

ABATEMENTS: Mr. McMahon advised that the Board had previously received 35 abatement documents from Assessor Rex Norman for their review, and inquired whether the members had any questions regarding same. Mr. Hohenberger sought clarification relative to an abatement request on Lamson Road. Mr. Norman clarified that the parcel in question had been split by the new roadway and he had subsequently taxed it as two parcels, however, he had been incorrect in doing so. Further, the parcel is eligible for a special assessment due to its utilization as residential property in a commercial zone.

Mr. Breton then moved and Mr. Hohenberger seconded to approve the recommendation of the Tax Assessor relative to 16 denials and 19 approvals of abatement requests as per his memorandum dated June 21, 2010. Passed 4-0.

The Chairman called for a fifteen minute recess to allow the Board to meet with Town Counsel.

PUBLIC SESSION: Mr. McMahon advised that the Board had conducted a meeting with Town Counsel to discuss property on Cobbetts Pond Road. He then deferred to Attorney Peter Bronstein, who was on hand representing the property owner, Charles Roberts.

Atty. Bronstein advised that Mr. Roberts is the owner of ½ of lot 8, all of lots 9, 10, 11, 12, 13, and ¼ of lot 14 on Cobbetts Pond Road; all of which had been combined at some point by the Town for tax purposes into a single parcel now referred to as lot 21Z-268 on the Town tax maps. Atty. Bronstein noted that the property owners had never been consulted or notified regarding this merging of the lots and that, per the zoning regulations, these should be reflected as individual non-conforming lots of record. He added that state statute precludes the merging of lots by the Town without the consent of the owner, and that Mr. Robert's was requesting that the Board revise the Tax Maps to the original plan of the area with the following modifications: combine ½ of lot 8 with lot 9, and ½ of lot 14 with lot 13. Atty. Bronstein then noted the Tax Assessor and Town Counsel had been apprised of and disagreed with this request.

Town of Windham
refuses to
acknowledge new
state law and the
fact that they never
had a lot merging
ordinance.

Mr. Hohenberger pointed out that the merging of the ½ lots would also arbitrarily change the "original" plan, and Atty. Bronstein replied that he felt it was unreasonable to request that the ½ lots be individual lots.

Discussion ensued regarding the original property deeds and when the lots were combined by the Town. Atty. Bronstein noted that the ½ lots were recorded as such in the deeds, and that the Town combined the lots somewhere around the late 60's.

Mr. McLeod inquired whether the property owner was treating the lots as individuals or whether there was an overlapping of uses. Mr. Joe Maynard of Benchmark Engineering approached on behalf of the owner, and noted that there is a slight overlap of a structure between lots 10 and 11, as well a structure of lot 9 which is completely contained thereon. The rest of the lots are vacant.

Discussion ensued regarding the value of the lots if taxed individually and why there had been no discussion of this prior to this time if the owner had concerns. Atty. Bronstein noted there had been sporadic discussions regarding the lots since 2000, and further discussion ensued relative to the lots having effectively been merged for zoning purposes, as well.

Mr. McMahon noted that such a merging may have been requested by a previous owner in the late 60's, and Mr. Maynard noted that no deed was found that referenced the property as "21-Z-268". Further discussion ensued.

Town Counsel Bernard Campbell approached noting that he and Mr. Norman were respectfully recommending that the Board deny the owner's request based upon the fact that since 1927 lots 9, 10, 11, 12, and 1/2 of lot 8 have consistently been conveyed by a metes and bounds description of the perimeter of the lots. Further, although lots 13 and 1/2 of 14 were originally separate from the others, in 1962 all of the lots came under one ownership with a single metes and bounds description.

Atty. Campbell went on to note that for 43 years one bill has been received for the property, which has been shown as a single lot on the tax maps, and that he believes for both assessment and zoning purposes it should be assumed and treated as a single lot.

Atty. Campbell then recommended that if the Board were going to consider granting the owner's request, a survey should be performed. He also noted the precedent that would be set by granting the request as it pertained to similar areas around the pond, and added that the owner does have the recourse to seek a proper subdivision.

Discussion ensued regarding the statute of limitations on such matters, and whether Mr. Roberts knew the property was considered as one parcel by the Town prior to 1995 when he assumed ownership. Atty. Campbell noted that, at a minimum, Mr. Roberts would have been aware in 1996 when he received a single bill.

Further discussion ensued regarding the owner's conduct as it pertained to Court opinion on effectively waiving the separation of lots through use. Atty. Bronstein stated that, although the previous owners had constructed a building on the property line, he believed that the 20 year statute of limitations should have begun in 1995. He reiterated that there had been no notification of the merger, and added that the Town cannot assume that an out-of-town taxpayer would have questioned a single bill for separate lots. Atty. Bronstein then stated that it is not necessarily Mr. Robert's intent to build on the five lots separately.

After further discussion, Mr. McLeod moved and Mr. Hohenberger seconded to maintain the layout of the property in question as depicted on the Windham tax maps and deny the request to recognize five individual lots. Passed 4-0.

Board of Selectmen Minutes of 06/2

Rex Norman is the Assessor with NO legal authority to pass decisions with respect to zoning

Here is the legal argument...void of any state law, case law or reference to actual town zoning ordinances. The statement they make concerning the deeds is what most would consider a 'scriveners convenience' the lots are clearly delineated. It is an OLD deed.

A single tax bill was used very frequently by assessors in NH. It was a book keeping convenience and saved on postage and copying charges. This was routine in many towns and had no bearing on zoning.

BUT WHY? They give no LEGAL reason for the denial. In addition where is the Code Enforcement Officer or the Planning Director???? This is a zoning issue and they NEVER consulted them! Unbridled power ABUSED!