

**Lisbon Sand & Gravel, Docket No.: 19735-02PT  
Barbara Clough-Clinton M. Clough Construction, Inc., Docket No.: 19737-02PT  
Mavis M. Clough 1991 Revocable Trust, Barbara Clough, Docket No.: 19738-02PT  
Barbara Clough, Clinton M. Clough 1996 Revocable Trust, Docket Nos.: 19739-02PT & 20266-03PT**

**v.**

**Town of Lisbon**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessments of the following:

Docket No.: 19735-02PT - \$105,969 on Map R27, Lot 11, a 37-acre lot (8 acres not in current use (NICU) and 29 acres in current use (CU)) with a gravel pit;

Docket No.: 19737-02PT - \$66,507 on Map R16, Lot 7, a 24-acre lot (3.96 acres NICU and 20.04 acres in CU) with a reclaimed gravel pit. The Taxpayer also owns, but did not appeal Map R16, Lot 5;

Docket No.: 19738-02PT - \$75,036 on Map R17, Lot 7A, a 265.06-acre lot (7.76 acres NICU and 257.30 in CU) with a gravel pit; and

Docket Nos.: 19739-02PT - \$199,464 & 20266-03PT - \$206,890 on Map R16 Lot 13, a 65.62-acre lot (12.0 acres NICU and 53.62 in CU) with a gravel pit (the “Properties”). Because of the commonality of issues and interrelationship of the Taxpayers, these cases were consolidated for hearing. For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

### **Parties General Arguments**

Overall, the Taxpayers argued the assessments were excessive because:

- (1) RSA 72-B:1 was repealed in 2001 and enactment of RSA 72-B:1, II requires the excavation areas, as defined in RSA 155-E:1, VI, be “taxed as real property pursuant to RSA 72:6 independent of any earth contained therein”; or more simply stated, the prior excavation activity tax was, by 2002, repealed and the current statute prohibits assessing officials from including the value of the earth in their assessment of the Properties;
- (2) the Town’s method of assessing the Properties is flawed because it has resulted in a double assessment of the site value and pit areas;
- (3) the Town incorrectly assumed a commercial value of \$20,000 per acre;
- (4) no adjustments were made for size, location or access;
- (5) the backland adjustments failed to consider the excess land in current use; and
- (6) reclamation costs were not factored into the assessments.

The Town testified all properties in Town with access were assigned a primary site value. Similarly, all excavation pits with access were assessed multiple one-acre primary sites for the estimated entire excavation area. The Town did not use the commercial value in assessing the

site value. No reclamation factor should be considered in valuing the Properties as they have not been appraised utilizing the income approach to value.

### **Parties Specific Arguments**

Docket No.: 19735-02PT; Map R27, Lot 11

The Taxpayer argued the assessment was excessive because:

- (1) the lot does not have any frontage, its access is via a 30-foot wide by 200-foot long right-of-way, and it is two miles from Route 302 off of a dead end road;
- (2) the Town has a six-ton weight limit on its roads in the spring and the cost of a bond would be prohibitive so the pit cannot sell products during the spring thaw;
- (3) the land value should be adjusted for its size, location and loss of access due to bond requirements;
- (4) the lot will not be suitable for commercial development when the gravel excavation is complete and its most likely use, and thus, value, is as a house lot;
- (5) two scenarios were analyzed to determine the highest and best use of the Property; and
- (6) the assessed value should be \$19,484 based on a highest and best use as industrial development.

The Town argued the assessment was proper because:

- (1) the lot's use is grandfathered; it is located in a residential agricultural zone and a highest and best use as industrial is not a permitted use by the Town in this zone;
- (2) none of the Taxpayer's comparables are in comparable neighborhoods;
- (3) there is a 30 foot right-of-way to get to the lot and it is possible that two lots could be subdivided with a variance which would not be difficult to obtain; and

(4) when the material is all played out on this lot and it is reclaimed, its highest and best use will likely be for residential development.

Docket No.: 19737-02PT; Map R16, Lot 7

The Taxpayer argued the assessment was excessive because:

- (1) the lot was formerly a gravel pit but was reclaimed with the exception of 2.1 acres which are used for stockpiling excavated material from an adjoining lot;
- (2) an Intent to Excavate was accidentally filed with the Town on this lot when it should have referred to the abutting lot;
- (3) the highest and best use of this lot is as a house lot; and
- (4) the assessed value should be \$13,312.

The Town argued the assessment was proper because:

- (1) aerial photos on file with the Town indicated the lot was, as of 2002, still an active gravel pit, with product being removed from that area, and thus, it was assessed as a gravel pit;
- (2) house lots in the area of the lot are assessed a base rate of \$20,000 which was derived from sales in the area; and
- (3) sales on Oregon Road were used in the analysis and support the assessment.

Docket No.: 19738-02PT; Map R17, Lot 7A

The Taxpayer argued the assessment was excessive because:

- (1) the lot has frontage on Route 302 and on Perch Pond Road with 5.7 acres of backland NICU; the backland has no road frontage, no view potential and is not included in the gravel pit area;
- (2) the Town has incorrectly assessed the gravel pit area (which is at the beginning of its life), currently 2.0 acres;

- (3) timber has been harvested on this 2.0 acre site but the topsoil has only been removed from 0.40-acres; therefore, the ad valorem assessment of the full 2.0 acres is premature;
- (4) the highest and best use of this lot is as residential; and
- (5) comparable sales support an assessed value of \$32,358.

The Town argued the assessment was proper because:

- (1) the lot has frontage on Plains Road and on Perch Pond Road; and
- (2) the Town noted there was an existing excavated area in addition to the new area where the topsoil had not been disturbed.

Docket Nos.: 19739-02PT & 20266-03PT; Map R16, Lot 13

The Taxpayer argued the assessments (as revised) were excessive because:

- (1) the lot has frontage along Oregon Road with a brook and steep topography;
- (2) the parcel must be accessed through an abutting lot under separate ownership;
- (3) the Town requires a bond to be posted in early spring to access Oregon Road which is cost prohibitive;
- (4) there are higher reclamation costs involved with this parcel; and
- (5) the highest and best use of the parcel is industrial and the assessed value should be \$14,509.

The Town stipulated the acreage NICU indicated for tax year 2003 (12 acres) was a clerical error; thus, the assessed value for tax year 2003 should have been the same as tax year 2002 at \$199,464 with 9 acres NICU. However, the Town recommended the five-acre primary site base value be reduced by 50% to account for its access through an adjoining parcel.

### **Board's Rulings**

Before making specific findings for each appeal and each parcel, some general rulings and findings that apply to all parcels are in order first. Generally, in valuing property, all real

estate rights, tangible and intangible, are assessed. RSA 21:21, I defines land and real estate as “[t]he words ‘land’, ‘lands’ or ‘real estate’ shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.” Further, RSA 72:6 provides that “[a]ll real estate, whether improved or unimproved, shall be taxed except as otherwise provided.”

While they vary from property to property, these ownership rights are often viewed as a “bundle of rights.”

Ownership rights include the right to use real estate, to sell it, to lease it, to enter it, to give it away, or to choose to exercise all or none of these rights. The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest.

International Association of Assessing Officers, Appraisal of Real Estate, 7 (11<sup>th</sup> ed. 1996).

When appraising a property that has no restrictions of rights (beyond being subject to taxation, eminent domain, police power and escheat), these rights are normally viewed collectively (as a bundle) and valued after a highest and best use analysis is performed of the entire property.

In these appeals, the valuation is not so straightforward for a couple of reasons. First, all the parcels under appeal have, as part of their bundle of rights, the potential for the extraction and sale of sand and other aggregates. This right, while inherently interrelated to the balance in the property’s bundle of rights, can be, and at times is, separately transferred (similar to timber rights) to an entity that is distinct and separate from the owner of the underlying real estate.

While that is not the case in any of these appeals, it is mentioned to emphasize the fact that the statutes, specifically RSA 72-B:1, II, exempt “earth” from being valued for taxation in combination with the balance of the bundle of rights as normally occurs pursuant to RSA 72:6.

The legislature in 2002 specifically provided that “earth” should be taxed, when extracted

(RSA 72-B:1, II), at \$.02 per cubic yard, similar in manner as timber that is taxed when cut at 10% of its stumpage value (RSA 79:2 and 3). Thus, in valuing the Properties, it must be done without considering one of their larger rights (sticks) in their bundle of rights, their sand and gravel (aggregate) value.

Second, much of the area of the parcels under appeal has the undisturbed acreage assessed in the RSA ch. 79-A current use program. Thus, the market value of those sticks in the bundle of rights are not valued at market rates but at current use values prescribed within the current use program. (RSA 79-A:5, I; PART Cub 304).

In short, the exercise of determining the proper and proportionate assessment under the applicable statutes is reduced to the question of what is the market value of the land not in current use (“LNICU”) without considering its “earth” or aggregate value.

The remaining bundle of rights embodied in the LNICU and minus any aggregate value still must be appraised “at its full and true value” (RSA 75:1) and at its highest and best use. 590 Realty Co., Ltd. v. City of Keene, 122 N.H. 284, 285 (1982). After a review of the extensive evidence and testimony presented at the consolidated hearing, we find the highest and best use of the several parcels under appeal that have permitted and ongoing aggregate removal is as sand or gravel pit operations with future residual residential or light commercial/industrial use. While testimony was presented as to the competitive and sometimes seasonal nature of the aggregate business in the Lisbon region, the long and fairly extensive use of the Properties by related owners is good evidence that their immediate highest and best use is continued sand extraction. The paradox in this exercise is that while the statute prevents aggregates from being valued with the other property rights and subject to the annual property tax, their existence and active removal leads to this highest and best use conclusion.

Ms. Mary Pinkham-Langer of the department of revenue administration, who was a witness on behalf of the Town, stated she advises towns to value the land associated with a sand and gravel operation in a manner similar to land used for yarding and inventory areas of logs and sawed lumber of sawmills. We agree with this comparison. Both uses have an area that is intensely used (sawmill building site and active excavation area) with necessary adjoining acreage for storage of inventory and stockpiled material. Because of this interrelated use to the primary use, the board concludes the land associated with and necessary for an aggregate removal process (the access roads and storage areas necessary for separating and/or processing material) has a higher value than supplemental or rear land as argued by the Taxpayers. Further, as also discussed in the following paragraphs, we find the Town submitted no probative evidence to support its methodology of assessing the “supportive” acres as additional residential or commercial sites. Consequently relying on its experience (RSA 541-A:33, VI), the board has applied the Town’s primary site value to the active pit area (or at least one acre at the primary site value for each LNICU) and then a secondary land value utilizing the Town’s rear acre base rate of \$2,000 with no adjustments for size or quality.

The board reviewed the sales information submitted by both the Taxpayers and the Town but for the following reasons was unable to rely upon the value conclusions of either.

The Town submitted, as part of Municipality Exhibit A (pages unnumbered), two “Gravel Land Sales in Lisbon” to support its methodology of using the primary site value of \$20,000 for every acre utilized in conjunction with the sand extraction on each of the appealed lots. The board finds the Town’s use of these two sales to establish its base rate and gravel pit assessment methodology is flawed for two reasons. First, the Taxpayers presented testimony that one of the sales occurred between related parties, and thus, calls into question the arm’s-length nature of the

transaction. Second, and probably even more significant, the Town made no deduction for the sand and gravel value that was a significant portion of the sales price consideration in both sales. Just as any analysis for ad valorem purposes of any large tracts involving significant timber must extract an estimated timber value to result in an indicated residual value attributable to the underlying land, so must any analysis of sales containing marketable sand and gravel attempt to extract an estimate of the aggregate value to then have a residual land value to be analyzed on a per site or back land basis. The Town did no such analysis, and thus, its use of these sales to justify the higher \$20,000 per acre for all the active pit areas is without merit.

The Taxpayers presented sales of industrial sites in Whitefield, Lancaster and Campton which, while they reinforce the board's findings that the Town's assessment of all the active pit areas at \$20,000 is excessive, still do not result in a usable and conclusive estimate of value per acre for the LNICU. In addition to the sales not being in Lisbon, many of the price-per-acre estimates were derived from sales of larger tracts or lots, and thus, are inversely affected by the economies of scale inherent in most land transactions. Given all the differences of these sales, the board was unable to meaningfully use the Taxpayers' value conclusions in revising the assessments and the methodology utilized by the Town during its reassessment.

The parties also presented conflicting arguments as to whether the right to excavate obtained either through the permitting process under RSA ch. 155-E or the grandfathered rights to excavate, as exist with the Properties, is attributable to the "earth," and thus, exempt from property taxation or whether it is an intangible right that adds value to the underlying real estate as other land use permits do. The board finds the value of a grandfathered right to extract or one obtained through an RSA ch. 155-E permit is largely, but not exclusively, attributable to the "earth." Obviously one would not seek such a permit and the cost associated with it unless there

were aggregates to be removed. Further, once the aggregates are removed, such permits no longer have any residual value to the remaining real estate. However, the board finds some of the value of the intangible right to excavate aggregates also relates to the land necessary for such excavation during that process (during the time the highest and best use is for aggregate excavation), similar to the analogy presented by Ms. Pinkham-Langer of the supplemental land necessary for a sawmill operation. Thus, this finding supports the methodology of the active pit area having a value similar to the primary site value and for the land related to the excavation process having a value higher than just ordinary rear land.

The Taxpayers, in estimating the market value of the LNICU in several instances, subtracted reclamation costs for the active pit area. The argument presented was that such reclamation, as required by RSA ch. 155-E, would have to occur before any subsequent residential or commercial/industrial use of the Properties occurred, and thus, needs to be deducted to arrive at the current market value of the LNICU. We disagree. Ms. Pinkham-Langer testified that frequently “played-out” gravel pits are not reclaimed but are leveled and contoured in keeping with future residential or commercial/industrial development. Thus, the reclamation costs argued by the Taxpayers are often not necessary or certainly not to the degree as argued. The board agrees with Ms. Pinkham-Langer and has seen this occur in a number of cases including two eminent domain cases where large gravel excavation operations were either subsequently developed or were being managed in anticipation of subsequent subdivision development. State of New Hampshire v. Paul Garabedian, Jr., Docket No.: 18432-01ED and City of Nashua v. Sunset Rock, LLC, Docket No.: 18007-00ED. Thus we find the deduction of reclamation costs in these Properties is not appropriate.

**Detailed Findings**

Docket No.: 19735-02PT - Map R27, Lot 11

Lot 11 is comprised of a total of 37 acres, 29 acres assessed in current use and 8 acres NICU. The property is located off of Old River Road and is accessed by a 30-foot right of way that crosses a former railroad bed. The parties generally agreed the LNICU is comprised of approximately two acres of the face of the sand pit with three acres used for access and storage area for excavating and processing material. Additionally, one acre has been reclaimed and two additional acres for further excavation have been retained out of current use. At the hearing, the Town recommended reducing the base rate for the five-acre “gravel pit” from \$20,000 to \$10,000, reducing the ad valorem value of that portion of the LNICU from \$100,000 to \$50,000. The board agrees the base value reduction is appropriate due to the property’s more remote location and access difficulties than the other parcels. For the reasons stated in the general findings, the board has reduced the primary site base rate to be applied to two acres of the sandpit rather than five. Further, the board determined a secondary base rate of \$2,000 without any adjustment for size is appropriate for the staging area and \$1,000 for the one acre reclaimed and the two acres reserved for future excavation. In summary, the board finds the assessed value as follows:

Two acres - face of gravel pit (\$10,000/acre)	\$20,000
Three acres – staging area (\$2,000/acre)	6,000
One acre – reclaimed (\$1,000/acre)	1,000
Two acres – reserved for future excavation (\$1,000/acre)	2,000
Current use value for the 29 acres in current use	<u>2,969</u>
<b>Total assessed value</b>	<b>\$31,969</b>

Docket No.: 19737-02PT - Map R16, Lot 7

Lot 7 is comprised of a total of 27 acres and is located at the intersection of Oregon Road and Route 302. This parcel is assessed with 20.04 acres in current use and 3.96 acres NICU. Lot 7's legal access is from Oregon Road as Route 302 has controlled access frontage. The parties presented conflicting evidence as to whether the property had an active sand pit in 2002. Barbara Clough, the manager of all the Properties' sand operations, indicated that in 2002 and 2003 the property no longer had an active pit but contained only access roads and stockpile areas for an adjoining parcel under appeal, Map R6, Lot 13. The Town asserts that, based on aerial photos, an active gravel pit was on the property. Based on its review of the aerial photos and Ms. Clough's testimony, the board finds the Taxpayer's knowledge of the historical use of the property to be more intimate, and thus, more accurate. Consequently, the board concludes that as of 2002 there was no active gravel pit on Lot 7, but that it was used to access and to assist the removal of aggregates from an adjoining parcel owned by a related party. Because of the steep terrain and brook along the Oregon Road frontage of Lot 13, the board finds the highest and best use of Lot 7 is its continued use for access and support of removal of aggregates from Lot 13 and future potential residential or commercial development. While Lot 7 does not have legal access from Route 302, it has visibility from Route 302, and thus, could have some nominal commercial or industrial value. Given the general findings and specific findings relative to this lot, the board finds the assessed value to be calculated as follows:

One acre – primary site (\$20,000/acre)	\$20,000
2.96 acres – secondary acres (\$2,000/acre)	5,920
20.04 acres – current use	<u>3,607</u>
<b>Total assessed value</b>	<b>\$29,527</b>

In reviewing the testimony and the assessment-record cards submitted by the parties, the board notes that house lots of several acres in size in this area have a market value in the low to mid \$20,000 range. Consequently, this estimate of value for the 3.96 acres NICU at just under \$26,000 is reasonable and proportional to the assessment of similar parcels also NICU.

Docket No.: 19738-02PT - Map R17, Lot 7A

Lot 7A is comprised in total of 265.06 acres with 257.3 acres in current use and 7.76 acres NICU. Again, the parties initially submitted conflicting evidence as to the actual area being actively utilized for aggregate extraction and, is an example of where, as discussed during the hearing, the Town and the Taxpayers need to improve their records to facilitate not only the ad valorem assessment of these properties but the assessment of a land use change tax as areas are disturbed and disqualified from current use. After review of the aerial photos and the testimony submitted by both the Town's assessing contractor Mr. Leonard J. Nyberg, Jr., and Ms. Barbara Clough, the board finds that Ms. Clough and the Town generally agree that two acres are involved in the excavation operations, one acre for the active pit area and one acre for a staging area and access road. The parties agreed the additional 5.7 acres not in current use is not associated or near the gravel pit but located towards the rear of the parcel adjacent to the lots associated with Perch Pond. The Taxpayer argued the ad valorem value of the 5.7 acres should be based on the rear land base rate of \$1,500 with a size and quality adjustment factor as indicated in the preliminary assessment to account for size and quality adjustments inherent in being part of the larger tract. The board agrees. The fact that the balance of the land is assessed in current use should not increase the assessment of land NICU simply due to the application of the two different assessment bases (RSA 75:1 and RSA 79-A:5). Consequently, after review of the Taxpayer's arguments and the Town's land quality and size adjustment tables submitted at

the board's request in a letter subsequent to the hearing (dated March 24, 2005), the board finds the rear acre base value for the 5.7 acres should be adjusted by the -0.60 factor. In summary, the board finds the assessment of Lot 7A to be calculated as follows:

One acre – gravel pit (\$20,000/acre)	\$20,000
One acre – secondary land (\$2,000/acre)	2,000
5.76 acres – (\$1,500/acre) x size/quality adjustment (0.40)	3,456
257.30 acres – current use land	<u>26,436</u>
<b>Total assessed value</b>	<b>\$51,892</b>

Docket Nos.: 19739-02PT & 20266-03PT - Map R16, Lot 13

This parcel consists of a total of 65.62 acres. During the hearing there was conflicting evidence submitted as to the area NICU. After a lengthy discussion, the parties stipulated that for both years approximately 9 acres, as was assessed in 2002, should be NICU with the balance assessed in current use. Again, the difficulty in determining what land is eligible for current use and what is not highlights the need for the parties to continue to better define the sand excavation areas so that the annual property tax and the RSA 79-A:7 land use change taxes can be properly administered. The survey plan, the aerial photos and the parties' testimony indicate this property, while having frontage on Oregon Road, is physically accessed through the adjoining parcel (Map R16, Lot 7) due to the stream and steep slope along Lot 13's Oregon Road frontage. In the summary of the assessment that follows, the board has adjusted the active pit/primary site area by 25% to account for this access issue. The board finds the assessment to be as follows:

1.8 acres – active pit area (\$20,000/acre) x 0.75 for access	\$27,000
7.2 acres – roads, stockpile and staging areas and future expansion (\$2,000/acre)	14,400
56.62 acres – current use <sup>1</sup>	<u>5,164</u>
<b>Total assessed value</b>	<b>\$46,564</b>

If the taxes have been paid, the amount paid on the value in excess of the following assessments, Docket No.: 19735-02PT (Map R27, Lot 11) - \$31,969; Docket No.: 19737-02PT (Map R16, Lot 7) - \$29,527; Docket No.: 19738-02PT (Map R17, Lot 7A) - \$51,892; and Docket Nos.: 19739-02PT & 20266-03PT (Map R16, Lot 13) - \$46,564 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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 in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(f). 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

<sup>1</sup> The board compared the 2002 and 2003 assessment-record cards to determine the average current use value per acre that was assessed each year. Without having any evidence as to the detailed breakdown of current use categories, it appears the average assessed value was the same for each year at approximately \$91.20 per acre. Thus, the board has utilized the \$5,164 for the 56.62 acres not in current use as shown on the 2002 assessment-record card (Taxpayer Exhibit 1-A).

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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, Post Office Box 735, Derry, New Hampshire 03038, representative for the Taxpayers; and Chairman, Board of Selectmen, Town of Lisbon, Post Office Box 222, Lisbon, New Hampshire 03585.

Date: June 29, 2005

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Anne M. Stelmach, Clerk

**Lisbon Sand & Gravel, Docket No.: 19735-02PT  
Barbara Clough-Clinton M. Clough Construction, Inc., Docket No.: 19737-02PT  
Mavis M. Clough 1991 Revocable Trust, Barbara Clough, Docket No.: 19738-02PT  
Barbara Clough, Clinton M. Clough 1996 Revocable Trust, Docket Nos.: 19739-02PT & 20266-03PT**

**v.**

**Town of Lisbon**

**ORDER**

This order responds to the “Town’s” July 21, 2005 Motion for Rehearing (“Motion”) and the “Taxpayers” July 28, 2005 Objection to the Motion (“Objection”).

After a thorough review of the Motion and its attached documents, the Objection, the board’s June 29, 2005 Decision, and all the exhibits submitted during the hearing in these cases, the board finds no basis to grant the Town’s Motion. While the Motion states how the Town disagrees with the board’s conclusion in its Decision, none of the arguments or documents submitted with the Motion indicate the board “overlooked or misapprehended the facts or the law.” TAX 201.37(d). As the Decision notes, the evidence presented at hearing was at times conflicting. However, the board as a fact finder reviewed the evidence and gave weight to the evidence it found most convincing. Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994) (“A fact finder has the discretion to evaluate the credibility of the evidence and may choose to reject that evidence in whole or in part.”) Further, as noted in the Decision, valuation of the remaining taxable rights for these Properties is

difficult, but the board finds nothing in the Motion indicates the board erred in its valuation conclusions. Consequently, the board denies the Motion.

Any appeal of the Decision must be by petition to the supreme court filed within thirty days of the date of this Order shown below. See RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

Concurred, unavailable for signature  
Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, Post Office Box 735, Derry, New Hampshire 03038, representative for the Taxpayers; and Chairman, Board of Selectmen, Town of Lisbon, Post Office Box 222, Lisbon, New Hampshire 03585.

Date: September 2, 2005

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Anne M. Stelmach, Clerk