Town of Amesbury, Mass.

v.

Town of South Hampton

Docket Nos.: 19750-02EX, 19751-02PT, 21122-04PT, and 21123-04EX

DECISION

The Town of Amesbury, Massachusetts ("Amesbury") appealed, pursuant to RSA 76:16-a, the Town of South Hampton's ("South Hampton") 2002 assessment of $8,000,000 and 2004 assessment of $3,789,300 on Map UTIL, Lot 1, designated as flowage rights relative to the Amesbury water supply (the "Property"). In conjunction with the property-tax appeals, Amesbury has filed, pursuant to RSA 72:34-a, appeals for 2002 and 2004 indicating its "water rights" should be exempt from any assessment as provided under RSA 72:23, I and/or RSA 72:11-a. Just prior to the scheduled March 21, 2006 hearing, South Hampton abated the assessments to $2,766,900 for 2002, 2003 and 2004. For the reasons stated below, the appeals for further abatement are granted.

Amesbury has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in Amesbury 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, Amesbury must show the Property's assessment was higher than the general level of assessment in the

municipality. Id. In addition, Amesbury has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory exemption or credit for the years under appeal. See RSA 72:23-m; TAX 204.06.

Amesbury argued the assessments were excessive because:

(1) Powwow River flowage rights and several dams (on Tuxbury Pond and Lake Gardner) were constructed in the 19th century and these dams first had value for generating water power for mills and then for hydroelectricity;

(2) at some point in the mid-20th century, however, such value ceased to exist and Amesbury acquired the flowage rights and dams from the Massachusetts Electric Company for nominal consideration;

(3) as established in the "Spring Appraisal" (Amesbury Exhibit No. 13), the dams have no transmissible value; and

(4) the assessments should therefore be reduced to zero.

South Hampton argued the assessments were proper because:

(1) the flowage rights situated in South Hampton have value to Amesbury;

(2) South Hampton made a good faith effort to value those rights and has abated the assessments significantly to account for the difficulties associated with valuing them;

(3) Amesbury is benefited by the flowage rights and is unwilling to release them;

(4) the flowage rights are legal encumbrances on certain properties in South Hampton and diminish, in whole or in part, the development potential of those properties; and

(5) Amesbury has failed to meet its burden of proving the assessments should be zero or that it is entitled to an exemption.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be zero for both 2002 and 2004 based on the finding that the flowage rights accrue benefit only to the public and thus there is no remaining transmissible value that can be quantified and subject to taxation.

The facts and the legal issues raised in this case are unique and, while not entirely a case of first impression to the board (See Society for the Preservation of Rockwood Pond v. Town of Fitzwilliam,19096-01EX and 19097-01PT), there is little prior precedent in New Hampshire case law.

While the parties disagreed as to the legal taxability of the Property, the facts involved in this case are generally undisputed and are as follows. The flowage rights owned by Amesbury and at issue in these appeals were acquired by Amesbury in 1967 for a nominal fee ("less than $100", Amesbury Exhibit No. 7 at 20) with the restriction that the "water rights … will not be used at any time by the grantee {Amesbury}, its successors and assigns, for generation of electric power or energy in any manner whatsoever …" Id. at p. 18. The flowage rights relate to sections of the Powwow River in South Hampton that are subject to pooling by the Tuxbury Pond Dam and the Gardner Lake Dam both located in Amesbury. The Tuxbury Pond Dam was developed in the late 1700's for power for early sawmills, gristmills, and the like. In the 1800's the Tuxbury Pond Dam was enlarged with the level of the pond raised to provide a larger water reservoir for textile mills. Also, at that time, Lake Gardner was created by a dam on the northern edge of Amesbury to power textile mills. With the decline of textile mills, the flowage rights and dams were acquired and assembled for hydroelectric production and operated as such until the mid-1900's when their electricity production became uneconomical. In 1967 Massachusetts Electric Company transferred title to both dams and the flowage rights to Amesbury.

Concurrent with the pooling of water in Tuxbury Pond and the Lake Gardner reservoir, private development occurred along both shores. Today, Lake Gardner has a public access area and beach built with federal funds and, particularly on the western shore, has significant private development (residences and camps) that benefit from the existence of Lake Gardner. Tuxbury Pond, although not developed to the extent of Lake Gardner, has residential properties that enjoy the view and water access amenities of the pond. Testimony was also presented, however, that a number of parcels, particularly in the upper reaches of Tuxbury Pond, are negatively impacted by the flowage rights and variable water level throughout the year, restricting development potential and utility of that land.

Tuxbury Pond Dam was totally reconstructed in 2001-2002 at the cost of $850,000 to $1,000,000. In 1994, Lake Gardner Dam was found to be a high hazard dam and in need of repairs by the Commonwealth of Massachusetts and over a 4 to 5 year period was reinforced and the spillway area reconstructed with direct costs estimated at $1.5 million. The reconstruction of both dams did not change the elevation of the reservoirs. Tuxbury Pond spillway elevation remained at 96.6 feet with the maximum filling potential to the top of the dam being 99.5 feet while the elevation of Lake Gardner remained at 94 feet at the spillway.

The board's decision will first address the market value appeal issues and then the exemption appeal.

First, however, several general observations are in order to focus and clarify the board's subsequent findings. Significant evidence was submitted about the history of assessing the flowage rights beginning in 1967 after Amesbury's acquisition of the rights and the payment in lieu of tax arrangement from 1970 to 2002 where Amesbury provided South Hampton fire protection. While such background is helpful in understanding why the issue is, only now, on appeal before the board, the decision does not address those historical assessment practices

because they have no relevance to the determination that must be made as to the legality and market value determination of the 2002 and 2004 assessments. This is not intended to minimize the effect such history has had politically on the relationship of the two municipalities, but rather is intended to focus the decision on the factual and legal parameters that existed in 2002 and 2004.

Second, the flowage rights that exist in South Hampton and were assessed by South Hampton are the result of the impoundment of water by Tuxbury Pond Dam and Lake Gardner Dam in Amesbury. Because it is axiomatic that such flowage rights exist and have potential value only when related to a dam and, conversely, a dam can only function and have value if the associated flowage rights exist, much of the board's discussion and analysis will also include the two dams that create the flowage rights being assessed.

Market Value of Flowage Rights

The pivotal issue in the board reaching its conclusion that the flowage rights have no transmissible market value is the determination that the highest and best use of the Property is primarily for public recreational value with ancillary water supply and flood control uses. As will be addressed, because this highest and best use involves several inseparable public purposes and with it the significant financial liability of maintaining the dams, there is no physical, legal or economic manner for the flowage rights to either be of any value or be transferred to a private entity. It is well established New Hampshire case law that for property to be assessed and taxed, it must have transmissible value. See Appeal of Town of Plymouth, 125 N.H. 141, 146 (1984); 590 Co., Ltd v. City of Keene, 122 N.H. 284, 287 (1982); and Public Service Co. v. New Hampton, 101 N.H. 142, 148 (1957). See also Society for the Preservation of Rockwood Pond v. Town of Fitzwilliam, 19096-01EX and 19097-01PT. Amesbury carried its burden with various

evidence, which the board will address, that the flowage rights had no transmissible value in the two years under appeal.

Evidence was submitted that no third party entity would have any conceivable economic[1] incentive to acquire the flowage rights from Amesbury. The discussion in the "Analysis & Valuation" and "Highest & Best Use" sections of the Spring Appraisal (Amesbury Exhibit No. 13) clearly indicate the two dams and the associated flowage rights are, in all likelihood, a liability to Amesbury due to the environmental and safety responsibilities associated with them and the Commonwealth of Massachusetts' oversight authority to ensure that the dams are functioning properly. Also, Robert Desmarais, Amesbury Town Engineer, testified at length to the long process Amesbury went through, at the direction of the Commonwealth of Massachusetts, in reconstructing Lake Gardner Dam due to its high hazard location above the downtown area of Amesbury and that the impounded reservoir above the dam benefits a hundred or more private individuals and a public recreational area. This general public benefit in maintaining the dams (and its concomitant responsibility to Amesbury) is illustrated in the testimony relative to Amesbury's attempt in the mid-1900's to breach the "Newton Road Weir", a small dam between Tuxbury Pond Dam and Lake Gardner Dam that directs water to the Amesbury water system inlet. In that instance the permitting and litigation expenses far exceeded the cost of maintaining the dam in its current location and condition.

Testimony was also provided that an extensive number of private properties, in both South Hampton and Amesbury, are benefited by the flowage rights of Lake Gardner and Tuxbury Pond enhancing the value of those properties and their resulting assessed value. Testimony was also received that for some properties in South Hampton the flowage rights were likely a detriment to their value. On balance however, the board concludes the net benefit to

[1] Definitions of market value always measure value in monetary terms or its equivalency. RSA 75:1; Appraisal Institute, The Appraisal of Real Estate 12th ed. pp. 21-24.

private property around Tuxbury Pond and Lake Gardner is significant because the number benefiting far exceed those who are negatively impacted. Thus there exists a strong impediment, political and economic, to any change in the dams and the level of impoundment that would reduce the desirability of Tuxbury Pond and Lake Gardner (as example, see Taxpayer's Exhibit No. 12 newspaper article relative to the affect of the draw down of Lake Gardner during its multiple year reconstruction process).

The Spring Appraisal performed a sales comparison approach based on four transfers and two properties for sale of dams and flowage rights and, in some cases, associated buildings that had recently transferred in New Hampshire. These sales indicate negligible or negative value for such properties. South Hampton presented no sales of similar properties that indicated a different value conclusion. The board finds these transfers are reflective of the non-existent or limited market for obsolete small hydroelectric facilities because of the liability of the long term costs of maintaining the dam facilities in a safe manner for public benefit subject to licensing and inspection by either New Hampshire or Massachusetts. See N.H. RSA ch. 482[2] and General Laws of Massachusetts Ch. 253 Section 46-48. Further evidence that such properties have little or no transmissible value due to the ownership liabilities outweighing any private monetary benefit, is the evidence, unrefuted by South Hampton, that the State of New Hampshire is no longer accepting title to dams and flowage rights unless there is a public safety reason. (Spring Appraisal – Amesbury Exhibit 13 at p. 18). Further support of this assertion is RSA 482:93

[2] It is interesting to note the "purpose" paragraph of RSA ch. 482 enunciates the broad public benefits of encouraging and maintaining dams. "482:1 Purpose. – The general court declares that there is a statewide need for conservation and control of water in streams, rivers, lakes and ponds by the repair of dams now in disrepair, the construction of new dams, the construction of hydro-energy production facilities as defined in RSA 481:2, IV, and stream clearance and channel improvement. These actions are needed for the regulation of the water levels of lakes and ponds, the flow of water for fire prevention, protection to lessen flood damage, the enhancement of public safety, the improvement of recreational facilities within the state, and for any similar public purpose."

This legislative statement supports the board's finding, that lacking any private economic benefit, dames and flowage rights provide various benefits to the public in general.

which in 1989 established a Legislative Dam Management Review Committee which has as one of its duties at RSA 482:93, III, (d)(2) to research any proposed acquisition of a privately owned dam utilizing criteria "designed to measure the impact of breaching the dam against its value as a public asset." The criteria, with the possible exception of "energy potential," all relate to benefits to the general public rather than value of private ownership. Those criteria include "potential supply and quality of water", "general environmental, scenic, historical and ecological concerns", "fish and wildlife value", "recreational value" and "flood control potential."

Certainly, when the flowage rights at issue were acquired for mill development in the 1700's and 1800's, these rights had value and presumably, at that time, the properties encumbered by the flowage rights were compensated for any loss in value. Because the dams and the flowage rights provided power for the mills to process raw materials (lumber, grain, etc.) they were a necessary and valuable component of the overall milling and manufacturing process that could either be transferred or, at least, were valuable to the owners themselves. See Public Service Company at 148. Similarly, as the dams were improved for textile mills and then subsequently modified to produce hydroelectricity, those rights continued to be a valuable economic component in each one of those manufacturing functions and at that time had transmissible and taxable value. Thus, during mill use and hydroelectricity production, the highest and best use of the flowage rights were as an integral power component of the overall production of lumber or electricity etc. In 2002 and 2004, however, such was no longer the highest and best use of the dams and the flowage rights.[3] The flowage rights no longer have any value as a power component in any type of income producing function. In Newmarket Mfg. Co. v. Town of Nottingham, 86 N.H. 321, 322 (1933), the court held "water rights are taxable".

[3] In fact, the 1967 deed from Massachusetts Electric Company to Amesbury prohibits the use of the water rights for the "generation of electric power or energy in any manner whatsoever …" (Amesbury Exhibit No. 7).

However, the case before the board is different from Newmarket because in 1933 the water rights at issue then had transmissible value for the production of hydroelectricity while those on appeal have no remaining transmissible value. As such mill and hydroelectricity uses became obsolete, the water rights took on a public value for their recreational, environmental, and amenity benefits and, to a lesser extent, water supply and flood control purposes. These uses, because they are so intertwined with a multitude of overlapping and, at times, competing public policy purposes and related maintenance liabilities, no longer have any transmissible right to a third party. Rather the value of the flowage rights has been totally transferred to the public in general and a subset of the public, those private individuals abutting the Tuxbury Pond and Lake Gardner.

The board gives no weight to the value conclusion (or any modification thereof) of South Hampton's value estimate performed by Mr. Gary Roberge. The abated assessments, estimated by Mr. Roberge, are based on the value of the potential loss of developable land in South Hampton encumbered with the flowage rights of both Tuxbury Pond Dam and Lake Gardner Dam. The board finds this methodology in estimating value might be applicable if the rights were being acquired in 2002 and 2004 as to what to compensate the different individuals from whom those rights were being acquired. (While Mr. Roberge did not perform a true "before and after" as is often customary in eminent domain valuations (see Lebanon Housing Authority v. National Bank of Lebanon, 113 N.H. 73 (1973)), his methodology is a short-cut attempt at measuring the net difference between the before and after values of such properties.) However, the loss of value of the encumbered properties is not the estate to be valued in this case. Rather, the rights that must be valued are the flowage rights that have been assembled over time and are now owned by Amesbury. While Mr. Roberge's methodology may provide an estimate as to what the flowage rights might cost today to assemble if there was an economic reason to do so, it

does not value those rights as held by Amesbury in 2002 and 2004 with all the competing public interest in them, and the associated liability of maintaining the dams. Assemblage of property rights often occurs when there is a more valuable highest and best use achieved through the assembling of rights than there is by separate or fragmented ownership of those rights (e.g., assembling small residential lots to allow for large commercial development on a highly travelled highway). Historically, assemblage of flowage rights occurred that allowed mill development. However, the economic incentive that was present then to assemble those rights no longer existed in 2002 and 2004, and thus, this methodology is inapplicable to valuing the rights held by Amesbury.

An example illustrates the distinction the board is attempting to make. Municipalities generally have eminent domain authority to acquire private property for public purposes. For example, a municipality may need to acquire land for laying out of a public highway or constructing a municipal building. In both instances the acquisition appraisal methodology would be very similar. Land sales or lot values would be obtained from the market and then applied in the most appropriate unit of comparison to the acreage being acquired for the highway or the municipal building. It is quite likely that such values would be very similar, if indeed not identical, if all other factors such as location, utility, soils, etc. are relatively similar. However, once those rights are acquired and the municipality utilizes the property for its respective public function of constructing a highway or municipal building, the remaining transmissible value that the municipality holds, could be placed on a balance sheet and ultimately sold for would likely be quite different for the two different properties. Land acquired for a municipal building, if no longer necessary for public purposes, would achieve, in a sale back to the private market, a value similar to other privately held acreage transactions. A road, however, because it becomes so encumbered with various public benefits such as access to private property, convenience for

commerce, public safety and, in extreme circumstances military protection, is very unlikely to have any residual transmissible value. The flowage rights owned by Amesbury are similar in nature to the highway having no transmissible value in the private market that is severable from the value to the general public. Indeed, like a highway or other public improvement, ownership of flowage rights and the dams (as discussed above) now impose significant liability potential on the public entity (Amesbury). Cf. Local Government Center, A Hard Road to Travel (2004) ch. 6 (discussing municipal liabilities for highways).

Further, the board finds the fact Amesbury invested well in excess of $2 million in reconstructing the two dams is also not evidence the flowage rights have any value in exchange. Again, the fact that Amesbury, with some state and federal funds for Lake Gardner, repaired and renovated the dams and spillways is solely reflective of the public value in those rights (and Amesbury's associated liability) as opposed to evidence of any transmissible value to a third party. Evidence was submitted that the alternative of breaching the dams was in all likelihood more expensive due to the permitting process, engineering and litigation and potential loss of tax revenue through lowered assessments than the cost of maintaining the dams. Thus, the board finds it very logical for Amesbury to expend such significant funds and yet still reach the conclusion that there is no transmissible value to be taxed for the flowage rights.

The board also concludes from the testimony and evidence that the water supply and flood control uses of the water rights and associated dams are marginal ancillary benefits for maintaining the flowage rights and dams. Robert Desmarais testified that due to the relatively shallow level of both Tuxbury Pond and Lake Gardner and the extensive watershed of the Powwow River including Lake Attitash and Meadowbrook Pond, the flood control capacity is very limited during storm events. Mr. Desmarais also testified Lake Gardner provides no water supply function for Amesbury. Tuxbury Pond does provide some reservoir pooling for water

storage for Amesbury's water supply and is utilized particularly during the winter months but not during the summer when two adjacent wells take over as the flow of the Powwow River decreases. He stated that if the dam at Tuxbury Pond did not exist today for its primary purpose of providing public recreational and environmental amenities, Amesbury would have a more economical alternative to Tuxbury Pond of drilling two new wells at the cost of approximately $250,000.

In conclusion, the board finds the flowage rights and the associated dams do have significant value, but only to the public. Thus, the flowage rights have no transmissible value and thus are not taxable.

Because the board finds zero market value for the flowage rights and because the parties presented no specific arguments or evidence of exemption under RSA 72:11, the board need not address the alternative exemption claims raised by Amesbury in these consolidated appeals.

If the taxes have been paid, the amount paid on the value in excess of $0 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until South Hampton undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, South Hampton 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, <u>not the date this decision is received</u>. 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 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.

Responses to Requests for Findings of Fact and Rulings of Law

The "Requests" received from South Hampton are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. In these responses, "neither granted nor denied" generally means one of the following:

a. the Request contained multiple requests for which a consistent response could not be given;

b. the Request contained words, especially adjectives or adverbs, that made the Request overly broad or narrow so that the Request could not be granted or denied;

c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;

d. the Request was irrelevant; or

e. the Request is specifically addressed in the decision.

RESPONDENT TOWN OF SOUTH HAMPTON'S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

1. That the Town of Amesbury, Massachusetts is the owner of two dams along the Pow Wow River which impound water into the Town of South Hampton at two locations. These bodies of water are commonly known as Lake Gardner and Tewksbury Pond. See Complete Appraisal Analysis, Don Spring, at page 8.

Granted.

2. That the Town of Amesbury is the owner of these flowage rights located in the Town of South Hampton. *Id*.

Granted.

3. That the Town of Amesbury's title to the dams in question and the flowage rights located in the Town of South Hampton were acquired from Amesbury Electric Light Company. *Id*. at 15.

Granted.

4. That, for many years, the Town of Amesbury and its predecessors in title were assessed and paid property taxes to the Town of South Hampton. See South Hampton Tax Ledgers.

Neither granted nor denied.

5. That the flowage rights owned by Amesbury in South Hampton constitute a taxable property interest. See Board of Tax and Land Appeals Order, July 27, 2005; *Newmarket Mfg. Co. v. Town of Nottingham*, 86 N.H. 321, 322 (1933).

Neither granted nor denied.

6. That, beginning in 1971, the Town of Amesbury agreed to provide the Town of South Hampton fire and ambulance services in lieu of paying taxes. See Answer to Interrogatory No. 5, South Hampton's Responses to Town of Amesbury's First Set of Interrogatories.

Neither granted nor denied.

7. That, over a period of years, the agreement between the Town of Amesbury and the Town of South Hampton to provide emergency and fire services in lieu of taxes disintegrated, leading the Town of South Hampton to again assess property taxes for the Town of Amesbury's flowage rights located in the Town of South Hampton. See Response to Interrogatory No. 6, South Hampton's Responses to Town of Amesbury's First Set of Interrogatories.

Neither granted nor denied.

8. That the Town of Amesbury, in light of this assessment, has applied for an abatement of these property taxes. These various abatement petitions have been consolidated into the instant action. See BTLA Order on Consolidation.

Granted.

9. That the Town of Amesbury has invested significant capital into the dams in question, for their construction, repair and maintenance. See generally, Town of Amesbury Board of Selectmen Minutes, March 14, 2000; Tuxbury Pond Dam, Phase II Inspection Report, Amesbury, MA; Phase II Report, Lake Gardner Dam, Amesbury, MA.

Granted.

10. That the Town of Amesbury uses these dams to ensure a ready supply of water for the residents of the Town of Amesbury. See Commonwealth of Massachusetts Water Withdrawal Permit.

Denied.

11. That the Town of Amesbury in the past has served this water to the Town of Salisbury, Massachusetts, a neighboring town. See Amesbury's Response To Interrogatory No. 9, South Hampton's First Set of Interrogatories.

Granted.

12. That the Town of Amesbury's expert, Don Spring, used a "sales approach" to value the Town of Amesbury's flowage rights. See Complete Appraisal Analysis, *supra* at 23.

Granted.

13. That, in appraisal the Town of Amesbury's flowage rights, Mr. Spring cited a series of dam and flowage right sales in the State of New Hampshire as comparables. *Id.*

Granted.

14. That the comparables cited in Mr. Spring's report were not arms-length sales, rather they were a series of sales in which the seller was experiencing various levels of distress and their desire to assign their dam and flowage rights were due to factors not consistent with the market value of these rights. *Id.*

Neither granted nor denied.

15. That Mr. Spring's failure to consider a cost approach that evaluates the cost to acquire these flowage rights renders Mr. Spring's report and testimony incomplete.

Denied.

16. That the Town of South Hampton's expert, Gary Roberge, used a cost approach in appraising the Town of Amesbury's flowage rights. Mr. Roberge looked to the number of new lots which could have been created absent the Town of Amesbury's flowage rights, due to the respective parcel's sufficient road frontage and area. See Gary Roberge, Flowage Rights – Amesbury MA, Valuation Report.

Granted.

17. That Mr. Roberge identified fifteen (15) such parcels which could have been created absent the Town of Amesbury's flowage rights. That Mr. Roberge valued these lost parcels at $98,000 per parcel. *Id.*

Neither granted nor denied.

18. That Mr. Roberge identified fourteen (14) developed lots which have lots value due to the Town of Amesbury's flowage rights. *Id.*

Neither granted nor denied.

19. That Mr. Roberge valued the lost value of such lots at $19,600 per parcel. *Id.*

Granted.

20. That Mr. Roberge identified four hundred nine (409) acres of "back land" which are subject to the Town of Amesbury's flowage rights. *Id.*

Neither granted nor denied.

21. That Mr. Roberge valued said "back land" at $5,000 per acre. *Id.*

Granted.

22. That Mr. Roberge applied a fifty (50) percent discount to the 409 acres of "back land" as his professional opinion was that this land could not be valued at 100 percent of the Town value for "back land". *Id.*

Granted.

23. That Mr. Roberge values the Town of Amesbury's flowage rights located in the Town of South Hampton at $2,766,900. *Id.*

Granted.

24. That given Mr. Spring's failure to identify arms-length comparables, and given Mr. Roberge's careful consideration, we believe that Mr. Roberge's report and testimony merit the greater weight.

Denied.

25. That the value of the Town of Amesbury's flowage rights located in the Town of South Hampton are $2,766,900.

Denied.

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

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, Taxpayer Representative; Chairman, Board of Selectmen, Town of South Hampton, 3 Hilldale Avenue, South Hampton, NH 03827; John J. Ratigan, Esq., Donahue, Tucker & Ciandella, 225 Water Street, Exeter, NH 03833, Municipality Representative; and James J. Allen, Daily News, 23 Liberty Street, Newburyport, MA 01950, Interested Party.

Date: 5/17/06

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Anne M. Stelmach, Clerk