

Steven and Doris Damboise

v.

Town of Goffstown

Docket No.: 27139-13LC

DECISION

The “Taxpayers” appeal, pursuant to RSA 79-A:10, the “Town’s” disqualification and removal of 0.24 acres from current use (“CU”) on Map 12/Lot 29 (the “Property”). For the reasons stated below, the appeal is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the Town’s removal of the acreage from CU was improper. See generally Tax 205.06 and 206.05. We find the Taxpayers did not meet this burden and therefore the appeal is denied.

Board’s Rulings

Based on the evidence, the board finds the Town did not err in removing 0.24 acres from CU and therefore the appeal is denied.

The “Property” in this appeal is a 10.74 acre lot improved with a single-family residence, gravel driveway, some yard areas and a logging road.¹ In December, 1997 the Taxpayers

¹ In July, 1991, the previous owner of the Property enrolled the entire “vacant parcel” into the RSA 79-A CU program classified as “Forest Land: Other”.

purchased the Property and subsequently constructed the residence and removed 0.50 acres from CU in November, 2001.

Upon review of the Town's CU records, the Town's Assessor, Mr. Scott W. Bartlett, determined they were not up-to-date and embarked on a review of all CU properties in the Town. Mr. Bartlett discovered the Town's file for the Property did not include a map with identifiable boundaries and other requirements specified in CUB 302.03.² As a result, Mr. Bartlett inspected the Property several times in 2013, met with the Taxpayers and reviewed other resources (including "Pictometry" aerial photography) to determine what portions of the Property qualified for CU and what portions should be removed from CU, if any.

This is an unusual appeal as it involves the removal of land from CU; however, the Town did not issue a land use change tax ("LUCT"). Instead, the Town was attempting to improve their record-keeping and updating their CU files³ and has absorbed the costs associated with the removal of the 0.24-acres from CU. The board finds the Town was acting appropriately in reviewing their files and taking steps to ensure the proper documentation and maps for all properties in CU were in their files. See CUB Rules, specifically 302.01(b)(1) and 309.01(b)(1).

The Taxpayer testified the Town erred in removing the additional 0.24 acres from CU and presented an undated, hand drawn map which he testified was presented to the Town when the "house lot" (0.50-acres) was removed from CU. (See Taxpayer Exhibit No. 9.) The Town could not locate a copy of this map in their files, but Mr. Bartlett testified that even if they had a copy, it does not conform to the requirements established in the CUB's administrative rules.

² Current Use Board ("CUB") administrative rules.

³ Mr. Bartlett testified he found the CU files for a number of properties incomplete, especially properties that were improved subsequent to their enrollment in the CU program.

The board concurs and finds the map supplied by the Taxpayer does not comply with the requirements enumerated in the CUB rules. For instance, CUB 309.01(b)(1)a states a CU map shall include “current use and non-current use land, clearly identified, oriented to establish its location, and sufficiently accurate to permit computation of acreage.”

Even if the map submitted by the Taxpayer complied with those rules, however, the board finds it does not include sufficient curtilage⁴ to support the structure and also includes 0.25-acres the Taxpayer indicated was “reserved for future use.” Reserving land “for future use” is not permitted pursuant to RSA 79-A:7, I-a, which states “land which is classified as open space land and assessed at current use values shall be assessed at current use values until a change in land use occurs pursuant to RSA 79-A:7, IV, V, or VI.” Simply put, land in CU program remains in CU until it is physically changed to a use that no longer qualifies for CU or until it no longer meets the minimum size requirements.

The “cleared” and/or “yard” areas in dispute between the Town and Taxpayers are clearly depicted by photographs submitted by the Town, which show those areas have been cleared and leveled. (See Municipality Exhibits F through I.) These areas clearly relate to the development of the Property and to permit these areas to be in CU would result in small fragmented portions of land receiving the reduced CU assessment with no real open space benefit to the general public. See RSA 79-A:1.

The board finds the most accurate estimation of land disqualified from CU (0.74-acres) results from Mr. Bartlett’s February 14, 2013 map resulting from his inspections of the Property.

⁴ CUB 301.04 defines “curtilage” as: the land upon which a structure stands and the land immediately surrounding the structure, including the following: (a) A yard contiguous to the structure; (b) Land groomed and maintained around the structure; and (c) Land necessary to the support and service of the structure.

The board finds the calculations of the area disqualified from CU (0.24-acres) were reasonable and well supported. (See Municipality Exhibits A and C.⁵)

In short, the board finds the Property contains 10 acres in CU and 0.74-acres NICU.

For all these reasons, the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Theresa M. Walker, Member

⁵ This map, labeled “Map showing land considered to be out of Current Use created by Scott Bartlett – February 14, 2013”, indicates the driveway (450’ by 15’) totals 0.15 acres, plus the “enclosed area” (consisting of the residence, curtilage and other cleared and/or improved areas) of 0.59 equals 0.74-acres not in current use (“NICU”).

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Steven and Doris Damboise, 26 Hooksett Road, Goffstown, NH 03045, Taxpayers; Chairman, Board of Selectmen, Town of Goffstown, 16 Main Street, Goffstown, NH 03045; and Current Use Board, c/o Department of Revenue Administration, 109 Pleasant Street, Concord, New Hampshire 03301, Interested Party.

Date: March 26, 2014

Anne M. Stelmach, Clerk