

**Board of Civil Authority Meeting - 10/1/2020**  
**6 pm - Approved Minutes**

**BCA Present:** via Zoom - Nora Rubinstein, Pat Hemenway, Heather Grier, Patty Kenyon, Elizabeth Cooper. At the town office - Terry Redfield, Laura Castle, Neil Russell at 6:12pm, Carl Haynes at 7:15pm

Terry called to order at 6:01pm

**APPROVAL OF MINUTES:** August 17, 2020 and September 17, 2020

Nora moved to approve the minutes of August 17, 2020 as presented, Terry 2<sup>nd</sup>. All in favor, motion carried.

Pat H moved to approve minutes of September 17, 2020 as presented, Heather 2<sup>nd</sup>. All in favor, motion carried.

**AUGUST 17, 2020 ISSUE RESOLUTION:** Letter from Secretary of State Jim Condos - Terry forwarded the letter to BCA members regarding the incident on August 17. Secretary of State has concluded their review of the incident.

Subsequently, an ethics complaint has been filed by the chair of the Republican Party with the legislature's Ethics Committee against Representative Robin Chesnut-Tangerman regarding this incident.

**NOVEMBER GENERAL ELECTION PREPARATIONS:**

**a. Scheduling/Staffing/Procedures Management**

- a. Scheduling Poll Workers** - Nora reported that everyone who worked the August primary is willing to work again. We will need to have a couple extra people in place to do greeting outside the door and also for counting so we're going to have to find new people. Nora and Pat are both looking for recommendations from the other members of the BCA. Preferably we are looking for people who are at a lower risk for complications from COVID-19. Also we will need a different team of people than normal to do the counting since many of our normal counters are on the ballot running for JP.

- b. **Temperature checks / Masks Required to Enter bldg.** - After a brief discussion if was determined that BCA members are not in favor of temperature checks. All agree that the requirement for masks is essential.

There was some discussion about the possibility of folks wanting to come in to observe the election processes. Members want to be proactive and prepared to accommodate requests, but also want to be sure we are following any guidelines surrounding the process. Patty will do some research to find out what the rules and expectations are.

- b. **Documenting Write-in Ballots Election Night** - We do need to make sure that we count write-ins, just as in a regular election.
- c. **Warning the pre-count of Mailed & Absentee Ballots - Monday, November 2, 2020 (posted by Oct 4, 2020) -**

Patty moved to close the town office to non-election related business and warn an official BCA meeting to process Absentee Ballots on Monday, November 2, 2020 starting at 10am. Heather 2<sup>nd</sup>. All in favor, motion carried.

Terry will research how this warning should be worded and whether or not it needs signatures of the members of the BCA.

There was a discussion about the process and staffing needs for this event. Law requires just two BCA members, ideally one from each party. BCA members feel we should follow normal practices for checking in absentee ballots, with a check in and checkout list used to track the ballots run through the tabulator. This is a warned public meeting, so all members are welcome along with observers. Additionally, we will continue to take in absentee ballots throughout the process.

Members felt that we should be proactive in helping people navigate through the absentee voting process. To that end, Patty and Elizabeth will work on creating a poster and some smaller handouts for folks to take home with them that succinctly explain the steps in the process and methods of returning ballots successfully.

**WORK ON VOTER CHECKLIST FOR TOWN MEETING 2021 UPDATES** - Heather gave an update about the information and training she has gotten from Nora Sargent in Wells for using the SoS election management system.

She also reported that ballots for Middletown Springs residents were mailed today 10/1/2020.

She also received a spreadsheet of all the people who have been mailed ballots so we can look at that for reference as we go forward. The SoS did not send ballots to anyone who was in the system as already receiving ballots. Some of this information may not have been correct in the system, so we will be able to use this spreadsheet to determine who might need a ballot sent to them directly from the town office.

Heather and Patty are scheduled to work on entering ballots into the system on Tuesdays and Saturdays from next week until election day.

The Tabulator needs to be tested by October 24<sup>th</sup>, we are still waiting on the software to arrive from the provider.

**HANDY PROPERTY TAX APPEAL DECISION** - The listers have received the final determination from the state. The appeal was decided using the appraiser's value, which decreased the value of the house for the grand list. (Sally Achey provided a copy of the determination letter on 10/2/2020. Said letter is attached here as part of these minutes.)

**OTHER LAWFUL BUSINESS (Schedule next BCA meeting)**

Next meeting prior to the election - Thursday, October 15, 2020 - 7pm

**ADJOURN**

Heather moved to adjourn at 7:30pm, Terry 2<sup>nd</sup>. Meeting adjourned at 7:30pm

Respectfully submitted  
Patty Kenyon, Clerk

**Addendum:** Handy appeal decision



State of Vermont  
Department of Taxes  
133 State Street  
Montpelier, VT 05633-1401

Agency of Administration

Reply to: PO Box 429  
Montpelier, Vermont 05601-0429  
802.828.2560  
802.828.5873 fax

September 02, 2020

**CERTIFIED NO. 7015 3010 0001 4919 5352**

Paul and Susan Handy  
103 Spruce Knob Road  
Middletown Springs, Vermont 05757

Re: Paul and Susan Handy v. Town of Middletown Springs  
Docket No.: PVR 2019-15

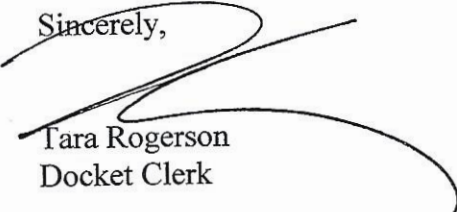
Dear Paul and Susan Handy:

Enclosed is the Hearing Officer's decision on the above-captioned appeal.

A copy of this decision is being forward to the Middletown Springs Town Clerk for recording in the Grand List under Vermont law 32 V.S.A. §4468.

Your right to appeal this decision is described in 3 V.S.A. §815 and the Vermont Rules of Appellate Procedure. You may appeal within 30 days of the Director's Entry Date. To perfect your appeal, file a written notice of appeal with the Clerk of the Department of Taxes together with a \$295.00 filing fee payable to the Vermont Supreme Court. Also, please refer to Vermont Rules of Appellate Procedure, Rule 10(b) when appealing to the Supreme Court.

Sincerely,

  
Tara Rogerson  
Docket Clerk

cc: Middletown Springs Town Board of Listers/Assessors  
Middletown Springs Town Clerk

**CERTIFIED NO. 7015 3010 0001 4923 5369**

 .VERMONT

**Decision Of The Property Valuation Hearing Officer**

Richard A. Favor

**Appellant**

Paul and Susan Handy

103 Spruce Knob Road

Middletown Springs, Vermont 05757

**Appellee**

Town of Middletown Springs

PO Box 1232

Middletown Springs, Vermont 05757

Re: Paul and Susan Handy v. Town of Middletown Springs

DOCKET NUMBER: PVR 2019-15

The property under appeal is described as parcel # TH05-103 and span # 393-122-10434.

Pursuant to 32 V.S.A §4461-4467, I heard the above appeal on Wednesday July 29, 2020 at 10AM via Zoom conference.

Value determined by the Board of Civil Authority \$440,400

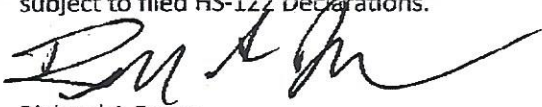
Value determine by the Property Tax Hearing Officer \$407,000

Homestead Value \$407,000

House site value \$343,200

Residential equalized value \$407,000

The subject property shall be set in the April 1, 2019 grand list in accordance with 32 V.S.A. §4468 at the value determined by the hearing officer. Pursuant to 32 V.S.A. §4468, this shall be the listed value of the subject property for the 2019 Grand List and for the following two years unless the property is materially altered, changed, damaged or the town of Middletown Springs undergoes a complete revaluation of all taxable real estate. Homestead and House site values are subject to change within the three years, subject to filed HS-122 Declarations.



Richard A Favor

Property Valuation Hearing Officer

PO Box 719

Pittsfield, Vermont 05762

Report Date 9/1/2020

Date Entered by the Director SEPTEMBER 2, 2020

### **Statement of the case**

This is an appeal of Paul and Susan Handy from the decision of the Middletown Board of Civil Authority relative to the assessment of their property located at 103 Spruce Knob Road, Middletown Springs, Vermont. The property consists of 44.00 acres of land classified as residential with a single-family berm home with 3,459 square feet of finished living space. The lister's valued the property at \$460,400 for the April 1, 2019 abstract grand list. Upon appeal the listers reduced the value to \$440,400 dollars. The board of civil authority upheld the listers value. The decision of the board of civil authority was appealed to the Property Valuation and Review division.

To determine the correct valuation of this property an appeal was heard pursuant to 32 VSA 4461 through 4467, via Zoom conferencing on July 29, 2020 at 10 AM by a Property Valuation and Review hearing officer. Procedure in this case is governed by the contested case provisions of the Vermont Administrative Procedure Act, 3 V.S. A. § 801 et seq.

Present for the appellants were Paul and Susan Handy and their appraiser Renee Dumas. Representing the town were Sally Achey and Patricia Hemenway, listers.

### **Summary of Evidence**

#### **The Town Presented the Following Exhibits**

- T1. Definition of terms – Pages taken from the Guide for Vermont Listers and Assessors regarding roles and responsibilities
- T2 History of Property Valuation – House site and total value of subject property for 2006, 2008 and 2018 with lister card
- T3 Change Forms 06-2019 – Lister site visit report, lister card, comments, and appraisal change notice
- T4 Appraisal Summary Report – Summary page of independent appraisal
- T5 Lister Response To Appraisal – Lister comparable property report
- T6 Sketch of House – Appraisal terms
- T7 Lister Cards, PTTR's of Middletown Springs Comparable Properties - 277, 99 and 103 Spruce Knob Road.
- T8 Lister Conclusion
- T9 BCA Report



**The Appellants presented the following exhibits**

- A1 – Real Estate Sales Card
- A2 - Real Estate Appraisal – Renee Dumas
- A3 Lister Card for Handy Property
- A4 Page from the Department of Taxes – How Property is Assessed
- A5 Page 5 from the Handbook on Property Tax Appeals Revised 2009
- A6 Page from Justia US Law Website – Royal Parke Corp. V. Town of Essex
- A7 Page from Law Pipe Web site – Wilde V. Town of Norwich
- A8 Pictures of sinkhole and culvert
- A9 Allard Excavating Cost to repair sinkhole
- A10 Engineering letter from Kristin F. McCusker

**Findings of Fact**

This is a de novo property valuation appeal of the Middletown Springs Board of Civil Authority's decision pursuant to 32 V.S.A. § 4461- 4469. The listers set the 2019 Grand list value of the subject property at \$440,400 dollars. This value was appealed to the Board of Civil Authority without change. The appellants filed an appeal to the Property Valuation and Review division.

The CLA for the 2019 grand list is 100.98 percent.

The property is not enrolled in the current use program.

The subject property is located at 103 Spruce Knob Road in Middletown Springs and was purchased for \$399,000 dollars on 11-14-2018. The home is a single-family berm constructed style home with approximately 3,459 square feet of finished living space with three bedrooms, three bathrooms and 44 acres of land. This was considered an arm's length transaction.

There is an independent appraisal submitted by Renee Dumas a licensed residential real estate appraiser. The appraisers' opinion of value as of 3-18-2019 (inspection date) was \$407,000 dollars.

A sinkhole developed in the driveway on April 15<sup>th</sup>, 2019 from a rainstorm the previous day.

There is an estimate to repair the sinkhole from Allard Excavating for \$25,200 dollars.

I find the Highest and Best Use of the subject property is the present residential use as it meets the following criteria: legal permissibility, physical possibility, financial feasibility, and maximum profitability.

### Discussion

To prevail in an appeal under 32 V.S.A § 4467 the appellant must first overcome the presumption of validity accorded the towns valuation. The appellant has overcome this presumption by introducing an opinion of value from a licensed real estate appraiser regarding fair market value of the subject property. However, the burden of persuasion remains with the taxpayer on all contested issues and does not shift to the town.

The subject property was purchased on November 14, 2018 for \$399,000 dollars. This was considered an arm's length transaction. The town's assessment of the property when purchased was \$460,400 dollars. The appellants grieved this assessment for the April. 1, 2019 grand list.

The listers visited the subject property on 5-28-2019 and were told that a sink hole adjacent to the driveway had developed on April 15, 2019 from a rainstorm the previous day. The listers decided to reduce the property valuation by \$20,000 to \$440,400 dollars. This valuation was grieved to the Board of Civil Authority and was not changed.

The appellant hired a licensed real estate appraiser to determine the valuation of their property as of April 1, 2019. The appraiser inspected the property on 3-18-2019 and determine the value was \$407,000 dollars. (Exhibit A-2).

#### Real estate Appraisal

The appellant's appraiser provided an opinion of value indicating a market value of \$407,000 dollars for the subject property. Five comparable properties were used in the analysis (Exhibit A2).

#### Comparable # 1

Located on 99 Spruce Knob Road in Middletown Springs this is a home with 1814 square feet of living area on 13.74 acres of land. The property was sold on 3-8-2018 for \$303,000 dollars. Net adjustments were \$104,000 dollars for an adjusted sale price of \$407,000 dollars.

#### Comparable # 2

This property is in Pawlet, Vermont at 174 Beaver Brook Road and sold for \$315,000 dollars on 9-14-2018. The gross living area is 3,731 square feet with 7.80 acres of land. Net adjustments were \$80,650 dollars for an adjusted sale price of \$395,650 dollars.

#### Comparable # 3

Located at 277 Spruce Knob Road in Middletown Springs this property consists of 1800 square feet of gross living area with 62.75 acres of land. This property sold on 01-15-2016 for \$390,000 dollars. Net adjustments were \$15,200 dollars for an adjusted sales price of \$405,200 dollars.



#### Comparable # 4

This property is located at 1191 Middle Road in North Clarendon and sold for \$310,000 dollars in June of 2019. The property is a berm home with 2,640 square feet of living area with 23.60 acres of land. Net adjustments were \$70,500 dollars for an adjusted sale price of \$380,500 dollars.

#### Comparable # 5

Located in West Rutland at 1450 Clarendon Ave this property has 3,540 square feet of living space on 49.1 acres of land constructed of glass, steel, and concrete. This property is a pending sale of \$465,000 dollars.

#### Lister's response to appraisal

The listers questioned two components of the submitted appraisal: Quality of Construction and Functional Utility (Exhibit T5). Their opinion was the quality grade of the subject and comparable properties should be good not average. They wanted their grading system for quality of construction to be used in the independent appraisal report. Using the town's software and property record cards, they changed the quality of construction grade of comparable properties #1 and #3 from 3.96 and 3.75 to the quality grade of 4.5 given the subject property. This would increase the adjusted sale price in the independent appraiser's report by \$12,100 dollars for comparable property #1 and \$30,400 dollars for comparable property #3. They also wanted the negative adjustment of (- \$34,000 dollars) for functional utility to be a positive adjustment of (+\$34,000) dollars for both properties

First, the independent appraiser is not required to use the towns grading system in her report. The grading of properties is the opinion of the appraiser based on experience and judgement. The hearing officer reviewed all photographs of the subject and comparable properties and does not see any noticeable difference in construction quality between them.

Second, the negative adjustment under functional utility is a deduction used by the appraiser to address an attribute the comparable properties do not have (berm construction) against the subject property that does. The appraiser made a negative adjustment to comparable properties #1 and #3 to reflect this difference. She stated the functional utility line in her report is where the deduction was made. This was not a deduction of the standard functional utility component normally seen in a home (low ceilings, no windows in finished basement areas, etc.)

There was considerable dialogue between the parties regarding categorizing the subject property as a berm home. The real estate sales card of the subject property (Exhibit A1) advertised the home as a chalet-style berm contemporary. The lister's stated that when built in 2006 this home was considered a berm structure. In their opinion the addition of a second level in 2008 brought this category of berm construction into question. A standard definition of a berm home in the building and appraisal industries is a home built on flat land with earth packed against one or more

exterior sides. The appellants home fits this definition and has earth packed against more than two sides.

#### Hearing Officer

The hearing officer does not accept comparable properties 2, 4 or 5 in the appraisers' report as evidence of fair market value.

Comparable # 2 is in Pawlet. This was eliminated for several reasons. There was a noticeable difference in square footage between the listers card (2,944) and the appraisal figure of (3,731). In addition, the appraiser stated this information was obtained from a real estate agent.

Comparable # 4 is a berm home in North Clarendon. This property sold in May 2019. The hearing officer will not accept a sale after April 1, 2019 for analysis.

Comparable # 5 is in West Rutland. This was a pending sale as of April 1, 2019 constructed of glass, steel, and concrete. In addition, there was no data presented (property record card) regarding the components of the home that were used for adjustments (square footage, building sketch, acres, etc.). This property is not acceptable to the hearing officer as comparable based on construction components and being a pending sale.

Comparable # 1 99 Spruce Knob Road and Comparable # 3 277 Spruce Knob Road are acceptable to the hearing officer for adjustments to determine fair market value. They are on the same street as the subject property. Comparable property # 1 sold for \$303,000 dollars on 03-08-2018 and comparable property # 3 sold for \$390,000 dollars on 01-15-2016. The appraiser adjusted for differences to comparable # 1 for a value of \$407,000 dollars. Comparable # 3 was adjusted for differences including a time adjustment for a value of \$405,200 dollars.

During the hearing there was inconsistency between square footages used by the town and independent appraiser. The gross living area of the subject property varied between the town (3,459) the appraiser (3,486) and the real estate listing card (3,534). This is important when looking at the adjustment the appraiser made to comparable # 1 and #3 regarding berm construction.

The appraiser multiplied the total finished area of the subject property by \$10.00 a square foot (3,459) and made that a negative adjustment to the non-berm homes (-\$34,000). However, in her report the gross living area is 3,534 square feet. The town did not object to the discrepancies in these figures as used in the appraisal report. There was no strong evidence presented by either party to support their gross living area figures. The hearing officer could not justify making changes to the appraisal report in that regard. The discrepancies were minimal and would not have made a substantial change in value. It is noted in this report as a matter of record.

#### Conclusion of Law

I find the appellant has met the burden of persuasion to overcome the Town's valuation of this property. The appraised value of \$407,000 dollars in the independent appraisal report represents fair market value of the subject property. This figure is supported by the two properties the hearing officer considered most comparable for adjustments in the appraisal report # 1 and # 3. The hearing officer will not reduce the fair market value for any changes to the land or building after April 1, 2019.

Based on the foregoing Findings of Fact the following is concluded as a matter of law:

The listed value of the subject property for the April 1, 2019 equalized grand list is \$407,000 dollars.

Pursuant to 32 V.S.A. §4468, this shall be the listed value of the subject property for the 2019 Grand List and for the following two years unless the property is materially altered, changed, damaged or the town of Middletown Springs undergoes a complete revaluation of all taxable real estate. Homestead and House site values are subject to change within the three years, subject to filed HS-122 Declarations.