

Board of Abatement

10/2/17

Board Present: Jared Cadwell, Selectboard Chair; Mike Jordan, Lister; Doug Mosle, Lister; Sara Stavrak, Lister; Patti Lewis, Town Clerk & Treasurer; Lisa Koitzsch, Justice of the Peace; Chuck Martel, Selectman; and Rick Rayfield, Justice of the Peace

Appellants Present: Matt Lillard, General Manager Mad River Glen Cooperative; Meg Hourihan, President of Mad River Glen Cooperative Trustees; and Steve Kantor, Counsel for Mad River Glen Cooperative

Jared Cadwell (Jared) opened the meeting at 10:00 a.m.

He identified the property as Parcel ID 10-043, owned by Mad River Glen Cooperative. (MRG)

He administered the oath to Appellants and asked the Board of Abatement Members (Board) if there were any conflicts of interest or if there had been any ex-parte communications. No conflicts were noted. Rick Rayfield (Rick) mentioned a Vt. Statute and Vt. Supreme Court ruling that he had sent out to the Board by email but noted there had been no opinion or discussion on the matter. Doug Mosle (Doug) said he and Jared had met with Matt Lillard (Matt) in May 2017 to review the MRG reappraisal and to explain a correction to appraisal and the resulting assessment.

Jared asked if the Appellants had any questions about the Board of Abatement Rules of Procedure. There were none. He then explained that the Board was to gather any evidence that the Appellants wished to present and have an opportunity to ask questions. After the evidence period the public hearing would be closed and the Board would enter into deliberative session. A written decision would be provided within thirty (30) days.

Rick asked if Steve Kantor (Steve) was a member of the bar, and thus an officer of the court, and the answer was yes.

Steve presented evidence from MRG showing that the ski area had not received a property tax exemption for lifts and snowmaking equipment between 2005 and 2016. See attached email, Memorandum in Support of Mad River Glen Cooperative Request for Tax Abatement, Exhibits A-D, and a copy of The Vermont Statute Online Title 32, Chapter 135, and Title 24, Chapter 051.

Steve stated that in 2002 the Vt. Legislature began the process of putting together a property tax exemption for ski lifts and snow making for ski areas. The law went into effect in 2005. The law provides that the value of lifts and snowmaking equipment (value determined by Towns) are exempted from the state education value for tax purposes. 2017 is the first year this exemption was applied to the MRG. The exemption was not applied from 2005 to 2016 resulting in an average of \$13,000.00/year over payment of taxes. By Matt's calculations there was a total overpayment of taxes in the amount of \$155,782.70. See Exhibit A.

Steve said they have no issue with the Towns numbers but do have issue with the fact the exemption had not been applied.

Steve asked what the law allows for a remedy in a situation like this. He quoted Statute 24, Section 1535, "taxes in which there is a manifest error or a mistake of the listers". He believes there clearly has

been a mistake. He does not believe it makes a difference who made the mistake and that the Board has the ability to abate taxes proved to be a manifest error. He further stated that the MRG was simply over taxed, that they operate by the skin of their teeth, and to them this is a significant amount of money. He asked the Board to exercise discretion and refund the over paid taxes either by check or by a credit going forward for as many years as necessary to reach the remedy.

Matt explained that he had used the Town's exempted property value of \$794,800.00 for the years 2005-2007 as this was the last value he could find in Town records. See Exhibit A.

Questions asked by the Board:

Chuck Martel (Chuck) asked if anyone at MRG was aware of the exemption law in 2005. The answer was that no one at the table held their positions at that time and were unclear if it had been known by prior management. Doug noted that the Vermont Ski Area Association advocated for the exemption and even if MRG was not a part of the association at the time it would have been announced to all ski areas.

The process of how valuation law changes are announced/made known to all parties was discussed. Doug said that one of the processes the Town Listers use is to rely on tax payers to look at their assessments and come to the Listers and/or use the grievance process to make corrections.

Doug asked if MRG felt any shared responsibility for the error. Steve responded that he did not see anything in which the Board's discretion took into account tax payer's ignorance. He also said that looking at a tax bill, with no exemption line, it might not have been noticed.

Jared asked for confirmation that the first time they learned of the error was May of 2017. The answer was to the best of their knowledge MRG had not noticed the error from 2005-2016.

Jared commented that since we have a grand list that is certified by the Town, but reviewed by the State of Vermont, and the taxes in question are State of Vermont education property taxes, collected by the Town as a pass through to the State, not Town taxes nor money spent by the Town, it would seem logical for MRG to seek relief through the State of Vermont. Steve responded that the statutory structure that he was familiar with makes the Town the assessing and collecting entity and the abatement statute does not limit the abatement authority. He believes the Town has the power to abate.

Lisa Koitzsch (Lisa) restated that the State education taxes are simply funneled through the Town. Sarah explained the tax collection process and noted that the State will still want their money regardless of the Board's decision on this request.

Lisa asked if Sugarbush had received their exemption since 2005. Doug answered that the exemption had been properly applied to Sugarbush.

Lisa asked to confirm that the amount they are seeking in relief is \$155,782.70. Matt replied yes and potentially an allowance for interest but he had not included this amount in their calculations. Steve added that if the Town charges interest on delinquent taxes then MRG could ask for interest at the same rate. Chuck then asked if what they were asking for is the \$155,782.70 plus interest. Steve said yes.

Doug again asked if MRG felt there was any shared responsibility. Steve said in hindsight, in 2005, he wished MRG had been up to date with exemption law changes but felt it is the Town's job to fairly

assess the ski area and the taxpayer's job is to pay the bill or grieve. In this case they were assessed value for equipment and lifts which the State of Vermont had told the Town not to. He is not sure it would make a difference in court who made the mistake but rather the court would analyze how to make right.

Sarah Stavraky (Sarah) agreed that the Town has to put out correct information on the property tax bill but when MRG has a finance person, and the exemption must have been all over the news at that time, one would think that the financial department would be looking for this reduction at that time and every year forward.

Meg Hourihan (Meg) suggested that if it was missed on the first bill it might be difficult to see it in following years.

Matt asked if taxpayers get a parcel ID/assessment report each year and Doug explained they would only get one if a change had been made to the property or in a reappraisal year.

Jared offered that he does not think that the State of Vermont can be absolved from some responsibility in this matter and thinks it should be considered.

Discussion followed about the length of time the Board would need to review the evidence presented by MRG and if it would have enough time to deliberate and meet the 30 day deadline to issue a decision. Steve said MRG had no objection to continuation of the meeting and to take all the time the Board needs.

Doug noted that MRG gets a significant economic depreciation on their assessed value. MRG asked where the snowmaking/lift numbers came from and Doug replied from the Marshall and Swift cost tables and that the acreage covered by snowmaking is 18 acres out of 118. Those acres are valued at \$5,000.00 per acre.

Both MRG and the Listers stated they were comfortable with the property assessment numbers as presented.

It was clarified again that the exemption does not apply to municipal taxes and that Matt had found no process to appeal to the State of Vermont.

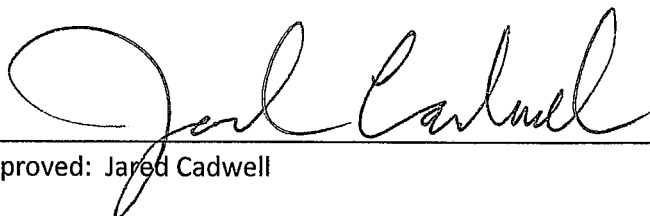
Jared thanked Steve, Meg, and Matt for coming to the Board.

10:56 a.m. Chuck made a motion to close the hearing and go into deliberative session. Rick seconded. No further discussion, all in favor, motion carried.

11:38 a.m. Lisa made a motion to recess the deliberative session and reconvene on October 10, 2017 at 10:00 a.m. at the Fayston Municipal Offices. No further discussion, all in favor, motion carried.

Respectfully Submitted

Patti Lewis


Approved: Jared Cadwell