

Amended

Minutes of the April 22, 2010 Board of Assessment Appeals Meeting

Present: Joe Gardner and T. Allan Palmer

Chairman Palmer opened the meeting at 7:30 P.M.

Sharon P. Moore
161 West Town Street
Lebanon, Ct. 06249

Reason for appeal: 490 denial.

Comments of Board. See legal opinion attached.

Action: Restore farmland designation.

Was – 25,800 Is – 2,810

Benjamin Ancona
411 Flanders Road
Coventry, Ct. 06238

Property 42 Village Hill

Reason for appeal: Assessment too high. Restore 490

Comments of Board. See Boards 2009 decision concerning farmland (Minutes - May 29, 2009).

Action: Restore farmland designation.

Was – 90,380 Is – 13,600

Peter & Janice Pacific
216 York Road
Lebanon, Ct. 06249

Reason for appeal: Property used for hay on 4.5 acres – keeping open space.

Comments of Board. The property was classified under 12-107 (farmland) by the previous owners. The classification was removed from 3.5 acres when ownership changed. The assessor denied the application, as the current use does not meet requirements under 12-107.

Action: No Action.

Clive & Cynthia West
75 Valinsky Road
Lebanon, Ct. 06249

Reason for appeal: Woodland in farm unit used as pasture.

Comments of Board. Restore farmland classification to entire farm unit. See Boards 2009 decision concerning farmland(Minutes - May 29, 2009).

Action: Restore farmland designation.

Was 56,700 Is 16,420

William Gunnell
19 Ravenwood Drive
Kings Park Ny. 11754

Personnel Property
271 Leonard Bridge Road

Reason for appeal: Assessed value of Trailer too high.

Comments of Board - Grievant canceled, The Board of Assessment cannot change the assessment if a grievant fails to appear.

Action: No action

Douglas Mullen
20 Country Lane Drive
Kings Park Ny. 11754

Personnel Property
271 Leonard Bridge Road

Reason for appeal: Assessed value of Trailer too high.

Comments of Board - Grievant canceled, The Board of Assessment cannot change the assessment if a grievant fails to appear.

Action: No action

Michael Mullen
1215 5th Ave.
East Northport Ny. 11731

Personnel Property
271 Leonard Bridge Road

Reason for appeal: Assessed value of Trailer too high.

Comments of Board - Grievant canceled, The Board of Assessment cannot change the assessment if a grievant fails to appear.

Action: No action

Bruce & Linda Smith
99 Camp Moween Road
Lebanon, Ct. 06249

Personnel Property

Reason for appeal: Increase in assessment.

Comments of Board - Grievant failed to appear before the Board, The Board of Assessment cannot change the assessment if a grievant fails to appear.

Action: No action

Timothy A. Smith
414 Cook Hill Road
Lebanon, Ct 06249

Personnel Property

Reason for appeal: No personal property on location.

Comments of Board. Grievant subsequently filed personal property list for tractor and horses. \$500.00 was an estimate of existing personal property by the assessor and was removed upon receipt of filing.

Action: Increase net assessment to 6,720

James Grover
1102 Trumbull Highway
Lebanon, Ct. 06249

Personnel Property

Reason for appeal: Personal property - farm

Comments of Board. Equipment is used as farming. Grievant Failed to file form M-28 "Exemption Application for the Assessor for Farm machinery, Horses, Ponies, Certain Farm Buildings"

Action: No action

Charles Rollo
12 Wexford Lane
Shelton, Ct. 06484

Personnel Property
271 Leonard Bridge Road

Reason for appeal: Purchased camper for \$4,995.

Comments of Board - Grievant failed to appear before the Board, The Board of Assessment cannot change the assessment if a grievant fails to appear.

Action: No action

Earl & Sarah Palmer
215 Chappell Road
Lebanon, Ct. 06249

Personnel Property

Reason for appeal: Increase in assessment due to penalty for not filing.

Comments of Board. Personal property filing not in assessors office.

Action: No action.

Richard & Frances Connelly
191 Clarke Road
Lebanon, Ct. 06249

Personnel Property

Reason for appeal: Personal property belongs to Larry Messier.

Comments of Board. Equipment is owned by others and taxed in another town.

Action: Remove Personal property.

Penns Barton-Zucherman
Camp Horizons
P.O Box 323
South Windham, Ct. 06226

Property: 127 Babcock Hill Road

Reason for appeal: Commercial non-profit service agency

Comments of Board. Grievant Failed to file required paperwork with the assessor.

Action: No Action

Christopher Warner
1465 Exeter Road
Lebanon, Ct. 06249

Reason for appeal: House is worth less than the assessment.

Comments of Board. Property is assessed comparably to similar properties

Action: No action

Dean Denis
280 Scott Hill Road
Lebanon, Ct. 06249

Reason for appeal: Increase in personal property assessment.

Comments of Board. - Increase due to penalty for not filing. The Board of Assessment Appeals can not remove penalties due to not filing.

Action: No action.

Alec & Dorothy Chesmer
P.O. Box 193
Lebanon, Ct. 06249

Property 906 Beaumont Hgwy.

Reason for appeal: Second floor not finished. Only one and one half baths.

Comments of Board. Second floor not finished. Only one and one half baths.

Action: Was – 249,040 Is – 229,740

Trenner Tompkins
113 Kingsley Road
Lebanon, Ct. 06249

Reason for appeal: Farmland classification removed.

Comments of Board. See Boards 2009 decision concerning farmland(Minutes - May 29, 2009).

Action: Restore farmland designation.

Action: Was – 50,400 Is – 10,640

Ronald Ives
157 East Hebron Tnpke
Lebanon, Ct. 06249

Property
175 East Hebron Tnpke

Reason for appeal: Second floor apartment not finished – no heating system, no fixtures or cabinets etc.

Comments of Board. Apartment is not complete. Assessor has given some consideration for not being complete. Additional adjustment is needed. Increase depreciation on unfinished apartment by \$ 10,000. Assr did not do correction.

Action: Was – 200,140 Is – 185,020.

Paul & Amy Nadeau
54 Norwich Avenue
Lebanon, Ct. 06249

Reason for appeal: Error on property record card, Foundation not being used at this time & shed is movable.

Comments of Board. Remove non existent deck, correct measurements of foundation to 31 X 51

Action: Was – 431,700 Is – 429,470

Wayne M. Budney
79 Geer Road
Lebanon, Ct. 06249

Property McCall Road

Reason for appeal: Wants lot lines reestablished – lots of record.

Comments of Board. Town Zoning regulations require that non –conforming pre-existing parcels in the same ownership be considered as one parcel.

Action: No Action

Delores Hamilton
485 Deepwood Drive
Lebanon, Ct. 06249

Property
481 & 485 Deepwood Rrive

Reason for appeal: Your appraised value of land, building shed and parcel is to high.

Comments of Board - Grievant failed to appear before the Board, The Board of Assessment cannot change the assessment if a grievant fails to appear.

Action: No action

Bruce A Cagenello
81 Stratton Forest Way
Simsbury, Ct. 06070

Property 217 Lakeside Drive

Reason for appeal: To lower assessment

Comments of Board: Property appears to be appropriately assessed.

Action: No action.

Robert H & Ann Marie Ragalia
38 Brandegee Lane
P. O. Box 8091
Berlin, Ct. 06037

Property: 1 Stacy Lane

Reason for appeal: Institution of "Res Exces and application of a C factor of 1.5 is excessive and does not result in a equitable land valuation.

Comments of Board: Property appears to be appropriately assessed.

Action: No action.

George & Dorene Nablo
73 Spellman Point Road
East Hampton, Ct. 06424

Property: Lakeshore Dr.(2)

Reason for appeal: Water frontage measured incorrectly. Property assessment too high based on recent sales and seasonal use.

Comments of Board: Property appears to be appropriately assessed.

Action: No action.

Barbara Bowling & Kazimiera Kulak
1 Don Street
Planville, Ct. 06062

Property: Kelley's Corner

Reason for appeal:

Comments of Board: Property is classified as a seasonal buildable lot. Property appears to be appropriately assessed.

Action: No action.

Motion to accept all actions made by Joe Gardner seconded by T. Allan Palmer.

The Boards April 27, 2010 is canceled

The meeting was adjourned at 8:25 P.M.

Signed

T. Allan Palmer,
Chairman
Referenced Legal Opinion

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April 13, 2010

T. Allan Palmer
Chairman
Town of Lebanon
Board of Assessment Appeals
579 Exeter Road
Lebanon, CT 06249

**Re: 147 West Town Street, Lebanon, CT
P.A. 490 Classification**

Dear Chairman Palmer:

This is in response to your inquiry of April 12, 2010 concerning issues raised during an appeal of the classification of the above stated property as “farm land” pursuant to provisions of Connecticut General Statutes §12-107c.

Issues

This issues you have requested that I address in this review are as follows:

1. Does the removal of the father, mother and brother constitute a change in ownership for purposes of 12-107 and 12-504?
2. Is it necessary for a new application for classification under 12-107 need to be filed when a property has a change in ownership or does 12-504c exempt transfers between parent and child?
3. If a new application is necessary, does 12-504 continue the classification or does the

assessor have the ability to deny the classification under 12-107 if the use has not changed since the transfer?

Background

An amended application for classification of the property as farm land was filed on September 19, 1988 by Sharon Mullaly Moore. At the time of this amended application the acreage to be designated as farm land was 15 acres (11 acres permanent pasture; 4 acres brush & sprout). The owners of the property at the time of this application were Raymond K. Mullaly, Virginia E. Mullaly, Kenneth H. Mullaly and Sharon Mullaly Moore.

Ownership of the property from 1988 through 2008 changed with the death of three of the initial four owners. The current owners are Sharon Mullaly Moore (2/3 interest) and Nancy Mullaly (widow of Kenneth H. Mullaly)(1/3 interest).

In 2009 the assessor reclassified the property from “farm land” to “excess acreage”. This decision was appealed by the owners to the Board of Assessment Appeals which restored the classification for October 2008 but required the owners to refile for continuation of the farm land classification in October 2009. The owners filed, as directed, on October 22, 2009. The type of farming operation listed by the owners was “dairy - raise heifers for show”. The total gross income of the farming operation was listed as \$0 and the application listed “no equipment”. On February 9, 2010 the application for continued classification as farm land was denied by the Assessor. The reason for the denial was listed by the Assessor as “Personal Use”. The owners were claiming the acreage in use for farming / agricultural operations of 15 acres. The owners were informed of their right to appeal the Assessor’s decision to the Town of Lebanon Board of Assessment Appeals. An appeal was filed by the owners on March 15, 2010.

On March 8, 2010, following the denial of the classification application, a representative of the Connecticut Department of Agriculture (Timothy McGuire) conducted an inspection of the property and filed a Special Inspection Report. In the Special Inspection Report, Mr. McGuire described in the detail the farming / agricultural operations and concluded that “the property and activities meet the definition of Agriculture in Connecticut General Statute, Section 1-1(q), and the practices described above are generally accepted agricultural practices”.

On March 12, 2010, another representative of the Connecticut Department of Agriculture (Ronald Olsen) by letter to the Town of Lebanon Board of Assessment Appeals advised as follows:

The property in question consists of 17 acres historically and presently having livestock on it and has been under farmland classification for over 10 years (since the 1970s). Both parents have died and presently [the property] is owned 2/3 by Ms. Moore and 1/3 by Ms. Moore’s sister in law who inherited the share upon death of her husband. These occurrences should not have triggered any problems and the classification should have remained the same without any change in the existing application except for the possibly a courtesy letter to the assessor as to any changes of name or address of the owners. The land should remain classified as farmland pursuant to Section 12-107c without the filing of any new application unless there is a sale, a land use change or a transfer (12-504h). 12-504c lists the excepted transfers of which the death of brother is one.

Discussion

Connecticut General Statute §12-504a provides in relevant portion as follows:

- (a) If at any time there is a change in ownership for any property that is classified as farm land pursuant to section 12-107c, . . . a revised application shall be filed with the assessor pursuant to said section 12-107c . . .

Accordingly, the general requirement is that anytime there is a change in ownership of a classified property, unless exempt, a revised application for classification must be filed by the new owner with the assessor.

Connecticut General Statute §12-504c provides a listing of “excepted transfers” from the requirements of the previously cited section. In relevant portion, 12-504c provides as follows:

- The provisions of section 12-504a shall not be applicable to the following: . . .
- (11) property transferred as a result of death when no consideration is received and in such transfer the date of acquisition or classification of the land for purposes of sections 12-504a to 12-504f, inclusive, or section 12-107g, whichever is earlier, shall be the date of acquisition or classification by the decedent.

Conclusions

With respect to the cited issues, the following responses are provided:

- 1. Does the removal of the father, mother and brother constitute a change in ownership for purposes of 12-107 and 12-504?**

The death of an owner does result in a change in ownership of the property. However, in this situation, the death of the father, mother and brother, respectively, removed them from ownership of the property and transferred that ownership to their heirs. The transfer of ownership upon the death of an owner for no consideration is an “excepted transfer” and is not subject to the application of the new filing requirements of §12-504a.

- 2. Is it necessary for a new application for classification under 12-107 need to be filed when a property has a change in ownership or does 12-504c exempt transfers between parent and child?**

As previously noted, the general rule recited by §12-504a requires the filing of a new application for classification. However, the exceptions cited in §12-504c(11) identifies certain conveyances of ownership interest which are excepted from this general rule. The transfer of title to an heir for no consideration is one of those excepted transfers. Accordingly, in this situation all of the three transfers which took place were subject to the exception cited in §12-504c(11). As a result, there is no statutory requirement for the filing of a new application.

- 3. If a new application is necessary, does 12-504 continue the classification or does the assessor have the ability to deny the classification under 12-107 if the use has not changed since the transfer?**

As noted in the preceding paragraph, the submission of a new application is not necessary under these circumstances as a result of the exception provided by §12-504c(11) . However, it is within the discretion of the assessor to determine whether a change in use has taken place. It is noteworthy here to cite a recent decision by the Connecticut Supreme Court in which the discretion of the assessor in these circumstances is addressed. In the case of Carmel Hollow Associates Limited Partnership v. Town of Bethlehem, 269 Conn. 120 (2004) the Supreme Court ruled on a case where an assessor denied an application to classify land as forest land which had been subdivided. The Supreme Court concluded that a forest land classification pursuant to §12-107d was distinguishable from farm land and open space classifications in one specific aspect; that aspect was the preeminent role of the state forester with respect to not only designating the land as forest land but also in continuing that classification status. Not until the state forester has filed a written “declassification” of previously classified forest land may the assessor declassify the property.

The Supreme Court went on to state the following with respect to the other types of property subject to classification:

Furthermore, if the legislature had wanted to grant a municipality or town assessors discretionary authority with respect to the classification of property as forest land it could have done so, as it did with the classification of property as farm land and open space land in General Statutes §§12-107c and 12-107e, respectively. [emphasis added]

Associates Limited Partnership, 269 Conn. at 135-36.

With respect to declassification of farm land the assessor does have discretion to determine if the use of the land has changed in a manner to justify the declassification of the property. This determination, however, is a factual determination as opposed to a legal determination. The Board of Assessment appeals, in the same manner as the assessor, has the discretion to reach a different conclusion from the assessor.

In this case, representatives of the Connecticut Department of Agriculture have concluded that, upon inspection of the property, the uses of the current owners are agricultural and the property should remain classified as “farm land”. The Assessor, of course, did not have the benefit of these conclusions at the time of her decision to deny the application. However, the conclusions of these officials are not dispositive. The Board continues to have the discretion to determine for itself whether a change in use has taken place.

I hope the foregoing review is assistance in your review of this matter. If you have any questions concerning the foregoing, please do not hesitate to give me a call.

Respectfully,

Ronald F. Ochsner