

Gary Brownfield vs Town of Atkinson
BTLA Docket Number: 22931-06PT

Background of Atkinson 2006 revaluation:

Abatement requests for tax year 2006

1. 158 residential property abatement requests were filed with the Town (3000 parcels)
2. 141 abatement requests were granted. Town error rate of 89% !!
3. \$89,000 of tax money granted to taxpayers for “good cause shown”
3. Approximately half of the abatement tax refunds came to “lake property”.
4. Discrepancies in assessments were widespread throughout the Town.

Due to that number of challenges through appeals for abatements, Mr. Artus, Mr. Brownfield, and others started a loosely organized taxpayer group to challenge assessments in Atkinson. That participation in the democratic process has caused some, if not all of the Selectmen/Assessors to view them as adversaries, rather than public spirited citizens. As one form of retribution, the Selectmen/Assessors have enacted charges in excess of those allowed by the RTK law for copies of public records. (or as revised by HB 1408, “governmental records”). These excess charges serve as a financial disincentive for those seeking assessing and other public documents.

The results of DRA USPAP 6 review:

1. Please see report.
2. USPAP is not enforced by DRA, only a review and advisory to ATKINSON
3. no action taken by Atkinson.. (question asked by Reed during BTLA ordered session Assessor Wood) (Ask for stipulation now.)

The Assessor in charge of the Revaluation for Purvis and Associates was dismissed by Mr. Brett Purvis for, as he described it, “incompetence”.

That’s little history of the 2006 time period being presented here today.

This having been said, I do want to stress to the Board that all parties conducted themselves in a calm and respectful manner in the Ordered settlement hearing held May 23, 2008.

End of History

Introduction of Mr. Brownfield’s case

Mr. Brownfield has 2 issues.

Part 1 of 2 concerns illegal taxation of land not owned by plaintiff.

Part 2 of 2 pleads for proper assessment of the septic system location.

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Part 1 of 2

Subject: Illegal assessment/taxation of “waterfront”

The law:

PERSONS AND PROPERTY, WHERE AND TO WHOM TAXED

Section 73:10

73:10 Real Estate. – Real and personal property shall be taxed to the person claiming the same, or to the person who is in the possession and actual occupancy thereof, if such person will consent to be taxed for the same; but such real estate shall be taxed in the town in which it is situate. Any assessments report issued by the commissioner pursuant to RSA 21-J:11-a shall not affect the obligation of the taxpayer to pay property taxes otherwise lawfully assessed.

Source. RS 40:7. CS 42:9. GS 50:11. GL 54:11. PS 56:14. PL 61:10. RL 74:10. 2001, 158:58, eff. Sept. 3, 2001. 2003, 307:10, eff. July 1, 2003.

1. Mr. Brownfield asserts he is being taxed contrary to RSA 73:10. (Illegally) (as highlighted above)
2. Mr. Brownfield makes no property claim beyond the bounds of his deed. (copy of deed)
3. Referencing the registered survey indicates the relationship between Mr. Brownfield’s and the waterfront. (See survey please)
4. The subject property has only one foot (+-) of water frontage.
5. The analysis and the determination of linear foot values relies upon the unsold properties having the same accurate data as the sold properties. This property has incorrect physical data attributed to it. One of which is the waterfront footage.
6. That incorrect data has led to real property being illegally taxed to Mr. Brownfield for years.
7. Mr. Brownfield has never claimed a fee simple interest in the waterfront property.
8. Mr. Brownfield has never consented to being taxed for the waterfront, which extends beyond his right, title and interest as described in his deed.
9. Mr. Brownfield is unable to convey the water frontage to a purchaser of his property.
10. A review of the lakeside lot line pictures demonstrates the factual nature of the waterfront.
11. The Town at the Ordered Meeting refused to address this issue because it was a “legal matter”.
12. The Town has made no good faith effort to investigate the legality of the plaintiff’s claims.
13. The Town has made no effort to view the property for a determination of physical facts. Neither before, nor after the Ordered Meeting.
14. The Town made no attempt to seek Town counsels opinion on this “legal matter”. (seek stipulation today)
15. The Chairman of the Selectmen/Assessors, Mr. Sullivan, stated at the Ordered Meeting that “we’ll let the BTLA sort this out”. This action is not a good faith effort to settle as ordered by the BTLA. The inaction of the Selectmen/Assessor Chairman and the complacent agreement of the professional assessor are most egregious to the Plaintiff. The BTLA should not be used to settle plain facts of law and demonstrates frivolous action on the part of the Town.
16. The Plaintiff requests the Board to deem the (in)action by the selectman as willful neglect of duty, and contrary to the Order to meet in good faith (as issued by the BTLA). These actions have resulted in a frivolous appearance before the BTLA.

17. In regard to property ownership and taxation. We request the Board apply the NH Supreme Court opinions stated in LSP v. Town of Gilford, Belnap Num. 95-500, NH Supreme Court Appeal of Beatrice Reid & a. BTLA No. 96-595 and any other applicable cases.
18. Furthermore, **If** the Board grants an abatement, the plaintiff argues that it is because of a clear error of fact, not of interpretation. The Town has made no effort to refute the facts presented at the May 23, 2008 Ordered Meeting. The Town has offered no argument of “interpretation”, The Town has made no effort to resolve this issue. Therefore Mr. Brownfield requests a favorable determination by the BTLA that filing fees be refunded in accordance with **RSA 76:17-b Filing Fee Reimbursed.**

The plaintiff requests that the Board order the Town of Atkinson:

1. **to correct the waterfront physical data on Mr. Brownfield’s property record card to reflect only that property that is described by his deed and as marked at the bounds of his property. Then, apply that waterfront factor in the same manner that it is allocated to other properties in Atkinson. The Plaintiff asks for no specific monetary amount, merely to have the data corrected on his PRC to reflect the factual water frontage (property) attributable by RSA 73:10 as taxable to Mr. Brownfield.**
2. **If the BTLA so determines, filing fees to be reimbursed to Mr. Brownfield per RSA 76:17-b (as discussed above)**

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Part 2 of 2

Subject: Septic System

1. The PRC lacks an accurate market value adjustment for this negative property feature.
2. The TP property has a septic system that is partially located on his property.
3. Mr. Brownfield has no legal right to access or maintain the leaching field portion of the septic system.
4. The leaching field portion is located under the paved and traveled ROW known as Chase Island Rd.
5. Mr. Brownfield will have to disclose this adverse feature of his property when it is presented to the “market” for sale.
6. The Town has recognized the basic negative feature but only made a 5% of land value adjustment. (\$3900)
7. The 5% adjustment was arbitrary and reflective of the true market value impact.
8. The plaintiff asserts that septic system leaching field has a finite life. Therefore the repair/replacement is a reality for the owner of this property.
9. The very real prospect of the cost of legal proceedings to gain access and to perform repairs of the leaching field located on another’s property looms as additional costs beyond the repair costs.
10. The plaintiff, therefore, pleads that this Board recognize the negative impact on both assessed and market value.

The plaintiff requests that the Board to order the Town of Atkinson:

1. **to make a good faith determination, based on replacement costs, of the market/assessed value impact of the septic system defects as stated above.**
2. **to use that data to enter a factor more appropriate to the site specific adjustment now recorded on the PRC.**
3. **to have the septic adjustment based on as they relate to a potential buyer in the “market”.**

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Summation:

Mr. Brownfield alleges that all the above issues were, and are, correctable at the Town level. That if the Town had performed its duties, upheld their oath of office, and been more transparent in their assessing practices, there would be no need to be before the BTLA today.

The plaintiff has not asked for monetary amounts because he believes that full and accurate physical data collection and the use thereof are the foundation for fair and equal assessments. He will be satisfied to settle for that fundamental duty of the Town Assessors being followed to the best of their ability and in accordance with NHA AO and IAAO accepted assessing and ethical practices.

Mr. Brownfield requests this Board (BTLA) find for him and order the correct physical data be recorded on his PRC (for the 2 subject items). Then, a revised assessed value be CAMA calculated and used for the tax years of 2006 and following, until such time as the Town is revalued.

In as much as the Town has not factored these issues into their comparative analysis that they plan to use here today, we are of the opinion that the omission renders the comparative study unfair and inaccurate.

In as much as the Town has unnecessarily burdened both the Taxpayer's and this Board's resources, the plaintiff requests the Board to find and order costs be awarded to Mr. Brownfield in accordance with Tax 201.39 and RSA 71-B:9. The plaintiff asserts the actions by the Town as described throughout this document amount to frivolous actions That is, this case was not brought before the BTLA in good faith on the part of the Town. (Such costs are requested separately from the filing fee requested per RSA 76:17-b. elsewhere in this document.)

If the Board rules favorably for the plaintiff's costs, the plaintiff shall submit itemized documentation of costs within 15 days of the BTLA's decision or as ordered by the BTLA.

END

