

Town of Calais, Vermont

CHARTERED 1781

Calais Board of Civil Authority Meeting Minutes

Wednesday, August 29, 2018 at 7pm at the Calais Town Offices

Present: Denise Wheeler (Chair), John Brabant (Vice Chair), Rose Pelchuck (Member), Sharon Winn Fannon (Member), Clif Emmons (Member), Katie Lane-Karnas (Recording Secretary), Jan Ohlsson, John McCullough, Wilson Hughes, Judy Robert, Craig Line, Charlotte Hanna Bassage, Judy Copa, Cornelia Emlen, Dillon Burns, Kristina Bielenberg

1. Call to Order: Denise Wheeler called the meeting to order at 7:03 pm.
2. Public Comment: None.
3. Review, Additions/Changes to Agenda: None.
4. Subject of meeting: The Chair identified the subject of the meeting as 12.03 acres withdrawn from the Current Use Program. The 12.03 acres are part of a larger piece of property at 287 Old West Church Road (parcel number 450287), owned by Craig Line. Craig Line is appealing the finding of the Calais Board of Listers regarding the valuation of 12.03 acres of his property which he appealed on July 2, 2018.

Board of Civil Authority (BCA) members were sworn in.

5. Appellant Update on Case: Craig Line reported that he learned today it is still possible for him to file an appeal to the State regarding the removal of the 12.03 acres from Current Use. He stated that whether or not they are approved, he still wants to state his case as he is interested in the policy issue that is broader than his 12.03 acreage. The Chair questioned whether it is necessary for the Board to go forward with the appeal given there is an avenue to appeal reinstatement in the Current Use program; Craig Line stated his desire to give his presentation to the Board. He stated he is seeking an evaluation from the BCA that would recognize the value of the property that takes into consideration the attached conservation easement. Craig's 12.03 acres is encumbered by a conservation easement that is separate and apart from his participation in the Current Use program. The Board and the Listers considered the question of how the value of other properties in Town that are similarly conserved through an easement or other conservation encumbrance may be affected by this logic. Discussion ensued regarding whether this is a policy decision, whether the town may make a policy separate from the state's policy, and the scope of "fair market value."
6. Overview of Process: The Chair reminded the meeting of the process involved in a BCA appeal. At the end of this hearing, a committee (of three or more) would be appointed to do a site visit within 30 days of this meeting; that committee then writes a report to present to the BCA. The BCA makes a decision that must be issued within 15 days of the report. The Board

decided, although Craig Line can resolve with the State the removal of his 12.03 acres from Current Use, to go forward with the meeting to better understand and possibly address the policy issue. The BCA is made up of the Justices of the Peace, Selectboard and Town Clerk; the Listers and the Appellant are party to this process. The decision is appealable to Supreme Court or the State Appraiser (within 30 days of the decision). The Chair reminded the meeting that talking about this outside of the hearing process (which is quasi-judicial) is not permissible, and that any deliberation will be in closed session.

7. Listers' Introduction: Jan Ohlsson, John McCullough and Wilson Hughes were introduced as Calais' Listers. Jan apologized for the Listers not including an explanation for their decision at the grievance process, and stated the Listers' intent to include an explanation of decision in the future. She stated that this situation began when Current Use Program (CUP) notified the Calais Listers an ag certification had not been filed on the Line property. In Vermont statute, any land taken out of Current Use must be appraised at fair market value as a stand-alone parcel. Statute goes on to say that the listers will use the model and land schedule of the municipality to determine the fair market value.

Jan Ohlsson explained that the Listers referenced the Calais Land Schedule; this was revised at the 2015 Total Reappraisal, so it is very current. There are two sections: Development (including development and house site) and Residual (land that is not developed). In this case, Craig's deed has a conservation easement which prevents its development; the Listers therefore used the Residual Schedule in considering his 12.03 acres (the value of the land according to the Listers is \$42,100). As a comparison, if they had used the Development schedule, the 12.03 acres would have been more than \$80,000. Another factor the Listers use are Land Grades. Land Grades are used by the listers to increase or decrease a property's value: a steep slope or lots of slab may lower the grade and resulting value; an extremely beautiful view may increase it. In looking at Craig Line's value on his lister card, his residual land has a Land Grade of .8, so the fair market value determined on the 12.03 acres was at .8 Land Grade. The surrounding land in the area was looked at (a neighbor has property in the Land Trust and is in Current Use); most all of Craig Line's neighbors' properties have a Land Grade of .8, showing consistency in the neighboring area.

Jan Ohlsson stated that Craig Line filed his grievance, which was then held on July 2. At the July 2 hearing he presented a letter from an executive of the Vermont Land Trust which makes the comment that appraisers have seen that the land value can go down if you have a conservation easement. Jan then referred to a Tax Department document, "Conservation Easements and Property Valuation," which the Listers looked at closely in regard to this issue. She highlighted that property that is in a conservation easement "may or may not diminish the value of the property" and that conserved land may be worth more; she pointed out that there is a debate over this question and no answer of how the land value will definitively be affected.

She raised questions regarding if the Town were to decrease the fair market value on Craig Line's property, they would potentially have to also decrease the neighbors' properties, thus increasing taxes. Jan Ohlsson said that Craig Line had asked that his land be valued according to use, and referenced Vermont Statute 3752: the use value appraisal can basically only be used for land that is in the Current Use Program. If they lower a property's value to the use

value, there would be no difference between the fair market value and the use value; the Town would thereby diminish the amount that would be coming from the State to the Town.

8. Questions for the Listers: Denise Wheeler inquired who supplies the Town with the Calais land schedule? Listers responded that it is held in NEMRC and is based on the reappraisal; each town has its own land schedule. Craig Line's deed does not allow any additional house site—his land must be used for ag, sugaring, farming (he cannot build more houses). Therefore, the residual schedule was used. The land grades were created at the reappraisal at the time of the land schedule. Listers can modify land grades but cannot change schedules. Sharon Winn Fannon inquired about the professional appraiser. He was Ed Clodfelter and he established the grades; the Listers may make changes if they see anything inconsistent. It was confirmed that land in the Residual program is undeveloped or undevelopable (and has no house site). "Fair Market Value" is the highest and best use of the land—that means that land can be developed as the highest and best use. John McCullough added that highest and best use cannot be assumed to be the ability for land to be divided and developed; sometimes a property is worth more intact than divided and sold. Kristina Beilenberg inquired further regarding the land grades. The grades range from .9-.2; they are factors that are applied based on the landscape; there is not a grade for geologic features (forest vs. fen vs. field). Craig Line's land grade was existing at .8 and the listers left it at that. Fair market value is also measured by 3 years of sales; there are not a lot of sales to use for comparison in this town. Charlotte Bassage inquired about whether the Listers consider the financial impact on Town taxes and the Calais grand list when assigning grade, and the Listers stated that they do not.
9. Appellant Presents Case: Craig thanked the Board for attending. He explained that this process was initiated by the 12.03 acres being taken out of Current Use, but he and another property owner jointly approached this issue in 2001 upon finding they had similar perspectives about land valuation. It is still possible to file an appeal for removal of his 12.03 acres from Current Use, which stated he intends to do tomorrow. He explained that the certification required is a new procedure and was mailed to him, but he did not receive it and was not expecting it based on past years' experience. He reported that he does not feel aggrieved and would rather pay less for property taxes; this seemed like a good chance to bring this up again, and he appreciated the knowledge and education of the current Calais Listers. He stated that he is asking for a different way to value ag land in Calais. He is requesting for conserved land to be valued as if it is in the state Current Use Program, whether or not it is enrolled in the Current Use Program.

Craig Line stated that when he bought the land from the VT Historical Society in 1998, he lost rights for development, as the deed was encumbered with a conservation easement upon purchase. He explained that East Montpelier has approved a slightly higher tax rate to cover properties that are conserved and therefore valued at a lower rate. He explained his view that this would encourage land conservation in Calais, allowing owners of smaller properties to conserve land (the Current Use Program requires at least 27 acres). He described the Listers' appraisal at the .8 grade as absurdly high. Craig stated that the Current Use Program has established a ridiculously low rate for ag land; he is asking the Town to lower the value from \$42,100, pointing out that he cannot do anything with the land except hay. He is asking for the .8 grade to be lowered. He requested that the land be valued at \$347 an acre, which is the rate established by Current Use. John Brabant pointed out that the Current Use acreage value is a

number determined by the Current Use Board that is not accurate in terms of a particular parcel, and the value of ag land varies across the state.

Craig Line explained that the 12.03 acre parcel has to be kept intact and cannot be separated out due to his deed (it can only get an allowable use building such as barn or sugarhouse which would require the VT Land Trust approval). The Listers by law have to treat it as a separate parcel when it comes out of the Current Use Program; the Calais Listers do know he cannot separate it out, and that it was removed as a result of the ag certification not being filed. Sharon Winn Fannon pointed out that the fair market value is inherently affected by the conservation easement because the value associated with the potential to develop the property has been stripped. There is no logical argument that a property encumbered by a conservation easement has greater value than an otherwise comparable parcel that has no conservation easement. The conservation easement is not a factor in the grade system; however, the fair market value *is* affected by this encumbrance. Jan Ohlsson responded that the land still maintains the farm potential as any other farm land. Dillon Burns requested the Board consider whether the listers erred in assigning the grade, and for the Board to clarify if that is the question they are addressing in the appeal. John Brabant clarified that the question is whether the Town applied the standard correctly in light of the conservation easement. The Board discussed that the appellant is required to supply comparable properties to prove their case. Tina Beilenberg asked whether all of his land has been in current use, and why is 12.03 acres out? Craig Line explained that there is a new form that is required to be filed annually that was mailed to people in the Current Use Program; because he did not file the form by the deadline, the program removed 12.03 of his 51 acres from the Current Use Program. John Brabant reported that he spoke with a number of people at ANR in researching this situation. He learned that the Current Use Program provides forest and ag land values each year; there is a new clause asking if you have ag land; Craig Line didn't declare it, and they moved the ag land out of the Current Use Program. Jan Ohlsson reported that each person in the Current Use Program has a map on file at the Town. Jan inquired whether Craig's forester hadn't checked with him about completing the new clause's designation—he hadn't.

The Board raised clarifying questions to consider for the appeal: Did the Listers appraise the land at a value that is higher than we think it should be? Is the appellant providing evidence of that with comparable properties and sales? Craig Line stated that he thinks the Listers' work should have included taking the responsibility for the burden of proof in locating comparables. John Brabant pointed out that the reappraisal would have accomplished this, and now as appellant it is Craig Line's burden to provide this evidence.

10. Appellant's questions: The opportunity for the appellant to raise questions included Craig Line stating that neighboring values should be higher than conserved property values. He also stated that the grade is too high: the land should be valued lower because of the encumbrances on the deed. An additional question was raised regarding whether the grade look at just the land, or does it take into consideration current use, land trust?
11. Listers Respond to Appellant: The Listers stated that listers are expected to keep the value of town properties aligned with the fair market value, so when a property sells, the selling price is in line with the appraised value.

The Listers pointed out that there is an inherent value to ag land; a prime ag acre is \$8,000 in Vermont and the average ag acre is \$3,300. The Chair asked Jan Ohlsson to locate and print evidence of these statistics. Jan reported that the grade is not related to current use, land trust, etc. and reiterated that the way she reads Craig Line's deed, the land can be used for any ag use.

12. BCA Questions and Discussion: The Board requested that Jan provide researched prices on fair market value for ag land. They discussed whether in lowering Craig Line's grade, the need to be equitable with everyone else would require lowering neighboring grades; the Listers' job is to be equitable throughout all of town. Tina Beilenberg asked to see some information of what the grades are; Jan Ohlsson will provide them from NEMRC, and John McCullough pointed out that listers commonly do not adjust the grades unless there is a reason. Sharon Winn Fannon asked what evidence the Board permitted to consider in this appeal. Jan Ohlsson brought attention to a list of the conserved land in Calais; the fair market value of the land totals \$2,667,000 and she considered the financial implications of lowering everyone's conserved land values. The chair stated that this information will not be considered in this deliberation. The listers' card for this property will be pulled and provided for the BCA to review.
13. Clerk of the Board to Collect Written Evidence: Within 30 days, the listers will provide (1) the grade list, (2) documentation on the price/value of prime ag land in Vermont, with and without development rights intact, if available (3) documentation on the *average* price of ag land in Vermont, with and without development rights intact, if available, and (4) the listers' card for Craig Line's property. Within 30 days, Craig Line will provide additional evidence (comparable properties or assessor's appraisal). These documents will be dispersed to everybody before the next meeting.
14. Executive session: The Board entered deliberative session at 8:55 pm, in order to deliberate on the decision they must make (1 V.S.A. § 312(e, f)). The Board resumed Regular Session at 9:10 pm and Denise Wheeler had nothing to report publicly
15. Adjournment: At 9:11 pm, Charlotte Hanna Bassage made a motion to continue the hearing to October 3, 2018 at 7:00 pm. Additional evidence will be gathered within 30 days with further evidence due back by September 26, 2018 at which time those documents will be dispersed to the BCA for review.
16. Appellant Withdrawal: The Board of Civil Authority meeting scheduled to be the continuation of the first meeting was cancelled. Craig Line decided to withdraw his appeal on October 15, 2018.

Date: 8/30/2018 Respectfully Submitted, Katie Lane-Karnas, Recording Secretary
Approved by the Board of Civil Authority at the 2/1/2021 meeting

Click on the link below to view documents associated with this agenda:

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