

James Gaisser

v.

Town of Sandwich

Docket No.: 23940-08TT

DECISION

The “Taxpayer” appeals, pursuant to RSA 79:8, the “Town’s” abated 2008 timber tax assessment of \$16,260, resulting in a tax of \$1,626, on Map R10-19A and R10-21 (the “Property”). For the reasons stated below, the appeal for further abatement is granted.

A pre-hearing conference was held in this appeal on February 6, 2009 at which time the parties explored, but were ultimately unable to arrive at a settlement. The board then scheduled a full adjudicative hearing on the matter for May 13, 2009. At the hearing, the Taxpayer represented himself and the Town was represented by Selectman Leo Dwyer. Also present at the hearing was Jesse Bushaw, Timber Tax Appraiser for the department of revenue administration (“DRA”), who provided testimony as an expert witness pursuant to RSA 79:8 and Brenda Pabom, the DRA’s timber and gravel clerk, who did not testify.

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 213.07. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the assessment should be based on the \$13,734.01 total amount of money received from his logger, James Thomas, Jr., as shown in Taxpayer Exhibit No. 1;
- (2) the Town was inconsistent in using its rating system to estimate the value of what was cut on the Property and on others in the Town; and
- (3) the assessment should be abated to \$1,373.40.

The Town argued the assessment was proper because:

- (1) as a matter of principle, it is important to have a process leading to consistent outcomes in timber tax assessments;
- (2) the Town relied on the state's rating system and the range of prices set by the DRA twice per year, inspected the Property, abated the assessment somewhat (from \$16,960 to \$16,626) and rebated part of the tax;
- (3) the Town uses the price paid by the logger to the owner to assess the timber tax only when it is commercially reasonable to do so;
- (4) the Taxpayer did not provide, as others have, information regarding the price received for the timber at the lumber mill, which is more reliable; and
- (5) the Taxpayer did not meet his burden of proof.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$15,563.76 resulting in a tax of \$1,556 (rounded).

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.

There is no one absolute value for the timber but rather various indications of its market value that one must look to in arriving at a reasonable estimate of market value. As noted in Fusegni v. Portsmouth Housing Auth., 114 N.H. 207, 211 (1974), “[t]he search for ‘fair market value’ is a snipe hunt carried on at midnight on a moonless landscape.” In an effort to bag that snipe, the board has looked at the indications of value submitted in this case.

The Taxpayer argued the board should utilize the \$13,734.01 amount paid to him for the timber by his logger, Mr. Thomas. To substantiate his claim, the Taxpayer provided the cancelled checks from “Thomas Chipping.” Further, the Taxpayer stated the Town was inconsistent in using its rating system; thus, the board should not rely on that system but should accept the indication of value as provided by his professional and reputable logger.

The Town testified, in order to result in a consistent process, the Town utilizes the rating system prescribed in the statute, making a judgment on the three parameters on the DRA's "Timber Tax Assessment Worksheet": the quality of the timber, the location of the timber and the size of the sale. Upon receiving the Taxpayer's application for abatement, the Town adjusted the quality of timber from good to average for a rating of 8 resulting in an overall rating percentage of 67%.

As noted on the form PA-7, the December 27, 2007 notice of intent to cut wood or timber, the acreage of the lot is 15 acres and the acreage of the cut is 10 acres. The DRA's Timber Tax Appraiser, Jesse Bushaw, testified the DRA sends out questionnaires twice a year to area loggers to arrive at stumpage prices in order to assist municipalities in assessing the value of timber. Further, he indicated a 10 acre site would be considered a small job in the state.

In reviewing all of the testimony, the board concludes the rating for the size of the sale should be "fair" rather than "average," reducing the total rating to 7 and the "percentage within the range" to 59% (from 67%), resulting in a tax of \$1,556 (rounded) when the worksheet used by the Town is revised as shown in Addendum A. The board reviewed Taxpayer Exhibit No. 1 and notes the Taxpayer erred on page one by neglecting to include check number 6450 in the amount of \$49.65 in his calculations. He further did not include two values, \$357 and \$675, that were "subtracted from timber for gravel" which should also have been factored in to the total which, when added, equates to \$14,815.66 (multiplied by 10% equals \$1,481.56). The difference between the board's finding and the Taxpayer's corrected calculations is \$74.44 which is nominal and supports the methodology used by the Town as adjusted by the board.

If the taxes have been paid, the amount paid on the excess of \$1,556 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(g). 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

Michele E. LeBrun, Member

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: James Gaisser, PO Box 5, Sandwich, NH 03227, Taxpayer; Chairman, Board of Selectmen, Town of Sandwich, PO Box 194, Center Sandwich, NH 03227; and Jesse Bushaw, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301.

Date: June 26, 2009

Melanie J. Ekstrom, Deputy Clerk

ADDENDUM A

SPECIES	LOW MBF	HIGH MBF			RANGE DIFFERENCE		RATING %	STUMPAGE VALUE *	# BOARD FT		
WHITE PINE	\$90.00	\$165.00				\$75.00	0.59	\$ 134.25	96.024		
HEMLOCK	\$25.00	\$45.00				\$20.00	0.59	\$ 36.80	0.000		
RED PINE	\$25.00	\$55.00				\$30.00	0.59	\$ 42.70	0.000		
SPRUCE & FIR	\$90.00	\$120.00				\$30.00	0.59	\$ 107.70	0.000		
HARD MAPLE	\$170.00	\$350.00				\$180.00	0.59	\$ 276.20	0.000		
WHITE BIRCH	\$65.00	\$80.00				\$15.00	0.59	\$ 73.85	0.200		
YELLOW BIRCH	\$115.00	\$200.00				\$85.00	0.59	\$ 165.15	0.000		
OAK	\$165.00	\$325.00				\$160.00	0.59	\$ 259.40	1.910		
ASH	\$70.00	\$135.00				\$65.00	0.59	\$ 108.35	5.845		
BEECH/SOFT MAPLE	\$35.00	\$75.00				\$40.00	0.59	\$ 58.60	1.260		
PALLET/TIE LOGS	\$25.00	\$40.00				\$15.00	0.59	\$ 33.85	3.490		
OTHERS:	\$0.00	\$0.00				\$0.00	0.59	\$ -	0.000		
OTHERS:	\$0.00	\$0.00				\$0.00	0.59	\$ -	0.000		
TONS & CORDS	TONS LOW	TONS HIGH	CORDS LOW	CORDS HIGH	TONS	CORDS	RATING %	STUMPAGE VALUE *	STUMPAGE VALUE CORDS *	#TONS	#CORDS
SPRUCE & FIR	\$2.00	\$4.00	\$5.00	\$8.50	\$2.00	\$3.50	0.59	\$ 3.18	\$ 7.07	0.000	0.000
HARDWOOD & ASPEN	\$1.50	\$3.50	\$4.00	\$9.50	\$2.00	\$5.50	0.59	\$ 2.68	\$ 7.25	0.000	35.000
PINE	\$1.00	\$2.00	\$1.75	\$4.50	\$1.00	\$2.75	0.59	\$ 1.59	\$ 3.37	61.390	0.000
HEMLOCK	\$2.50	\$5.00	\$5.50	\$11.00	\$2.50	\$5.50	0.59	\$ 3.98	\$ 8.75	90.200	0.000
WHOLE TREE CHIPS	\$1.00	\$1.50	\$0.00	\$0.00	\$0.50	\$0.00	0.59	\$ 1.30	\$ -	484.390	0.000
BIRCH BOLTS	\$0.00	\$0.00	\$30.00	\$50.00	\$0.00	\$20.00	0.59	\$ -	\$ 41.80	0.000	0.000
CORD & FUEL WOOD	\$0.00	\$0.00	\$7.00	\$12.00	\$0.00	\$5.00	0.59	\$ -	\$ 9.95	0.000	0.000

* STUMPAGE VALUE = % RATING x RANGE DIFFERENCE + LOW RANGE VALUE

SPECIES	NUMBER OF BOARD FEET IN THOUSANDS	NUMBER OF TONS	NUMBER OF CORDS	STUMPAGE VALUE		TOTAL ASSESSED VALUE	TAX AT 10 %
WHITE PINE	96.024				\$134.25	\$12,891.22	\$1,289.12
HEMLOCK	0.000				\$36.80	\$0.00	\$0.00
RED PINE	0.000				\$42.70	\$0.00	\$0.00
SPRUCE & FIR	0.000				\$107.70	\$0.00	\$0.00
HARD MAPLE	0.000				\$276.20	\$0.00	\$0.00
WHITE BIRCH	0.200				\$73.85	\$14.77	\$1.48
YELLOW BIRCH	0.000				\$165.15	\$0.00	\$0.00
OAK	1.910				\$259.40	\$495.45	\$49.55
ASH	5.845				\$108.35	\$633.31	\$63.33
BEECH & S. MAPLE	1.260				\$58.60	\$73.84	\$7.38
PALLET / TIE LOGS	3.490				\$33.85	\$118.14	\$11.81
OTHERS :	0.000				\$0.00	\$0.00	\$0.00
OTHERS :	0.000				\$0.00	\$0.00	\$0.00
				TONS	CORDS		
SPRUCE & FIR		0.00	0.00	\$ 3.18	\$ 7.07	\$0.00	\$0.00
HARDWOOD & ASPEN		0.00	35.00	\$ 2.68	\$ 7.25	\$253.58	\$25.36
PINE		61.39	0.00	\$ 1.59	\$ 3.37	\$97.61	\$9.76
HEMLOCK		90.20	0.00	\$ 3.98	\$ 8.75	\$358.55	\$35.86
WHOLE TREE CHIPS		484.39	0.00	\$ 1.30	\$ -	\$627.29	\$62.73
BIRCH BOLTS		0.00	0.00	\$ -	\$ 41.80	\$0.00	\$0.00
CORDWOOD		0.00	0.00	\$ -	\$ 9.95	\$0.00	\$0.00
						\$15,563.76	\$1,556.38