

BCA ORGANIZATIONAL & TAX APPEAL HEARINGS MEETING
JULY 21, 2014
6:30 PM

Present: Doreen Aldrich, Mary Barber, Ann C. DiBernardo, Patricia Fowler, Peter Golec, Susan Hammond, Dennis Harty, Douglas MacPhee, Alan Ternes and Cass Wright, BCA; Paul Noble & Camilla Roberts, Listers; Kathleen Neathawk, Asst. Town Clerk

Call to Order: Vice Chairman, Douglas MacPhee called the organizational meeting to order at 6:30 p.m.

MacPhee asked for a motion to adopt the Rules of Procedure for Conduct of Tax Appeal Hearings. Golec moved to adopt the Rules of Procedure for Conduct of Tax Appeal Hearings, seconded by DiBernardo. The motion carried unanimously.

Aldrich moved to nominate Thomas MacPhee, Chairman for the ensuing year, seconded by Ann DiBernardo. There were no further nominations and the motion carried. Aldrich then moved to nominate Douglas MacPhee as Vice Chair for the ensuing year, seconded by Peter Golec and the motion carried.

The chair administered the oath to all BCA members present and the BCA signed.

At 6:35 p.m. Barber moved to adjourn the organizational meeting and open the appeal hearings seconded by Peter Golec. The motion carried.

TransCanada Hydro NE, Inc. – 20 Mill St. - PIN 246060019 – SPAN 528-166-12481

The clerk administered the oaths to Mark Cleverdon, Property Tax Mgr., representing TransCanada and to the listers. The chair asked if any BCA had a conflict of interest or had ex-parte communication. Dennis Harty recused himself from this hearing. Roberts introduced the property and passed out a memo (Exhibit A). Roberts explained that this is somewhat of a repeat of last year and turned it over to Mr. Cleverdon from Trans Canada.

He reiterated that this is year three of an appeal started back in 2012 with the same value – 2012, 2013 and 2014. The town is valuing the parcel at around \$108,000,000 and the company with their independent appraisal is valuing it at around \$63,000,000. Nothing has changed; it's the same for all three years and he is here just following up on the grievance. As the listers are aware, they are in mediation. He added his goal is to find a way going forward to work together and not get involved with lawyers and consultants because all the money the town is incurring and TransCanada is incurring through mediation or some type of settlement is expensive. He added, the worst case scenario, if they were to go to court and the court ruled in TransCanada's favor 100%, the town would have a liability on an annual basis of taxes of about 1.3 million a year which would total up to about four million. That's if they get their way 100%. If they go middle of the road, we go to the mid-point of the town's value and our value then we're looking at half that. Instead of 1.3 million a year, it would be about \$655,000 a year which is about \$2,000,000 right now for three years. This is serious and a lot of money that depending on how we end up, the taxpayers could be responsible for. He said he is open to coming up with a way to avoid this.

Ternes said you talked about working out a solution. It is his understanding there are municipalities larger than ours who actually agree on a base value and then taking current information on how much money you make out of a facility would be a premium or could go down to less. If you look at the income each year, if you were giving us honest income figures and not necessarily to us; you'd have to give them to some party that would keep it confidential; but someone we both trust. Cleverdon said the income approach is probably the best approach for this kind of property. Ternes said he wants to use the income that they are making at what they sell it for. Cleverdon said you want the actual and he is fine with that. Ternes asked Cleverdon if he could talk to his people and find out where there are communities that are doing this and get some kind of copy of their arrangement. Cleverdon said he could try; but most of us are all pipeline which is regulated. He will check up north in Toronto where they have solar and turbine to see if they are doing anything like that. Canada is a little different though.

Wright asked Cleverdon if he could describe the corporate pedigree of TransCanada; is TransCanada self-possessive or is it affiliated with other utility corporations or is owned outright by another entity. Cleverdon responded that TransCanada, TransCanada, LTD and TransCanada --- it filters down and there are a lot of different entities within entities. Wright asked how about above? Cleverdon said it's TransCanada, TransCanada stock.

Barber said we have the listers telling us to leave it where it is; we have mediation taking place and what Mr. Cleverdon is saying is something could be worked out. Does that fall into the responsibility of this board? Where does the BCA come into that? The mediation falls with the select board. Barber asked Cleverdon if he was asking that between the \$108,000,000 and \$63,000,000 that the BCA consider reaching middle ground. Cleverdon responded that he thinks that is happening in mediation right now. MacPhee explained that Ternes was talking about after this case is settled making it better so we don't end up in court again; a solution for the future.

Roberts cautioned that the magnitude for the whole state and all the education taxes throughout that Rockingham is a beneficiary of and TransCanada's values up and down the whole river are big enough to swing things around in value for the state so whatever we might think we would do here, to do that out of sync with the rest of the towns and all the properties for the whole state would be like shooting ourselves in the foot. It would not be a good idea to go rogue and do something separate. There may be, with the whole state, a wiser course. Cleverdon said it's always good to bring up new ideas.

It was agreed that the inspection committee be made up of MacPhee, Chair; DiBernardo & Fowler and a tentative date was set for either July 29th or August 1st at 9:00 a.m. Roberts said it would be a good idea for a lister to be a part of the inspection as an observer and the BCA agreed.

Doris Morse/Roseann M. Drexler – 1800 Rockingham Rd. – PIN 065001800 – SPAN 528-166-11704

The clerk administered the oath to the appellants and the listers. The chair asked if any BCA had a conflict of interest or had ex-parte communication. DiBernardo recused herself because Drexler was an employee of her & her husband for 20 years. Lister Roberts introduced the property and passed out a memo and tax map (Exhibit A) and turned it over to Morse. Morse explained that this was all one parcel of land in the beginning owned by her grandmother. Years ago, after the state got through taking land to put the road in; they were paying taxes on 36 acres. Years later her grandmother gave her and her husband three acres and she was paying taxes on 33 acres. Later in life, Morse's grandparents gave Roseann one acre. This all started when they gave Roseann more acreage. This is all one piece of land for 88 years; now you want to add six more acres to it. The map does not show Roseann's; this is all one piece of land in this deed. The listers have her for seven acres; but that was corrected. Now there are six acres floating around that goes back on to this. Nothing has been done; the boundary lines are stonewalls except for a couple. The listers said they were going to walk the line; but she doesn't know if they did or not. Noble advised that he and Mike Harty went there. She added that the trailer does not have seven rooms and it only has two bedrooms. There is a kitchen, a living room with the expansion that makes more room within the living room and a bath. The listers have a house on her land which is three acres; the town has it with Roseann's name on it. It shouldn't be. The tax bill comes to Brenda, Sam and me. She is objecting to the six acres. All these years, taxes have been paid on 36 acres and three acres were taken from it and then one acre was taken from it.

Roberts explained that the maps sent in the notebooks are from the prior year before all this so there is an updated map in this memo. She added that the clerk doesn't have the updated map yet. She said if the BCA looks at the map in their binders, she thinks it will help clarify exactly what Morse is describing as what has come to pass. If you look at the difference between the two, you will see the six acres that Morse has described is to the north end of this property. Drexler came to the listers last year in a grievance proceeding and brought in a deed that confirmed with the research and ortho photos about the location of her house from the air, the listers could see that it didn't add up. The bearings and distances on the deed she brought measured out very close to what is now seen on the map. The listers were able to take that to the town cartographer and understand that really she did own one acre which leaves this other six acres. At the time, it looked like the six acres belonged to her and her mother on the parcel now talked about. After taking the information to the cartographer, they got the map in Exhibit A back. This acreage was measured by DiBernardo. Out of respect for the deed brought in at grievance, Roberts took it down to the clerk's vault. The deed Drexler brought them does not have any actual measurements of the land. It keeps referring to prior deeds so she kept going back. There are two different deeds that come to the original, actual description. Like so many old deeds, they're pastures. The pastures are bounded by stonewalls and in one case it changes and you would know that by knowing what the boundary was of the abutting property owner. It is very confusing. The other deed says simply, "the edge of the pasture" with no measurements, no monuments, and no stake in the ground. There is no way to know where the lines are unless you go to the trouble the surveyors do to research all the abutting properties, owner's deeds, etc.

This is beyond the scope of the listers at this point. It is a plus or minus situation. There is a lot of room in all these boundaries here that go many different directions with a plus or minus six acres. Morse said 88 years ago, all this was one. There is no stone wall by Chesley's. Roberts said she asked the Secretary of State if the BCA could make a determination of acreage because it is kind of a new thing. Of the years she has been here, she's never had the BCA make a decision as to acreage vs value. She got no answer back. As far as the listers can tell and from the listers' handbook which she quoted from the normal structure of authority in terms of grand list where acreage comes from, it seems to them that if Morse really feels that there would be a different acreage because of that plus or minus factor, they could take it back to the cartographer and tell them. As listers, they have to be very well documented to make changes in acreage and they need to treat people consistently and with caution. They rely on what the mapper comes up with using his tools and technology.

Noble said if you read the listers' handbook, you will find that there is one area where the listers have the authority to change a number and that is in the area where there is boundary that has not been surveyed. In this case, there are. One place, at least, is flexible because you have this "plus or minus" reference in the deed. Roberts advised that should the BCA make a determination that it thinks the acreage should be different than 38 acres, then this is undeveloped land and they would use the land schedule where undeveloped land is \$1,000 per acre if you might want to consider the value that might go with that. Morse asked the listers when they took the aerial photos; when the leaves were on? Roberts said the aerial photos come from the GIS maps. Morse advised that most of this is all woodlot and very dense. After Roseann's change, all of a sudden six acres appear on her (Morse's) property. They have been paying all these years on 32 acres; now it's 38 acres. Fowler said since there is no survey, the BCA has no idea how much acreage is there. Noble said the GIS maps are done in large part by aerial surveys. The error in an aerial survey on area is up to 25%. If you look at that number, the plus or minus looks pretty big. It actually isn't as big as you think it is because that 25% is the area. If you take the square root of 25 and make it five which would be an edge of a square, the potential linear area is five feet in a hundred. That makes it a little easier to swallow. That is the error you would find on your hand held GPS that you buy at the sporting goods stores. The equipment the surveyors have can cut that to six inches; but this isn't surveyed. When you see a surveyed line, you know you have a good number; anything not surveyed, you want to temper it. If you have two values, you have the right to exercise some judgment as to what the number is.

The inspection committee will be comprised of Harty, Chair; Barber and Hammond. Harty will notify the listers as to the date and time of the inspection.

**BF Petro/Anthony James dba James Petro, LLC – 97 Westminster St. - PIN 265030097
SPAN 528-166-10177**

The clerk administered the oath to the Appellant, his attorney and Listers. MacPhee asked if anyone had a conflict of interest or ex-parte communication. Mary Barber and Peter Golec recused themselves. Lister Roberts introduced the property and passed out a memo. Chris Moore, Appellant's attorney and Mr. James were present. Moore handed out exhibits. He said they were here to contest the fair market value of the property. Fair market value is defined as the price which the property will bring on the open market when offered for sale and purchased

by another. Exhibit A shows the PTTR which shows the date of the sale and the amount of the sale. The date was April 17, 2014 and sold for \$133,150. The law states and the Supreme Court has upheld that as long as a bona fide contemporaneous sale is shown, a presumptive fair market for the property is established and no further inquiry is needed. Exhibit B is a statement from the realtor who actively marketed this property for years and tried to get top dollar for it. He was on commission and he had every incentive to try to get as much money as he possibly could. In an email, he said the property was on the market for a number of years with some interest; but no takers. As James knows, the property was also offered at auction; but believes there weren't any bids. Moore said he felt James had a pretty good argument that what he paid probably reflects the current market value --- real property and equipment. He added, he thinks James will find, assuming the business is operated well, he got a great deal; however, based on the income generated, it was not worth any more than what he paid. One can argue that a store or gas station is not the highest and best use; however based on economic activity in the area, it's hard to define what a higher use might be. He said he didn't know what one would do with that store with the tanks in the ground. James added that it went up for auction and he was the only bidder at \$140,000 and that bid was refused; however he went back early spring, \$133,000-\$150,000 was with what inventory was left in the store so that drops the value even more. Moore said he included some case law (Exhibits C & D). The "Great Bay Hydro Corp. goes on to say sale price is the most persuasive and favored method of determining fair market value". In that case you can disregard the sales price as an indicator of fair market value if the property was privately offered to a limited number of buyers. This was openly marketed, publicly auctioned trying to sell this gas station. He asked the BCA not to disregard the sales price. He feels it is spot on with what the value is. James added that he thought it had been on the market at least four years. Moore said taking a market data approach, what are other gas stations in town selling for; Barrows sold their gas station at the north end of town for \$155,000 recently and he included that transfer tax return in the exhibits. Bucky Adams bought Cal Masure's gas station for \$80,000. James added that when he bought the gas station, it had been closed for about two months. When he went to reopen, due to several violations with Rick and the gas part of it with the State of Vermont, they would not let him reopen it unless he jumped through hoops. He was able to band aid the problem. With the band aid, the State of Vermont informed him in writing that those tanks have to be out of the ground no later than January 1, 2018. That gives him up to the summer of 2017 to be replaced. He can't afford to do that so he is reaching out to Shell to see what they can do; it is several thousand dollars. Moore said James makes a good point, if we're looking at the property as of April 1st, it was actually shut down. There was an environmental violation with the property and the state wouldn't allow the place to operate as a gas station. James said it was two months before he could open it; he had to paint, etc. Moore reiterated, going through the approaches now, he wanted the BCA to believe him when he says the purchase price was the most accurate. There are other approaches that listers use. The income approach which maybe the listers are choosing to use, James can speak to how profitable the place is. The gist from the realtor's letter is the other guy wasn't making a go of it. It would probably be completely vacant if it wasn't for James stepping up. James added that if there isn't an owner/operator in there working, the place won't make it. James said the margin on the sale of gas is minimal. Liquor is 8% from the state. Gas is on an average three to five cents. He added if you buy a carton of cigarettes here in Vermont, it's roughly \$25-\$27 tax per carton; in New Hampshire, it's roughly \$17.00. Everything across the river is a lot cheaper as far as tax so

he is competing against that. A lot of his sales are foot traffic. Moore said other comps --- directly across the street is currently assessed at \$279,000 which is far less than the \$410,000 at the Shell station. James said he questions the lot size; he thinks his is smaller. James said he has talked with the zoning administrator; and was advised that he is in a commercial district; but two sides of his property abut residential property. He needs to upgrade the canopy, the signs, etc.

Roberts explained that the property has been valued by the income approach when the appraisal was done in 2011-2012. They did a lot of studying of gas stations in general and not just in this town. She passed out a copy of the most current trends in convenience stores and gas stations in terms of how they're valued (JSO Valuation Group Ltd.). The thing that stood out about this property, because there is another across the street, is the way the traffic flows. It is much more favorable to this gas station than the one across the way. Folks will take the most convenient way to get in and get gas and get out and a lot of people working in town and going out of town go right by there. They saw in 2011 the distinction between a mechanic service garage that sells gas and a convenience/market store selling videos, food, and beer, anything you can pick up quickly on your way home; no service provided. They have diverged and most owners know that. With Barrows Coal, referenced here, part of that sale was that the tanks had to be removed or the new owner would not close on the deal. They were just going to do the mechanic work and forget the gas. Cal's is not selling anything but service and gas. It's not the same kind of buyer or same kind of consumer situation as a convenience store. The listers looked at a host of comparables but; first they wanted to find out from the seller and buyer more information about the sale to know how much weight to give that sale because the statute says a sale is one consideration; it is not the only consideration. She referenced the third page at the bottom of her handout. It says "discounted valuation due to liquidation". That is the reply the listers got from the seller. With that, this sale will be removed from the liquidation study for the town. It will not be considered a "valid sale" which means it is not represented as of a market value. It will not get used in the state equalization study for the town. The listers then went to other assessments in the area. There are two comparisons in the packets, the Penguin Mart in Springfield and Circle K in Westminster Station that are recent. They are both gas stations and bigger so the listers have made adjustments. The figures in parenthesis are adjustments down for the different attributes of the property. There were no adjustments up from these sales because the James Petro property has less of these attributes than the other two sales. When they did that, they came up with \$414,000 and \$411,000 and decided that in between could be a reasonable estimate of value. On the other side, they felt their responsibility is equity. They thought about what other towns do and what have they been doing with the other gas stations and convenient stores in town and this is what their listing is.

James said the listers mentioned traffic patterns. First thing in the morning, going out of town, it's favorable to stop there. A lot of times, they go right to the traffic light. He has watched it and wondered what he has to do to bring in more business. Part of the sale with Barrows & Fisher at the Gulf station at the other end of town was that the tanks had to come out because the buyer didn't want the headache. To compare the gas station to the Penguin Mart in Springfield where there is a lot more traffic and more industry is not a fair comparison. The Westminster Station Market has a Dunkin Donuts which brings in a lot more traffic and you have New Hampshire traffic heading over to I 91 so that makes that a really busy gas station so he doesn't

feel that is a fair analysis. Moore reiterated that the exhibits he presented have case law and the law is a stubborn thing. He knew the listers would use a different approach to justify the high valuation; but the fact is, a recent bona fide sale isn't just one consideration; it is the most persuasive and favored method of determining fair market value. There is no need for any particular estimation method for valuing real property for tax purposes when a recent bona fide sale exists to illustrate the fair market value. There is no requirement that the property be actively marketed in order to establish a bona fide sale for determining fair market value for tax purposes. All that is required for a bona fide sale is that it be between a willing buyer and a willing seller at arm's length and not to rig a value. It wasn't rigged; it was actively marketed for years. If Rick was pressured, he wasn't under the gun to sell it within a month's time because he was trying to sell it for four months and no one wanted it. James added that nobody wants to give their property away; but there comes a time when it is not profitable and it's not selling.

Noble said we don't appraise property based on its singular sale price. The listers assess fair market value for tax purposes. Our fair market has to represent a broader market than just one sale. Generally speaking, they would not even consider less than three to come up with a figure. In our closing argument, we say leave it alone because we're not saying it should go up. We only used two comps which were local. The prior page is the assessment comparison and very interesting. It is a partial array of approximately 40 gas stations/convenience stores looked at in 2011. You can see where these things are selling or where they are assessed at. The interesting thing is of the ones listed, there have been no grievances or appeals and that's throughout quite a large area --- Chester, Rockingham and Westminster. They're selling in one or two cases, above those listed values and some cases below. That's normal everyday business. The Penguin and Westminster sales are close by. We aren't guessing. We're using the standard procedures outlined nationally and adjusting for the area. The successful businesses are doing moderately well. They generally make 2%. When you do the income basis, that \$410,000, the required net operating income is only \$41,600 and that is not a lot of money.

The Inspection Committee will be comprised of Wright, Chair, MacPhee and DiBernardo. They will meet with James on July 30th at 9:00 a.m.

Floyd Amidon c/o Richard & Carol B. Johnson – 38 Oak St. – PIN 233540038 – SPAN 528-166-11937

The appellant was not present; but his attorney, Chris Moore was. The oath had previously been administered. Barber advised that she had called the clerk to ask if the Johnson's had requested abatement. She asked if there was a problem with that. MacPhee and Moore said "no". The listers introduced the property and turned it over to Attorney Moore. Moore passed out exhibits. The first is the sale price from Amidon to Johnson on May 5, 2014; it sold for \$22,500. At the time it was sold, the property was vacant. Their argument to the BCA is that it was more valuable as a lot once the remediation had been done --- lead paint, half burned structure, mulching. The reason it was torn down and sold is because the structure after the fire was not habitable or saleable. The house was a total loss after the fire and cost of repair far exceeded the value of the structure after repair. See affidavit of Floyd Amidon. The Johnson's bought it for \$22,500; but they would not have bought it for that had there been a structure on it that they would then have to pay another \$40,000 to tear it down, remove it and deal with the clean-up.

The listers are saying there is some value to it. There was a structure there as of April 1st. It was a half burned building. Consistent with the affidavit, the cost to repair it far exceeded the value. The property was purchased 16 months prior to the fire for only \$29,000. He appealed to the BCA's common sense and asked if they had a family member moving back to town would they pay \$74,000 for a village lot in Bellows Falls where the building was half burned down when they could buy a house in Morgan's Field for \$80,000 without any damage whatsoever. Moore said he could think of five structure fires in Bellows Falls. Two actually changed hands. One was 63 Atkinson St. in January of 2004 that sold for \$10,000, The Oona's commercial building sold for \$50,000, Blodgett's Auto Repair didn't change hands.

Roberts passed out a memo from the listers. She said the listers did inspect the property on March 11th and did find the shell there. They thought it could be reasonably rehabilitated. The affidavit from Mr. Amidon is important to consider. The listers left the primary site for the land with water and sewer at a value of \$53,000 and the structure at \$21,000. The listers debated on this one. It is very hard to think clearly about something when you know what happened right afterward. As listers, they found out that it was considered by the people involved not to be salvageable, only something to be disposed of. She added they have a policy in the town amongst the listers; with various evidence from various sales that if you have a property that is so debilitated and not financially feasible to rebuild and it costs money to actually take it away, they drop land values in half for that. At the time they were there, they didn't see it that way; but since that time, the listers recommend dropping the building value to zero and the land value at half.

Moore said he was ok with the listers' value of \$26,500.

The Inspection Committee will be comprised of Harty, Chair, Barber & Ternes. They agreed to inspect the site right after this meeting.

There being no further hearings, Wright moved to recess the meeting to Wednesday, August 13, 2014 at 6:30 p.m. seconded by Golec. The motion carried.

Attest: _____ Town Clerk