Jere D. Buckley
v.
Town of Webster
Docket No.: 20523-03PT

Caryl D. Buckley
v.
Town of Webster
Docket No.: 20524-03PT

Caryl D. Buckley
v.
Town of Webster
Docket No.: 21086-04PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2003 and 2004 assessments as follows:

Tax Year 2003

Docket No.: 20523-03PT - $132,500 (land only) on "Map 4 Lot 1," a 0.69-acre waterfront lot;

Docket No.: 20524-03PT - $242,139 (land and buildings) on "Map 4 Lot 2," a seasonal waterfront camp on 1.84 acres of which 0.92 acre was classified in current use ("CU"); and $419,932 (land and buildings) on "Map 4 Lot 6," a single-family residence on 19.07 acres of which 17.60 acres were classified in CU; and

Tax Year 2004

Docket No.: 21086-04PT - $200,813 (land and building) on "Map 4 Lot 2," a seasonal waterfront camp on a 2.48 acre parcel of which 1.96 acres was classified in CU; and $425,596 (land and buildings) on "Map 4 Lot 6," a single family residence on 19.0 acres of which 17.53 acres were classified in CU.

For tax year 2003, Map 4 Lot 1 was owned by Jere D. Buckley; however, prior to April 1, 2004 Mr. Buckley deeded the lot to his wife, Caryl D. Buckley. Because of the interrelationship of the lots, the board held a consolidated hearing on these cases. For the reasons stated below, the appeals for abatement of the "Properties" 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.

The Taxpayers argued the assessments were excessive because:

(1) the valuations of the Properties increased significantly;

(2) the Town's methodology is flawed;

(3) there are factual errors on the assessment-record cards;

(4) the three lots are located between Lake Winnepocket and Pond Hill Road, a part of which is a class V road of which the Buckley residence is the only one on the class V portion;

(5) for tax year 2003, Map 4 Lot 1 was not eligible for a building permit, was accessed by a deeded right-of-way, crossed by a small stream and was subject to 50-foot setback regulations and Comprehensive Shoreland Protection Act (RSA 483-B) restrictions;

(6) it is difficult to access Map 4 Lot 1, Map 4 Lot 2 (the site of a seasonal camp) and Map 4 Lot 6; the first 750 feet of Map 4 Lot 6's access is over an abutting property (Map 4 Lot 5); the access to Map 4 Lot 6 also has a 300 foot elevation change and includes some steep slopes, and the access affects the lots' marketability;

(7) Map 4 Lot 6 is an L-shaped lot with a 900 foot long, 16.5 foot wide strip extending to the lake shore and the Town has incorrectly assessed the waterfrontage on this lot;

(8) the land condition values applied to the waterfront are not reasonable or equitable;

(9) in tax year 2004, Map 4 Lot 1 no longer exists as a result of a voluntary merger with Map 4 Lot 2, and a lot line adjustment made to Map 4 Lot 6 extinguished any waterfrontage on that lot; and

(10) the Town has failed to use the correct soil potential index when valuing the farmland in CU and is inconsistent in its methodology in assessing CU land.

The Town argued the assessments were proper because:

(1) Map 4 Lot 1 is a grandfathered lot and there is no evidence that it cannot be built on; however, its use is limited;

(2) Map 4 Lot 2 was also a non-conforming lot in 2003 based on its road frontage but had a camp on it;

(3) Map 4 Lot 6 had water access in 2003 and its highest and best use is as a water access lot;

(4) the assessed values for the land in current use were derived from a formula in the administrative rules of the Current Use Board's ("CUB") booklet;

(5) the Taxpayers have the burden to show the market value of the lots but have failed to present any evidence of their values; and

(6) the prior Town representative retired and some errors that require correction will be addressed subsequent to this hearing.

The Board of Tax and Land Appeals ("board") recessed the hearing but left the record open for the Taxpayers to provide copies of the revised deeds and copies of the 2003 and revised 2004 CU applications and maps. The board also directed the Town to produce its revised assessment-record cards. On February 10, 2006 (dated February 9, 2006), the Taxpayers filed a packet of deeds and attached diagrams of the Properties ("Taxpayers' Submission"). On March 1, 2006, the Town filed a breakdown of revised assessments with accompanying assessment-record cards ("Town's Submission") and copies of the proposed settlement agreements for each lot under appeal[1]. A decision on these cases was held in abeyance because the parties telephoned the board to advise they may have reached a settlement. Based on a subsequent letter from Edward Tinker of Avitar Associates of New England, Inc. ("Avitar"), the parties were unable to do so. Given that no settlement was achieved, the board issues this decision.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be as follows:

Docket No.: 20523-03PT – Map 4 Lot 1 - $74,900 (deeded to Jere D. Buckley)

[1] The Taxpayers did not accept the settlements offered by the Town. In a subsequent letter to the board, the Taxpayers questioned why the "settlement agreements" were on "board letterhead." The board notes a board form is made available as a tool for parties to use in the event of a settlement. Because of prior confusion, this form has been revised deleting the header and adding a notation on the bottom to provide a copy of any settlement to the board.

Docket No.: 20524-03PT – Map 4 Lot 2 - $234,953 (land $184,453; buildings $50,500); and **Map 4 Lot 6** - $417,253 (land $108,353; buildings $308,900)

Docket No.: 21086-04PT – Map 4 Lot 2 - $195,213 (land $140,313; buildings $54,900); and **Map 4 Lot 6** - $341,649 (land $28,349; buildings $313,300)

Facts

The parties stipulated to the equalization ratio of 96% for tax year 2003.

For tax year 2003, Jere D. Buckley solely owned Map 4 Lot 1, a 0.69-acre vacant lot with water frontage on Lake Winnepocket. This parcel was accessed by a deeded right-of-way of approximately 7/10ths of a mile. His wife, Caryl D. Buckley, solely owned Map 4 Lot 2, a seasonal camp on 1.84 acres with water frontage on Lake Winnepocket; 0.92-acre of this land was classified in CU. Caryl D. Buckley also solely owned the abutting Map 4 Lot 6, a single-family residence on 19.07 acres; 17.60 acres of this land was classified in CU. The first 750 feet of access to this lot is over an abutting property and the access has a 300 foot elevation change and steep slopes. This land also had an approximate 2/10th of a mile strip of land to access Lake Winnepocket of which approximately 0.07 acre abutted Map 4 Lot 2.

In 2004, Jere D. Buckley deeded Map 4 Lot 1 to Caryl D. Buckley. A voluntary merger of Map 4 Lot 1 and Map 4 Lot 2 along with a lot line adjustment to Map 4 Lot 6 extinguishing its access to Lake Winnepocket created the new Map 4 Lot 2 consisting of 2.48 acres of which 1.96 acres is classified in CU. After the lot line adjustment, Map 4 Lot 6 consisted of 19.0 acres with a single family residence of which 17.53 acres is classified in CU. As of tax year 2004, both lots (Map 4 Lot 2 and Map 4 Lot 6) are solely owned by Caryl D. Buckley.

Several issues are raised in these appeals: (1) the ownership rights and buildability of Map 4 Lot 1; (2) whether the Town's assessment methodology of the site value inappropriately

captured some of the bundle of rights that are actually embodied in CU land on Map 4 Lot 2 and Map 4 Lot 6; (3) the Town's assessment methodology of capturing a waterfront value on Map 4 Lot 6 in 2003 and its assessment in 2004 subsequent to the voluntary merger; and (4) the equalization ratio applied to the value assessed to the land in CU.

Findings

In valuing property, all real estate rights, tangible and intangible, are assessed. RSA 21:21 Land; Real Estate states: "I. The words 'land,' 'lands' or 'real estate' shall include lands, tenements, and hereditaments and all rights thereto and interests therein." The most complete form of ownership is title in fee. 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 the real estate, sell it, lease it, enter it, and give it away," or to choose to exercise all or none of these rights. Appraisal Institute, The Appraisal of Real Estate 12th ed. p. 8 (2001). The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right of interest. When appraising a property that has no restrictions of rights (beyond being subject to taxation, eminent domain, police power or escheat), these rights are normally viewed collectively (as a bundle) and valued after a highest and best use analysis of the entire property. In these appeals, for tax year 2003, Map 4 Lot 1 was solely owned by Jere D. Buckley. "Real property includes all interests, benefits, and rights inherent in the ownership of physical real estate. Specifically, an estate in land is the degree, nature, or extent of interest that person has in it." The Appraisal of Real Estate Id. at 8. Map 4 Lot 2 and Map 4 Lot 6 were owned solely by Caryl D. Buckley in tax year 2003. The supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Therefore, in making its determination for tax year

2003, the board must consider the highest and best use and proper assessed values of the two separate estates; i.e., the property owned by Jere D. Buckley (Map 4 Lot 1) and the property owned by Caryl D. Buckley (Map 4 Lot 2 and Map 4 Lot 6). For tax year 2004, all Properties appealed were under one estate – owned by Caryl D. Buckley.

2003

Map 4 Lot 1 – The board finds the proper assessed value of this lot to be $74,900. The Taxpayers (title in Jere D. Buckley's name) argued the access was via a long, steep, deeded right-of-way over an abutter's property and could not be developed because of its size and setback requirements under the existing zoning laws and therefore, its only value was to an abutter. Further, the Taxpayers argued the value increased significantly from 2002 to 2003. The Town testified the lot was grandfathered and thus had potential value as a buildable lot. The Town did acknowledge some additional adjustment should be made for the lot's access. The Town also acknowledged the lot would have to meet state requirements from Lake Winnepocket's high water mark in order for the Taxpayers to put in a septic system and additional adjustments were warranted. As part of the Town's Submission, and upon further review, the Town determined the lot was unbuildable under current zoning regulations even with a variance. As a result, the land condition factor was adjusted from 575 to 325, consistent with similar, unbuildable Town lots, resulting in a revised assessment for Map 4 Lot 1 of $74,900. The board finds the lot was unbuildable as of April, 2003 and its highest and best use was for supplemental land to an abutter. Further, the board finds the Town's revisions are reasonable and the Taxpayers submitted no market value evidence to support a different value than that recommended by the Town.

Map 4 Lot 2 - The Taxpayers (title in Caryl D. Buckley's name) argued the land condition factor assigned to this lot was excessive, the Town incorrectly categorized the seasonal cabin as having log siding, the access is a continuation of a road through an abutting lot also owned by Caryl D. Buckley (Map 4 Lot 6) and crosses over a deeded right-of-way of another owner. The Town indicated in its Town Submission, that upon review, the land condition factor was lowered from 715 to 690, the tax value associated with the excess water frontage in CU was removed, adjustments were made to reflect the siding as novelty rather than log, and the category for cabin heat was changed to wood/coal/none. These revisions resulted in a 2003 assessed value of $234,953. Based on the evidence, the board finds the highest and best use of this lot is as a seasonal dwelling[2] and further finds the Town's revisions are reasonable. Given no market value evidence from the Taxpayers, the board finds the proper assessed value to be $234,953 as recommended by the Town.

Map 4 Lot 6 – The Taxpayers (title in Caryl D. Buckley's name) argued the access to this L-shaped lot is via a 750-foot long deeded right-of-way over the abutting (Map 4 Lot 8) property. This lot supports a year-round residence and its access to the lake is via a 16.5 foot wide strip extending approximately 900 feet to a steep and rocky shoreline. As indicated above, the Taxpayers challenged the categories and range of the land in CU. In the Town Submission, it noted revisions were made to this lot as follows:

[2] Taxpayer, Caryl D. Buckley owns the contiguous Map 4 Lot 6; under CUB rules, these two contiguous tracts allow the Taxpayer the right to have a portion of this lot qualify for current use. Cub 301.03 "Contiguous parcels" means more than one parcel of land which is connected, disregarding whether it is divided by a highway, railbed, river or water body or the boundary of a political subdivision. Cub 301.08 "Tract" means a parcel or contiguous parcels of land having identical ownership, and which qualifies for current use assessment in any category or combination of categories as described under Cub 304.01.

1. the SPI of 42 was applied to the 4.61 acres of farm land;

2. the CU condition of 60 was applied to the 7.72 acres of unmanaged pine and the 4.13 acres of unmanaged hardwood;

3. the CU condition of 65 was applied to the 1.14 acres of unproductive land; and

4. the interior dwelling was changed from custom wood to both custom wood and drywall.

The board finds the highest and best use of this lot is as a single family residence with supplemental land. The board notes this lot has additional value as a result of its access, although limited, to Lake Winnepocket. Although the water access is limited on this single lot, Caryl D. Buckley owns the abutting Map 4 Lot 2 waterfront property and qualifies for current use assessment on a portion of Map 4 Lot 2 by consolidating the acreage of both lots. CUB 301.03 and 301.08. The board finds the Town's revisions resulted in a revised assessment of $417,253 which the board finds is reasonable based on the evidence presented.

2004

For tax year 2004, as indicated above, a voluntary merger and lot line adjustment created two separate, abutting lots of record, both deeded to Caryl D. Buckley, Map 4 Lot 2 and Map 4 Lot 6.

Map 4 Lot 2 –The Taxpayers' arguments were substantially the same as noted above for tax year 2003 and need not be reiterated. It is noted, however, that Map 4 Lot 1 was deeded from Jere D. Buckley to Caryl D. Buckley and merged with Map 4 Lot 2. Further, 0.07 acres was removed from Map 4 Lot 6 and annexed to Map 4 Lot 2 through a lot line adjustment. The NICU portion of the now 2.48 acre Map 4 Lot 2 is 0.52 acre. The Town revised the assessment-record card to reflect the CU condition of 65% factored into the 1.96 acres of unmanaged

hardwood and made corrections to reflect a cathedral ceiling and a one-opening custom fireplace resulting in a revised assessed value of $195,213.

While the board finds the highest and best use of this lot remains the same, a portion of this lot (1.96 acres) is qualified to be in current use because Caryl D. Buckley also owns the abutting parcel, Map 4 Lot 6, containing 19.0 acres. Based on the evidence presented, the board finds the Town's revisions to be reasonable and finds the proper assessment to be $195,213.

Map 4 Lot 6 – Again, the Taxpayers' arguments were substantially the same as iterated in 2003 above. The Town's Submission noted the following revisions were made:

1. as a result of the lot line adjustment with Map 4 Lot 2, the acreage for the unmanaged hardwood was reduced from 4.13 acres to 4.06 acres;

2. a 2004 on-site inspection resulted in the sketch being redrawn to reflect the angled garage area;

3. a 12 X 20 carport was added to the sketch in 2004; and

4. as a result of the lot line adjustment, the land condition for the primary 1.47 acre site was lowered from 300 to 75 to reflect the removal of the waterfront portion of the lot.

The Town's revisions resulted in an assessment of $341,649. The board finds the highest and best use of this lot remains the same as a single-family residence with supplemental land. Although this lot no longer has deeded rights to Lake Winnepocket, it is contiguous to Map 4 Lot 2 (also owned by the Caryl D. Buckley) which fronts on Lake Winnepocket allowing the owner all real estate rights to access Map 4 Lot 2 having title in fee to both lots (see page 6 of this Decision). The board finds the Town's revisions are reasonable and orders the proper assessment to be $341,649.

The Taxpayers have asserted the Town inappropriately recaptured in the value of the site waterfront related rights that are encumbered with CU assessment. As RSA 79-A:1 states in the

declaration of public interest, assessing property at its lower current use is a valuable tool to encourage the preservation of open space. The board has long acknowledged, however, the difficulty in fairly assessing land not in current use ("LNICU") that is surrounded by value-enhancing attributes of that which is in current use. As first enunciated in John L. Arnold v. Town of Francestown, BTLA Docket Nos.: 8718-90PT, 11152-91PT and 13819-93PT and in several subsequent cases, there is no one technical or mechanical way of determining the proper value of the LNICU. However, as discussed in Arnold:

> In most properties there are many factors that influence value and contribute to the determination of the highest and best use. Such factors are nearly endless but commonly include influences, both internal and external, to the property such as location, size, utility, access, improvements, topography, view, and zoning. In valuing an unrestricted property, the effect of various value influencing factors are normally viewed collectively. However, in reality, such factors are rarely distributed evenly throughout the property. Some portions of a property may embody certain factors more than other portions. For example, the area of a lot that contains improvements is more valuable than unimproved areas, and the location on a lot from which a view is obtained is generally more valuable than obscured locations.
>
> However, when a property is subject to current use assessment, certain rights and value influencing factors are temporarily veiled and not valued for taxation purposes. N.H. CONST. Pt. II, art. 5-B; RSA 75:1; chap. 79-A. These rights and factors still exist and are held by the owner, but they are suppressed or restricted by current use for tax purposes until sometime in the future when the land that embodies those rights or value influencing factors no longer qualifies for current use and is then assessed at market value.
>
> Land not in current use (LNICU) does not have its rights or factors restricted by current use assessment and should be valued at its highest and best use considering the rights and factors directly inherent in the LNICU and any effect the balance of the property has on the LNICU.

Here, Map 4 Lot 2 and to some extent Map 4 Lot 6 enjoy most, but not all, of the benefits of waterfront property. However, the Taxpayers have configured the lots to place land along the water frontage in CU in an attempt to reduce the waterfront value of the lots. At the conclusion of the hearing, the board left the record open to receive revised assessment-record cards from the

Town and for the Taxpayers to produce copies of the CU applications and maps that existed in 2003 and provide the 2004 CU applications and maps along with copies of deeds reflecting the transfer and merger of the lots. The Taxpayers provided copies of the deeds in the Taxpayers' Submission. Further, the Taxpayers provided a diagram (Attachment F to 2/9/06 letter) for tax year 2003 depicting the CU and LNICU areas which they indicated was submitted to the Town Selectmen as an attachment to an August 22, 2002 reply to the Town's request for information. The diagram depicts Map 4 Lot 2 with a 50/50 acreage division which the Taxpayers indicated they "arbitrarily drew the line bisecting the lot into two similar halves, each with 200 feet of lake frontage." Attachment G to the Taxpayers' Submission was depicted to be a revised diagram for Map 4 Lot 6 (showing the dimensions of the Property removed from CU) which was prepared by the Taxpayers and submitted to the Town Selectmen as a "revision to an earlier rough and inaccurate version prepared by a tax assessor, but retained very much the same acreage." Attachment H purports to be the diagram submitted to the Town on April 8, 2004 with the lots "as merged" depicting the CU classifications and acreages of the lots. Neither the Taxpayers nor the Town provided the board with copies of the CU applications (CUB form A-10) as requested at the hearing and there is no supporting documentation to prove these diagrams are in fact what was accepted and recorded by the Town other than what is indicated on the assessment-record cards. Therefore, the board has no basis to determine the Town has failed to use the corrected soil potential index when valuing the farmland in CU or utilized inconsistent methodology in assessing CU land. The board has weighed the various factors affecting value and in its judgment finds the revisions made by the Town are reasonable and supported by the evidence. "Given all the imponderables in the valuation process, '[j]udgement is the touchstone.'" Public Serv. Co. v. Town of Ashland, 117 N.H. 635, 639 (1977). The board has made a thorough

review of all the documents and evidence provided at the hearing and, as requested by the board, subsequent to the hearing. Based on this review and the board's judgment and experience, it finds no further adjustments beyond those recommended in the Town's Submission are warranted and therefore, orders the Properties be adjusted as cited above. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of City of Nashua, 138 N.H. 261, 264-265 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

"The powers of the board and the rights of taxpayers appearing before the board are entirely statutory and are limited by the terms of the statute." Appeal of Land Acquisition, 145 N.H. 492 (2000), citing Appeal of Gillin, 132 N.H. 311, 313 (1989); see also Thayer v. State Tax Comm'n, 113 N. H. 112, 114 (1973); "The board's subject matter jurisdiction is similarly statutorily defined." See Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985). These statutes provide the exclusive remedy to taxpayers who are dissatisfied with their assessments. Porter v. Town of Sanbornton 150 N.H. 363 (2003); LSP Assoc. v. Town of Gilford, 142 N.H. 369, 374 (1997). To the extent the Taxpayers claim the revised Properties' assessments (Town's Submission) continue to be overasessed, the Taxpayers have failed to provide any market evidence to support such a finding. Despite the methodology claims made by the Taxpayers, those claims do not lead to a finding of disproportionality without probative evidence that the resulting assessments are disproportionate to market value and the Town's level of assessment. The Taxpayers have the burden of proving by a preponderance of the evidence that they are paying a disproportional share of taxes. Porter, Id. ("While it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and

of itself, prove the disproportionate result."). Further, to the extent the Taxpayers argued the assessments increased significantly, the board finds such evidence does not prove disproportionality. See Appeal of Town of Sunapee. 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. A reassessment is intended to remedy past inequities and, thus, new assessments will vary between properties, both in absolute numbers and in percentages. It appears to the board that all "factual errors" argued by the Taxpayers at hearing and subsequently revised by the Town have been addressed. However, if in fact there remain facts disputed by the Taxpayers, the board finds there has been no evidence provided to support any additional revisions. Further, "[j]ustice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985) citing Bemis v. Claremont, 98 N.H. 446, 449.

The Taxpayers argue the Town failed to properly equalize the current use assessed values on the Properties. RSA 79-A:5 provides for equalization of current use values which is intended to keep ad valorem and current use assessments on the same level. Given that purpose, it is only logical for the Town to equalize the current use values as of the year of the revaluation if one has occurred. The purpose of a revaluation is to attempt to assess properties at 100% of market value. It would be absurd to use a prior year's ratio when a revaluation has occurred when the intent of the statute is to insure equality. The board finds the Town's use of the 2003 equalization ratio of 96% applied to the current use values is fair and proper.

The board has not individually responded to the Taxpayers' "Motions Requesting Rulings" ("Motions") filed at the hearing as they are too convoluted, contain multiple requests in

each "Motion" for which a consistent response could not be given, contain requests which were declared to be "moot" by the Taxpayers, went beyond the scope of these appeals, and many were requests for town-wide action rather than property specific action. Further, the Taxpayers failed to provide adequate documentation to support many of the Motions. The board has incorporated in this decision, responses to Motions which have merit and over which it has jurisdiction. "The trial court's order sets forth both sufficient findings of fact and essential rulings of law to support the ultimate decision. [The board] need not respond expressly to every specific request filed by a party." Harrington v. Town of Warner, 152 N.H. 74, 86 (2005). The board finds the remaining arguments lack merit and warrant no further discussion. See Appeal of Land Acquisition, 145 N.H. 492 (2000), citing Vogel v. Vogel, 137 N. H. 321, 322 (1993). The board would note that several of the Taxpayers' Motions deal with whether the Town's revaluation was properly performed. The board refers the Taxpayers to RSA 71-B:16 and board's rules PART Tax 208 which deal with petitions for municipal-wide reassessments. The Taxpayers' relief under RSA 76:16-a and 79-A:12 is to have their assessments proportionate to market value for the ad valorem portion of the assessment and current use assessment in compliance with RSA 79-A and CUB rules. The Taxpayers' Motions go beyond the remedy the board has authority to grant in these appeals.

If the taxes have been paid, the amount paid on the values in excess of those enunciated in the board's rulings 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 Properties pursuant to RSA 75:8, the Town shall use the ordered assessments 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 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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Michele E. LeBrun, Member

_____
Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jere D. Buckley and Caryl D. Buckley, 266 Pond Hill Road, Webster, NH 03303, Taxpayers; Edward Tinker and Gary J. Roberge, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; and Chairman, Board of Selectmen, Town of Webster, 945 Battle Street, Webster, NH 03303.

Date: June 9, 2006

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Anne M. Stelmach, Clerk