such information includes basic ownership documentation, number of acres being applied for current use assessment, the current use categories being requested, and whether the land is eligible for soil potential index calculation for farm land or has a forest stewardship plan. Also, CUB 302.01(d) requires a map to accompany the application delineating the acres being requested for current use and any different areas of current use classification. Neither the statutes nor the CUB rules contain any requirement that taxpayers provide with the application form any information of forest land’s “class,” “grade,” “location” or “site quality” in a matrix or any other format. See CUB 304.03(a). CUB 304.03(k) places the obligation with the local assessors to consider the above-cited forest land characteristics in determining where within the assessment range to assess the current use land.<sup>1</sup> CUB 304.03(l) then clearly provides the process, subsequent to the application, for a landowner to challenge the assessing officials’ initial determination of current use assessment and the information and process landowners can employ to provide further detailed information if they disagree with the current use assessment determination. Without

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<sup>1</sup> “CUB 304.03(k). In accordance with RSA 79-A:2, V, the local assessors shall consider the class, type, grade and location when determining where within the forest land range of assessments a particular parcel of land is placed.”

citing the entirety of CUB 304.03(1), the landowner challenging the assessing officials' determination shall either provide site quality, location and grade information themselves or engage a forester to submit such information.

The matrix format of qualitative rating of the CUB 304.03(a) forest land characteristics, which was initially suggested by this board in the Marlow Order, was intended to provide a practical, cost effective process for municipalities to obtain qualitative information from current use landowners to be considered by the assessors in determining where within the current use assessment ranges specific property should be placed. As the Marlow Order clearly indicates, however, it was never intended to supplant the selectmen's initial statutory authority and obligation to assess property in current use based on information from any source as to the various site characteristics of the property.<sup>2</sup>

Further, the board finds no statutory or rule basis for the Town's belief that the local assessor's obligation to assess current use property only applies to land already enrolled in current use. The above-cited CUB rules address how assessors are to consider different site characteristics in determining the current use assessment of property regardless of whether it is for land being initially applied for current use assessment or land that has been enrolled in current use for many years. While the board's Marlow Order dealt with requiring the selectmen in that town to properly assess existing current use property, the rulings were based solely upon applying existing current use statutes and CUB rules, which make no distinction between "new" or "old" current use property.

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<sup>2</sup> "This approach solicits voluntary information initially from taxpayers. If the selectmen receive inadequate or faulty responses, or if the taxpayer fails to respond in a timely fashion, then the selectmen can take whatever additional steps may be necessary to obtain adequate information or, on their own, determine or adjust where within the assessment range to place the forest land using other acceptable methods and information sources. Lack of response from a taxpayer does not relieve the selectmen of their initial obligation to assess the property as best they can based on available public information. See Appeal of Gillin, 132 N.H. 311 (1989) (lack of cooperation on the part of a taxpayer should not be seen as a basis for punitive assessment)." Marlow at p. 10. (Emphasis added.)

As noted earlier, having ruled that the Taxpayers' land is eligible for current use, the board is ordering the Town to review the Property and its characteristics in conjunction with the Taxpayers' 2004 current use application, and to respond in writing by June 11, 2004, copying the Taxpayers at their address of Post Office Box 64, Glenclyff, New Hampshire 03238, as to the Town's current use determination and the basis for this determination.<sup>3</sup> The Taxpayers shall respond to the board, by June 18, 2004, copying the Town, either indicating their agreement with the Town's current use assessment or any basis for disagreement. After receiving the parties' submissions relative to the proper current use assessment, the board will issue a Final Decision ruling on the proper current use assessment for 2003 and incorporating the findings and rulings from this Preliminary Decision. All rehearing and appeal timelines pursuant to RSA 541:3 and 541:6 shall be from the clerk's date on the board's Final Decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

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<sup>3</sup> Concurrent with the signing of this Preliminary Decision, the board received on June 14, 2004, a letter dated and mailed on June 10, 2004 from the Town detailing its determination of the proper 2003 current use assessment.

**Certification**

I hereby certify a copy of the foregoing Preliminary Decision has this date been mailed, postage prepaid, to: R. Eric and Margaret J. Jones, Post Office Box 64, Glencliff, New Hampshire 03238, 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: June 16, 2004

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Anne M. Stelmach, Deputy Clerk