

MINUTES SUBJECT TO CORRECTION BY THE SHELBURNE BOARD OF CIVIL AUTHORITY. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE BOARD.

**TOWN OF SHELBURNE  
BOARD OF CIVIL AUTHORITY  
MINUTES OF MEETING  
September 19, 2016**

APPROVED – 10/3/16

**MEMBERS PRESENT:** Tom Little (Chair); Laura Gannon-Murakami, Dennis Bowen, Carroll “Bud” Ockert, Josh Dein, Peter Gadue, Lee Suskin, Jennifer Leopold, David Webster, Nancy Baker, George Schiavone, Colleen Haag (Clerk).  
**ADMINISTRATION:** Ted Nelson, Town Assessor.  
**OTHERS PRESENT:** Richard King.

---

**1. CALL TO ORDER**

Chair Tom Little called the meeting to order at 7 PM.

**2. PUBLIC COMMENT**

None.

**3. REVIEW/APPROVE MINUTES**

*September 6, 2016*

**MOTION** by Dennis Bowen, **SECOND** by Pete Gadue, to approve the minutes of September 6, 2016 as written. **VOTING:** all ayes except two abstentions (Bud Ockert, Josh Dein); motion carried.

**4. TAX APPEAL: TA52, LLC, 190 Lands End Lane**

Chair Little reviewed correspondence sent to the BCA relative to the Rules of Procedure for BCA Property Tax Assessment Appeal Hearings. Colleen Haag urged deliberating and making a decision on the two appeals before the BCA (Vermont Railway and Lands End Lane) prior to October 10, 2016 while she is still Town Clerk.

TA52, LLC, 190 Lands End Lane

The procedure to be followed with the hearings was explained. The oath was signed by the appropriate parties. There were no disclosures of conflict of interest, potential conflict of interest or ex parte communication with the appellant or public statement regarding the appeal. Chair Little noted he communicated with Mr. King on a procedural matter.

Assessor Ted Nelson stated the property under appeal is 10.4 acres with a dwelling and barn at 190 Lands End Lane owned by TA52, LLC. The value under appeal is \$2,797,000. Richard King, representing the appellant, appeared on behalf of the appellant.

**APPELLANT COMMENTS**

Richard King commented as follows:

- The property was purchased in an arm’s length sale for \$2,595,000 on May 5, 2016.
- The transfer tax return for the sale has been submitted.

- There were no other considerations or unusual circumstances.
- Under Vermont Supreme Court rulings and common sense the sales price determines the fair market value of the property.

Tom Little asked the appellant to follow up with the citations to Vermont cases. Mr. King said he will submit the court cases.

#### ASSESSOR REPORT

Ted Nelson reviewed his memo giving background information on the decision by staff to allow the appeal to proceed to the BCA. The following was noted:

- The value change to the property is because 5 acres was separated off of the 15 acre parcel.
- The previous owner (Jeff Jackson) felt the appraisal was too high.
- Shelburne Point is one of the most exclusive neighborhoods in town. Three of the six lots are sold. Lot 3 is valued at \$3 million. Lot 4 is valued at \$2.4 million. All the lots have rights to the beach on the north end of the point by the Halvorson parcel.
- Comparables on Ordway Shore, Harbor Road, and Mariner's Cove adjusted out to \$2.7 million and \$2.8 million which reinforces the value of \$2.797 million for the appellant's property.
- Assessing is not a precise science. Common level of assessment is an average.

Richard King asked the following:

- Is there any reason to doubt the sale on May 5, 2016 was not a bona fide sale - Mr. Nelson said no.
- Is there any reason to believe there were other circumstances with the sale that did not involve the buyer and seller and that influenced the sale - Mr. Nelson said no, but noted Mr. Jackson had the property on the market for five years and may have been under pressure to sell because he was supporting two properties.
- When the sale took place that is the first time Lot 7 and Lot 8 were separated - Mr. Nelson confirmed this.

Tom Little asked the first time the parcel changed hands. Ted Nelson said as of April 1, 2008 Willard Jackson and his children owned Shelburne Point then the land was subdivided into lots. Jeff Jackson owned a house and five acres with no frontage as of 2008 then the property was reconfigured and Jeff Jackson came before the BCA in 2010 requesting a reduction in value.

Tom Little asked about the site plan in the packet of information (Page 19) showing Jeff Jackson's five acre parcel and dwelling and the surrounding 10.4 acres of land including lake frontage owned by Willard Jackson. Ted Nelson said the 80' of lake frontage is owned by the family trust. Some reconfiguration was done and on April 1, 2009 Jeff Jackson acquired 10.4 acres to add to the lot with five acres and a house for a total of 15 acres with lake frontage. The newly configured property was valued at \$3.9 million. The parcel remained as 15 acres with a house until April 1, 2016 and then 10 acres and the

dwelling was purchased by TA52, LLC and Jeff Jackson retained five acres. Tom Little asked the assessment for Lot 8. Ted Nelson said \$334,100.

David Webster asked about the sales price as fair market value given the current market for lakefront property (selling for less than assessed value). Ted Nelson said this depends on the type of property. Property valued greater than \$1.1 million languishes on the market. Property valued between \$275,000 to \$600,000 stays on the market 15 to 30 days. Neighborhood is an important element. People view Shelburne as investment property as being prudent, but it takes longer to move it. David Webster asked if the town has recovered from the 2008 market. Ted Nelson said the average has been five or six high end sales from 2011 to the present and less than one prior to that time. The price range is more in the \$800,000 range rather than \$2 million range.

Lee Suskin asked if the town is stipulating the appeal is valid. Ted Nelson said the town is before the BCA without objecting to the appeal, but the hearing is de novo. Tom Little noted the Assessor's Office raised the issue of untimely appeal. Mr. Little asked if the objection is being withdrawn or the objection waived. Ted Nelson said the town is conceding it is better to hear the appeal and stipulate to the fact that this is a legitimate appeal.

Tom Little asked if there is any response to the appellant's view that the May 5, 2016 arm's length sale with no unusual circumstances is in itself dispositive of fair market value. Ted Nelson said the assessor does not have the luxury to jump to a sales price because that would not retain equity in the Grand List. Sales price is not a reliable basis to value property in the future. The BCA can determine if \$2.6 million is fair market value. Tom Little asked if the length of time the property is on the market is a type of circumstance that can cause an arm's length sale to be less of an indicator of fair market value. Ted Nelson said the seller (Jackson) indicated he got everything he could and he was anxious to sell, but there was a point where he would go no lower.

Tom Little stated without citing any court decisions the BCA has in the past taken the position that a single sale does not necessarily establish fair market value. The appellant carries the burden of proof. Richard King said purchase price is a consideration on a bona fide sale. Unless there is evidence of other considerations, sales price takes on a great deal of value. Mr. King cited the Great Bay Hydro case as having other circumstances beyond the buyer and seller. With the hydro case the court ruled the purchase was not just real property, but involved multiple facilities in five towns.

Lee Suskin said testimony was heard that the sale was a stress sale. Mr. Suskin asked if there is any case law on stress sales being a bona fide transaction. Richard King said sales of properties in foreclosure are enough to question the value. A bona fide sale means there is a willing buyer and seller and all are aware of the facts. Testimony was given on the history of the subject parcel, ancient sales, trends, and listed value, but there was nothing to suggest the value of the property at purchase is not the value. There was no testimony of a stressed sale, but rather just suggestion there may have been a stressed sale.

Tom Little noted the second page is missing from the Inspection Committee Report of October 2010 for the Jackson property. Richard King pointed out the inspection report is of the two parcels assessed as one.

Tom Little said any further information must be submitted within a week from today. Richard King will submit relative legal decisions for consideration.

The evidence was closed.

#### SITE INSPECTION

The inspection committee is:

- Josh Dein
- Lee Suskin
- George Schiavone
- Tom Little

The report from the inspection committee will be read at the October 3, 2016 BCA meeting.

Tom Little said there were two appeals in the 2014 cycle with the same argument as the 190 Lands End Lane appeal. The BCA conclusion was that a property's recent sale price may be evidence, and may be strong evidence, but that is not the only evidence the BCA can consider. Mr. Little noted the Town Manager said resources can be available if the BCA needs legal advice from outside counsel to the Town Attorney who is advocating for the town through the Town Assessor.

Josh Dein asked for the legal definition of "distressed sale". Tom Little said the classic phrase is "willing buyer and willing seller" and "distressed" means one may not be willing.

Nancy Baker questioned why a week was given to submit additional evidence. Tom Little said the time is to allow legal arguments or court cases to be filed.

#### Vermont Railway Appeal

Josh Dein and David Webster recused themselves and left the meeting. The BCA went into deliberative session at 8:15 PM to discuss the draft inspection committee report on the Vermont Railway appeal and the alternative interpretation of relevant statutes submitted by Lee Suskin. Deliberative session ended at 8:33 PM and the meeting resumed.

#### 5. OTHER BUSINESS

##### *Colleen Haag Retirement Party*

Tom Little said the retirement party for Colleen Haag was a wonderful, well attended event. The new Town Clerk will attend the BCA meeting on October 3, 2016.

*Election Help*

Colleen Haag will confirm volunteers for the November election at the October 3, 2016 BCA meeting.

**6.      ADJOURNMENT**

With no further business and without objection the meeting was adjourned at 8:40 PM.

*RScty: MERiordan*

