

1. Call to Order / Attendance

Chair Afienko called the meeting to order at 6:00 P.M.

Members present: Joe Afienko, Chair; William Peirce, Alternate Member; Alan Rindler; Member; and Kristin Collins, attorney from Preti-Flaherty.

Other people present in roll call, Karen Fortier, Kittery Contract Assessor; Paul McKenney, Kittery Contract Assessor; and Michael Tremblay.

2. New Business/Public Hearing: Appeal 1, 84 Goodwin Road (Tax Map 58 Lot 61). Owner/Applicant Michael & Maureen Tremblay requests consideration of an application of appeal for real property assessment.

Chair Afienko opened the public hearing and requested the property owner to proceed with his presentation.

Michael Tremblay clarified that the Board has received and reviewed the submitted application and packet. He added that the three real estate companies did not have the updated and correct lot size of the property, and that they had it listed as 20% higher. Mr. Tremblay asked if the Board had any questions.

Mr. Rindler clarified the Assessors will present and then the hearing will be opened for questions. The Assessors did not have any questions for the applicant at this time.

The Board was asked if they had any questions of the applicant.

Chair Afienko verified the amount of the requested abatement, \$301,800.00.

Mr. Tremblay agreed and explained that the land value is so much higher than the building value, that the lot size adjustment makes a big difference to the value.

Mr. Peirce asked if he received an abatement after the survey performed by Easterly Surveying showed his property was smaller than the Town had on record.

Mr. Tremblay replied that he did receive a letter from the Assessors that the value was reduced, but he did not feel it was reduced enough.

Mr. Peirce confirmed that the Real Estate brokers did not have this updated information, and Mr. Tremblay confirmed that they were unaware.

Ms. Fortier asked if Mr. Tremblay went back to the brokers with the updated lot size for an adjustment, and he replied that he did not.

Mr. Tremblay commented on the neighbor's huge house newly built that decreases the value of his property because it overlooks his property and results in little privacy.

Mr. Rindler asked Mr. Tremblay if he knew the height of this house in terms of the second floor overlooking his property.

Mr. Tremblay did not have exact measurements but gave the Board an estimate of the height. He commented that it doesn't block the sun.

Mr. Rindler asked for more description on how it has affected his property.

Mr. Tremblay discussed the angles of the property on the site in relation to his property. He clarified there is no shrubbery between the properties due to the right of way for water access. Discussion continued on the neighbor's house, the sight lines, and the effects of the construction on Mr. Tremblay. He commented on the "monstrous" houses lack of fitting in with the character of the neighborhood.

Mr. Peirce asked the Assessors if they used a criterion for their assessments in relation to the properties next to the applicant. Paul McKenney replied they did not, and explained the three criteria used when adjusting the land: the neighborhood, the site index, and the condition factor. He further clarified that the neighbor's property was a subjective factor that may or may not affect the value of the applicant's property.

Mr. Tremblay commented that there were no covenants or restrictions on the properties that limit the buildings orientation on the lots that he was aware of.

Mr. Peirce asked questions regarding the liability versus the asset of the property, since Mr. Tremblay reports that the house is an actual liability in terms of future development. It would cost at least \$25,000 to tear down in order to rebuild. However, the property generates a rental income which is an asset. Mr. Peirce asked the Assessors if they take a negative value as a factor. Mr. McKenney replied that they can only assess what is on the property as of April 1, not what may happen, such as a tear down.

Mr. Tremblay commented on the structure of the house, with the quality of the construction due to the age. Discussion continued on the repairs done and the improvements needed to keep the house intact.

Chair Afienko commented on the differences of a market analysis and an appraisal.

Chair Afienko asked the Assessors to proceed with their presentation as there were no more questions of Mr. Tremblay.

Paul McKenny reviewed the timeline of the property to the Board, and mentioned the town-wide revaluation. Mr. Tremblay received an adjustment at the informal hearing, and another adjustment for his abatement. Mr. McKenney reported that the Assessors do not feel Mr. Tremblay has met the burden of proof and that there was not sufficient evidence submitted. Mr. McKenney asked if there were any questions of the Board.

Mr. Rindler asked about the physical inspection of the property, and the impression of the neighboring house and the value of the applicant's property.

Ms. Fortier directed the Board to review the photos to understand the property. She reviewed the photos with the views of the neighbor's house, and remaining photos of the lot and views of the ocean.

Mr. Tremblay corrected that the ocean view was not affected by the neighbor's house, but the privacy was the issue.

Mr. Rindler restated his question, asking the Assessor's if a neighbor's property affected the value of an adjoining property. Mr. McKenney said that it can, but it is hard to prove that with comparable sale data.

Mr. Rindler followed up with lot size questions, and the Tower Road comparables. He asked if there is a value of privacy in appraising. Ms. Fortier replied it is a value of opinion, and that the oceanfront factor is the value in the market. Discussion continued regarding the comparables and the values of the lot size and privacy, noting that the comparables have larger lots than the applicant. Mr. McKenney replied that an adjustment was made in the condition factor for the applicant. This adjustment was reviewed.

Mr. Rindler and Mr. Peirce asked again about the issue of privacy, and Mr. McKenney replied that it is a hard factor to adjust for due to the market. Building restrictions were discussed for the lot.

Mr. Peirce asked if the Town has any control over the orientation of a new home, and Mr. McKenney replied that his opinion is that the Town would only oversee the setbacks for the lot but not orientation. Ms. Collins agreed since the neighbor's home was able to orient differently than the replaced building. Mr. Peirce asked Mr. Tremblay if the lack of privacy was taken into account during the abatement and he replied no. Mr. Tremblay continued to discuss the lack of privacy due to the neighbor's house.

Ms. Fortier continued the Assessors' presentations, stating that the backyard and lawn was noted as exceptional. The lawn was described as level and exceptional. Ms. Fortier reviewed the comparable properties and explained the reasoning for including them in their analysis. The comparables that included homes that were torn down and rebuilt were included to show the value of the land. Other comparables included waterfront properties with homes on them. These comparables show that their assessment is in line with the market value.

Mr. Rindler asked a question regarding the Pocahontas comp and the time adjustment factor. Ms. Fortier reviewed the time adjustment since the property sold in 2019.

Mr. Peirce asked Mr. Tremblay about the leaning/unlevel floors in the sunroom. Mr. Tremblay noted that the house would require extensive work to level the floors. Mr. Peirce asked if the Assessors were informed of this and he was not sure. Roof sagging

was also discussed by Mr. Peirce and Mr. Tremblay. Ms. Fortier commented that she did note some settling when she toured the property that is common of homes of that age. The condition of the property was discussed in terms of assessing.

Chair Afienko asked if there were any other questions. There being none, the Board closed the public hearing.

3. Deliberation

Mr. Peirce discussed that the Board has rules for what an applicant needs to do to overturn an assessment. He explained that on the application it is suggested that an outside appraisal with comparables is done, and that he has not done that. He has provided opinions of value, but has not provided enough evidence. Mr. Peirce sympathized with the situation since he bought the property a long time ago and the taxes have increased since then. The right of way between the properties was briefly discussed. Mr. Peirce does not feel a reduction is warranted unless the view and privacy factor is not accounted for in the re-assessment and figured.

Mr. Rindler addressed the question of the neighbor's property affecting the value of the applicants as a true and present issue. He disagreed with the Assessor's conclusion that no evidence was given, and feels that the neighbor's new home could be a factor and that the testimony of Mr. Tremblay is evidence as well as the photographs. Mr. Rindler discussed the comparables and the lack of them addressing the issue of privacy. He recommends that a further abatement of \$100,000 be given.

Mr. Peirce asked about the rental income he receives, and that it mitigates the issue since the tenants tolerate the lack of privacy. Mr. Tremblay replied he has not raised the rent amount since they are repeat tenants but he may see an adjustment from the short-term renters this summer. Mr. Peirce remarked that if they made the adjustment due to the neighbor's house, they would have to make that adjustment for everyone because of the potential of "McMansions" anywhere.

Mr. Afienko expressed that he feels the assessment is accurate. There was a large difference in the types of properties in the comparables, but not a large difference in the assessment, showing the accuracy of the assessment.

Mr. Peirce asked the Assessors what they thought of another \$100,000 adjustment. Mr. McKenney replied that if there had been an appraisal done, and the assessment is within 10% of that appraisal, then the assessment is correct. Since there was no appraisal done, they cannot determine if the \$100,000 adjustment is valid.

Ms. Collins reviewed that if the applicant has proven there has been overvaluation, then they must also find evidence in the record of what the right value would be. It is on the appellant to show what the right value should be.

Mr. Afienko concluded that based on the evidence it has not been proven that the assessment is wrong. He explained that Mr. Tremblay could appeal to the Superior

Court within 60 days of this hearing. Mr. Afienko reviewed with Mr. Tremblay the usefulness of an appraisal, and whether it is considered an opinion or evidence.

Mr. Tremblay confirmed for Ms. Collins that the taxes were paid for the property.

The Board took a recess at 7:12 PM, and reconvened at 7:20 PM.

Ms. Collins read the findings of fact and the Board discussed and voted for each one as follows:

1. This appeal was timely filed and the appellant testified that the taxes have been paid for the tax year. The appellant has not presented any comparables by which to prove that the assessment is not in line with market value or to dispute the validity of the comparables presented by the Assessor. 3-0
2. It is possible here that the neighboring home and resulting lack of privacy negatively impacts the value. The photograph provided by Ms. Fortier is evidence of this effect. The Assessors presented comparables which all have larger lots do not address the issue of lack of privacy. However, the appellant did not present evidence demonstrating true market effect of lack of privacy. 2-1
3. The Assessor has presented a range of comparables in the vicinity and there is no demonstrated reason to believe that the adjustments made for difference in date of sale, quality or size of lot, or quality or size of building are not reasonable. 2-1
4. The Assessor did grant a reduction in assessed valuation of \$69,300 to account for limitation in utility based on the smaller lot size. The Assessor notes that the level nature of the backyard going toward the water positively affects the value of the lot. 3-0
5. The comparative market analyses presented by the appellant which were performed around August 2020 suggest a list price of \$900,000 to \$1,200,000. These suggested prices are within close range of and not substantially lower than the assessed valuation. 3-0
6. Because the appellant has not met his burden to present credible evidence to prove that the assessed value of the property is manifestly wrong, the appeal is hereby denied. 2-1

Ms. Collins corrected the record to state that the appellant could appeal this Board's decision to the State of Maine Property Tax Review Board since the property is valued at over \$1,000,000. He would have 60 days from the decision of the hearing, and would be able to present new evidence to the State.

Mr. Afienko moved to approve the findings of fact as written, and deny the appeal. Mr. Peirce seconded. The motion passed 2-1.

Mr. Peirce moved to authorize the Chair to sign a written notice of decision and findings. Seconded by Mr. Rindler. The motion passed 3-0.

Mr. Afienko moved to adjourn the hearing 7:32 P.M., seconded by Mr. Rindler. The motion passed 3-0.

4. Other Business

Approval of Minutes- May 5, 2021

Chair Afienko moved to approve the minutes as written. Seconded by Mr. Rindler. Motion passed 3-0.

5. Adjournment

Mr. Rindler moved to adjourn the meeting at 7:34 PM.

Submitted by Carrie Varao on June 28, 2021.

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information, the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website.