TOWN OF MORRISTOWN
18 LOWER MAIN STREET
MORRISVILLE, VERMONT 05661-0748

BOARD OF CIVIL AUTHORITY MEETING

The Board of Civil Authority of the Town of Morristown, notified and warned to meet at the Conference Room of the Tegue Building at the 43 Portland Street in said town on Thursday, the 6th day of November 2003, reconvened its meeting at 6:30 P.M.

Members present: D Andrews, T. Breault, K.Campbell, J. Greene, T. Hirchak, M. Lambert, S. Leach, S. Rooney, E. Wilson, D. Yacovone, P. Griswold, B. Greenia, B. Kellogg, S. Bryer, J. Paige, M. Struhsacker, and M.A. Wilson.

Listers present: L. Phelps and F. Favreau.

Reappraisal Consultant present: T. Vickery

Chairman Hirchak opened the reconvened hearing at 6:34 pm.

AGENDA:

1. The B.C.A. members signed an oath to hear and determine all matters at issue between taxpayers and listers submitted for their decision. Oath was administered to the listers, affirming that all evidence given relative to the cause under consideration shall be the whole truth.

2. Appeal #2003-15 and #2003-16: Peter Fuss – Parcel #12136-9905 and 12136-9909 respectively.
   a. Oath administered to Mr. Fuss, and his letter of appeal was read to the board.
   b. Mr. Fuss testified that his appeal was for hangar #9 only and not hangar #5. Although the assessment of hangar #9 was reduced by the listers at grievance, Mr. Fuss still believes it is too high. He testified that his hangar is larger than others, but there are about four other hangars exactly like his with respect to finished interiors. However, they are assessed for less. He stated that his hangar does have heat and power, is insulated, and the walls have been sheet-rocked. However, there is no water, no mechanical workshop and it is not used for commercial purposes. He has expanded his hangar by 800 s.f. by adding a 20' x 40' shed type extension along the backside of the hangar. This space allows him to store an antique airplane. Mr. Fuss stated that he is willing to pay his fair share of taxes as long as he is treated like all the other hangar owners.
   c. Tom Vickery responded for the listers. He presented Listers' Exhibit I that showed the current assessments of all the airplane hangars. He stated that originally the assessments were based on sales of hangars at Fair Market Value. This value included the hangar and an associated airport location/land value. A lawyer for another group of hangar owners that has appealed their assessment argues that use of the state owned land should not be taxed. Moreover, it is the opinion of the same lawyer that the hangars should not be taxed based on his interpretation of the Vermont Statutes that he sited. Listers Exhibits II and III are copies of current leases between the State of Vermont and the hangar owners. Both leases include language that speaks to the payment of local taxes by the lessee. The listers interpretation is that the language in the leases (prepared by the Vermont Agency of Transportation) shows the state's intent to have hangar owners pay property taxes on the structures and improvements while the state would pay 1% of Fair Market Value on the land. The listers asked for an opinion on the matter from the Department of Taxes, Property Valuation and Review Division. From that opinion (see Listers' Exhibit I), the listers now believe that hangars should be taxed on the buildings only and not the land. With selling prices being too ambiguous because of the terms of the leases, the listers calculated the hangar assessments on a cost basis. Doing so would change the value on all the hangars, and not just Mr. Fuss's. (See Listers' Exhibit I) As to the specifics of hangar #9, the listers took into account the larger size of the hangar, the finished condition of the interior and set a quality grade at average value compared to other hangars assessed with a quality grade of low cost average. The assessment was further adjusted to eliminate the land value.
   d. An inspection committee made up of Steve Leach - Chair, Peg Lambert and Ed Wilson was assigned.

3. Appeal #2003-17: William Gordon – Parcel #12136-9911.
   Appeal #2003-18: William Henchey – Parcel #12136-9912
   Appeal #2003-19: Robert Wardwell – Parcel #12136-9915
   Appeal #2003-20: Steven Berson – Parcel #12136-9914
    a. Attorney Ronald Merleman represented the above named appellants on behalf of the hangar association and owners. He was sworn in and the letter of appeal was read to the BCA.
    b. The collective appeal is based on the premise that real property owned by the State of Vermont is non-taxable. Then the question is, are hangars real property or personal property/chattel? If according to the terms of the leases between the state and the hangar owners, the owners can remove the structures, then the law of accession applies, and the hangars are not taxable. If the hangars are permanently affixed to state owned land, do they become non-taxable? Does the language of the lease imply that the hangars are taxed as a separate property to the individual owners? Mr. Merleman admitted that the language of the lease is mixed and confusing, but that there is an implication that the state can determine what happens to the hangars, even though the state purports that there are "hangar owners". Upon questioning, Mr. Merleman confirmed that the leases were written by the Vermont Department of Transportation, and there is no residuary right to the property when the lease expires. He argues that any conveyance merely transfers lease rights rather than the sale of any tangible property. He is not aware that any other towns that have airports and/or hangers situated within their boundaries have had to consider this issue. It is Mr. Merleman's opinion that it is unfair to consider a real property tax on the hangars under appeal because of the control by the State of Vermont as implied in the lease.
    c. Tom Vickery responded for the listers. He referred to the exhibits and testimony presented previously for the Fuss appeal. He also stated that he is of the opinion that these appellants want the BCA to set the Fair Market Value of the hangars at $0 (zero) to make the values non-taxable. Although Mr. Merleman argued that the lease leaves the hangar owners with no rights to the tangible property, Tom feels that the lease clearly extends the lease period to 25 years, and that the state will find an alternate location for a hangar if plans for the airport indicate that hangars must be relocated. Conveyance of hangars requires that a Bill of Sale and a Property Transfer Tax Return be prepared and submitted to the state with the proper revenue. Tom suggests that if the state owned the hangars, it would be liable for taxes representing 1% of the Fair Market Value. He suggests that the BCA get a legal opinion on the issue.
    d. Until there is a resolution about the question of the hangars being taxable, no inspection committee will be assigned.

4. Appeal #2003-21Sally Barrows – Parcel #25029
    a. Attorney Eric Parker represented Ms. Barrows. He was sworn in and the letter of appeal was read to the BCA..
    b. Mr. Parker presented an updated appraisal by Linda Seville as Appellant's Exhibit I. He testified that Jersey Heights is an interesting neighborhood with its mix of FHA starter homes and high-end homes on small lots. One would reason that if buyers were given the choice, they would chose to purchase a high-end home on a larger lot in a different neighborhood such as those presented in the comparables in the Oak Ridge Development. Mr. Parker stated that a house of this size and quality should not have been built on a lot that small, and asked what value can be attributed to a house that large on a lot that small with a modular home being built next door in that neighborhood when there are comparable homes on larger lots with more privacy readily available. He maintains that the listers assessment pretends that this high quality home is on a much larger lot, and must be assessed "as is" on a smaller lot. He stated that the private appraisal of $285,00 is fair and more in line with reality because there is no sales data available to benchmark this type of new home. In conclusion, Mr. Parker stated that the BCA must go with the private appraisal as presented.
    c. Tom Vickery responded for the listers. He presented Listers' Exhibit I that showed how the property had been revalued at grievance. Adjustments were made to reduce the base cost by 8% and the replacement cost by 8%. Further reductions were made by adding a functional depreciation of 4% for the size of the home and an economic depreciation of 10% for being overbuilt for the neighborhood. A reduction of the land grade multiplier further reduced the assessment to a new value of $307,200. The listers used the cost approach and came very close to the private appraisal submitted to them. Because it was difficult to find comparable sales, the listers used consistent

evaluation methodology, and the private appraisal does not dispute their assessment. It is Tom's opinion that Ms. Barrows did not take into consideration the market approach to value when constructing the house in the Jersey Heights neighborhood

d. An inspection committee made up of Brian Greenia - Chair, Ken Campbell, Siri Rooney and Paul Griswold was assigned.

5. Appeal #2003-22: Norman Prive – Parcel #08136.
   a. Mr. Prive was sworn in and his letter of appeal read to the BCA.
   b. Mr. Prive testified that his home, currently assessed for $667,400, was built forty years ago of 2x4 construction- an inferior quality than most homes being built today. As for the property, there is virtually no landscaping, and a culvert on the Langdell Road drains into his backyard and garage. He has complained to the town about the problem for years, but has never been satisfied with any solution. Mr. Prive mentioned neighboring homes as comparables: Fournier with 1.01 acres and a heated in-ground pool is assessed at $155,600; Lowe with .70 acres is at $138,400; and the Langdell property with 5.0 acres is at $129,000. The dwelling next door to the Prive residence houses a day-care business, and the Houle apartment complex across the street is income property. Mr. Prive feels that this detracts from the single-family residential character of the neighborhood and that the listers are not using depreciation in the way it ought to be used. He appealed to the listers to use common sense in re-assessing his property.
   c. Francis Favreau responded first for the listers. He presented Listers' Exhibit I that showed the old and new assessments for the residences on Sunset Drive. Mr. Prive's residence contains more square feet than most of the other homes but is valued at the lowest square foot cost of the houses on Sunset Drive by using a generous physical depreciation of 18%. Lister Lynn Phelps showed the BCA another comparable of a home in the Red Pines Estates (Listers' Exhibit II) which borders Sunset Drive. The Stewart property is very similar to Prive's in square footage and assessment including depreciation. That home sold in 2002 for $167,000.
   d. An inspection committee made up of Dave Yacovone - Chair, Jim Paige and Brian Kellogg was assigned.

6. Appeal #2003-22: Norman Prive – Parcel #08136.
   a. Mr. Prive, still under oath, stated he has no objection to the value placed on his bus garage, but that his complaint is with the assessment of the land. The building lot was given a land grade of 2.0, but his lot for his home was graded at 1.0. He pointed out that the soil at his home is sand and that the soil at the bus garage is clay. He had to haul in over 1000 yards of fill to keep his busses out of the water. The rest of the acreage is graded at .06 and it is nothing but swamp. The pond, assessed at $1500 is merely a catch basin for all the water that runs off the land. He disputes the assessment for landscaping, stating that the dry areas are merely hayfields that are mowed. The listers appraisal for the land comes out to $1500+/- per acre and he feels that is unrealistic. The property is unusable beyond the building site and is permitted for conditional use. It cannot be subdivided and can only be used for a garage or a single family home.
   b. Tom Vickery testified for the listers, saying that it is a very good site where the garage and parking are located. Admittedly the land surrounding the building site is swampy. It is a commercial use in a residential zone. He compared the property to that of Richard Cote who has a similar business across town. The two are similarly assessed although Mr. Cote has less land and fewer square feet in his building. (See Listers Exhibit I.) Mr. Prive's assessment was lowered at grievance from $259,600 to $203,600 because it is a special purpose property that would be difficult to resell for a different use due to the location and type and size of the building.
   c. An inspection committee made up of Dawn Andrews – Chair, Jane Greene and Dave Yacovone was assigned.

Tom Vickery left the hearings at 9:15 PM.

7. On a motion by Steve Leach with a second by Jane Greene, the minutes of the meeting of 10/23/03 were approved as presented.

8. Brian Greenia moved to accept the report of the inspection committee for the Demars' Property – parcel ID #2000101 at 63 Professional Drive. Motion seconded by Theresa Breault. There was disagreement among the BCA about the recommendation to assign a 1.00 multiplier for the land rather than use the .50 multiplier issued by the listers during the grievance process. Motion was voted and failed. The inspection committee was willing to reduce the multiplier from 1.00 to .75. Paul Griswold made a motion that the BCA accept the inspection committee's report as amended. Motion seconded by Brian Kellogg. Upon vote, the motion failed. Members Wilson and Andrews felt that there could be no resolution until Tom Vickery could be present to defend the assessment that resulted from the grievance procedure. He will be asked to be present at the next meeting.

9. On a motion by Dawn Andrews with a second by Theresa Breault, the board voted affirmatively to accept the inspection committee report as written on the Demars' appeal for parcel ID #21130 at 481 Brooklyn Street.

10. On a motion by Dawn Andrews with a second by Theresa Breault, the board voted affirmatively to accept the inspection committee report as written on the Demars' appeal for parcel ID #08150 at 29 Sunset Drive.

11. On a motion by Brian Greenia with a second by Dawn Andrews, the board voted affirmatively to accept the inspection committee report as presented on the Condon appeal for parcel ID #12159-01 at 3475 Laporte Road.

12. On a motion by Dawn Andrews with a second by Jane Greene, the board voted affirmatively to accept the inspection committee report as presented on the Lakĕ appeal for parcel ID #11054 at 1123 Moren Loop Road.

13. On a motion by Steve Leach with a second by Peg Lambert, the board voted to go into deliberative session at 10:23 pm. The purpose was to prepare the notice of decision on the appeal of Pinecrest Mobile Home Park.

14. On a motion by Dawn Andrews, with a second by Theresa Breault, the board voted to come out of deliberative session at 10:30 pm. The board instructed the clerk to prepare the Official Notice of Decision for the appeal of Pinecrest Mobile Home Park based on the information gathered in the deliberative session. (See attached *Official Notices.*)

15. On a motion by Theresa Breault with a second by Dawn Andrews, it was voted affirmatively to have Chairman Hirchak seek a legal counsel on the question of the taxable nature of the hangars situated on state owned land at the airport, and to bring a written opinion back to the BCA.

16. Upon motion, the meeting was recessed at 10:31 pm until November 6, 2003 at 6:30 pm.

Respectfully submitted,

Mary Ann Wilson

Mary Ann Wilson
Clerk – B.C.A.