

Dean Wolf

v.

Town of Chichester

and

James and Lorraine Robinson

Docket No.: 19957-03OS

DECISION

This appeal, filed by Dean Wolf, an adjacent property owner, concerns approximately 14 acres of land assessed in current use in tax years 2001, 2002 and 2003 located on certain “Property” (Map 3, Lot 84, Lot 84-1 and Lot 84-2) owned by James and Lorraine Robinson (the “Robinsons”). The appeal challenges the “Town’s” initial decision in March, 2001, upon application by the Robinsons, to grant current use classification and the Town’s decision in January, 2004, after acknowledgment that this classification was in error, to remove the land from current use and make a “zero” assessment of a land-use-change tax (“LUCT”). Because there is merit in the challenge, the board grants the appeal and orders the remedy detailed below for tax year 2003.

The board held a noticed hearing regarding the appeal on September 1, 2004, attended by Mr. Wolf and two Town representatives, Selectman David Colbert and Administrator Lisa

Stevens, but not by the Robinsons.¹ At the hearing, Mr. Wolf stated that if no LUCT is imposed, then the land should be assessed at ad valorem rates for each of the three years it incorrectly remained in current use. Since current use assessments are substantially lower than the ad valorem assessments that should have been applied, the Robinsons received the benefit of reduced taxation on these 14 acres until the error was corrected by the Town for tax year 2004.

Following the hearing, the board requested additional documentation from the Town. See Order dated September 3, 2004. The Town substantially complied with the Order by submitting, and copying all parties with, a letter and additional documents.

The Robinsons submitted their current use application on March 27, 2001 and it was granted on the same date by two prior Town selectmen. See [Wolf] Exhibit 1. At the hearing, the Town asserted the appeal should be denied, but admitted the 14 acres of land owned by the Robinsons “was mistakenly placed under current use taxation” for tax years 2001, 2002 and 2003. See also Municipality Exhibit A.

All parties (except perhaps the Robinsons, who failed to attend the hearing or submit any written evidence) now agree the land did not qualify for current use taxation and the 2001 application should have been denied because the land was in a non-qualifying use (a junkyard/landfill²). At their January 13, 2004 meeting, a new panel of Town selectmen, based on questions raised by Mr. Wolf, decided the Property “was incorrectly approved for current use initially and the Board agreed to assess a zero penalty because of this administrative error.”

¹ Upon receiving a prior written request from the Robinsons, the board granted a continuance and rescheduled the date of the hearing from April 27, 2004 to September 1, 2004. The board received no further communication from the Robinsons or explanation as to why they did not attend the September 1st noticed hearing.

² The Robinsons’ junkyard business has been in operation since 1962. (The Town had knowledge of the junkyard use of the Property at least since May 5, 1988: minutes of the Town’s Planning Board from this date state: “J. Robinson said he does not have a permit but will probably continue to operate the junk yard.”) See [Wolf] Exhibit 1 and the photos in [Wolf] Exhibits 2, 3 and 4.

In effect, the Town acknowledged errors had been made in the prior tax year assessments but decided not to impose a “penalty” but instead to ‘move on’ by applying ad valorem assessments on the Property in tax year 2004. Mr. Wolf appealed this decision to the board on March 3, 2004.

Board’s Rulings

Upon consideration of these undisputed facts and the Town’s subsequent submission, the board grants the appeal.

The board exercises its authority under RSA 71-B:16, II because it finds ample evidence the Property was improperly assessed prior to tax year 2004.³ Whether this occurred solely due to an “administrative error” or some degree of culpability by the Robinsons or the Town’s former selectmen cannot be determined from the record before the board.

Regardless of culpability, this statute gives the board authority to “order a reassessment of taxes previously assessed” when it finds an improper assessment and the statute contains no limitation circumscribing the number of prior years over which the board’s authority may extend. In a prior decision involving a somewhat similar, but more wide-spread, inquiry into the City of Lebanon’s current use administration, the board concluded “RSA 76:16 is a remedial statute” which allows the board to correct errors in prior year assessments. See Lebanon Reassessment of Current Use, BTLA Docket No. 11127-91CU (March 24,1993); and City of Lebanon v. Dartmouth College Trustees and Lebanon Board of Assessors, BTLA Docket No. 10914-91 (January 5, 1993); see also Appeal of Wood Flour, Inc., 121 N.H. 991, 994 (1981) [statutory

³ RSA 71-B:16 provides: “The board may order a reassessment of taxes previously assessed . . . of any taxable property in the state: . . . II. When it comes to the attention of the board . . . that a particular parcel of real estate . . . has been fraudulently, improperly, unequally, or illegally assessed.” RSA 79-A:12 contains similar provisions and gives the board authority to “order a reclassification or a denial of a classification of any parcel of land classified” as current use. The latter authority is not applicable here since the Town has already acted to remove the Property from current use classification.

authority permits reassessments so that “‘all classes of property’ shall be assessed according to law.” (Citations omitted.)]

At the hearing, Mr. Wolf argued if the Town’s decision not to assess a land use change tax (“LUCT”) against the Robinsons pursuant to RSA 79-A:7 is upheld, then the Robinsons should owe, and the Town should receive, the full amount of ad valorem taxes for the three years during which the land was improperly assessed as current use property. In other words, he maintains the entire Property should be assessed at ad valorem rates for tax years 2001 and 2002, as well as 2003.

While there is statutory support and some precedent for ordering a reassessment to effect more than one year, the board concludes this is not the most appropriate resolution. Instead, the board finds making an ad valorem assessment for one year (tax year 2003) is both more equitable and more in accord with due process principles. The board’s Order and Hearing Notice sent to the parties stated the inquiry pertained to the “2003 assessed value,” but did not mention potential liability for any prior years. The Robinsons elected not to attend the hearing (or request a further continuance for health or other reasons) at their own risk; they did not, however, receive notice that any assessment prior to the 2003 tax year would be at issue.

For these reasons, the board orders the Town to assess and collect taxes based upon ad valorem assessments for tax year 2003. From the Town's records, the computation is as follows:

<u>Lot</u>	<u>Designated Current Use Acreage</u>	<u>Town's Indicated 2003 Ad Valorem Assessment</u>	<u>Town's Actual 2003 Current Use Assessment</u>	<u>Difference</u>
84	2.043	\$ 200	\$ 31	\$ 169
84-1	7.1	\$ 77,500	\$ 1,389	\$ 76,111
84-2	5.01	\$ 77,400	\$ 1,362	\$ 76,038
Totals	14.153			\$152,318

Source: Municipality Exhibit A (which includes the Town's 2003 assessment record cards for the Property).

The net differences between the proper ad valorem assessments and the current use assessments for tax year 2003 result in additional taxes owed on the Property of \$2,740 (Town's \$17.99 per mill tax rate for 2003 applied to \$152,318 increased assessment). The Town is directed to issue a tax bill based on the increased assessment and the Robinsons are granted 30 days from the date of this Decision to pay the amount owed. Failure to do so will trigger the statutory remedies of interest and liens for unpaid taxes available to the Town. See, e.g., RSA Ch. 80 (Collection of Taxes).

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 Decision has this date been mailed, postage prepaid, to: Dean Wolf, 24 Harvest Road, Chichester, New Hampshire 03258, Petitioner; James and Lorraine Robinson, 182 Dover Road, Chichester, New Hampshire 03258, Taxpayers; Chairman, Board of Selectmen, Town of Chichester, 54 Main Street, Chichester, New Hampshire 03258; Linda Kennedy, State of New Hampshire, Department of Revenue Administration, 57 Regional Drive, Concord, New Hampshire 03301, courtesy copy; and Current Use Board, c/o Department of Revenue Administration, Post Office Box 457, Concord, New Hampshire 03302, Interested Party.

Date: October 29, 2004

Anne M. Stelmach, Deputy Clerk