

**WALDO COUNTY COMMISSIONERS COURT SESSION
TAX ABATEMENT HEARING PETITION NO. 365
JOSEPH & JOAN ZINKEVICH VS TOWN OF PROSPECT
MAY 13, 2014**

PRESENT: Commissioners William D. Shorey (Chairman), Amy R. Fowler and Betty I. Johnson. Also present were Plaintiffs Joseph & Joan Zinkevich along with Defendant Town of Prospect Selectperson, Diane Terry and Assessors Agents Joshua Morin and David Haverfield from Hamlin Associates, Inc. Recording the minutes was County Clerk Barbara Arseneau.

Commissioner William D. Shorey opened the hearing by reading the rules of the proceedings and swearing in the Petitioner and Defendants. He also stated that after the Commissioners have made a decision, which may or may not be the same day as the hearing, either party may appeal this decision to the Superior Court of the State of Maine in accordance with the Maine Revised Statutes Annotated Title 36, §844 and the Maine Rules of Civil Procedure, Rule 80B.

W. Shorey disclosed that the Waldo County Commissioners have to go before the Budget Committee each year and Bill Sneed of Prospect is on that Budget Committee. The Commissioners will hold a fair and just case and this will have no bearing on the judgment made.

W. Shorey: The Petitioner may now present your case.

PETITIONER:

Joseph Z.: We bought the property and went through the steps. The town determined that this is a non-buildable lot. There was a camp on it that was going to be re-built but the Planning Board said we couldn't rebuild it or relocate it. Now, two and one half years later it's valuation time and they decide it is now a buildable lot. They increased the value of the lot 125%. The only reason it became buildable was for tax reasons. Don't understand it.

Joan Z.: I had talked to Toupie Rooney and she knew which lot I am speaking of, if it was a buildable lot and she said no. I asked her to please tell the folks at Hamlin Associates that because I need them to reduce the taxes. If it's not a buildable lot, they will reduce it 50%. Then everyone did a 360-degree turn – now have to spend money getting a site evaluation and soil test. Just don't understand why I should have to spend all that money when this was supposed to be a non-buildable lot when I purchased it. Everyone was on board with that and now, because of taxes, it has changed.

Joseph Z.: What I don't understand with the town also, and she talked to Hamlin before we did it; they weren't even aware that since 1977, the town had a two acre lot minimum to build in their by laws. (Read from minimum lot size ordinance.) They went off one acre. Under the ordinance, it is two acres. (Clerk instructed to take 2012 Amendments to Prospect Minimum Lot Size Ordinance as evidence - Exhibit #1-A).

Joan Z.: We purchased the property for \$10,000.00. The sellers had it on the market for a long time and they just kept dropping the price. They couldn't sell it. I see a lot of stuff for sale and I just don't see that property values have risen that dramatically.

Joseph Z.: The lot in question is also in a flood zone. They did not take that into consideration at all. They knew about it. The town has flood zone maps, soil tests, etc. The town knows but does not want to put the effort into seeing if the lot is buildable or not, even though they have made the determination that it is not. I have a map here that shows the flood zone. (Referenced the map included in their documentation packet. (Submitted color maps of the Bucksport Mill area Exhibit #2-A. The Clerk made copies).

For the market value, I don't know if you want to see this or not, it looks like they didn't go out to look at the lots or take into consideration the location of the lots. They didn't see if they were in Flood Zones and did not know about the 2-acre minimum to build in the town. They didn't take into consideration that the lot is directly across the river from the Bucksport Mill. There is a constant humming and lights are on 24/7. That should depreciate the price of a lot. (Reference made to copies of pictures taken of the view from the lot towards the mill. These pictures are in the original packet submitted to Commissioners).

The way that the assessments were done now, there is a lot next to us with a camping trailer, well and septic. There is a dispute with the town. They sent a letter saying one thing, but their map shows something else. The map shows 2.72 acres and the town land card says it is .74 acres.

D. Terry: The tax map says 2.75 acres. The tax bill and land cards say .75 acres. The tax cards are correct. Tax maps are not legal documents.

Joseph Z.: So what you're saying is that Lot #31 says 20.5 acres.

W. Shorey: Let's not get into conversations with each other. Let's stick to you presenting your facts. Prospect will get an opportunity to challenge.

(Brief discussion on the accuracy of tax maps.)

A. Fowler: Tax maps are a nice visual. They don't hold a lot of water.

Joseph Z.: Is it .75 acres or is it 2.75 acres like the map says? I know the area down there. They have another lot with a cottage, well and septic that they are saying is .24 acres. The driveway to get to the place is over .24 acres. Again, going by the map, it shows that the lot runs from the water to Shore Road. That tells me there is more than .24 acres there.

Joan Z.: Even if the lot next to us is an improved lot and is only ¼ acre less, it still has a well and septic and I have neither on that property.

Joseph Z.: That lot is only valued at \$19,580.00. There's a well, a septic, and a permanent camper. They are taxing the camper for \$2,000.00. That is a permanent structure. There's a half acre on Ferry Road that's on the river valued at \$390.00. That is lot #57 on the map. There is another half acre down the road a ways that is valued at \$7,990.00. There is an 8-acre lot valued at \$27,120.00. These are all waterfront lots.

W. Shorey: Again, I would remind you, you need to present the facts and then we will have a time for questions.

Joan Z.: Do you need a copy of this map, is what he is saying.

W. Shorey: Yes. (Clerk made a copy and Commissioners designated it as Exhibit 1-A).

Do you have anything else?

A. Fowler: Looking at this map, which property is yours?

Joseph Z.: Lot #49. It's next to the Town of Prospect lot. There is another lot, an inland lot that is a wet lot valued at \$12,330.00. They have a culvert that crosses the street that runs between us and the Town of Prospect's lot – any run off, in turn, wants to go in that lot. As for building in the Town of Prospect, they have their set backs, flood zone, they are required to be 40 feet off the road. If you look at the map, that lot is in the flood zone, and it will cost a lot of money to make that lot buildable, if they will even allow it. The planning board says you can't build, so you would have to spend a lot to put in a lot of material to make that lot buildable. I would like to point out that there are two lots across the street from us that sold last year for \$15,000.00 each. Those were 3.66 acres and a 4.9-acre lot.

B. Johnson: Which lots?

Joseph Z.: These are lot #16 and #39, which are directly across from us on the other side of the street. Would you like the land cards on those?

B. Johnson: They are not shore land lots.

Joseph Z.: No, they are not. Now you have two lots under the towns' bylaws that are buildable and they only sold for \$15,000.00 each.

W. Shorey: Is there anything else you have to present? Have you finished?

Joseph Z.: No, I'm not finished yet. I don't know if you'll allow it, but I have examples of stuff that's for sale that's been for sale in the town that they are trying to sell below assessed value and they can't sell. I have MSL sheets and land cards.

W. Shorey: They have no bearing on this case.

Joseph Z.: You see; I don't know where they get their figures. I'd also like to point out that this land is in shore land zoning, which is 250 feet horizontal distance – resource protection – 75 feet back you can't do anything – I don't think any of that was taken into consideration. Even if it is deemed a buildable lot, there are still restrictions under the Town bylaws where you could only put a one family – you can't put two families on that lot. They have the flood maps; flood plan soil tests down that whole area, restrictions, the planning board said it wasn't buildable. I don't even know what they've got the lot zoned for – it may not be residential. We tried to get the DEP and code enforcement out to look at the lot. DEP wouldn't come out. She says she is too busy and it's up to the town. The code enforcement officer wouldn't come out and look at it.

W. Shorey: We are getting too much of "he-said-she-said". The only thing that would be valid here would be a signed document certifying that someone said this.

Joseph Z.: We didn't know we needed to get something from the planning board.

W. Shorey: We need to stick with the facts.

Joseph Z.: I guess that's all. I guess most of this hinges on non-buildable lot versus buildable lot.

Joan Z.: And for what I paid for it – there is no reason it would go up so much in two years from what we paid.

W. Shorey: We're getting into statements and hearsay and we don't need that. Questions can be asked by all parties. Questions?

A. Fowler: My confusion lies with the Intention to Build form. Do you plan to build on this property?

Joseph Z.: We wanted to use it as a campsite. Were told that we should send a letter to the Town and if we didn't hear back, it was all right. We never heard back.

Joan Z.: The Intention to Build form came into play when I asked Ms. Rooney about whether or not it was buildable or not buildable. She told me it was not. I asked her to relay the information to Elizabeth that it was not a buildable lot. She said I had to fill out a form. I did so and she then said it was denied because it was missing a septic design. I didn't want to build anything there; I just wanted an answer as to whether or not it was buildable. I didn't want to fill it out but was told I had to.

Joseph Z.: The Intention to Build form was signed on July 9, 2013, which is way after we purchased the lot. The idea was to get her to come out and look at the property to see if it was buildable. She wouldn't do that.

B. Johnson: What did you pay in taxes two years ago and last year?

Joseph Z.: We paid \$216.00 when we purchased the property and for the first two or three years.

B. Johnson: It was assessed at what?

Joseph Z.: \$10,000.00. Then it went up to \$22,500.00, which was a 125% increase in valuation.

D. Terry: \$337.50 in 2013. 2012 it was \$10,000.00 and \$216.00 in taxes.

A. Fowler: Has the Town done a revaluation?

D. Terry: Yes. We completed one in 2013. It was the first one in 20 years. We were previously right on the line with the State. We were at 67% and went up to 100%.

W. Shorey: Any other questions? (None) I have a few. I was reading the folder and I understand you purchased a lot from someone and an agent had told the person that it was an unbuildable lot.

Joan Z.: No, we purchased it from the folks who were selling it.

W. Shorey: When did you find out it wasn't buildable?

Joseph Z.: Before we bought it.

W. Shorey: You didn't ask to have a paper drawn up?

Joseph Z.: No. She (referring to co-plaintiff, Joan Z.) did call the Town to confirm. Everybody was on board and happy.

W. Shorey: Everything we are hearing today is hearsay.

A. Fowler: Is there anything in the deed that states that this is a non-buildable lot?

Joseph Z.: No.

W. Shorey: It seems to me that you may have missed a couple of things in these discussions with Mr. Carlson. If he had written a letter and had it notarized that he had actually said that. We are listening to conversations this morning that may have had good intentions, but the opportunity was missed to certify this.

Joseph Z.: I understand what you are saying, but if you saw the lot, the maps and everything involved in it, you'd say it was not a buildable lot. You would have thought you could trust the town, but you can't believe what the town is telling you.

Joan Z.: Unless you get it in writing.

W. Shorey: Towns have people that fill positions, then they move on and other people come in to fill those same positions that would not know of previous conversations. You should get notarized papers.

Joseph Z.: The town should be responsible for what they say. They are being paid for a service and they give a lot of wrong information. You're telling me that I can't believe what the town says unless it is in writing?

W. Shorey: No. I'm saying that if you do not have a paper notarized by someone and that person moves on to another job and someone else takes over, the new person won't know what took place. If you have this in writing and notarized, then it is good. You could also have this person come in today to verify what was said.

D. Terry: Can I speak?

W. Shorey: Prospect will get its chance to speak in a moment. That is all I have for questions. It is Prospect's opportunity to ask questions now.

DEFENDANT:

Mr. Joshua Morin handed out informational packets to the Commissioners from Hamlin Associates. This was submitted into evidence as Exhibit 7 A-K.

J. Morin: When we did the revaluation for Prospect, we had mock hearings for people to come in and explain why their land is unbuildable or not worth the amount we gave it for value. We told them that they needed documentation, either from a Code Enforcement officer or from a land surveyor, stating such and we will price it accordingly. Exhibit A is tax map – the same as what these people have. Lot #39 is marked with a red arrow. The first acre is \$22,500.00. That is the amount for any lot in that area that does not have a building on it. If it is a developed lot, the first acre value is \$30,000.00.

D. Terry: We do have a two-acre minimum lot size ordinance. Theirs was a grandfathered lot. All our undeveloped lots are, regardless of frontage or no frontage – the same for first acre.

J. Morin: The reason for that is that we didn't have enough proof for sales. I sat down with the State representative of taxation. Usually waterfront is worth more money. Just down the road on Verona Island it is \$850.00 a front foot. There would be quite a difference if we priced this as waterfront property. They are getting a reduced rate just because we did not have enough sales on the water for proof. We took whole town and averaged the sales out and came up with the first acre that is not built on (not improved, undeveloped) as \$22,500.00.

Exhibit B is the lot right next to them; the lot with camper. If you look at the Flood Plain map that they included also as Exhibit H, you will see that both are in flood plain zone. In my mind, if that was an unbuildable area, you would not be able to have a camper on one side and a garage on the other side.

D. Terry: All those lots are in shore land zoning. If someone wanted to build, that would be a question for the planning board.

J. Morin: Exhibits through G are just the lots that are close to them just to show that there are getting valued the same. The house lot right down the road has .24 acres. The first acre value is \$30,000.00 and then is reduced because it is less than an acre. The total value of that one is \$15,000.00. All are being treated the same in that area.

B. Johnson: All of this came around because of the revaluation, correct?

J. Morin: Yes. Exhibit I, is their Intent to Build permit and I just threw that in there for the next two exhibits because Exhibit J is actually the letter from the Code Enforcement Officer from the town. She is not going to deem it unbuildable unless they do the other steps to a building permit such as a perc test. Legally they still have to go through this process even to use as a campsite. I am not a code enforcement officer or a land surveyor, so I have to have this documentation from them saying that it is unbuildable before I can price it that way. The last exhibit is K, which is the letter from the Board of Selectmen of the town saying that they consider it a buildable lot and explains the error on the map that he (Plaintiff) mentioned earlier. Many people say, "My lot is unbuildable." We need the documentation to show that fact.

D. Terry: We did have documentation on one lot in that area that is on file where there had been a determination made. This was another property, not Zinkevich's property.

B. Johnson. I'm confused. Their lot is .75 acres?

D. Terry It is one acre. The lot that is .75 acres is lot #50. The tax map had it listed wrong.

A. Fowler: (To Plaintiff) Do you agree with this? (no response)

J. Morin: I believe that was left over on the maps because that was more than one lot. When they were subdivided, it never was erased on the map, which is why it said 2.72 acres. If you read the deed, it is actually only .75 acres.

W. Shorey: Say Mr. and Mrs. Zinkevich decided to follow the procedure to find out if the lot is buildable or not and it came back that it was buildable; if they still didn't want to build on it, they would have improved the value of the property substantially because it could be sold at some point in the future as a buildable lot.

J. Morin: It doesn't change the value that we have on it; it would be still considered an undeveloped lot, which is the first acre at \$22,500.00. It might be worth more to them if they try to sell it. We have to do the whole town on the average, so that is how it was done.

B. Johnson: Was this explained to them?

J. Morin: I do not remember if they came in to those hearings that we had. We sent everyone a notice.

Joseph Z.: Can I speak on that? We were told not to come in; that she would take care of it herself. Everything was done over the phone. Some of the things that you said about proving this or that was not told to us. Were you aware of the two-acre minimum?

J. Morin: Yes. These are grandfathered lots.

Joseph Z.: Why didn't you do your valuations under the town ordinance of a two-acre building and then go from there instead of going at one acre?

J. Morin: This is how the land is priced. It is tiered down from one acre.

B. Johnson: If someone had two acres, their assessment would be more than the \$22,500.00.

D. Terry: Right. It's considered the base lot.

B. Johnson: And they are assessed at \$22,500.00 because they are grandfathered.

A. Fowler: Since the revaluation, is everyone in the town of Prospect being charged accordingly?

J. Morin: Yes. That's why I brought other property record cards in so you can see that it is.

A. Fowler: If it is any consolation, what they are charging for water frontage is unheard of.

D. Terry: You mean unheard of from the standpoint that it is reasonable?

A. Fowler: Yes. Most places are charging per foot, per view.

Joan Z.: If I try to sell this property and I list it for what they have it valued and I cannot sell it, will you still consider it reasonable?

A. Fowler: Unfortunately, many other places are on the market right now, and there is no market. A tax value is different from a real estate value.

Joan Z.: How do you determine value? The value is only what the person is willing to pay for it.

A. Fowler: To someone that likes to study frogs, a small wooded boggy area might be worth a whole lot more to them than someone who is looking for an ocean view. Value is many times seen in eye of beholder.

Joan Z.: But if can't sell it for what you people are saying it's worth, and I cannot, then to me it's not worth \$22,500.00 if I can't have a buyer.

A. Fowler: I'm not disputing what you are saying. If you paid \$10,000.00 for it back a few years ago and you were able to sell it for anything above your purchase price, I would consider that a success. The fact is, when the town did the revaluation, they put everybody on the same playing field. Many towns in the past got inconsistent.

J. Morin: Chopped up.

B. Johnson: What you would need to prove is that you were being assessed differently than others.

W. Shorey: I'll give you a good example of a recent case. Two years ago, we had a case involving a mobile home. The assessed value was \$15,000.00. It probably wasn't worth \$5,000.00. The town had a rule that the least mobile homes could be assessed at was \$15,000.00. That owner was upset, but it was set at the minimum even though it was not in good condition. Everyone was being treated the same.

Joan Z.: Our other problem is that we do not feel it is a buildable lot.

Joseph Z.: We KNOW it's not a buildable lot. He stated that the town's barn is on one side of us, a camping trailer is on the other side, and both are built in the flood zone. The town does what it wants.

D. Terry: It's not in the flood zone.

Joseph Z.: Excuse me! Here's the flood zone and here's your barn!

A. Fowler: On paper, whether it's buildable or not isn't relevant to us. What we need to determine is that everyone is being treated in a fair manner. Whether it's buildable or not has no reflection on how it is assessed. The market fluctuates but that does not change the assessed value of the property.

Joan Z.: As far as the market value goes, it doesn't matter either. What I can actually sell this property for....

B. Johnson: If the market was great, you might be able to sell it for more. The market is up and down. People might put their place up for sale for a lot more than it is assessed and get it, or they may have to lower it to a point where it is lower than the assessment.

W. Shorey: I think we have the information we need to make a determination on this case, unless there is anything new that hasn't been added. If there is nothing new, we will close this part of the hearing. Do the Commissioners want to get this decided now?

B. Johnson: I think we can have discussion. I have a couple of questions on what they are asking for. It is not consistent. The current assessment is \$22,500.00. The abatement they are requesting is \$12,500.00 and they are not even taxed that amount of money.

D. Terry: I had a question on that, too.

B. Johnson: I can only figure there is a misunderstanding on the abatement figure. You were taxed \$337.50. What do you want for an abatement?

Joseph Z.: She was going on the value of the property, not the abatement.

B. Johnson: Those are not the same. I think what you are asking is what would the tax bill be at \$12,500.00.

Joseph Z.: Can I say something?

W. Shorey: Discussions are closed and it is between the Commissioners now.

A. Fowler: We hear what they are saying often. Our concern in these hearings is that people are being treated equally and nobody is being singled out. The town has more than proved that case. Although taxes have gone up for everybody, they are doing as they should do and they have done it properly. Whether the lot is buildable or not, is not within the perimeters of what we need to be looking at.

****A. Fowler moved; B. Johnson seconded to deny the abatement request of Joseph and Joan Zinkevich.**

Discussion: B. Johnson: Every town has gone through this. The State finally got tough about valuations. I agree with Amy, with what we have here, it looks like everyone starts out with \$22,500.00 and we have no say over buildable or not buildable.

W. Shorey: The motion is to deny abatement. How do we vote?

Motion passed unanimously.

Respectfully submitted by: *Linda L. Kinney*
Waldo County Deputy Clerk