

Exeter Sand and Gravel, Inc.

v.

Town of Brentwood

Docket No.: 11101-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$294,200 on vacant, 46-acre lot containing a gravel pit (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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). We find the Taxpayer sustained the burden of proof necessary to support a claim of overassessment.

The Taxpayer argued the assessment was excessive because:

- (1) there have not been many gravel sales due to the economy and lack of any big projects in the area;
- (2) the highest and best use is as a gravel pit;
- (3) the Property was incorrectly assessed as a commercial-industrial lot;
- (4) the land is uneven due to the gravel operation and the frontage is

inferior for development, road level access grade is limited, frontage drops off 10 to 20 feet;

- (5) it was excessive compared to the sales of other pits;
- (6) the assessment should have been \$2,000/acre or \$92,000; and
- (7) Pine Road frontage of subject vastly inferior to commercial-industrial properties accessed from Routes 27 and 101.

The Town argued the assessment was proper because:

- (1) the Property's highest and best use was commercial/industrial;
- (2) the Property is located near Route 101 with a concentration of other industrial properties;
- (3) it was consistent with the land sales used in the revaluation;
- (4) the Taxpayer's comparables were not in the Town and had other differences that made them not comparable to the Property;
- (5) there was construction activity along Route 101; and
- (6) the Property is on the market presently for \$20,000/acre.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$182,400.

Based on the testimony at the hearing and the subsequent submittals by the parties, the board has identified a number of factors at issue relative to the Property under appeal.

1) What was the highest and best use on April 1, 1991, of the subject 46-acre parcel?

2) What adjustments, if any, should be made for location?

3) What impact did state-mandated gravel pit reclamation (closure) costs have on market value of the subject Property?

4) What was the market for particulate matter in the area served by Exeter Sand and Gravel in 1991?

5) How do the commercial-industrial comparables, as supplied by the Town, compare to the commercial-industrial properties on Pine Road near the subject gravel pit?

The Town relied on five nonresidential land sales varying in size from 4.12 acres to 32.69 acres. No adjustment was made for location according to the Town (pg. 22) "no locational adjustments are applied," since all sales are in Brentwood and considered "good for industrial development."

The Town assessed the subject Property for an average price of \$6,396 per acre. The Taxpayer estimated a value of \$2,000 per acre based on three sales of gravel pits located in Loudon, New Hampshire (38.1 acres), Canaan, New Hampshire (225.3 acres), Warren, New Hampshire (60.5 acres), and one listing in Epsom, New Hampshire (24.75 acres). The Taxpayer testified that the market for gravel was weak in the local area due to a poor economy.

The Town's improved comparables consisted of 32.68 acres on Route 101 (home of the Castles of Brentwood - shopping center), 62 acres on Route 101 (now a Jehovah's Witness church complex), and 21.59 acres in Rochester (Cabletron expansion of existing improvement). Conversely, the improved commercial properties on Pine Road in the neighborhood of the Taxpayer's Property consists of a significantly lower quality and class of industrial development (industrial metal building), Pike Industries' (asphalt plant),

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Seacoast Mills, Inc. (sawmill), pre-cast cement products plant, and Northern Elastromeric, Inc. (located in reclaimed pit)).

The Taxpayer estimated a closure (reclamation) cost of \$169,740 (\$170,000 rounded). If the highest and best use is to sell off its remaining gravel over an eight-year period, reclaim the lot, and then sell it for industrial development, then the cost of reclamation would be subtracted from the estimated selling price in eight years.

In order to better understand the unique factors at issue of this appeal, the board sent its review appraiser/inspector, Mr. Scott Bartlett, out to make an on-site inspection and record his observations in a written report (subsequently mailed to both parties for any comments they wished to make).

The board finds the highest and best use to be its present use as a gravel pit with future potential for commercial-industrial development.

The Taxpayer's argument that the Property's value should be limited to the present gravel pit use, without adjusting for the contributory value which a commercial-industrial development potential would create, is unrealistic, given the zoning in 1991. The exclusive reliance on other widely scattered gravel pits as comparable properties is likewise flawed because no commercial-industrial development potential was identified in those gravel pit sales. Thus, \$2,000 per acre was unrealistic and substantially understated.

By the same token, the Town's \$6,400 (rounded) per acre value was not appropriate for the subject Property for several reasons.

The weak economy which prevailed in 1991 and the lack of local projects requiring the type of material available on the subject Property tended to depress the Property's value even as a gravel pit.

Pine Road and the type of developments present in 1991 is inferior to the more desirable locations of the comparable sales accessed from Routes 27 and 101. Three out of five of the Town's comparables had no adjustment for location. The other two were minimal (+10%).

The price per acre of the Town's comparables ranged from \$1,612 to \$12,236 and only the 4.12 acre sale was given any adjustment for size (-20%).

Only one of the Town's comparables were adjusted for topography in spite of unrebutted testimony concerning the expense to develop adverse features found in the subject 46 acre site.

The board found its review-appraiser's report more cogent and convincing than either party's assumptions used to support their conclusion of value.

We therefore rule the 1991 market value is \$190,000 (unequalized).

Therefore, the ordered 1991 assessment is \$182,400 ($\$190,000 \times .96$) (\$4,300 per acre rounded).

If the taxes have been paid, the amount paid on the value in excess of \$182,400 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992, 1993 and 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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 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

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Albert Grappone, Agent for Exeter Sand and Gravel, Inc., Taxpayer; and Chairman, Selectmen of Brentwood.

Dated: February 3, 1995

Valerie B. Lanigan, Clerk