

Leonard Goodnow

v.

Town of Swanzey

Docket No.: 20945-05CU

DECISION

The “Taxpayer” appeals, pursuant to RSA 79-A:9, the “Town’s” May 25, 2005 denial of the Taxpayer’s subsequent 2005 application for current use on Map73/Lot 35, a 13.4-acre lot with a sugar house (the “Property”). The Property was assessed at \$25,308 (consisting of \$23,000 for 0.75 acres of land not in current use, \$808 for 12.65 acres in current use and \$1,500 for the sugar house). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has 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 Taxpayer carried this burden.

The Taxpayer argued the Town erred in denying the resubmitted current-use application (to correct the acreage in current use) because:

(1) the entire Property (13.4 acres) was first placed in current use in 1988, but the Town, based on an existing sugar house, removed 0.75 acres from current use following a 1998 reassessment;

- (2) the Taxpayer resubmitted a current-use application in 2005 to place all but 0.10 of an acre in current use;
- (3) the sugar house with curtilage is 0.10 of an acre and is the only land that should not be in current use;
- (4) an additional 0.30 of an acre is a dirt road (“woods road”) used occasionally to remove timber off the Property and by another person who taps maple trees on the Property and this acreage should be included in current use; and
- (5) while the woods road is also a right-of-way providing access to an adjacent (McKelvey) property, it is a detriment rather than a benefit to the Property.

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

- (1) the woods road does not qualify for current use because it is being used as a driveway for the adjacent McKelvey property developed with a dwelling;
- (2) the woods road is a legally defined easement contained in a 1996 deed from the Taxpayer to the benefit of three adjoining properties, one of them being the adjacent McKelvey property; and
- (3) a driveway such as the woods road is not undeveloped land as defined by the current use rule, CUB 301.11; and
- (4) the woods road also is not a “power line” or a similar utility easement as addressed in CUB 303.05.

The Town at hearing did concede that the 0.75-acre area assessed as not in current use was excessive based on their discussions with the Taxpayer. The Town argued that a total area not eligible for current use was 0.40 of an acre, (0.10 of an acre attributable to curtilage around the sugar house and 0.30 of an acre attributable to the woods road going through the Property).

The Town stated, however, no revised assessed value for that reduced area had been calculated or discussed with the Taxpayer.

Board's Rulings

Based on the evidence, the board of tax and land appeals ("board") finds 0.40 of an acre of the parcel does not qualify for current use but the 0.30 of an acre attributable to the woods road has no or only nominal market value to the Taxpayer. For reasons detailed below, the board finds the assessed value as follows:

Property-Type	Land-Area	Land-Value Per Acre	Assessed Value
Residential Land: Sugar House Curtilage	0.10 acre	\$34,000	\$3,400
Woods Road	0.30 acre	N/A	\$100
White Pine Current Use Land	3.00 acres	\$96	\$288
Hardwood Current Use Land	3.60 acres	\$28	\$101
All Other Forest-Type Current Use Land	6.40 acres	\$67	\$429
Sugar House Assessed Value	_____		\$1,500
Total	13.40 acres		\$5,818

As the Taxpayer noted at the inception of his testimony, there is no dispute as to the value of the sugar house or that 0.10 of an acre area of curtilage around the sugar house is not eligible for current use. The sole issue is whether the woods road, encompassing, as the parties agreed,

approximately 0.30 of an acre, is eligible for current use. Related to this remaining issue, obviously, is the resulting assessed value of the curtilage land and current use land.

Eligibility of Woods Road for Current Use Assessment

The board rules the 0.30 of an acre of woods road does not qualify as open space as defined in RSA ch. 79-a and the CUB rules. There was no dispute between the parties that the woods road provides access to three properties to the north of the Property, one of them developed with a year-round dwelling. The woods road is also used by the Taxpayer or another individual infrequently for maple sugaring and logging. The woods road apparently was an old right-of-way that was documented in a quitclaim easement deed in 1996 where the Taxpayer formalized the historic easement to the benefit of the three properties to the north (Attachment 3 of Municipality Exhibit No. A).

To be eligible for current use, a property must be undeveloped and used as farm land, forest land or unproductive land as defined by the current use statute and rules. RSA 79-A:2, IX defines “open space land” as “any or all farm land, forest land, or unproductive land as defined by this section....” CUB 301.11 defines “undeveloped land” as “any land which is not used for residential, commercial, or industrial purposes, other than the growing of farm or forest products.” Forest land is defined at CUB 304.03(b)(1) as:

“A tract of undeveloped land, which is actively devoted to or capable of growing trees of any age, including the production or enhancement of one of the following:

- a. Forest products;
- b. Maple sap;
- c. Naturally seeded Christmas trees; or
- d. Wildlife or wildlife habitat; and

(2) A certified tree farm.

(c) Land containing roads constructed for the purpose of forest product removal or forest protection shall be assessed as forest land.” (Emphasis added.)

Based on the above definitions the board has consistently ruled that roadways, driveways, and rights-of-ways that are used principally for accessing residential uses, such as the adjoining McKelvey property, are not eligible for current use because they are part of the residential curtilage of a house lot and not open space land as defined in RSA 79-A:2, IX. See Elaine S. O’Donnell v. Town of Nottingham, BTLA Docket No.: 17999-99LC, (April 9, 2002); William D. Rzepa v. Town of Dalton, BTLA Docket No.: 17397-97LC, (July 1, 1999 and August 16, 1999); Virginia A. Soule v. Town of Sunapee, BTLA Docket No.: 14773-93PT, (August 20, 1997); Taylor Real Estate Trust v. Town of Holderness, BTLA Docket No.: 8593-90PT, (January 11, 1996). If the woods road was not the driveway to the adjoining McKelvey residence, it would likely be eligible for current use if used solely for forestry and agricultural purposes. RSA 79-A:7, IV(a); CUB 304.02(b); CUB 304:03(c).

Valuation of 0.40 Acre Land not in Current Use

The Town submitted a copy of the 2005 assessment-record card which included the assessment calculations for the 0.75-acre area that was originally determined not eligible for current use. A review of the Town’s methodology indicates the fractional acre is calculated on a straight line basis relative to the base \$34,000 per acre unit price. Consequently, the board estimates the 0.10 acre value for the curtilage around the sugar house to be calculated in a similar fashion, or \$3,400 ($\$34,000 \times 0.10$ acres). This assessed value of \$3,400 is reasonable given the fact the sugar house is not necessarily the primary building site location on the Property if it were to be developed. If the Property were to be developed with a house, the Town testified it was its

assessment methodology to place the primary site value with the dwelling and any accessory buildings, such as a sugar house, would not have a separate site value.

However, the board finds this methodology is inappropriate for calculating the assessed value of the 0.3 acre woods road. From a market value standpoint, the woods road is of little or no value to the Taxpayer, but is of significant value to the three properties to the north that benefit from the woods road easement. The Town testified the assessments of those properties reflect the fact they have reasonable access provided by the woods road easement. Arguably the Property is detrimentally encumbered by the woods road easement and it could negatively affect the Property's market value. While, as the Town argued, the Taxpayer has some benefit of the woods road for accessing the sugar house, and for logging, such benefit relates to the open space uses of the land and is specifically exempt from any ad valorem assessment pursuant to RSA 79-a:7, IV(a) and CUB 304.02(b) and CUB 304.03(c).

Consequently, the board places a nominal value of \$100 on the 0.30 acre simply to account for the existence of the acreage in the Town's assessment-record card methodology. This nominal "place holding" value is consistent with the board's rulings in the prior cited cases. Because the land not in current use (0.40 acres) is 0.35 acres less than the Town's 0.75 acres on the assessment-record card, 0.35 acres has been added to the Hardwood category as it encompasses maple trees as shown on the current use map (Attachment #1 of Municipality Exhibit No. A) and the photographs (Municipality Exhibit No. B). This increases the land area enrolled in current use and subject to contingent current use lien, and thus, the Town shall file a notice of contingent lien for this area with the register of deeds as provided in RSA 79-A:5, VI.

While not summarized in the Taxpayer's arguments, the Taxpayer raised two additional arguments: (1) CUB 303.05 provides that land encumbered with power lines or other utility

easements is not disqualified from current use because of those improvements; and (2) House Bill 630 of the 2006 legislative session would require the party that benefits from a right-of-way that disqualifies land from current use be the party responsible for the of the land-use-change tax. The board finds neither argument is applicable to the facts in this case. As argued by the Town, the power line exclusion of CUB 303.05 is not applicable to a driveway associated with residential development. House Bill 1630, even if arguably relevant (which the board questions because no land-use-change tax is involved in this appeal), does not take effect until July 1, 2006.

If the taxes have been paid, the amount paid on the value in excess of \$5,818 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the Property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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: Leonard Goodnow, PO Box 213, Spofford, NH 03462, Taxpayer; Chairman, Board of Selectmen, Town of Swanzey, PO Box 10009, Swanzey, NH 03446; and Current Use Board, c/o Department of Revenue Administration, PO Box 457, Concord, NH 03302, Interested Party.

Date: July 6, 2006

Anne M. Stelmach, Clerk