

**WALDO COUNTY COMMISSIONERS COURT SESSION
RECONVENED TAX ABATEMENT HEARING PETITION NO. 352
LANCE PHILBROOK VS TOWN OF MONTVILLE
APRIL 12, 2011**

PRESENT: Commissioners William D. Shorey (Chairman) and Betty I. Johnson (Commissioner Amy R. Fowler could not attend.) Also present was County Clerk Barbara Arseneau to take minutes and Deputy County Clerk Veronica Spear to assist.

CALL TO ORDER: Commissioner William D. Shorey at 10:25 a.m. W. Shorey noted that the commissioners had, on February 17, 2011, voted to award the abatement on personal property belonging to Lance Philbrook (Map 7, Lot 6) in the amount of \$155.72. He asked if everybody had received notice that both the Petitioner and Defendant had submitted, in writing, motions to the County Commissioners to reconvene this hearing on April 12, 2011 to receive additional testimony and evidence from both parties. He further noted that the Town of Montville Selectmen had sent a copy of letter to Lance Philbrook dated April 5, 2011 in which it stated that Montville Code Enforcement Officer Bob Temple looked at the parcel (Map 7 Lot 3) and reviewed the Shore Land Zoning Ordinance. Mr. Temple determined that a lot that does not meet the minimum size standards of the ordinance was created in 1987. This occurred after the ordinance was adopted. The ordinance specifically states that a variance cannot be granted for a problem created by a prior owner. Therefore, the lot has limited use. Montville currently has a bog land classification for excess acres that have limited use but no such classification for a base lot. The ratio of the value of bog land excess acres to regular excess acres is 1/6. Applying this ratio to Mr. Philbrook's base lot gives a value of 1/6 x \$10,224.00, which totals \$1,704.00. The tax on this value is \$27.26 for 2010. The Montville Selectmen granted L. Philbrook an abatement of \$136.32 on his 2010 tax bill on the parcel designated Map 7, Lot 3.

W. Shorey asked L. Philbrook if he had received this letter from the Town of Montville, regarding that settlement. (Tape recording started here.)

L. Philbrook: I received a letter from them, but have not spoken with them personally.

W. Shorey: I see. Well, was the letter you received acceptable to you?

L. Philbrook: That seemed to be fine.

W. Shorey: That seemed to be fine? [To the Selectmen] And that's acceptable to you people? You people are fine with that?

J. LeGore: Yes.

W. Shorey: So we can dismiss that; say that that's settled, that side of the case?

J. LeGore: Yes.

W. Shorey: O.K., then that brings us to where we were, back to the personal property issue and I think you had some further information, was that M. Philbrook, that you wanted to provide.

L. Philbrook: Yes. And basically this...

W. Shorey: Excuse me; could we get, have we got letters for the gentlemen?

V. Spear: Yes, I do. (Copies were sent around the table to all.)

L. Philbrook: In addition after we met last – I have them – (referring to copies of letter.)

B. Johnson: Oh, you have them? O.K.

L. Philbrook: Thank you. Just the fact that the statements were that they were not singling out business or picking and choosing – they were going to every business they knew of...

W. Shorey: Yes.

L. Philbrook: Well, this lady right here, which is a former business owner in town, was contacted after the initial letters went out. She has since closed her business, but she was contacted by Herman Peaslee basically letting her – and she wrote this; she was going to come here with me today, but she had to be in Bangor, she couldn't – last minute, she didn't know until yesterday but she was contacted by Herman Peaslee and stated to her that this tax was not going to affect her or her business. So that just...further confirms to me that they are – it's not like they missed businesses, like last time we were in here and they said that some businesses that they didn't know about, but they obviously knew this one and they basically chose to omit her out of it. (Copies of a letter from Corie Dimmitt were submitted as evidence.)

W. Shorey: I guess, just for the record, I just got this letter and I haven't seen it, and I don't know if you gentlemen [Selectmen] have either, but I'd just like to read it for the record:

“04/12/2011; To Whom It May Concern, Up until last summer I owned and operated Mountain Valley Sport Guide Service and retail Gun Shop. I received a phone call shortly after closing from one of the Selectman (Herman Peaslee). He told me that he was calling because he heard I was upset with the new tax form that I received and he had hoped that it wasn't what influenced my decision to close my business. That was not directed toward me, and it was really for the larger businesses in town that had heavy equipment, etc. Not to worry about it, it doesn't affect me. I told him I wasn't happy about getting it in the mail, but that wasn't the sole reason for closing my business. I also

told him that I didn't think it was right to isolate certain businesses. What's good for one is good for all. Signed, and what's her name?

L. Philbrook: Corie Dimmitt.

W. Shorey: O.K. Corie Dimmitt. Sorry. O.K. I guess...I guess the first, the first thing that I would say that this is a little bit more than a casual proceeding and I don't know that we can put a lot of weight to it not be notarized.

L. Philbrook: I asked this morning and she was willing to come in and do that.

B. Arseneau: I didn't think I had to notarize that, and I apologize. That's my... [To Veronica Spear] She came in and delivered it to you?

V. Spear: No.

L. Philbrook: She was going to but then she was running short on time – she had a doctor's appointment and so she dropped it, on her way, to me and that's why I called her two or three times this morning because she was going to come down here, write it right here and have it notarized.

B. Arseneau: Oh, O.K., so she didn't come in.

W. Shorey: So there were conversations that we're relatively sure.

B. Arseneau: Yes.

L. Philbrook: She is willing to come back on her way back through and speak to you personally.

B. Arseneau: I thought she was going to come in and deliver it.

W. Shorey: No, if she's had conversations with the Clerk, that's good enough for me. O.K. And so this is the, in essence, this is what you wish to add to what to you presented the last time you were here, Mr. Philbrook. And you, Commissioner Johnson – do you have any questions for...

B. Johnson: About this letter?

W. Shorey: Yes.

B. Johnson: No, I'm fine with the letter.

W. Shorey: And how about Montville?

H. Peaslee: I'd definitely like to address the letter.

W. Shorey: O.K., thank you.

H. Peaslee: My name is Herman Peaslee and she's claiming she spoke with me and if she spoke with me, this was years ago, but my recollection of this was that she told the Town she wasn't a business and that she'd closed her business before, so she told me that all she had – she might have – was like a phone or whatever and I told her, "Well, if you are no longer a business, she would fall under that \$1,000.00 exemption. It seems to be that this letter is a misunderstanding of the conversation that I had with her. So if I – if she's stating that I said, "Forget it," it wasn't that I was stating that, "Oh, you're a business, well forget it." I was stating that she didn't have anything to meet that \$1,000.00 exemption...because she was no longer a business.

W. Shorey: Um-hmm. [Acknowledging] Do you have anything else that you want to add about the letter?

J. LeGore: Just that we contacted her, or Herman contacted her. We divided the businesses in town up and called people and that she told Herman she was no longer in business when he called. I distinctly remember having that conversation that was her reason for not having to pay taxes – personal property taxes – because she no longer had the business and all the equipment associated with it.

W. Shorey: Um-hmm. O.K., now, going back to you folks, we had, when we had the first hearing, we had discussions about the personal property and there actually was a vote here and the vote was two to one and that happened to be in Mr. Philbrook's favor and then you provided us with some other information. Would you like to speak to that this morning?

J. LeGore: Well, I sent you a letter sort of extracting some quotes from the Maine Municipal Association Assessors' Manual having to do with some of the legal aspects of assessing. I could, I don't know – do you want to review some of the important aspects of that?

W. Shorey: Yes, I'd like to have you do that for the record.

J. LeGore: On one quote, I'm taking from there, "It is not enough for the taxpayer to merely show that the assessors have made an error in judgment, even though such a mistake may result in lack of uniformity in the assessment of similar property. The taxpayer must show that his property was valued and more than its fair market value, not that other similar properties were undervalued. He or she must come forward with credible, affirmative evidence of just value." Now that's taken from some case law. There's been a number of cases in Maine that pertain to that. Another section says, "The taxpayer must be able to provide, indisputably, that there's evidence of a systematic scheme by the assessors to place a disproportionate share of the tax burden on one taxpayer." Again, this is from case law. So, we are saying that Mr. Philbrook hasn't shown that this property was valued at more than its fair market value. We also don't think that his contention that we erred in not assessing personal property of a few

business or individuals constitutes evidence of a systematic scheme by the assessors to place a disproportionate share of the tax burden on one taxpayer. Again, to reiterate the number of personal property valuations in Montville has increased from 22 in 2008 to 152 in 2010 and we believe that this shows that we have been making a concerted effort to make a complete list of personal property and we enclosed the list of both business and non-business personal property tax in Montville, for 2011, which was included in this letter. So, basically, we feel that, according to case law, we feel you erred in granting Lance Philbrook his abatement on this personal property for those reasons. So we're asking you to reconsider that decision.

W. Shorey: Um-hmm. Do you have questions you'd like to ask them, Mr. Philbrook?

L. Philbrook: I don't believe so. I can't think of anything right off hand, other than going back to the conversations we've had about, you know, not knowing about these other businesses in town, which – and – then, this, you know [referring to letter from Corie Dimmitt}. Obviously, she's not here to state – Corie, rather, is not here to state on this letter but some of the other businesses in town - to say they don't know they're there because they didn't have signs, and whatever, you know, which I'm pretty sure – I'm not exactly sure where Glen's house is, but he's right off of Route 3, I'm pretty sure, on top of the hill, there. I forget – I don't know the name of the road but the other shop, the one Mike's Repair – or whatever he calls it = is just down the road from where his house is. I find it a little hard to believe that he doesn't know it's there.

H. Peaslee: When you say Glen, are you referring to me?

L. Philbrook: Oh, I'm sorry – I meant Jay.

J. LeGore: Yes – it's around the corner. You're talking about...

L. Philbrook: Do you know where it is?

J. LeGore: You're talking about – it used to be a body shop, on the left?

L. Philbrook: They did all general repair.

J. LeGore: It's on the left going past Newel's and then it's on the left, right? Because you're headed towards Liberty?

L. Philbrook: If you're going in town, Liberty, yes.

J. LeGore: Yeah, if you're headed from Route 3 toward Liberty it's on the left. It used to be a body shop and now it's...

L. Philbrook: He's done all general repair; he always has.

J. LeGore: We thought it was a body shop that went out of business and then recently he went back into business as general repair. Is that your understanding, Herman?

H. Peaslee: Yes, that was owned by Ronnie Newton and he worked at, I believe, Robbins Lumber or something and he had an auto body shop that he did for himself but he became ill – seriously ill - and he sent us a letter stating he was no longer in business and then at some point around this time - it was probably the winter of 2010 – he then rented that shop to Mr. Light. We were not aware of that. It was right at the time – right before April 1st -but that time and we did miss him. I've since called him and he is willing to step forward now. But we missed him. It was not intentional; he just moved in there in between, and we missed it.

W. Shorey: I appreciate your being straightforward on that; that's good. Do you have any more questions [to Commissioner Johnson]?

B. Johnson: No. I was going to ask about when Mr. Philbrook was here before, and you guys were here before; you had mentioned other businesses. And it looks like or sounds like you probably did go and kind of check out those that he mentioned. He mentioned a few names of some businesses; some that even had signs. Was anything done to look at that and see if he was stating this; that you guys maybe did miss it or not miss it?

J. LeGore: Well, this is the time of year when we start looking at everything all over again, so we certainly look at all this – any evidence that comes up, we consider it; sure.

H. Peaslee: But I noticed in the minutes, the one on Route 3, the truck repair was mentioned but we actually did get him; he's being taxed very similar to you. I think you were \$9,000.00. He was \$8,000.00-something, so we didn't miss him. Now whether he – whether we – if you're saying maybe we caught something we didn't, I don't understand on that one because we did assess him.

B. Johnson: I thought there was one that, he evidently is still doing some business and I don't know – remember which one it was but the equipment was all really old and dirty and, you know, so it wasn't assessed.

W. Shorey: Yes, I remember the discussion on that.

B. Johnson: He's still using that, you know, equipment; he's still using the equipment, you know. There must be some value to it. But I'm not sure what business that was.

G. Widmer: I think you're referring to Keithan...

J. LeGore: Yeah, I think so.

B. Johnson: To whom?

G. Widmer: Keithan's Garage on Route 220 and we'll definitely revisit them this year when we make our April rounds.

J. LeGore: But, again, as we stated in our letter, that isn't really relevant.

B. Johnson: Well, no, it isn't...

J. LeGore: The fact that we missed one or several items is not really relevant to his particular case. He has to demonstrate that we didn't put a proper value on his personal property, right...

B. Johnson: On his, right, I understand that...

J. LeGore: ...and that's what he has to demonstrate by law.

B. Johnson: ...but it also says that, you know, if you were trying to do a systematic assessment and you're going to go and do properties that are businesses - the personal properties on businesses - then only doing certain ones doesn't seem to be really following that, you know where you're going to first concentrate on business because it's out there and it's more open and other types of personal property is much more difficult to - this tractor or somebody's tractor or whatever - it's more difficult. But the businesses were going to be done first. In 2009, I believe, Mr. Philbrook said that he was the first time in 2009. I don't know how many businesses were actually assess in 2009 and that's what I m kind of taking is that he's feeling that he was isolated first, here, and has been paying last year and again assessed this year. I read somewhere that you were going to try to do the businesses and have that as the first project and then it was going to be together.

J. LeGore: We submitted a list of 152 business and non-business properties that were taxed in 2009.

B. Johnson: I know - I see the list that you submitted, here.

J. LeGore: So it's clear that we haven't singled out Mr. Philbrook.

L. Philbrook: Look, I have just one other statement that which did come from Glen: I attended a select meeting - I don't remember the date, but it was several meetings ago. When we're talking about different property assessments and the paperwork that these folks that are from the Town send out first to fill out and send back and they were using the values from that and Glen said, and I quote, he goes, "I've got better things to do on a Saturday in April then ride around assessing," because it was taking up too much time. That's why they were relying on paperwork that was sent back. I find that a little disturbing.

W. Shorey: O.K. Is that your final comments that you want to make, Mr. Philbrook?

L. Philbrook: I suppose, yes.

W. Shorey: O.K. [To the selectmen] And do you have any additional comments?

J. LeGore: Sure, I'd like to respond to that.

W. Shorey: Well, O.K., but that's hearsay; it's not – can't accept hearsay, so it's not – it doesn't take you anywhere.

J. LeGore: O.K.

W. Shorey: O.K., so here's where we are, gentlemen. We have an unfortunate thing this morning that Commissioner Fowler could be absent. There was a special meeting in Augusta with the Bureau of Corrections today and she's heavily involved in that and she's the president of the MCCA and she had told them that, "If you can get this meeting arranged, I'll come, no matter what." Well, the meeting came at 10:00 a.m. this morning so that was "no matter what." So here's how we're going to handle this, which seems to be the fairest way to do it. We've been taking notes of what's been said by all parties this morning. This is going to be on the agenda, which is on the 11th of May, I believe is our next meeting, and I mean, you're welcome to attend. It's going to be discussed on a public part of the agenda to reach the decision and I apologize to you for having to drive in here from Montville – two or three. You don't have to come in May but if you wish to come, we won't be taking any more testimony; we'll just be discussing it to make a decision. You're welcome to come but we want to do it in public so that if anyone wanted to attend, they can attend.

B. Johnson: Commissioner Shorey, I have one more question I wanted to ask.

W. Shorey: You go ahead and do it.

B. Johnson: I wanted to ask; in 2009, what was the assessed amount that he [Lance Philbrook] was assessed for umm...we have the 2010...

J. LeGore: For personal property?

B. Johnson: Right. We have the 2010, but we don't have what he was assessed in 2009. I'm just curious about, you know, and for depreciation the various things and what he was assessed for 2009.

W. Shorey: Is it true, is it a fact, Mr. Philbrook, that it seemed to be that you hadn't necessarily complained about what your assessment was but your basic complaint was that the way that is was generally unfair, the way it was...

L. Philbrook: Correct.

W. Shorey: ...but the price was...

L. Philbrook: I've never disputed the valuations.

W. Shorey: The valuations...

L. Philbrook: Just the way it's being done.

B. Johnson: You just feel that you were assessed in 2009 and then again in '10 and somebody else has less assessed in '09 or not even at all at this point.

W. Shorey: So, we...

B. Johnson: Can you find it? You're getting there, right? [Laughing].

J. LeGore: We're getting there.

B. Arseneau: It's May 10th, by the way, you're next [court session].

W. Shorey: May 10th on the next meeting. O.K.

H. Peaslee: What time is that?

W. Shorey: Would we put them on at the same time 10:00 a.m.?

V. Spear: Or how about 9:30?

B. Johnson: Early?

B. Arseneau: Is that all right?

W. Shorey: Is that O.K. with you gentlemen?

J. LeGore: That's on a Wednesday?

B. Arseneau, V. Spear and W. Shorey: Tuesday.

J. LeGore: And you said the 11th?

B. Arseneau: The 10th. May 10th.

W. Shorey: And we apologize for that but it was something that we didn't have...and it was kind of a last minute thing, so we couldn't really change it again, but we'll try to get a final decision on May 10th.

L. Philbrook: Will you send out a letter on that?

W. Shorey: Oh, yes, you'll get a notice.

B. Arseneau: There will be notice of the hearing and a decree that follows.

W. Shorey: And then of course, there'll be an opinion afterwards that will be sent out of what the decision, is, too, a few weeks afterwards.

J. LeGore: That number is \$10,699.00 is probably a bit higher than 2010 because of depreciation. Also, I wanted to state one more thing in that the implications of your decision is that if anyone in Montville, or maybe even Waldo County comes in with a claim for an abatement that because the assessor missed something and made an error, that that's a basis for granting an abatement. That's quite a precedent, we feel, that you probably don't want to make.

W. Shorey: We understand that.

B. Johnson: O.K. Now the \$155.72 that this one – for this year...

J. LeGore: That's the actual tax.

B. Johnson: That's the actual tax and you're asking for the full amount of that tax to be abated? Is that what you're...?

L. Philbrook: In a sense, yes, because I think the whole thing's being done unfairly.

W. Shorey: Yes, but you've never made the complaint about the value.

L. Philbrook: No, it's not the value at all.

W. Shorey: No, it's always that you think it's unfair. We understand that.

B. Johnson: Right.

L. Philbrook: At this point, it doesn't matter if it was \$500.00 – it's the point. The principle behind it.

W. Shorey: So, I think we've pretty much covered what we can cover today, gentlemen, and we'll put this on the agenda and Commissioner Fowler will get the notes of this meeting and any additional information that was taken in and we'll make a decision and see if we can cut down on your mileage of running into Belfast every month.

H. Peaslee: Speaking of which, we have one for Simpson?

V. Spear: Yes.

J. LeGore: Did that get postponed, or what?

B. Johnson: Yes.

W. Shorey: Yes, it's postponed, I believe, isn't it?

B. Arseneau: Yes.

B. Johnson: Until June, wasn't it?

V. Spear: And I called...

H. Peaslee: Yup. My question really is what criteria do you as a board take when you're fielding these requests? Do you look at that? Because our problem with that one is it was so vague – it said, "Tax too high," or something and we had asked them to explain because we'd had a reval in 2005 so somebody other than us put a value on that.

B. Johnson: Are you talking about Simpson?

H. Peaslee: Yes.

B. Johnson: We can't really discuss that here.

H. Peaslee: No, my question is, if anyone asks, do you just go, "Yup," and it goes on or do you look and do you say, "Well, this should be filled out differently." I'm just curious about the process.

W. Shorey: Well, let me give you an example. I'll leave the names out because this is an old past case. You're asking us how we arrive at a fair price. Well...

J. LeGore: No, that's not what he's asking.

W. Shorey: Ask the question again.

B. Johnson: When somebody gives us papers saying that they are appealing your... [decision] what is our criteria for deciding if we're going to hear the case?

H. Peaslee: It's more about the process. If someone asks for an abatement from us, and there isn't enough paperwork and we ask, "Please explain," and they don't, and then they go directly to you, it seems like you're skipping part of the process, here and I was just wondering...

B. Johnson: Well, this is why sometimes we send it back.

H. Peaslee: I was wondering why, when you received that one, you didn't say, "What is it you're asking here," because it was very vague.

W. Shorey: We haven't seen it. I haven't even looked at the pile.

B. Johnson: We don't see it.

H. Peaslee: So if someone asks, you just automatically grant the hearing?

W. Shorey: I think the Clerk decides if it's a case that's going to come along – if it's got the merits to go forward...

B. Arseneau: We try to go by the statutes and if its' met all the time frame and all of that yet, the Commissioners...

B. Johnson: Then we have to hear it, but then we have to decide if we have jurisdiction to hear it, if they have followed the requirements of actually giving information for us to hear, and then it might be decided that, I'm sorry, but you haven't given enough information and we can't hear it. So each case is different, but as long as it's filed within the time period and so forth, then it comes to this court for us to look at and we have to decide if they're standing and all the things that go with it. Just like when they come to you to see if you're going to give them an abatement, and then you have to decided if you're going to or not; if they came within the timeframe and so forth. It's kind of the same criteria that you have. You make an assessment and somebody doesn't agree, within 30 or 45 days or whatever, they can appeal it.

W. Shorey: I understand your question and the technicality, but it's kind of like giving them their day in court, if you will, and they're weird, strange cases, sometimes; like I can think of, going back, of one – and this particular case it was a certain type of home to live it and they were all too high, but the too high was constituent throughout the whole town. So that's part of what we've got to decide; if you charge too much, for example, did you charge everybody too much and if you did, then that's the deal that somehow they have to have a petition in town and figure out how to get it down. We can't overrule that, but it's just a very "layman's" way of giving those individuals a chance to be heard, and strangely enough, a lot of the cases kind of resolve themselves, to some degree; and then some don't. But I don't know that I've ever heard, since I've been here, anyway, of any moving on any further. Usually they've got resolved to that extent. I know that there's times when maybe someone should have come in to the office, your office, and asked a certain question, or two or three certain questions, and didn't get it done, but this is kind of the last stop for them to have an opportunity to have their day in court and your inconvenience is that you've got to take the time, two or three of you to come in. I understand what you're saying but that's just the way the process plays out. So, I guess, having said that, if no one has any other questions, we'll close this hearing and apologize, again, for maybe having you feel the need to make one more trip into Belfast.

B. Johnson: It was decided that we were going to wait or we were going to make a vote and then, you know, what would be the outcome....

W. Shorey: No, we're not going to make a vote today. We want to have a full board when we're voting and Commissioner Fowler can review the minutes and I'm sure that she can get up to speed on them. O.K.?

G. Widmer: O.K., so, a question about the process – so when we come back in May, will we just be coming back to hear the decision or will there be more questions...

W. Shorey: No more questions and no more answers. If you don't have a high anxiety level, you can call afterwards and get it, or get it in the mail, or what-have-you, but there'll be no more input.

B. Johnson: No more testimony or information.

W. Shorey: O.K.?

G. Widmer: O.K.

W. Shorey: Thank you, again. Have a nice day, gentlemen.

****B. Johnson moved, W. Shorey seconded to adjourn the hearing at 10:54 a.m.
Passed by two.**

Respectfully submitted by *Barbara L. Arseneau*
Waldo County Clerk