

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

Subject of Appeal: Residential land and dwelling located at Lot 8 Williams Island and identified as Tax Map R05 Lot 006-08 (AC#362). Subject owned by David S White, TTEE et al.

Jurisdiction of West Bath BAR to hear and decide appeal:

- West Bath date of True Commitment 08-10-15.
- Taxpayer Application for Abatement dated 09-12-15.
- The taxpayer filed a written application for abatement to the proper body within the 36 MRSA §841 deadline.
- Elected Assessors' denied the abatement 11-09-15.
- Notice of Decision was dated 11-12-2015.
- Elected assessors responded within the 36 MRSA §842 deadline.
- Taxpayer filed preliminary documentation dated 12-11-15 to appeal.
- Taxpayer Application for Appeal of Denial received by town 12-22-15.
- Taxpayer filed a timely appeal of denial under 36 MRSA §843.
- Hearing publically advertised in Times Record and on Town's website.

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

Date of Site View: Waived due to island winter access impracticality
Location of Site View: See above waiver reference
Site View Attending: See above waiver reference

Date of Hearing: Thursday, January 28, 2016 called to order 4:30 PM
Location of Hearing: West Bath Town Hall Lower Level
Hearing Participants: David White, Trustee / Appellant
Ronald Beal, West Bath Assessors' Agent
Peter Oceretko, Board of Assessors Chair
Juanita Wilson-Hennessey, BAR Chair
Robert Morris, BAR Secretary
Richard Totten, Regular BAR member
Chet Garrison, BAR Alternate
Lisa Atkins, BAR Alternate
(Brandi Lohr, BAR Recording Secretary)

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Exhibits:

Appellant Submittal:

Preliminary letter explaining Appeal dated 12-11-15;
Williams Island Subdivision Plan 1973 (SCRD PB10 PG17);
BAR Appeal Application dated 12-17-15;
Maine Listings MLS printouts of unsold properties (5);
Maine Listings MLS printouts of sold properties (2);
Oral Testimony by David White, Trustee.

Town Submittal:

Subject property tax card;
Subject deed (SCRD BK3583 PG49);
Subject Tax Map R-5;
Abatement Application dated 09-12-15;
Board of Assessors Notice of Decision dated 11-12-15;
Assessors' Agent advisory letter to Appellant dated 11-12-15;
Assessors' Agent memo detailing 2015/16 abatements dated 12-14-15;
Assessors' Agent note dated 12-16-15 clarifying Appeal filing steps;
Assessors' Agent memo dated 01-12-16 with varied property cards (9);
MRS Report of Assessment Review Preliminary 2016 SV;
Oral testimony by Ron Beal, CMA as Assessors' Agent;
Oral testimony by Peter Oceretko, Board of Assessors Chair.

Summary of Findings of Fact:

- Appellant and Town mutually agreed that the aggregate value of the real estate as currently assessed is \$251,200.
- Appellant and Town mutually agreed that no partial abatement was granted.
- Appellant confirmed abatement sought is to lower assessed value as of April 1, 2015 to \$180,200.
- Neither party (appellant and town) was represented by legal counsel.
- No expert witnesses testified.
- BAR Chair noted that the Board was varying from its typical site visit process by not conducting a site inspection immediately preceding the Hearing. Williams Island is accessible only by boat and it was accepted as a reality of coastal Maine living that access in January is impractical and that attempting to maneuver wintery shoreline is hazardous. It was further stated that within the Appeal Application the Appellants agreed to grant access and if testimony indicated a site visit to be necessary in order to fully understand the evidence presented then the Board could vote to recess pending appropriate weather to view the island, including the cottage interior.
- Based on Appellant testimony it was established that the Subject property was purchased on 03-08-2013 for \$190,000. Appellant testified that the price was lowered due to a septic issue discovered during the purchase process. It was agreed that the \$1,900,000 sales price indicated on the property card was a clerical error though the RETTD for the sale was not available for verification.

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- Based on review of the deed submitted as an exhibit it was clarified in response to a question from the BAR that the Subject is held in ownership as Tenants in Common by David S White, Trustee; Joanne W White, Trustee; Cynthia Brown and Andrew White (David and Joanne's children). David White stipulated that he was seeking the appeal of abatement denial acting under his authority as Trustee even though the application was signed without including reference to his and Joanne's role as co-Trustees of each other's Living Trusts u/a 2006.
- Additional discussion of the deed also clarified that the Subject island property holds parking and mooring privileges on mainland located in Brunswick. In oral testimony David estimated the boat trip from the Brunswick launch area to be approximately two miles from the Subject parcel on Williams Island.
- Appellant's oral testimony emphasized the inconvenience and added expense of island dwelling. Appellant noted that insuring island property is costly and that possible insurance carriers are limited in number. He described construction quality on Williams Island as modest with limited environmental impact. Appellant stated his belief that the vacant island lots remaining unsold should be interpreted as setting the market value ceiling for the land portion of the Subject's assessed value while noting that the published asking prices are significantly lower than his assessed land value.
- Assessors' Agent testimony indicated that the improved Subject parcel is on the Island's constant deep water side while the unsold vacant island lots are located on the tidal side making them less desirable. He also noted that three of the unsold lots are under the same ownership.
- The question was raised regarding how assessing cost tables reflect differences between developed and undeveloped lots and the Assessors' Agent responded that the method uniformly applied since the April 1, 2007 effective date of the last town wide revaluation does not include specific contributory value for site improvements. He indicated the strongest emphasis is placed on categorizing land as developed versus vacant and constant deep water versus mud flats.
- During testimony it was established that the Subject property contains a fully functioning septic system that includes a conventional leach field in addition to a 1300 gallon water cistern filtered by a settlement tank that is powered by a propane generator.
- In response to a question from the BAR both Assessors' Agent and Appellant estimated that the Subject cottage footprint is 125+- feet back from the Shoreline and that the cottage has water views cleared of vegetation.
- A question was raised from the BAR whether an independent fee appraisal was undertaken when the combined Living Trusts conveyed partial ownership to the Appellants' adult children on 03-25-15 and the Appellant responded that no appraisal was done. A follow up question from the BAR asked how the Whites had determined the fair market value required to be entered on the RETTD and the Appellant answered that the value declaration had been left to their real estate attorney and he could not recall the value used. Again, no RETTD was available at the Hearing to verify the fair market value declared in March 2015.

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- The BAR questioned how many habitable islands exist in West Bath and the Assessors' Agent estimated four developed islands. He acknowledged that sales of island properties are scarce and that statistical data upon which to base land cost tables is limited. In response to a related BAR question the Assessors' Agent acknowledged that within the last 15+- months a segment of a parcel off Sabino known as Treasure Island sold in the \$160,000 to \$165,000 range but he did not have any documents available at the Hearing to verify the details of the transaction. He further alluded to several additional mainland lots deemed unbuildable that had sold for \$40,000 to \$45,000 but he did not have any detail available to support his memory.
- In response to a question from the BAR the Assessors' Agent explained that all islands are classified as the same neighborhood to distinguish them from other waterfront parcels and he indicated on the property card that it is identified under Land Line Valuation Section as Site Index "ISL".
- Assessors' Agent stated that the entire Town of West Bath is currently assessed above market value as demonstrated by the submitted State Valuation Analysis indicating a Standards Ratio of 113% and a Combined Sales Ratio of 111%. He further stated that until additional island sales occur to indicate revised market conditions all island properties will continue to be valued based on the existing assessing cost tables.
- General discussion between Board members revealed shared awareness that the 2013 sales price of \$190,000 further adjusted by the Combined Sales Ratio of 111% still left a noticeable gap between the indicated value and the assessed value. One Board member expressed that the BAR's annual training conducted by Maine Municipal Association consistently reminds us that the Law Court issued the statement "equity trumps value" and he postulated that lacking affirmative evidence to the contrary the equity premise was likely applicable in this Hearing. Another Board member expressed that site visits are typically beneficial and reminded the Board that a vote to recess until weather permitted such a visit could still be considered.
- General discussion closed without any BAR member identifying an Appellant exhibit containing information rising to the level that satisfies the necessary burden of presenting credible and affirmative evidence of just value to support that the assessment is so flawed that it should be deemed manifestly wrong, rather than merely imperfect.

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Summary of Decision:

Appellant relied primarily on his oral testimony and did not refer to specific individual pages within his set of previously submitted exhibits to draw a definitive aggregate value conclusion. The town's Assessing Agent followed suit relying on oral explanation of the assessed basis.

After testimony, cross examination by each party, questions from the entire Board (regular and alternate members) and closing statements the open discussion was closed at 6:20 PM and deliberations by the three regular members of the BAR began.

Further discussion was brief. Juanita Wilson expressed that from her individual perspective the evidence presented by Appellant was so inconclusive relevant to value revision that recessing to conduct a site inspection would not remedy the void of missing data and added that she viewed the window to submit the documentation to have closed. She also stated that if the other Board members identified evidence of substance that she had overlooked she would be open to a motion to recess pending a site visit to better understand that evidence. Robert Morris expressed that people often thought the BAR held more authority than it does to render subjective value estimates without substantial documentation upon which to rely.

A motion was made by Richard Totten that the claim of substantial overvaluation had not been sufficiently supported by the Appellant's presentation and Robert Morris seconded the motion. No discussion followed and the vote was 3-0 that substantial overvaluation was not demonstrated by Appellant's submitted evidence and oral testimony.

Accordingly, it was the unanimous decision of the Board of Assessment Review that the Town of West Bath's current assessed value of \$251,200 should stand as an imperfect but just value on April 1, 2015.

The West Bath Board of Assessment Review hearing adjourned at 6:33 PM.

On this 6th day of February 2016
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.