

Levi Ladd

v.

Town of Pembroke

Docket No.: 11107-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

Map/Lot

559/6: 73 acres in current use and 103 acres not in current use with a combined assessed value of \$540,950;

559/16-2: 29 acres in current use and 6 acres not in current use with a combined assessment of \$69,500.

The lots are on the north and south side of North Pembroke Rd. and contain active gravel operations in the areas not in current use (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessments were 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 failed to meet the burden of proof to show the 1991 assessment was unfair or disproportional.

The Taxpayer argued the assessments were excessive because:

- (1) the rear land was assessed at too high a rate per acre;
- (2) some of the land is assessed as potential homesites which is too speculative a use at this point;
- (3) Robert Cole, President of Concord Sand and Gravel, told the board the economic life of the gravel operation will end by the year 2000; and
- (4) Mr. Ladd estimated the value of the Property under appeal was \$200,000 on April 1, 1991.

The Town argued the assessments were proper because:

- (1) the Taxpayer did not submit any information to the Town as to the basis of his belief of excessive assessment even after specific requests for such information;
- (2) the Taxpayer did not comply with the current use rules as to keeping the Town informed of the expansion of the gravel pit so the proper land use change tax could be assessed;
- (3) the sale of the Plourde gravel pit in 1986 for \$1,300,000, after the improvements to the property are deducted, indicates a per acre value of \$14,000; the Taxpayer's Property would be assessed, if no current use assessment is calculated, at \$3,266 per acre; and
- (4) the other active gravel pits in the Town are assessed in the same manner as the Taxpayer's.

Board's Rulings

Based on the evidence, we find the Town supported the 1991 assessment.

Although the Town made no specific deduction or adjustment for reclamation costs for the subject gravel operation, neither did they consider

potential reclamation costs for other gravel pits in the Town. Instead, they reasoned that comparable sale prices determined by buyers and sellers took into account the remaining economic life of the pit as well as the estimated cost to close the pit when depleted.

While the Taxpayer felt that any assessment value based on potential house lots was premature, at the same time he indicated the commercial development of the tract after bridge construction (est. \$100,000 cost) seemed a more likely highest and best use of the parcel when the pit is closed around the year 2000. The board notes the parcel abuts land owned by the Taxpayer in Concord that fronts on Route 106 and abuts the parcel sold by the Taxpayer and improved with Sam's Club on Route 106. Further, the Taxpayer estimated that 50% of the pit was still viable for excavation as of the assessment date in 1991.

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayer also raised issues concerning the Town's land use change tax on the subject but the board ruled that no jurisdiction exists since the claim was not timely appealed pursuant to RSA 79-A:10.

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 Page 4

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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(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. 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

George Twigg, III, Chairman

Paul B. Franklin, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Levi Ladd, Taxpayer; and Chairman, Board of Selectmen of Pembroke.

Dated: July 26, 1995

Valerie B. Lanigan, Clerk

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