

TOWN OF WEST BATH
Board of Assessment Review (BAR)
Appeal Hearing Finding of Facts and Decision

Subject of Appeal: Residential subdivision lots located at Harmony Haven Subdivision and identified as Tax Map R-2 Lot 16-M-2 through 16-M-14 (Tax AC#1452; 1464; 1469; 1470; 1471; 1472; 1473; 1474; 1475; 1478; 1479; 1480 & 1481). Subject owned by Stephen C. and Annora B. Renaud.

Jurisdiction of West Bath BAR to hear and decide appeal:

- West Bath date of True Commitment 08-24-10.
- Taxpayer Application for Abatement dated 10-14-10 / received on or about the same date.
- The taxpayer filed a written application for abatement to the proper body within the 36 MRSA §841 deadline.
- Elected Assessors' denied abatement 02-01-11.
- Notice of Decision received 02-03-11.
- The elected assessors responded within the 36 MRSA §842 deadline.
- The tax payer was properly informed of denial of the request.
- The tax payer application for appeal of denial received by town 03-31-11.
- The taxpayer filed a timely appeal of denial under 36 MRSA §843.

Preliminary requirements for filing appeal were understood as having been met.

Date of Site View: Thursday, April 21, 2011 at 4:30 PM
Location of Site View: This Way and That Way, land (only) view
Site View Attending: Stephen Renaud, Appellant
James Day, Attorney for Appellant
Juanita Wilson-Hennessey, BAR Chair
Richard Totten, BAR Secretary
James Williams, BAR Regular Member
Peter Oceretko, BAR Alternate
Steve Winter, Community Member

Date of Hearing: Thursday, April 21, 2011 called to order at 5:00 PM
Location of Hearing: West Bath Town Hall Lower Level
Hearing Participants: Stephen Renaud, Appellant
James Day, Attorney for Appellant
Michael Olivo, Appraiser as Witness for Appellant
Ronald Beal, CMA, West Bath Assessing Agent
Roger Therriault, Attorney for BAR
Juanita Wilson-Hennessey, BAR Chair
Richard Totten, BAR Secretary
James Williams, BAR Regular Member
Peter Oceretko, BAR Alternate
(Rob Morris, BAR Recording Secretary)

Hearing Attendees: Annora Renaud, Appellant
Steve Winter, Community Member

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Exhibits:

Appellant Submittal:

Appeal Application received by Town 03-31-11
Attachment 1 – List assessed value vs. abated value
Attachment 2 – Notice of Appeal dated 03-30-11
Exhibit A – Subdivision Conditions (Sheet 1 of 2)
Exhibit B – Summary Appraisal effective 11-30-11
Exhibit– 36 MRSA §701-A: Just Value Defined
Subdivision Survey as approved by Planning Board

Town Submittal:

Tax Map R-2 and current subject property cards
West Planning Board Minutes for May 12, 2009 with
Subdivision Notes and Conditions of Approval
Renauds' Application for Abatement packet dated
12-30-10, including CMA by Edie Cram, Realtor
Advisory Memo dated 01-06-11 from Ron Beal. CMA
to Selectboard, including tax maps R-2 & R-6
and comparative property cards with TY-2010
Commitment Book extracts Page 10 thru 13
Advisory Memo dated 01-13-11 from Ron Beal, CMA
to Selectboard, including tax maps R-1 & R-3
with additional comparative property cards
Town Notice of Decision stating denial dated 02-01-11

Summary of General Findings of Fact:

- Appellant and Town mutually agreed that the aggregate value of the subject real estate as currently assessed (combined value of 13 lots) is \$780,600.00.
- Appellant confirmed abatement sought is to lower total assessed value as of April 1, 2010 to \$391,600.00 (seeking total value reduction of \$389,000.00).
- Appellant and Board of Assessment Review both represented at hearing by legal counsel. Town represented by Certified Maine Assessor without legal counsel.
- It was confirmed by Appellant's attorney James Day that the Appeal of Abatement Denial was based on a combination of three existing grounds:
A] Attorney Day indicated that the perceived premature assessment of the individual lots as of April 1, 2010 was the primary basis for appeal of denial. He contended that the assessment is illegal because Conditions of Approval imposed by the Planning Board prohibits sale of the subdivision lots individually.
B] Unjust discrimination and substantial overvaluation were expressed by Attorney Day to be alternative grounds for appeal because the subdivision's incomplete roads rendered the lots to be the equivalent of business inventory still in the process of completion. Attorney Day presented the definition of Just Value as contained in 36 MRSA §701-A.

The Board of Assessment Review consensus was that each of the three possible grounds claimed by the Appellants should be addressed as separate conditions within the hearing. It was further agreed to first address the claimed illegality of assessment, followed by discrimination and then to continue with substantial overvaluation of the 13 individual lots if still necessary after considering all relevant testimony on the first two grounds.

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Summary of Findings of Fact regarding appeal ground of Illegal Assessment:

- Ron Beal, CMA stated that based on the approval by the West Bath Planning Board followed by the filing of the subdivision plan at the Sagadahoc County Registry of Deeds it is straightforward to assess the lots as individual parcels.
- Attorney Therriault stated his interpretation that the additional condition imposed by the Planning Board restricted the issuance of any Building Permit until the town Codes Enforcement Officer (CEO) and Road Commissioner issued written approval of the road construction but did not prohibit sale of lots.
- Appellant Stephen Renaud confirmed that his understanding as Developer was that the lots can be sold but that Building Permits cannot be issued until ME DEP, town CEO and Road Commissioner "sign off" on road segments, including storm water construction where applicable.
- Appellant Stephen Renaud also confirmed that the subdivision's individual lots have been offered publicly for sale, including listing on the MREIS multiple listing service by Edie Cram of Welcome Home Realty. Also advertising sale is a subdivision lot layout sign erected at the entrance to Harmony Lane (located directly across the road from the Town Hall). Steve further stated that he has not had any notice from the Town of West Bath that the various public offers of sale have violated the conditions of subdivision approval.
- Attorney Day and Steve Renaud continued their presentation by referring to the Subdivision recorded plan posted on an easel. Lots #2, 3, 4, 5, 6 & 7 were outlined in pink and were acknowledged to be accessible for showing by Realtor Cram though Steve clarified that only lots#2, 4 & 5 are readily approached by passenger car. Lots#8, 9, 10, 11, 12, 13 & 14 are approachable only by foot and were outlined in green. Steve verbally estimated an additional \$300,000 cost to bring the remainder of the roadbed to required engineering standards.
- In response to questions from the BAR Steve responded that the ME DEP was involved because the subdivision exceeded 7 lots and the subdivision was approved for all lots rather than being designed for a phased approval process.
- Also in response to a BAR question Steve Renaud and Attorney Day confirmed that the DEP will sign-off in incremental steps if requested by Renauds' Project Engineer to approve one lot at a time.
- It was also verified from the recorded subdivision plan that the Planning Board had annotated a five year restriction on further division and sale of additional land from the Renauds' remaining 60+- acres that surround the subject lots.

The Board of Assessment Review deliberated and concluded that the assessment of the subject real estate as 13 individually approved subdivision lots was both routine and required under the specific circumstances of subdivision approval and recording. By a unanimous vote the BAR eliminated the appellants' primarily claimed ground of illegal assessment as a basis for subject abatement.

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Summary of Findings of Fact regarding appeal ground of Unjust Discrimination:

- Ron Beal, CMA stated that his recent research of existing subdivisions in West Bath supports that those with incomplete road construction do not benefit from a limiting land value factor, or discount factor as sometimes described that is dissimilar to the 10% adjustment already applied to the Renauds' land. In response to BAR questions he specified the Gardner subdivision on Austin RD, Beaver Brook in close physical proximity to the subject and another subdivision on Fosters Point Road below the Hill RD intersection (the name eluded him).
- No specific examples of similar properties benefiting from an altered method of assessment were submitted by appellant for BAR review.

The Board of Assessment Review deliberated and concluded that the method of land value calculation applied to the subject subdivision is routine under the current West Bath method of land value assessment and accepted that the method is uniformly applied throughout town. By a unanimous vote the BAR eliminated the additionally claimed ground of unjust discrimination as a basis for subject abatement.

Summary of Findings of Fact regarding appeal ground of Substantial Overvaluation:

- Michael Olivo, ME Certified General Appraiser LIC#CG15 of Associated Appraisers of Maine, Inc summarized the appraisal report he completed effective 11-30-2010 for the intended use of tax abatement. Based on an inspection of the property and a claimed study of pertinent factors, including valuation trends and an analysis of neighborhood data he concluded the market value of Lot#5 to be \$36,000 and the market value of Lot#10 to be \$26,000.
- In response to a BAR request for clarification Mike Olivo verified that he had acted solely as an unbiased independent appraiser for a flat fee rather than as a real property consultant working on contingency within the abatement process.
- Based on the appraisal report's stated intended use to be for the purpose of abatement Mike Olivo was asked to informally define Just Value and to explain how he compared Just Value to Fair Market Value during his analysis process. Mr. Olivo responded that he was not a Certified Maine Assessor and that he believed Just Value was simply a term used by the State. He did not include an analysis of Just Value compared to Fair Market Value in his work process because in his opinion the two value definitions are synonymous.
- Under the written report's Comments on Market Data section Mike Olivo refers to time adjustments made based on MREIS statistical data as well as "other data available" in his work files that resulted in "approximately 11% per year depreciation" as used in the subject abatement appraisal report. As part of the review hearing the BAR invited Mr. Olivo to submit additional documentation from his work file when he believed such submittal would further clarify or support his opinion. Mr. Olivo did not refer to his work file nor did he submit either orally or in writing any additional confirmatory data, statistical tables or work notes during his testimony segment that spanned approximately 25 minutes.

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- In response to a series of questions from the BAR Mike Olivo stated that he did not interview the Certified Maine Assessor serving as the town's Assessing Agent, nor did he interview any member of the Planning Board to verify the disputed intent of the legally limiting conditions placed on the subdivision. He stated that he did not review the Maine Revenue Services (MRS) annual sales audit specific to West Bath's certified sales ratio for any of the years between 2007 and 2010 that he calculated to have a depreciation rate of 11% per annum. Mr. Olivo also clarified that he did not interview Realtor Edie Cram who was marketing the subject property for her firsthand knowledge of market response though under the report's Comments on Market Data he does quote Mr. Renaud as stating that no sales of subdivision lots had occurred.
- Based on the appraisal report's introductory grid's check off box indication of declining property values, Mr. Olivo was asked to explain in specific detail the negative value adjustments ranging from \$7,200 to \$20,400 made for time adjustments when the MRS audits fixed the town's certified sales ratio at a continued and stable 100%. He restated that he did not review the MRS statistical analysis that indicated stable sales rates and verbally corrected that his time adjustment was in fact 11% over the three year period rather than the 11% per year stated under Additional Comments in his report.
- When asked the source of the cost data used to calculate the negative adjustments ranging from \$15,000 to \$20,000 made for the lack of electrical poles Mr. Olivo stated that it was obtained from Marshall & Swift cost tables but did not offer the specific tables used for inclusion as written hearing evidence.
- In response to a BAR question Ron Beal, CMA confirmed that the 100% certified sales ratio for each of the three years in question was the MRS audit resulting statistical percentage rather than the adjusted percentage permitted under statute as part of the commitment process.
- Ron Beal, CMA also pointed out that within the analyzed timeframe two other sales at higher purchase prices occurred in the same Brown Ferry subdivision identified in the appraisal as Comp #1 and Comp #3, but neither higher value sale was acknowledged or included in the abatement report. (Greater detail stated in town's written submittal in paragraphs #6 & #7 of Beal Memo dated 01-06-11.)
- Steve Renaud stated that he has invested \$400,000 in the subject subdivision and estimated that a cost of \$12,000 per electrical pole (\$150,000 total) will be required in addition to the \$300,000 he had earlier stated as his verbal estimate of cost to complete the roads to full required engineering standards.

The Board of Assessment Review deliberated on whether the appeal's claimed value adjustments indicated by the two lots the appraiser presented as representative of all lots had been supported sufficiently to both demonstrate substantial overvaluation and to provide adequate economic data within the hearing record that would enable the BAR to reasonably determine a just value for each of the thirteen lots in question. One Board member indicated that Mike Olivo's level of licensure as a Certified General Appraiser carried strong weight and therefore the appellants' submitted list of proposed values should be accepted. No other BAR member agreed. By a vote of 2 to 1 the BAR eliminated the final additionally claimed ground of substantial overvaluation as a basis for subject abatement.

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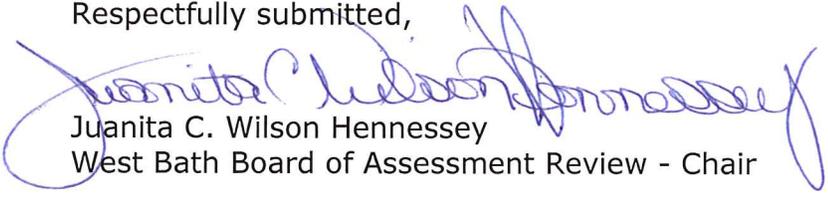
Summary of Final Decision:

The result of the entire deliberation and the three separate votes undertaken by the West Bath Board of Assessment Review was the elimination of all three grounds claimed as the basis for appeal of abatement denial. The complete hearing resulted in the conclusion that the appellant did not meet the necessary burden of presenting compelling evidence that the real estate assessment is so flawed that it should be deemed manifestly wrong, rather than merely imperfect.

The third and final vote taken by the Board of Assessment Review stated by a margin of two to one that the Town of West Bath's current assessed value of each lot within the group of thirteen lots should stand as a reasonable just value on April 1, 2010.

The West Bath Board of Assessment Review hearing was adjourned at 7:35 PM.

On this 27th day of April 2011
Respectfully submitted,


Juanita C. Wilson Hennessey
West Bath Board of Assessment Review - Chair

NOTE: Title 36 M.R.S.A. §843 states that the decision of a local Board of Assessment Review may be appealed by either party directly to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure. Appeal must be filed within 45 days of the date of the vote on the original decision and this time period may be extended by the court upon motion for good cause shown.