

**BOARD OF CIVIL AUTHORITY MEETING MINUTES  
RANDOLPH TOWN HALL  
SEPTEMBER 15, 2016  
7:00 P.M.  
CONFERENCE ROOM B**

**Board Members Present:** George Phillips, Jack Cowdrey, Mike Ross, Jessamyn West, Richard Burstein, Joyce Mazzucco, Ruth Lutz, and Martha Lawrence

**Others Present:** Pamela Simendinger; David Simendinger; Lisa Preston, Lister; Ed Luce, Lister; Pat French, Lister; and Ted Nelson, Jr.

**1. Call to order.**

The Board of Civil Authority meeting was called to order at 7:00 p.m. by Board Chair Richard Burstein.

**2. Public Comment.**

There was no public comment.

**3. Approve the agenda.**

Jack Cowdrey made a motion to approve the agenda as presented. Jessamyn West seconded the motion. A voice vote was taken and the motion carried by unanimous vote. The agenda was approved.

**4. To hear the property tax assessment appeal of Wesco, Inc., property located at 16 North Main Street, SPAN #507-159-13648, Parcel #234014-000.**

Mr. Burstein opened the hearing by stating who the appellant was and where the property is located. The appeal from Wesco, Inc. (aka Champlain Farms) was made by David Simendinger in a letter dated August 23, 2016 and received by the Town Clerk on August 29, 2016. The letter stated that the Listers originally assessed the property at \$554,300 and lowered the value at Grievance to \$438,300. The letter further stated that an appraisal performed by an independent real estate and business valuation consultant suggests that the real market value is \$270,000. This letter was entered into evidence and labeled as "Exhibit #1".

Town Clerk Joyce Mazzucco administered the following oath to the Board members: "I solemnly swear (or affirm) that I will well and truly hear and determine all matters at issue between taxpayers and listers submitted for my decision. So help me God (or under the pains and penalties of perjury)". Mr. Burstein administered the same oath to Ms. Mazzucco. Ms. Mazzucco asked the Board members to sign the oath sheet.

Mr. Burstein disclosed to the Board that quite a number of years ago he had performed some legal work for Wesco. He did not feel this would be a conflict of interest but asked if anyone objected to his participation in this appeal. There was no objection.

Mr. Burstein asked that anyone who would be giving testimony to stand and to take the following oath: "Do you solemnly swear (or affirm) that the evidence you shall give relative to the cause now under consideration shall be the whole truth and nothing but the truth so help you God (or under the pains and penalties of perjury)?" Town Clerk Joyce Mazzucco administered this oath to David Simendinger, Pat French and Ted Nelson, Jr.

Appearing at the hearing on behalf of Wesco, Inc. was David Simendinger. Mr. Burstein asked the appellant to state his case. Mr. Simendinger is the President of Wesco, Inc. and he told the Board that his brother passed away a couple of years ago and he was in the process of buying out his brother's portion of the business. People's United Bank ordered Mr. Simendinger to have all the company's assets valued. Mr. Simendinger presented a copy of an appraisal, dated February 20, 2015, that was prepared by Atlantic Valuation Consultants for the benefit of People's United Bank, N.A. The appraisal was entered into evidence and labeled as "Exhibit #2". Mr. French was recognized and he stated that he did not object to having the appraisal into evidence but wished that the appraiser who prepared the appraisal could have been present at this hearing and available to answer questions. Mr. Simendinger told the Board he thought the appraisal was the best evidence to support his belief that the assessed value for the 16 North Main Street property is too high. It is his opinion that the \$270,000 valued shown in the Atlantic appraisal is reflective of the current market value. The gas station/convenience store business is very competitive. About 80% of the business comes from sales of gas, cigarettes and beer. Over the years he has seen a decline in business. He stated that Vermont has one of the highest gas taxes as well as taxes on cigarettes. It's hard to compete with New Hampshire where most things are cheaper. There's also the competition from the internet which is bad for retail business. Expenses are up—sales tax on soda and sugary drinks, increases in minimum wage, sick day benefits for part time employees to name a few. There are two of single lined gas tanks that will need to be replaced next year, and with low gas sales, Mr. Simendinger is unsure if it will be worth replacing. It is harder to make favorable contracts for products, such as soda or beer, with decreasing sales. Location also plays a part in the decrease in sales. The subject property is not far from the Dunkin' Donuts and Cumberland Farms, major competitors. Also the new facility up by the Interstate—The Barn, draws away business, as does the Rite-Aid store next door to the subject property. The profit margins are small and all the added extra expenses means prices on retail items need to be raised. Higher prices tend to turn customers away. There were some questions asked and answered about the information Mr. Simendinger presented. The following individuals participated in the discussion: Richard Burstein, David Simendinger, and Jessamyn West.

When Mr. Simendinger was finished presenting his case, Mr. Burstein asked Pat French, Town Assessor and a member of the Board of Listers, to present the Listers's argument. Mr. French presented a handout with a number of documents and these were entered into evidence and labeled as follows:

- Exhibit A: 16 North Main Street Assessment Information—Town Appraisal & Sketch
- Exhibit B: Comparable Gas Station/Convenience Store Sales
- Exhibit C: Recent or Similar Gas Station, Convenience Store or Dual-Use Property Sales
- Exhibit D: Comparison sheet of the listed values of all Gas Station/Mini-Marts in Randolph

Mr. French told the Board that at the last town-wide reappraisal, the Vermont Appraisal Company set the value at \$686,600. This was appealed to the BCA and then to the State Appraiser. The Town and Wesco settled by agreeing to a stipulated value of \$615,600. In 2010 Wesco appealed the assessed value to the Listers and by mutual agreement lowered the value to \$554,300 to reflect the below average condition on the building. Most of the value for the subject property is in the land and improvements and canopy. Wesco appealed the

assessed value again this year. The Listers lowered the land value substantially and adjusted the property assessment to \$438,300 and this is the value under appeal. The lowered land value was an adjustment to grade. There was a discussion and the following individuals participated in the discussion: Richard Burstein, Jessamyn West, Joyce Mazzucco, George Phillips, Pat French and David Simendinger. The discussion touched on the land value adjustment, the canopy, fire suppression and the single lined gas tanks. The fire suppression system has been removed because unintended discharges from the system are more of a hazard than as a safety feature.

Mr. French introduced Ted Nelson, Jr. to the Board as an expert witness for the Listers. Mr. Nelson has been doing real estate appraisals/fee appraisals/reappraisals since 1989 and is one of owners of Vermont Appraisal Company since 2003. Mr. Nelson did most of the commercial and industrial property appraisals for the Town of Randolph during the 2006 town-wide reappraisal. Mr. French turned the floor over to Mr. Nelson.

Mr. Nelson disclosed that he had previously met Mr. Simendinger in Winooski this past spring where his firm (Vermont Appraisal) is hired to perform the duties of the assessor. There were 3 properties in which the city and Wesco disagreed about the assessed value. In the end, the city and Wesco were able to agree on values for two of the three properties. For the third property the differences in values were significant and both parties agreed to disagree. This was a different municipality and different issues, but the situation is somewhat similar to what is happening here in Randolph where the Listers tried to work with the property owner to arrive at a value agreeable to both sides. Mr. Nelson also disclosed that he had taken a fresh look at the subject property prior to this hearing by going into the store and making a small purchase.

Mr. Nelson told the board that he had heard that Atlantic had performed a lot of work assessing Wesco's properties in February 2015 as part of the process of evaluating Wesco's value due to Mr. Simendinger's brother's passing. The Atlantic appraisals for a number of Wesco's properties came in lower in value than the values the particular towns/cities had them assessed at. Mr. Nelson referred to a spreadsheet, Exhibit C—"Recent or Similar Gas Station, Convenience Store or Dual-Use Property Sales", which outlined information on recent sales of gas stations going back to 2010. The information on this sheet suggests that anyone interested in owning/running a gas station would need at least \$550,000 to \$675,000 to invest to get into or to stay in the business selling petroleum products and convenience store items. He talked about some of the larger gas station/convenience stores around the state, i.e., RL Vallee, Jolley, Cumberland Farms, the facility at Exit 4, and other Wesco properties, and about stores that are affiliated with chains like Subway, Dunkin' Donuts, etc.

Mr. Nelson discussed the information in Exhibit B-four comparable gas station/convenience store sales excerpts from the Atlantic appraisal. It is his opinion these four comparable sales are most similar to the subject property. The first comparable was a sale in Winooski for \$500,000. One condition of note about this property is that the buyer/owner of the property and any subsequent owner, if the property remains as a gas station, must purchase gasoline from Champlain Oil Company, Inc. Mr. Nelson said this was a disadvantage as the owner cannot purchase gas at a better price from another dealer. The building is a similar size to the subject property but the lot size is smaller and the Annual Average Daily Traffic (AADT) is 14,100. The other comparables in the exhibit are for properties of similar size and AADT. The subject property has an AADT of 9,000.

Mr. Nelson presented a handout with excerpts from the Atlantic appraisal, and this was labeled as “Exhibit E”. Page 3 and page 4 of Exhibit E provided information on historic performance and measures of profitability for the periods 2007-2009 and 2012-2014. Mr. Nelson talked about the information on these two pages and explained what “EBITDA” means (Earnings Before Interest, Taxes Depreciation & Amortization). He noted the significant change in the EBITDA from the period 2007-2009 to the period 2012-2014, although sales/revenues for those time periods are similar. Mr. Nelson said he tried to understand how Atlantic arrived at some of the numbers in the appraisal. He thinks the appraiser extrapolated and used a 5.5% figure multiplied by the EBITDA (\$72,100) to arrive at a value of \$400,000. Mr. Nelson talked about the comparable land sales listed on page 1 of the Exhibit E and told the Board he did not think the Brighton sale was comparable to the subject property. The third sale listed, Jolley to RL Vallee, was a sale to an abutter and not a valid sale. The last page of Exhibit E provided sample information from a few appraisals done by Atlantic. The \$270,000 value from the Atlantic appraisal suggests that the subject property is not a viable business and the building and storage tanks should be removed and the property sold as a commercial building lot.

There was a discussion about the information presented. Participating in the discussion were the following individuals: Richard Burstein, Ted Nelson, David Simendinger, Ruth Lutz, George Phillips, Joyce Mazzucco, Lisa Preston and Pat French. The discussion touched on the shrinking supply of fuel dealers; the need to replace the fuel pumps to accommodate the new credit card chip technology; the need to replace the single wall fuel tanks with double-walled fuel tanks; where the gas is supplied from—supplied from Albany by various companies; the need to carefully look at what sales are comparable—need to take into account location; and a recommendation for both parties to meet and come to an agreement on value. Mr. French told the Board he had a copy of the 2009 Atlantic appraisal and the Board agreed to enter this into evidence as “Exhibit F”.

5. **Other Business**

There was no other business to consider.

6. **Recess Hearing.**

George Phillips made a motion to recess this hearing for the Wesco appeal to a date and time to be determined and to meet for the next tax assessment appeal on Wednesday, September 21, 2016 at 6:00 p.m. Ruth Lutz and Jessamyn West seconded the motion. A voice vote was taken and the motion carried by unanimous vote. The meeting recessed at 8:12 p.m.

Attest: \_\_\_\_\_  
Joyce L. Mazzucco, Town Clerk