

Peter G. Cook

v.

Town of Ossipee

Docket Nos.: 15883-94PT and 16526-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" assessments as follows.

Tax Year 1994

\$591,081 (adjusted) on Lot 183, a 927-acre lot (851 acres in current use; 76 acres not in current use) with two buildings;

\$4,992 on Lot 6, a vacant 208-acre lot in current use (the Taxpayer indicated this lot was no longer in dispute);

Tax Year 1995

\$603,216 on Lot 183, a 927-acre lot (851 acres in current use; 76 acres not in current use) with two buildings; and

\$7,900 on Lot 7, a vacant 10.2-acre lot (the Properties).

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

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 carried this burden.

The Taxpayer argued the assessments were excessive because:

Lot 7

1) the lot was purchased in April 1995 for \$300 an acre in an arm's-length transaction; and

Page 2
Cook v. Town of Ossipee
Docket No.: 15883-94PT

2) the lot is landlocked and is at least 1 mile from a town maintained road and closest utilities.

Lot 183

1) the Town has assessed ad valorem road frontage for land in current use;
2) the gravel pit assessed has been inactive since 1978 and meets the definition of an abandoned pit pursuant to RSA 155-E.

The Town argued the assessments were proper because:

Lot 7

1) the lot was purchased from an estate, was not considered an arm's-length transaction and was classified as non-qualified in setting the state ratio;
2) the lot has been assessed as a backland parcel; and
3) the Taxpayer needs to submit qualified comparable sales to support his value.

Lot 183

1) the current use map does not clearly delineate the property not in current use (NICU); and
2) the gravel pit on the Merrow lot was on the planning board's 1994 list as

an active pit.

Subsequent to the hearing the board issued two orders, on May 7, 1997 and July 18, 1997, requiring the Taxpayer to revise the current-use map delineating the actual areas NICU and the Town to revise its assessment based on the Taxpayer's revised map.

Board's Rulings

Lot 7

The board finds the proper 1995 assessment to be \$4,100. Prior to being purchased by the Taxpayer Lot 7 was a land-locked parcel having no legal access. The board concludes its highest and best use is to be joined in ownership to one of the abutters - exactly what occurred by the Taxpayer's purchase. Consequently, it should be valued as if part of the larger adjoining parcel (lot 183) and receive the same quantity discounts. The

Page 3
Cook v. Town of Ossipee
Docket No.: 15883-94PT

assessment is calculated: $10.2A \times \$800 \times .50$ (size discount) = \$4,100. While this is slightly higher than the Taxpayer's purchase price, it generally comports with the sales price and conforms to the Town's assessment methodology.

Lot 183

Based on the evidence submitted at hearing and the subsequent submissions as ordered by the board, the board finds the 1994 and 1995 assessments to be calculated as follows.

1994

Description	# of Acres	Calculations	Assessed Value
Library lot	2	$(\$12,600 - \$550) \times 1.2$ (cond. factor)	\$ 14,500
Chick house lot (incl. driveway)	3	$\$12,600 \times 1.2$ (cond. factor)	\$ 15,100
Merrow lot	3	$\$12,600 \times .6$ (cond. factor)	\$ 7,600
Merrow lot	3	$\$12,600 \times .6$ (cond. factor)	\$ 7,600
Rear acreage (NICU)	68	$\$800 \times .5$ (size discount)	\$ 27,200
Current Use-White Pine	209		\$ 14,630
Current Use- Hardwood type	392		\$ 7,526
Current Use-Other Forest type	169		\$ 8,112
Current Use- Wetlands	78		\$ 936
Total Land Value			\$103,204
Abated Building Value			\$179,100
Total Assessed Value			\$282,304

Page 4
Cook v. Town of Ossipee
Docket No.: 15883-94PT

1995

Description	# of Acres	Calculations	Assessed Value
Library lot	2	$(\$11,500 + \$550) \times 1.2$ (cond. factor)	\$ 14,500
Chick house lot (incl. driveway)	2	$(\$11,500 + \$550) \times 1.2$ (cond. factor)	\$ 14,500
Merrow lot	five 1-A sites	$5 \times \$11,500 \times .6$ (cond. factor)	\$ 34,500

Rear acreage (NICU)	70	\$800 x .5 (size discount)	\$ 28,000
Current Use-White Pine	209		\$ 15,650
Current Use-Hardwood type	392		\$ 8,805
Current Use-Other Forest type	169		\$ 9,280
Current Use-Wetlands	78		\$ 973
Total Land Value			\$126,208
Building Value			\$179,100
Total Assessed Value			\$305,308

The board's assessment conclusions are based on the following findings.

1) As referenced in the board's July 18, 1997 order, the total acreage under appeal is determined to be 927 acres. The various survey maps submitted by the Taxpayer are not in all cases detailed enough to rely on the total acreage calculated from those plans.

2) Also as noted in the board's July 18, 1997 order, any excess land not applied for in the original current-use applications, and not consumed by the revised areas NICU, are assessed ad valorem as rear land ("unidentified land").

3) The total number of acres NICU is 79 acres, not 80 acres as argued by

the Town. The board finds the one acre for the Chick lot driveway should come out of the "unidentified land" that is to be assessed at ad valorem rates.

4) For 1994 and 1995, the Library lot is to be assessed as two acres as depicted on the current-use plan. The board estimated a base site value of \$12,050 by calculating the difference between the Town's 1994 base rates for a 3-acre site and the Town's 1995 1-acre site.

5) For 1994, the board determines the entire Chick lot of three acres (inclusive of one acre for driveway) has a condition factor of 1.2 similar to the Library lot lacking any other specific evidence as to the desirability or comparability of the Chick house lot.

6) For 1995, the board has reduced the acreage of the Chick house lot to 2 acres (inclusive of one acre for driveway) to conform to the change in the zoning lot requirements effective for 1995. The board has valued the 1-acre driveway not as a separate house lot, but as supplemental land to the primary Chick house lot.

7) The total frontage NICU as depicted on the current-use plan is 1,678 feet. The frontage of the Library lot and the Chick lot is 580 feet. Consequently, 1,098 feet of road frontage along the Merrow lot is left as additional frontage to be assessed at ad valorem rates. In 1994, due to the minimum zoning frontage requirement of 400 feet, the board has assessed two additional 3-acre - 400 foot frontage sites on the Merrow lot. In 1995, due to the change in the zoning minimum frontage requirement to 200 feet, the board has assessed five 1-acre sites with 200 foot frontage each on the Merrow lot.

8) The board finds the Town's attribution of value to the gravel pit on the Merrow lot by use of condition factors on the frontage parcels is not appropriate; thus, the board has deleted those condition factors. RSA 72:13

allows for the assessment of minerals, i.e., gravel in this case, to be assessed only at the time that it is being extracted or becomes a source of profit.

RSA 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.

The Taxpayer testified that the last time any material was removed commercially from the pit was prior to his purchase in 1978. Since that time, any material that was removed was without his permission. Further, as the Taxpayer testified, no RSA 155-E permit had been obtained for the pit or a report filed with the selectmen as an active pit pursuant to RSA 155-E:2 I(d).

Consequently, the board finds the Town's reliance on the pit being on the planning board's active pit list does not establish a basis for assessing the gravel under RSA 72:13.

9) The board has applied the .60 factor as recommended by the Town to the two Merrow lot sites on Archer's Pond Road because of its class 6 status.

10) The board has not assessed any river frontage as suggested by the Town in its July 31, 1997 letter. First, this was the first time during the entire appeal the board has seen such a calculation. Second, the current-use

plan shows all river frontage being surrounded by current-use land, and thus, is not subject to any ad valorem assessment (CUB 303.01).

11) The balance of the rear land on the Merrow lot is assessed with just the size-quantity discount. As discussed earlier, the board finds adding a condition factor for being part of a gravel pit is inappropriate.

12) The current-use valuations are calculated based on the original acreage of the original current-use application. The price per acre is drawn

Page 7
Cook v. Town of Ossipee
Docket No.: 15883-94PT

from the Town's July 31, 1997 letter which reflects the current-use assessments used by the Town and the appropriate equalization ratios for the years involved.

If the taxes have been paid, the amount paid for Lot 7 on the value in excess of \$4,100 for 1994 and for Lot 183 on the values in excess of \$282,304 for 1994 and \$305,308 for 1995 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, 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.

Page 8
Cook v. Town of Ossipee
Docket No.: 15883-94PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

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

Date: September 9, 1997

Valerie B. Lanigan, Clerk

0006

Peter G. Cook

v.

Town of Ossipee

Docket #16526-95PT

ORDER

This "Order" responds to the "Taxpayer's" (Peter Cook) letter filed with the board on January 24, 1998 and the "Town's" February 3, 1998 letter with attached assessment-record card. Upon review, the board finds that the Town's 1997 assessment reasonably comports with the board's September 9, 1997 decision with the current use values equalized as required by RSA 79-A:5 I and current-use board rule CUB 304.02 (f).

The board will take no further action on this matter.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Page 2
Cook v. Town of Ossipee
Docket No.: 16526-95PT

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Peter G. Cook, Taxpayer; and Chairman, Selectmen of Ossipee.

Date: February 24, 1998

Valerie B. Lanigan, Clerk

0006

Peter G. Cook

v.

Town of Ossipee

Docket Nos.: 15883-94PT and 16526-95PT

ORDER

During the April 30, 1997 hearing on these appeals, it was evident from the testimony that the original current-use application for Map 13, Lot 183 and the Town's assessment of Lot 183 were in conflict as to the actual acres in current use and not in current use. Further, the Taxpayer's current-use application map does not denote the boundaries of the land not in current use adequately to definitively locate them.

Consequently, the board orders the Taxpayer to submit to the Town a revised current-use application and map in compliance with CUB 302.01 (specifically, 302.01-e, copy attached) within 30 days from the date on this order, copying the board. The Town shall review the current-use application and revise its assessment-record card for Lot 183 to reflect the actual acreage in current use and not in current use. The Town shall perform this review within 30 days of receipt of the Taxpayer's revised application and shall submit the revised assessment-record card to the board copying the

Taxpayer.

Once the board has received the revised current-use map and assessment-record card, it will complete its deliberations and issue its decision.

Page 2
Cook v. Town of Ossipee
Docket Nos. 15883-94PT and 16526-95PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

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

Date: May 7, 1997

Valerie B. Lanigan, Clerk

0006

Peter G. Cook

v.

Town of Ossipee

Docket Nos.: 15883-94PT and 16526-95PT

ORDER

This order relates to the telephone conference held with the parties on July 14, 1997 to address the Taxpayer's revised current-use application and the Town's June 27, 1997 response. Mr. Peter G. Cook, Taxpayer, Alice MacKinnon, representing the Town of Ossipee; and Josephine Belville, Assessing Technician for the Town of Ossipee, participated in the telephone conference.

The Taxpayer is ordered to revise the map with the following information and resubmit it to the Town, copying the board, by July 25, 1997.

1) Measure and note the dimensions on the lots that are not to be in current use, (Library lot; Chick House lot and Merrow lot); and

2) Measure and delineate the driveway to the Chick House lot.

The total acreage for lot 831 for the years under appeal shall be the 927 acres as assessed by the Town. The Taxpayer's revised estimate of 915 acres shall not be used. Any excess land not applied for in the original

current-use applications, and not consumed by areas delineated above as not in current use, will be assessed ad valorem as rear land.

The Town will supply to the board, copying the Taxpayer, the revised assessment by August 1, 1997.

Page 2
Cook v. Ossipee
Docket Nos.: 15883-94PT and 16526-95PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

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

Dated:

Valerie B. Lanigan, Clerk