

Ellen Ostreicher

v.

Town of Rindge

Docket No.: 20023-03TT

DECISION

The “Taxpayer” appeals, pursuant to RSA 79:8, the “Town’s” 2003 timber tax assessment of \$10,447.16 on Map 1, Lot 22-2 (the “Property”). For the reasons stated below, the appeal for abatement is granted.

A pre-hearing conference was held in this appeal on February 23, 2005 at which the parties explored settlement but were ultimately unable to arrive at a settlement. The board then scheduled a full adjudicative hearing on the matter for November 30, 2005. At that hearing, the Taxpayer was represented by a licensed forester, Mr. Daniel D. Reed (“Mr. Reed”), and the Town was represented by Carlotta Pini (“Ms. Pini”) the Town’s administrative assistant. Also present at the hearing and providing testimony, as an expert witness pursuant to RSA 79:8, was Mr. Dennis Thorell (“Mr. Thorell”), Timber Appraiser of the N.H. Department of Revenue Administration (“DRA”).

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 79:1, III and TAX 213.08.

The Taxpayer argued the assessment was excessive because:

(1) the Town incorrectly rated the quality of timber, location of timber and size of sale all as “good” on the timber tax assessment worksheet resulting in the use of the highest end of the range of the DRA suggested stumpage values;

(2) the goal of the logging operation was to remove lower quality timber to encourage better growth of the remaining stock and regeneration of higher value species where the hemlock was entirely cut;

(3) the logging had to be done as a “cut-to-length” operation due to the limited yarding area adjacent to the Taxpayer’s house;

(4) the size of the logging operation both in acres (9 acres) and volume was small making it unattractive to many potential loggers; and

(5) the Town’s assessed value exceeds the contract price paid by the successful bidding logger and, furthermore, it is likely that logger overpaid for the timber because he ‘needed work’ at that time.

After obtaining the actual contracted price of the sale of the timber from Mr. Reed at the prehearing conference, the Town abated the assessment to that amount (\$8,591.79) but the refund check was returned by the Taxpayer. At hearing, the Town argued the revised assessment of \$8,591.79 was proper because:

(1) it was the result of a competitive bidding process and thus is indicative of market value;

(2) the Taxpayer's argument that the logger overbid is not supported by any documentation and generally a bidding process reflects the various motivations of the bidders (e.g. surplus work or insufficient work) and collectively are indicative of market value; and

(3) the Town, in recent times, has used either actual stumpage sale prices to estimate market value or an estimate derived by ranking the overall desirability of the timber based on an assessment worksheet and stumpage value ranges provided by DRA.

Board's Rulings

The basis for determining stumpage value is contained in RSA 79:1, III:

“Stumpage value” means the amount determined by the assessing officials in the same manner as other property values for the purposes of taxation at the time the timber is cut. The assessing official shall take into consideration the location of the timber, the quality of the timber, the size of the sale, and any other factors necessary to harvest the wood or timber that affect the value of timber being cut. Stumpage value of all forest products except those customarily measured by the cord, by weight, or by the piece shall be determined on the basis of international 1/4 inch rule log scale. If there are questions by the assessors regarding the true and accurate stumpage values reflected in contracts presented by the owner as the basis for timber tax assessment, the department of revenue administration, property appraisal division, shall be available to assist or advise the municipalities in the proper calculation of the stumpage value for assessment purposes. The burden shall be upon the owner filing the “Report of Wood Cut” form to demonstrate the reasonableness of a claim under this paragraph.

(a) For standing timber sold to a purchaser, the assessing official shall consider the stumpage price paid on a per cord, per 1,000 board foot, by weight or other basis when calculating stumpage value. If the assessing official finds that a claim is not commercially reasonable then the assessing official may, after conducting an inspection of the property, use the average stumpage value list provided by the department of revenue.

(b) For sales of timber where the product is not sold as standing timber, the assessing official shall use the average stumpage value list provided by the department of revenue administration.

Prior to the prehearing, Mr. Reed had declined to provide the Town with the actual contract price paid for the standing timber. Consequently, the board of selectmen was unable to consider such information, as RSA 79:1, III (a) provides, in assessing the timber tax. The Town had relied upon its consulting forester to rate the value of the timber based on its quality, location and size of operation and the DRA's average stumpage value lists referenced in RSA 79:1 III (b). The Town's forester rated the quality of timber, location/accessibility and the size of the sale as "good" resulting in the Town initially using the high end of the DRA average stumpage values in assessing the tax. Subsequently, as noted above, after obtaining the contract price for the timber the Town offered to abate the assessment to the sale price, but the check was returned by the Taxpayer.

The board finds here, as often is the case with market value determinations for real estate, there is no one absolute value for the timber but rather various indications of its market value that one must look to to arrive at a reasonable estimate of market value. As noted in Fusegni v. Portsmouth Housing Authority, 114 N.H. 207, 211 (1974), "[t]he search for 'fair market value' is a snipe hunt carried out at midnight on a moonless landscape"

In an effort to bag that snipe, the board has looked at the various indications of market value submitted in this case and estimates a market value of \$7,600 on which to base the timber tax.¹

¹ The board has rounded its value conclusion to \$7,600 rather than doing a strict accounting as the Town has done and as the board is aware most towns do utilizing either contract stumpage prices or the DRA suggested stumpage values. By rounding the board does not intend to imply that strict accounting done by the towns is incorrect. Simply the board, in this case, found several indications of value that have been correlated to a \$7,600 estimate. A parallel process often occurs in estimating the market value of real estate through an appraisal process where indications of value by the three approaches, sales, cost and income, are correlated to a rounded estimate of market value.

One indication of value is the contract sales price which totaled \$8,591.79. Mr. Reed testified he believed the logger overpaid, particularly for the hemlock pulp, because he was in need of work at that point in time. While this is a subjective observation on the part of the Taxpayer's forester, it is apparently based on his ongoing professional relationship with this logger and knowledge of market conditions.

The board, in trying to determine if there was any validity to such observation, reviewed both the DRA average stumpage values and the New Hampshire Timberland Owner's Association ("NHTOA")² quarterly survey for hemlock pulp prices. The DRA average stumpage value list for the southern section of New Hampshire for October 1, 2003 through March 31, 2004 indicated a value range of \$2.25 to \$4.00 per ton for hemlock pulp. NHTOA listed hemlock pulp wood, on a cord basis, at \$8.00 per cord. Utilizing a conversion factor of 1 cord equals approximately 2.5 tons, the NHTOA survey of \$8.00 per cord equates to \$3.20 per ton. Consequently both stumpage value sources, DRA and NHTOA, support the contention that the contract price of \$6.00 per ton was in excess of the general market. The board also reviewed the other contract prices paid in this logging operation, the most significant one being for oak at \$325 per thousand board feet. While the oak stumpage price may be a little low, it does not appear to be totally offsetting to the above market price paid for the hemlock pulp. Consequently, overall, the board concludes the contract price paid was, to some extent, above market.

A second indication of market value is the utilization of the DRA's average stumpage value list and a rating of the operation, as RSA 79:1, III provides, based on the timber's quality,

² The board subscribes to the NHTOA's quarterly publication, Timber Crier, as it is an industry recognized source of stumpage values based on a survey of loggers similar to DRA's list.

the timber location and size of logging operation. Mr. Thorell stated the DRA developed a timber tax assessment worksheet to assist municipalities in assessing the value of timber. Both the Town and Taxpayer's forester had utilized the worksheet in trying to estimate where within the DRA stumpage value ranges the Taxpayer's timber would fall. The board concludes the Town's overall "100%" rating based on "quality of timber", "location of timber" and "size of sale" is inappropriate for this lot for the following reasons. First, as testified to and as indicated by the actual cutting, the majority of the timber cut was for pulp or lower quality saw logs. Another indication that the quality/desirability of the lumber was not high is the fact that of the eight cut-to-length loggers that Mr. Reed submitted his prospectus to, three did not respond, two looked at the lot but did not submit a bid, one indicated no interest due to the location of the lot and only two submitted bids. Second, the location of the timber, while relatively close to a public road, had access limitations due to the narrow driveway, limited yarding area and close proximity to a cemetery which complicated the ease of access and removal of the timber. Third, the area cut over was only approximately nine acres making this a relatively small operation compared to many logging operations in the state.

In reviewing all these factors, the board concludes the rating should be average for all three criteria rather than all good as rated by the Town's forester and poor for the "location of timber" as rated by Mr. Reed. While Mr. Reed provided a good description of the access constraints and photographs of the driveway and yarding area, the board concludes there are many other timber lots which have significantly worse access and physical topography affecting their accessibility than the Property and while its access has affected the timber value, it was not so impacted to rate it as "poor".

An “average” rating results in using the mid-point (50%) of the DRA’s stumpage value list. Utilizing the mid-point of the October 1, 2003 through March 31, 2004 average stumpage value list provides an indicated market value of \$7,437.71³.

| TOWN OF RINDGE | | | | |
|----------------------|--|----------------|----------------|----------------------|
| TAX YEAR 2002 – 2003 | | | | |
| SPECIES | NUMBER OF BOARD FEET IN THOUSANDS OR CORDS | NUMBER OF TONS | STUMPAGE VALUE | TOTAL ASSESSED VALUE |
| WHITE PINE | 0.830 | | 120.00 | \$99.60 |
| HEMLOCK | 14.365 | | 37.50 | \$538.69 |
| YELLOW BIRCH | 1.094 | | 120.00 | \$131.28 |
| OAK | 12.515 | | 362.50 | \$4536.69 |
| ASH | 0.290 | | 107.50 | \$31.18 |
| BEECH & S. MAPLE | 3.460 | | 52.50 | \$181.65 |
| PALLET/TIE LOGS | 0.020 | | 32.50 | \$0.65 |
| HEMLOCK | | 479.35 | 3.125 | \$1497.97 |
| CORDWOOD | 52.5 | | 8 | \$420.00 |
| TOTAL | | | | \$7437.71 |

A third indication of market value is a consideration of the second but unsuccessful bidder who submitted a stumpage bid price for the saw logs but not for the cord wood or pulp wood. If the same estimate the board utilized in the above grid for cord wood and pulp wood is added to his estimate for the saw logs, it results in an indicated value of the timber of \$7,808.17. While the board gives less weight to this third indication of value because it is from an unsuccessful bidder (just as the board would give less weight to a listing price for property or

³ In addition to the volumes indicated on the Town’s assessment spreadsheet, the board added the 52.5 cords contained on the Report of Cut but inadvertently omitted by the Town in its calculations. Also the board has used the DRA stumpage value list that encompasses the time period of the logging as opposed to the subsequent six month list utilized by the Town. Mr. Thorell testified the stumpage values that pertain to the market value at the time of the cutting rather than at the time of the filing of the timber tax report are more appropriate.

unconsummated offer) with the adjustments noted above, it provides another indication that supports the board's conclusion of \$7,600.

In closing, Mr. Reed requested guidance from the board as to the use of the timber tax worksheet. As the board noted during the hearing, and in this decision, this worksheet comports with the statutory requirements as to what assessing officials must consider and is a useful tool in estimating market value. It is however, in many cases, not the sole method of arriving at a reasonable estimate of market value on which to base the timber tax. But as the board has shown above, with reasonable adjustments so as to reflect the totality of the evidence presented in this case, it contributes to arriving at a reasonable estimate of market value. The board envisions that with diligent and careful assumptions by taxpayers, consulting foresters and town assessing officials, this worksheet can be helpful in administering the timber tax.

If the taxes have been paid, the amount paid on the value in excess of \$7,600 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 Decision has this date been mailed, postage prepaid, to: Daniel D. Reed, 489 Windy Row, Peterborough, NH 03458, Taxpayer Representative; Chairman, Board of Selectmen, Town of Rindge, PO Box 163, Rindge, NH 03461; and Dennis Thorell, Department of Revenue Administration, PO Box 457, Concord, NH 03302-0457.

Date: December 21, 2005

Melanie J. Ekstrom, Deputy Clerk