

Peter G. Cook and Chester E. Chellman

v.

Town of Ossipee

Docket Nos.: 15882-94PT and 16527-95PT

DECISION

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

Tax Year 1994

\$38,900 on Lot 14, a vacant, 79.95-acre lot as identified on the assessment-record card (card);

\$187,500 on Lot 20, a 64.5-acre lot as identified on the card;

\$66,600 on Lot 21, a vacant, 145-acre lot as identified on the card;

Tax Year 1995

\$38,900 on Lot 14, a vacant, 79.95-acre lot as identified on the card;

\$194,200 on Lot 20, a 64.5-acre lot as identified on the card; and

\$75,100 on Lot 21, a vacant, 145-acre lot as identified on the card (the Properties).

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying a

disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

Page 2
Cook/Chellman v. Town of Ossipee
Docket No.: 15882-94PT and 16527-95PT

The Taxpayers argued the assessments of lots 14, 20 and 21 were excessive because:

Lot 14

- 1) the lot is landlocked and is 1 mile from a town maintained road and closest utilities;
- 2) the topography is rough and rocky; and
- 3) based on an April 1995 purchase of map 17 lot 7 for \$300 an acre, the lot should be assessed at \$300 per acre.

Lot 20

- 1) the acreage used by the Town is incorrect; the correct size is 58.4 acres;
- 2) the gravel pit has effectively been closed since the fall of 1992, there has been no activity and there is no source of income; and
- 3) the land should be assessed as vacant land.

Lot 21

- 1) the acreage used by the Town is incorrect and should be 91.8 acres.

The Town argued the assessments of lots 14, 20 and 21 were proper because:

Lot 14

- 1) the lot has been treated as backland with no frontage;

- 2) the \$800 per acre base value has been depreciated for bulk and topography considerations; and
- 3) the comparable sale used by the Taxpayers was an estate sale and was not an arm's-length transaction.

Lots 20 and 21

- 1) the lots are assessed as 2 parcels because of Brownell Road which creates a subdivision;
- 2) the survey does not indicate the lots acreage, the owner(s) of the property or a certification; the Town has not been given good documentation to support changing the acreage; and

Page 3

Cook/Chellman v. Town of Ossipee

Docket No.: 15882-94PT and 16527-95PT

- 3) the Town considers lot 20 as an active gravel pit until the Taxpayers do something to remove it from the record.

BOARD'S RULINGS

The board rules on the lots individually as follows.

Lot 14

The board finds the proper assessed value for lot 14 to be \$30,200. Lot 14 is not landlocked as argued by the Taxpayer because it abuts and can be accessed through lot 20 which has frontage on a class V town road. However, because lot 14 can only be accessed through lot 20, lot 14 and lot 20 should be considered as one economic unit for arriving at their value. Consequently, the board has revised both the Town's quantity factor and the topography factor. Based on a review of the assessment-record cards, the board estimates the size adjustment factor for the 138 acres (approximate total acreage of lot 14 and lot 20) is .63. Also, based on the description of the quality of the

land and its distance from a road, the board has reduced the topography condition factor to .75. In summary the calculation is as follows:

$$79.95 \text{ acres} \times \$800 \text{ per acre} \times .63 \times .75 = \$30,200$$

The board finds Mr. Cook's purchase of lot 7 for \$300 is not conclusive evidence for valuing lot 14. Lot 7 was indeed landlocked having no current physical or legal access to it. Mr. Cook was one of the only two abutters to lot 7 that would have had any interest in acquiring it. By considering lot 14 as one economic unit with lot 20 and applying the Town's quantity acreage adjustment, the resulting assessment recognizes the land is remote but still part of an accessible and separately transferrable parcel available to any potential purchaser, not just an abutter.

Lot 20

The first issue in dealing with lot 20 is what is a reasonable description of the lot's size. The board finds that lots 20 and 21 were purchased in 1972 and described by metes and bounds in the deed. The purchase and sales agreement at that time described the Property as 150 acres and

Page 4
Cook/Chellman v. Town of Ossipee
Docket No.: 15882-94PT and 16527-95PT

referenced a plat, apparently not recorded, by a Thadeus Thorne. While that plat does not include any acreage calculation, it does have some metes and bounds notations generally comporting with the deed description. The board finds the Town's insistence that a registered survey be produced before any change in acreage can be made, to be unreasonable given the deed and plat description of lots 20 and 21. Further, while there was no breakdown of acreage between lot 20 and 21 contained in either the deed or the Thorne plat, it is reasonable that the lots be described by the calculations contained in the Chellman letter of February 16, 1995.

Therefore, the board finds the correct acreage of lot 20 to be 58.4 acres and for lot 21 to be 91.8 acres. The total of these calculations is 150.2 acres, nearly identical to the deed description and estimate contained in the purchase and sales agreement. The board understands the Town's reluctance to change acreages without reasonable proof that the tax maps are incorrect. The Town, however, gave no good counter evidence as to the basis of the tax map calculations, and thus, the board finds the deed description as confirmed by the subsequent perimeter survey by Chellman is adequate to revise the acreage.

The second issue of lot 20 is whether the Town's assessment of 30 acres as a gravel pit is reasonable. The board finds it is not and deletes the condition factor relative to any value attributable to gravel.

RSA 72:13 reads:

72:13 Mines, Sand, Gravel, Loam, or Other Similar Substances. Real estate shall be taxed independently of any mines or ores contained therein until such mines or ores shall become a source of profit, and independently of any sand, gravel, loam, or other similar substances contained therein until any of them shall become a source of profit; except when such mines, ores, sand, gravel, loam, or other similar substances, or rights therein are owned by some person other than the one to whom such real estate is taxed, in which case they shall be taxed as real estate to such other person.

RSA 72:13 allows for the assessment of minerals, i.e., gravel in this case, to be assessed only at the time it is being extracted and becomes a source of profit. The testimony was that the last time any material was

Page 5
Cook/Chellman v. Town of Ossipee
Docket No.: 15882-94PT and 16527-95PT

removed from this pit was in 1992 and that based on the planning board's review of an existing permit, further conditions were placed by the planning board to be met before further excavations could take place. The board finds

the original 1981 permit, as reviewed and conditioned by the planning board in 1992 would not allow the Town to assess gravel in 1994 and 1995, pursuant to RSA 72:13. Also the permit adds little if any value to the Property's bundle of rights given the planning board's conditions and the uncertain economic viability of proceeding with removing gravel.

Consequently, the board finds the assessment is calculated as follows.

1 acre site value	\$ 7,400
Frontage	\$19,200
Rear land 57.4 acres x \$800 x .63 x .75	<u>\$21,700</u>
Total	\$48,300

Lot 21

The sole issue with lot 21 is its correct acreage. For the reasons already mentioned for lot 20, the board finds lot 21's total acres to be 91.8 acres. The board has valued lot 21 as a separate economic unit based on the total 91.8 acres. The board estimated, based on a review of the assessment-record cards submitted, that a size adjustment factor for the rear land would be .72. Consequently, the assessment is calculated as follows.

1 acre site value	\$ 7,400
Frontage	\$ 9,600
Rear land 90.8 acres x \$800 x .72 x .8	<u>\$41,800</u>
Total	\$58,800

Conclusion

In conclusion, the total assessments of these three lots is \$137,300. While the board did not give any weight to the Taxpayers' marketing of the Property in 1995 and 1996 at the \$140,000 asking price recommended by a realtor, the total assessments do have some reasonableness related to that offer.

If the taxes have been paid, the amount paid on the values in excess of \$30,200 for lot 14; \$48,300 for lot 20; and \$58,800 for lot 21 shall be

refunded with interest at six percent per annum from date paid to refund date.

Page 6
Cook/Chellman v. Town of Ossipee
Docket No.: 15882-94PT and 16527-95PT

RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1996. 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 "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration 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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Page 7
Cook/Chellman v. Town of Ossipee
Docket No.: 15882-94PT and 16527-95PT

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter G. Cook and Chester E. Chellman, Taxpayers; and Chairman, Selectmen of Ossipee; and Alice MacKinnon, Agent for the Town of Ossipee.

Date: September 9, 1997

Valerie B. Lanigan, Clerk

0006

Peter G. Cook and Chester E. Chellman

v.

Town of Ossipee

Docket Nos.: 15882-94PT and 16527-95PT

ORDER

This "Order" responds to the "Taxpayers'" (Peter Cook and Chester Chellman) letter filed on February 5, 1998 which the board treats as a "motion" for enforcement pursuant to TAX 203.05 (j). The board finds the motion was not filed within three months of the September 9, 1997 decision; consequently, it is not a timely Motion pursuant to TAX 203.05 (j).

Further, the board notes the assessment being complained about is within \$100 of the board's ordered assessment regardless of the methodology used by the Town. The Taxpayers have their annual appeal rights under RSA 76:16, 16-a and 17 if they so desire.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Page 2
Cook/Chellman v. Town of Ossipee
Docket No.: 15882-94PT and 16527-95PT

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter G. Cook and Chester E. Chellman, Taxpayers; and Chairman, Selectmen of Ossipee; and Alice MacKinnon, Agent for the Town of Ossipee.

Date: February 24, 1998

Valerie B. Lanigan, Clerk

0006

Peter G. Cook and Chester E. Chellman

v.

Town of Ossipee

Docket No.: 15882-94PT

and

Peter G. Cook

v.

Town of Ossipee

Docket No.: 15883-94PT

ORDER

These cases were filed under the board's expedited procedure (TAX 207) and the parties have submitted their arguments in brief form. The board has reviewed the record and, before issuing a decision in these cases, has decided a hearing is needed to answer certain questions. The board also notes the Taxpayers have pending 1995 appeals (Docket Nos.: 16526-95PT and 16527-95PT) which have been scheduled for April 4, 1997. On its own motion the board consolidates the 1994 expedited appeals with the 1995 appeals, cancels the April 4, 1997 hearing for the 1995 appeals and schedules both years for hearing on April 30, 1997. The rescheduling to April 30 is so that there is

adequate time to hear the cases. (There are four other cases scheduled for April 4, 1997.) A separate hearing notice is enclosed.

In addition to being present at the hearing to answer questions, the parties should come to the hearing with the following documents:

Page 2
Cook/Chellman v. Town of Ossipee
Docket Nos.: 15882-94PT and 15883-94PT

Taxpayer

- 1) copies of deeds for all properties being appealed that establish ownership as of April 1, 1994 and 1995;
- 2) any current-use applications or communications relative to current use in the Taxpayers' possession; and
- 3) an itemization and documentation of the costs sought by the Taxpayer.

Town

- 1) copies of all current-use applications and maps associated with the properties under appeal;
- 2) a copy of the Town's subdivision and zoning regulations in effect as of April 1, 1994 and 1995; and
- 3) revised copies of the properties' assessment-record cards for 1994 and 1995 showing the effect of any abatement issued for those years.

The board is aware of the significant time both parties have spent in the preparation of the documents in these appeals. This hearing is not intended to prolong the process but to simply resolve some of the unanswered questions, hear any evidence unique to the two tax years and to obtain the above-referenced documents.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Page 3

Cook/Chellman v. Town of Ossipee

Docket Nos.: 15882-94PT and 15883-94PT

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Peter G. Cook, Taxpayer; Chester E. Chellman, Taxpayer; Alice MacKinnon, Town's representative; and Chairman, Selectmen of Ossipee.

Date: February 27, 1997

Valerie B. Lanigan, Clerk

0006