

**DUKE SIMONEAU VS. TOWN OF BROOKS
TAX ABATEMENT HEARING PETITION #332**

March 13, 2007

9:30 A.M.

(TAPE 1)

PRESENT: Waldo County Commissioners John M. Hyk, Chairman; Amy R. Fowler and Donald P. Berry, Sr. Also present was Petitioner Duke Simoneau along with Defendants Town of Brooks Selectmen Ben Lufkin and Raymond Shute, and Brooks Citizen Fredrick Eickelberg. Also present were County Clerk Barbara Arseneau, Deputy County Clerk Veronica Stover, and members of the press.

Commissioner John Hyk opened the hearing by having everyone introduce themselves. The rules of the hearing were read to all present and then the Petitioner and Defendants were sworn in. The Petitioner was allowed to speak first.

PETITIONERS:

D. Simoneau: The initial petition that I filed for abatement was based on the theory of external obsolescence, depreciation caused from outside of my property. I did an analysis of sales in the area. I am both a certified general appraiser and a certified Maine assessor, and properties on the Hall Hill Road take two and a half times longer to sell than other parts in the town of Brooks. The primary cause of this is a series of nine different problem areas recognized by code enforcement for the last few years as damaging value. They include un-permitted illegal junk yards, a dangerous building that the town is working on, a certified health hazard and an uncertified health hazard. You cannot approach properties on the Hall Hill Road without going past several from one side or the other. The properties in the middle are moated by junk. In researching this abatement request, one of the questions the County Commissioners ask, is to please point out properties similar to yours with the tax rate. So complying with that my house, (an old farmhouse), just the building, is taxed at \$74,000.00. I looked at a farmhouse over on 139 that is similar vintage and shape. It is taxed at \$59,000.00. Two old farm houses on the Lower Hall Hill Road; one is taxed at \$49,000.00 and one is taxed at \$33,000.00. The State constitution says properties have to be taxed equitably, so you have the problem with external depreciation, and the problem that the properties themselves aren't taxed similarly to begin with. That is the basis for my abatement request; the property itself suffers from external depreciation. I see the Commissioners have got copies of my file with you that include pictures from both sides and maps out the difficult properties. Until code enforcement can take these on, and they have been working on them since we filed a complaint in 2003, but all of these situations have grown worse in that time. So the loss in value is a factor in the market. It is one of the three forms of depreciation and if the junk continues, then the properties on that road will be totally un-saleable and should be abated accordingly, every one of them.

A. Fowler: The other properties that you compared that are relatively equivalent to yours, are they on the same road?

D. Simoneau: Two of them are on the same road. They are at the foot of the hill and one of them is over on Route 139. They are all similar old farm houses and one of them actually has sold recently. If you are looking at the file there, the Jason Wood's property, 76 Hall Hill Road & the Mary Jo Abbott property is on Hall Hill Road that would be the road that I live on and Monroe Highway is across the River Valley.

J. Hyk: [To the other Commissioners] Do you have questions for this gentleman?

R. Shute asked the Commissioners if he could see the document.

J. Hyk: You haven't seen this?

R. Shute: No.

J. Hyk: Did you request it? Did you ask for it previous to now?

R. Shute: No, this information was not presented to the Selectmen when he requested his abatement.

[The Selectmen looked over the information that was submitted to the Commissioners.]

A. Fowler: [To the petitioner] Are you a certified appraiser?

D. Simoneau: I am a certified general appraiser, worked for the federal government and I am a certified Maine Assessor. I don't practice assessing; it's just supplemental to my work for the government. One reason why I didn't file the photos with the selectmen is obviously, they are very familiar. Mr. Lufkin is a neighbor, just two doors down.

J. Hyk: I have a question for you. On your cover page addressed to us, it says that there are only valuations of "buildings and land" without calculations at the Town Office. It is unclear how or when the Assessors calculated their values. So when you say that, are you saying there are no property record cards with the pictures and a drawing and it shows you how a calculation was made from one year, and the next year and the next year?

D. Simoneau: That is correct. These are the tax records that we have in town. This is my property here. (He showed the Commissioners what his tax records look like.) The town has never, in any record that I have been able to find, had a door-to-door assessment in 200 years. Nobody has gone door-to-door, walked the buildings, and measured the buildings. What's there, if the Commissioners would like to see what those appear to be. All of the buildings that are there, it is the very simplest system. Some towns in Maine still use it. They don't have any calculation of square footage, they use a basic system of

land which is totally appropriate for a town the size of Brooks, and you don't have to break it down any further than base lot back land and water front land. The buildings themselves we have no record as to their size, as to their condition, as to the quality of construction. For very few properties, the selectmen have been using a Marshall and Swift and have been doing some calculations but we don't have the standard cards that you would expect to find if you went into a town office. The selectmen have made, in fact, I think they have a thing on the town meeting warrant this year, to try to purchase that software to try to populate the system.

A. Fowler: How much is the software?

R. Shute: The software itself, the detail assessing software is \$4,500.00 and the general software in the package is around \$2,000 or \$2,300.00; something like that.

B. Lufkin: You can buy different sections.

J. Hyk: If you'll forgive me, I do want to be careful about following the process. I want to stick to the issue. If there are no more questions for Mr. Simoneau then the town may present their case.

DEFENDANTS:

R. Shute: Looking at this material that was just handed to me, Mr. Simoneau filled out the abatement to the Commissioners and based it on #8 "External Obsolescence and Overall Inequities." The abatement that Mr. Simoneau put before the Town of Brooks, in my opinion, only stated "external obsolescence." So any information, in my opinion, that has been presented here about inequities is not appropriate. We denied Mr. Simoneau's abatement on external obsolescence.

B. Lufkin: I might add that all of these pictures and all of these properties numbers 1,2,3,4 are all in portion by the town to either fix them up, tear them down, clean them up or whatever. This does not happen overnight. We are gaining. There is a property that sits almost across from Mr. Simoneau that he doesn't relate to here that has a lot higher valuation and it is still an old farm building that has been improved. It carries a lot higher assessment than anything in that. My own house, yes, it is a fairly new home, I am not ashamed to pay a high tax on it and I do.

R. Shute: My focus here today is to talk about why we denied the abatement. As far as I am concerned we denied it on the verbiage of obsolescence. It had nothing to do with inequities. I would like to pass to the County Commissioners the definition of OBSOLESCENCE. (R. Shute submitted a typed dictionary definition of the word "obsolescence.")

A. Fowler: In your denial to this gentleman it doesn't state that. It just says that he is denied.

R. Shute: That is correct. On his original form #8 it says "External Obsolescence." That is all it says, period. We did not discuss "alleged inequities in the valuation of the town and all of those materials." As far as I am concerned, I am here to discuss obsolescence. With having said that, I am going to show you some pictures. I have done some research, Mr. Simoneau had on the cover sheet a picture of his house, and I thank you for doing that but also these are the pictures from the view of his house from different angles. (He passed the pictures around for everyone to see.) Now I would like to show you some photos. I contacted "x-number of town offices and cities" for how they handle abatements under obsolescence. I have not found any that had that gone on in that town or city except one and that is the City of Belfast. They have given one abatement for obsolescence and that was not asked for, that was done by the assessor himself. I will show you pictures of Milton Hills (on 137; the old lumber mill). The city has been trying to clean up this place for 20 years. In fact the gentleman that had it was put in jail to try to clean this up. They gave 10% obsolescent factor for this place. This house is directly across from Milton Hills. As you saw in the photos of Mr. Simoneau's house none of these so called junk yards are anywhere near Mr. Simoneau's house. I will refer to a place in Northport, if you know where Rocky Ridge Road or Rocky Road in Northport off Route 1 is, there are places of the magnitude that Mr. Simoneau has shown here on the way to a very nice subdivision that is worth hundred of thousands of dollars. Northport does not give obsolescence just because you have to pass by the place that you may or may not think is appropriate to have in your town. Not to draw this out; I believe that we denied Mr. Simoneau's request for obsolescence appropriately and looking at other towns not doing it, the City of Belfast doing it in one place where one house is directly across from it, and there is at least seven houses that have "very distinct views of Milton Hills in Belfast". Those places do not have an obsolescence abatement or a reduction. At least four of those houses have sold in that last four or five years.

B. Lufkin: I might add, of all the properties there are around the town with eyeshot of the photos that Mr. Simoneau presented, and so forth, none other are asking for abatements or anything. Everybody is treated as fair as we can under the laws that we have to abide by.

(Brief Break)

J. Hyk: I am a little confused, can you tell me on the form Appeal of Decision of Board of Assessors (Do you [selectmen] have a copy of it?) #8 asks, "What is your estimate of the fair market value of the property for which abatement is requested?" It says, "N/A – Abatement request based on external obsolescence and overall inequities."

D. Simoneau: As Mr. Shute pointed out the original abatement request was for external obsolescence. That is the form that I did for you guys [the Commissioners]. The estimate for fair market value, the selectmen have already said, the fair market value is this level. So what I am saying is they did not take into account the problems with marketing a property on the Hall Hill Road. Quite frankly, 522 properties in the Town of Brooks, any of them that happen to be taxed at market value is strictly by coincidence.

None of them are right. The selectmen have been trying to get a “re-val” passed for three years. None of these properties are taxed at market value as defined in the State law.

R. Shute: I have to go back to my initial statement, obsolescence meaning, “obsolete, falling into a position that it can no longer be used.” Mr. Simoneau’s house has not fallen into any of those categories and it is nowhere near any of those places that he has shown in view of his house. There are houses that are being sold on Hall Hill Road and other places in town. He makes reference that the asking prices and the people are buying them for so much lower, or whatever. One of the things that I have been told since I have become selectman in the last four or five years is the valuation of something is between a willing buyer and a willing seller. I have had that pounded into my head for 100,000 times, I don’t care what it is put out on the market for. It has nothing to with it other than is “what I want to get for it.” I don’t have to sell it; there are properties in town that have been on the market for three, four, five years that are in “good neighborhoods,” if you want to define it as “good neighborhoods.” I still need to go back to that the only thing we are here for, as far as I am concerned, is his original application to us was “external obsolescence” ONLY. It had nothing to do with inequities. So I ask that the Commissioners rule on the obsolescence only and I believe that we were correct in denying the abatement using the City of Belfast as a definition of what obsolescence abatement was granted for.

B. Lufkin: I owned a farm on the Hall Hill Road, I bought it in 1966. I sold it in 1983. The person that bought it re-sold it in 1988. It has been resold again and again. That is almost within a tenth of a mile of Mr. Simoneau’s on the same road, so property does sell on that road.

J. Hyk: I want to keep things on track. We’ve had the plaintiff present a case and questioned, and we have had the defendants present their case and questioned. I just want to know if there were any more questions of the defendants and if the defendants are finished with their case so we can get to the deliberate part of this. I would just ask if your presentation is complete now.

R. Shute: Yes.

J. Hyk: [To D. Simoneau] Do you have any questions of the defendants?

D. Simoneau: No, Mr. Shute has done his homework and put together his case and Mr. Lufkin is supporting it.

J. Hyk: [To the other Commissioners] Do you have any further questions for the town, the defendants?

A. Fowler: I have a couple of questions that are irrelevant of this case that I will ask after we are done.

D. Berry: [To the Defendants] So, we turn around today and we deny this, and he comes back to you next week with a brand new petition that says, "Overall Inequities"; does that mean you are going to be back here again in another month for us to rule on "overall inequities?" You have made a major point about this whole thing of obsolescence, etc. and I understand that, but this whole thing just cannot continue to perpetuate itself. This concept of "overall inequities" – we know that overall inequities exist they exist everywhere, but if he comes back to you next week with a brand new appeal, does it mean that we come back here in another month to deal with "overall inequities?" That is my question to you guys [the Defendants].

R. Shute: It all depends on whether we deny the abatement request.

B. Lufkin: Or if he [D. Simoneau] files it.

D. Simoneau: You only have 185 days from the commitment of taxes, which I deliberately didn't file this abatement request because I knew the selectmen were trying to deal with the "external obsolescence." It is to try to catalyst getting the work done, but at the present time for the tax year 2006, I could not legally file another abatement request, as that 185 days is gone. I probably wouldn't file it, regardless, because the only thing that is going to clean up the actual inequities across all is a "re-val" of the whole town and get it done by professionals and done right so they can be maintained.

A. Fowler: Is that on the warrant this year?

B. Lufkin: Yes, money to be added to it.

R. Shute: Yes, there is an article to add to the set aside to have a re-evaluation done.

D. Berry: But there is no article there with respect to do it?

A. Fowler: So you are just setting money aside for it but you aren't....

D. Berry: You told us last time we were here that you had set aside a sum of money already.

J. Hyk: I thought the money was already put aside.

R. Shute: We are adding to that money. The last three or four years they started out with \$25,000.00 and we added more at a town meeting, then we added, at a later town meeting, more. The statement was made that the town would approve; when revaluation happened in the town of Brooks, the people would give the O.K. to have it done. You can have that worded in the article of whoever makes a motion to start the process. You can amend it any way that you would like to. Is there an article that states right out plain, "Will the town approve the selectmen to re-value the town?" No, there is not.

J. Hyk: This is exactly what I don't want to be doing at this part of it.

****D. Berry moved, A. Fowler seconded to deny the appeal.**

Discussion:

A. Fowler: I think you [D. Simoneau] are on the right track and I think that you know exactly what you are doing and I think you [to the Defendants] know where he is going with this and what he his doing. I respect the fact, first of all, that you [the Defendants] are trying to clean up because that is not easy anywhere. If you can get some of those people to clean up, "snaps" to you. As I say, I agree with the denial for the reasons that I think the town is moving ahead and hopefully will make amendments and work towards getting things rectified there.

J. Hyk: I think that there is a case for "economic obsolescence." Obsolescence doesn't mean that you can't use the property; it means that there are extenuating circumstances outside of the property that diminishes the property value. It could be a pig farm; it could be any number of things. I have seen it happen in other towns, it has happened in Prospect and we gave abatement on that basis, so I feel that it is possible. I could uphold this petition; I would not have a problem with it. As to the inequity questions, I think that it is inherent in any and all appeals, because you were talking about property tax and how it was set out. I think that it is implied, whether it is stated or not. I don't expect anybody to agree with me; that is my opinion and I am entitled to it, so I am expressing it. If there is no further discussion, then I think that we should put the question to a vote. The motion is to deny.

Motion failed. A. Fowler in favor and 2 opposed (J. Hyk and D. Berry)

J. Hyk: The motion fails. There is only one other thing to be done, we are all done with the presentation part. You can adjourn or you can make another motion.

A. Fowler: I think before you make a motion, think about it because know you have to look at what you figure the value is or should be or what the loss or the gain is. I almost wonder if that is something that we couldn't table, if you will, and look into it, or did you have something off the top of your head?

J. Hyk: What is the petitioner asking for?

R. Shute: 25%.

J. Hyk: We don't have to come up with a number unless we are going to approve. We could do that in parts. We could certainly do that in parts. You could approve it in theory, in principal, and then say, "This is what we think it should be." Or you could even ask the parties to negotiate that, if they wanted to. If they didn't, then they wouldn't. We have certainly done that in the past. I think that we have to understand where we are going in principal. I have no problem with how we get there.

D. Berry: I will tell you outright that I don't favor 25% of reduction. I basically feel that there needs to be a reduction here in this. The reason I voted the way I voted was what you said about there are other factors that are inherent in it. I see it right in my own town, I see it.

J. Hyk: Both parties have the option of taking this to court, too, if they don't like our decision. Let me ask you this, Don, would you feel all right about cutting the 25% in half?

D. Berry: That would not bother me to decrease that.

J. Hyk: So make it 10% or 11%.

D. Berry: I am going to move an abatement request here in the sum of \$10,000.00.

****D. Berry moved, A. Fowler seconded to approve the abatement in the sum of \$10,000.00. 2 in favor and 1 abstention (A. Fowler) Motion passed.**

****A. Fowler moved, D. Berry seconded to adjourn the abatement hearing at 10:10 A.M. Unanimous.**

Respectfully submitted by



Veronica Stover, Deputy County Clerk