

Charles M. and Beverly D. Lovett

v.

Town of Harrisville

Docket No.: 10490-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of:

\$133,100 (land \$28,400; buildings \$104,700) on Lot 18, a 4.3-acre lot with a house; and

\$70,800 (land \$19,500; buildings \$51,300) on Lot 19, a 1.24-acre lot with a house (the Properties).

For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The board held two hearings on this appeal. At the original hearing, the Town assessor recommended an adjustment of -10% to -15%, and the Taxpayers indicated they would accept a 15% reduction. The board did not issue a decision after that hearing but waited to hear from the parties because the Town indicated the selectmen ultimately had to approve the 15% reduction. The Town filed a

memorandum that stated the Town then would not settle the case at a reduction of 15% because the Town's assessor had misunderstood the factual basis for the appeal. The Town also stated the Taxpayers had at the initial hearing, greatly exaggerated to the board the activity at the gravel pit, and thus, the settlement could not be approved by the Town. The board then held a second hearing, receiving significantly more evidence on the gravel pit.

The Taxpayers argued the Properties' assessments were excessive because: (1) the assessments did not reflect the adverse effect the gravel pit had on value and desirability; and (2) an appraiser estimated a 20%-30% reduction due to the gravel pit.

Following the second hearing the Town recommended a 5% reduction to the 1990 assessments because of the uncertainty about the gravel pit approval and operation. The Town then argued no further adjustments would be warranted for 1991, 1992 and 1993 because of the minimal impact the actual operation had on the Properties' values.

Board's Rulings

Based on the evidence, we find a binding settlement was not reached because the testimony at the first hearing created an incorrect impression about the pit's operation and effect on the Properties. We find the correct 1990 assessments should be \$126,445 for Lot 18 and \$67,260 for Lot 19.

The board has found a 5% reduction on both assessments because of the market effect of the uncertainty about the approval and actual operation of the gravel pit. As of April 1, 1990, the gravel pit had been denied a special exception but that denial was subject to a rehearing. The special exception

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was granted January 1991. Once in operation, the pit was authorized to have 54 truck trips a day (27 in and 27 out).

The Taxpayers did not present market data to support a greater reduction than that recommended by the Town assessor. Specifically, the Taxpayers only stated that an appraiser had estimated a 20% to 30% reduction due to the gravel pit, but the Taxpayers did not submit anything in writing from that appraiser. Therefore, the board was unable to determine the basis for the appraiser's opinion. Given the nature of the abatement request here -- the adverse impact of an adjacent gravel pit, the board will not accept the Taxpayers' bare assertion of a 20% to 30% reduction.

Pursuant to RSA 76:17-c and TAX 203.05 (copies of both attached), the board is only issuing a decision on the 1990 appeal. If the taxes have been paid, the amount paid on the value in excess of \$193,705 (\$126,445 plus \$67,260) shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

While the Town has the obligation under RSA 76:17-c and TAX 203.05 (f), (h) to use an ordered assessment, for subsequent years the Town is authorized to make good faith adjustments from year-to-year pursuant to RSA 75:8. The board, having heard substantial testimony on the actual gravel pit operation, i.e., after 1990, does not think the Town needs to carry the 5% reduction forward. However, the board, at this point, leaves the decision as to what good faith adjustments are required to the Town. If the Taxpayers are unhappy with those good faith

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adjustments, the Taxpayers may file a motion under TAX 203.05 (j).

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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 law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles M. and Beverly D. Lovett, Taxpayers; Chairman, Selectmen of Harrisville; and Kendall W. Lane, Esq., Representative for the Town of Harrisville.

Dated: July 21, 1994

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Valerie B. Lanigan, Clerk