

**WALDO COUNTY COMMISSIONERS COURT SESSION  
TAX ABATEMENT HEARING PETITION NO. 352  
LANCE PHILBROOK VS TOWN OF MONTVILLE  
FEBRUARY 8, 2011**

**PRESENT:** Commissioners William D. Shorey (Chairman), Amy R. Fowler and Betty I. Johnson. Also present were Plaintiff Lance Philbrook and Montville resident Greg Hills along with Defendants Town of Montville Board of Assessors Jay LeGore, Herman Peaslee and, later, Glen Widmer. Recording the minutes was County Clerk Barbara Arseneau, assisted by Deputy County Clerk Veronica Spear.

County Commissioner Chairman William D. Shorey opened the hearing at 9:30 A.M. Commissioner Shorey introduced the County Commissioners, read the rules of the hearing to all present and then the Petitioner and Defendants were sworn in. He asked the Petitioner and Defendants to introduce themselves.

W. Shorey: The Petitioner may now present your case.

**PETITIONER: Lance Philbrook**

L. Philbrook: There were actually two parts to this. I have one on the land taxes and the personal property. The first thing that came to my attention was the small portion of property there with the taxes; they assessed me on a buildable house lot where I strongly don't feel it is. It is roughly half an acre that I purchased from the town that came up for bid. I bought it for the sole purpose of just so that I would have a place to put a business sign. I don't agree that the tax rate that I am being assessed on is fair because it cannot be built on. There is not enough room there and it is wet from the stream that is there. The other portion of that is the personal property tax that I don't think is fair because, for one thing, it is not being applied to all of the citizens in Montville and they are saying it is being applied to the businesses in Montville when it is not even being applied to all of the businesses in Montville. There is only a select few that are being taxed on it. Some of the values that they have assessed in there for the personal property, I don't know where they get the numbers for the values.

W. Shorey: Are you finished?

L Philbrook: Yes.

B. Johnson: What I want to ask; is there a limit to the size of the lot? Do you have an ordinance that has to be a certain size?

G. Hills: In 1991 the Town voted down minimal lot size at the annual Town Meeting but the subdivision ordinance does list a minimum lot of 2 acres.

B. Johnson: This is about half an acre?

G. Hills: Correct.

B. Johnson: Another question would be you had said a lot of the businesses are not being assessed and do you have proof of that?

G. Hills: We have the actual Town's personal property and there are several like businesses like Lance's auto, Montville Motors on 220, Mike's Repair on Trues Pond Road and there is even a large truck repair on Route 3.

B. Johnson: Now, this is not considered a home business; it is considered a regular business, correct?

A. Fowler: What do you mean, Betty?

B. Johnson: In many towns there is a clause of subject of home business which is evaluated at a different amount than a regular business. When you file your taxes do you file them as a business, not as a home business? Is that correct?

L. Philbrook: I am still not sure I fully understand that. Are you talking about income taxes?

B. Johnson: Yes.

L. Philbrook: Yes, filed as a business.

A. Fowler: With regards to the property - the half acre of land - how is that valued before you purchased it? When you bought it, did you purchase it from the Town?

L. Philbrook: Yes. The Town put it up for bid.

A. Fowler: It was just a half acre of land?

L. Philbrook: Yes.

A. Fowler: And your sole purpose for that parcel of land was?

L. Philbrook: It was just to put a sign on it and to park a car on it occasionally.

A. Fowler: How many years do you believe they have been in the process of assigning personal property values?

L. Philbrook: I don't know. I know they started with me and this is the second year.

**DEFENDANTS: Town of Montville**

J. LeGore: With regard to the lot, we don't really have classification of buildable or unbuildable. In Montville we have a base lot and land is assessed as a base lot plus excess

acres. A base lot is one acre and then there is a table that adjusts that. If there is less than an acre then there is a table that tells us what percentage of the base lot to apply. In this case, a half an acre is assigned a value of 71% of the one acre value. So, that half acre lot is accessed as any other half acre lot in Montville. With regard to it being unusable or unbuildable, I think the applicant would need to come up with some sort of evidence such as if it happens to be in shore land zoning because there is a stream that runs through it. So it seems to us that he would have to provide some concrete evidence such as he went to the code enforcement officer and tried to get a building permit and was denied; he went to the plumbing inspector and was denied a permit. So, it seems to me that is the hard evidence that you would need to demonstrate a decrease in value from any other half acre lot in town. With regards to the personal property we have only been assessors for three or four years and when we came in personal property was being assessed, but not very thorough so we have undertaken a program to try and be more thorough about it. Just some statistics in 2008: there were 22 personal property valuations in Montville. In 2009 there were 124 and in 2010 it increased to 152. So we are continuing to work on this and try to get as many as we can because we think that is the State law. A lot of people don't like the personal property tax but it is the State law and we try to do the best we can. I think that we can say that as long as it is being applied to businesses, which is about 20% of those of 152 are people that are not in business. For example, I happen to own a tractor that I pay personal property tax on and it is not a business tractor. There are others in town. There is also a \$1,000.00 exemption for non-business personal property. So, a lot of people who are not in business would meet that limit.

A. Fowler: Bear with me as I have had a cold, so if I misunderstood or didn't hear you with regards to this base lot because Montville doesn't have a minimum lot size so a base lot is \$14,000.00 of an unimproved 1 acre lot, correct?

J. LeGore: Yes.

A. Fowler: So, this being a half acre, I see where your figure is coming from. But I guess I got a little confused because did you say there is a stream that runs through it, or that it is wet or something?

J. LeGore: There is a stream that runs through it and that stream happens to be shore land zoned.

A. Fowler: So, you are aware that this property isn't "all that?"

J. LeGore: All what?

A. Fowler: Well, in another word, it almost sounds like you are aware that this property probably isn't a valuable, buildable piece of property. Or, in another words, if you went and proved it, got a code enforcement officer or tried to get a permit and were denied then you could actually bring the proof that he is already aware of is the way that it came across to me. I noticed that we don't have copies of all of the tax stuff.

G. Hills: We have copies.

A. Fowler: On the personal property I am curious because personal property gets a lot of us in trouble, I was a selectman, too, so I know personal property. Do you have a depreciation schedule on all of the personal properties with the VIN numbers and how you base that, and so far you have gone through personal property in three years?

J. LeGore: No, not the Town of Montville, but these particular assessors - we have only been in office for about three or four years. We have tried to update the records.

A. Fowler: Who did it prior to that?

J. LeGore: The previous assessors.

A. Fowler: So, were you taxed for personal property prior too?

L. Philbrook: No.

A. Fowler: Assuming you may have had some...So, for three years you gentlemen have been part of the board of assessors and you haven't got all of the personal property done?

J. LeGore: We got as much as we have been able to get so far. We are always interested to know stuff. We don't claim to be perfect. My understanding is we might have made an error of omission on somebody else's personal property; it is not grounds for someone else not paying their taxes.

A. Fowler: I guess what concerns me is how long it has taken. I just asked Commissioner Johnson prior to this morning because, property, you are allowed so many years to get an evaluation done. I think it is two years that way and I am just curious when you are going to get done everyone else. It does set a precedent.

H. Peaslee: It isn't the fact that we started this and haven't completed it, it is just that people like to hide their personal property and someone might say, "No, that is not mine - that is my cousins." We have always made every effort to include everyone that we can. I think what Jay meant was being not perfect because somebody may say they don't have it but it does belong to them. As far as the other businesses, it's a little misleading to say "So-and-So's" business because you don't know that they may have something that is leased or they might have something that is a piece of junk. You don't know what is in their businesses. We make every effort to include everybody whether it is a business or a resident. I found at least 20 when I was looking quickly through the commitment book of buildings on half acre or less and some down low as a quarter of an acre. To me it shows you can build on and it is done quite frequently in Montville on half acre or less. We have a lot.

B. Johnson: On the land – it sounds to me like if there is a stream going through, you must have an ordinance of how many feet they can build back from that. I don't know where the stream goes. If it is right in the middle you don't have much room left. From what you are saying, Jay, it almost sounds like it really isn't a buildable property because of that and also due to the wetland. Going for a permit and being refused because of that and also being refused by the plumber, it sounds to me like it is not a buildable piece of property.

J. LeGore: Maybe you misunderstood me – I am saying that is the sort of evidence that the applicant should present to us. We haven't gotten that evidence and it is true that this lot is in shore land zoning but that doesn't mean it is not buildable. It just means you have to get certain permits. Now, Montville doesn't have a general building permit but it does have building permits for shore land zoning. So, if he wanted to do something with that lot he would go to the code enforcement officer and get a permit.

W. Shorey: What would the cost be?

J. LeGore: Minimal.

A. Fowler: What happens when the code enforcement denies him?

J. LeGore: Then he can present that evidence to the Board of Assessors and then the value could be adjusted. But so far, and my understanding of the law, is it is up to the applicant to demonstrate it.

W. Shorey: My question is, between the two parties - like as Town Officials have you ever said, "Well, Mr. Philbrook, if you do thus and so that it would demonstrate to us that it is not a buildable lot?" Has that conversation ever come up?

J. LeGore: No, he has never come to us and asked us that.

A. Fowler: I see where you are going with that. A lot of times we try to resolve these before they even come here. I see exactly where you are going with this, Bill. When he came to you with this request for abatement you guys should have said...

H. Peaslee: As far as I am concerned, he never came to us with the abatement. It showed up on our desk and I have never spoken to Mr. Philbrook. So, he never presented to me this.

W. Shorey: So, as discussion, if Mr. Philbrook came into your office and asks for a permit from one of these other permits that you have and they denied him, then you would probably be in agreement with Mr. Philbrook that he didn't have a buildable lot.

J. LeGore: Well, we could then discuss what the fair value was and we could make an adjustment, sure. There is always room for exceptions. We need some hard evidence. People just cannot come in and say, "I think my taxes are too high and my value."

A. Fowler: We understand that.

B. Johnson: Did you ever say to him, "The burden is on you to bring some proof that it is not," and explain the process to him? As a board of assessors I would think that would be part of what you were doing to try to resolve it. Many citizens don't know what they have to do and so they get this form and fill it out not realizing that there are some steps that have to be taken. Has that ever been explained to him?

J. LeGore: No, although didn't you [Mr. Philbrook] visit your lot with Glen? Didn't Glen come out?

L. Philbrook: After I filed the abatement paperwork, Glen the Second Selectmen called and set up a meeting down there and by the time I had gotten to the corner property he was already walking out tape measure in hand and the only thing he said to me was, "Nope, it is far enough from the stream that it is a buildable lot." If you came in at a diagonal corner from the stream you could build here. I don't know if we have that tax map here. There is a four-way intersection there and the corner property is sort of a triangular piece. Just by the shape of it and the measurements there is not much there. With that stream, and depending on the time of year it is, depends on how big that streams get. You can tell when the ground is bare that whole thing in there is wet and mossy. So, it is pretty much wetland most of the time.

B. Johnson: I know that has been issues in other cases; when the water was high is that where you are measuring or when it is lower? That has been an issue with many of these. Most of the rulings that I have seen were when the water is high, that is the measuring part.

L. Philbrook: I have checked with the State on the road setback from Route 220 and it is 33 feet from the center. So, if you take 33 feet from this side, and I am not sure what the setback is from the stream, I could not find any definite answers on that. It doesn't leave you much in that little triangle piece of land to do anything with.

B. Johnson: You don't have an ordinance with the shore land?

J. LeGore: You want to know what the setback is for shore land zoning? I think it is 75 feet.

A. Fowler: From the high point or the low?

J. LeGore: I am not sure how it is defined for streams.

W. Shorey: How would you feel, Mr. Philbrook, about trying to get a permit to see if this is a buildable lot? Is this something that you would be interested in doing?

L. Philbrook: If I had to prove a point, O.K., but I have no desire to build on this piece.

W. Shorey: Well, I think we understand that but it just seems we are going through an exercise here that maybe not all parties are being as forthcoming as they can be. It seems, though, it is almost a situation that would kind of resolve itself if one more step was taken.

A. Fowler: I see where you are going with that.

W. Shorey: I don't say we cannot make a ruling, and maybe not today, and we might have to have further discussion but that might be something worthwhile for you to pursue. I understand that it would settle a point if it is buildable or not and what is the value. That question would go away. Is that a fair question, gentlemen?

B. Johnson: Because you would be making an adjustment for the tax itself or the valuation, you have to pay something for that and there is going to be a percentage because you can't build on it, or whatever.

H. Peaslee: The only comment that I am going to make is I thought it seemed like you were saying that it is being taxed as a building lot.

A. Fowler: No, we got that. My interpretation of what Commissioner Shorey is trying to say is perhaps it would have been easier had you all met so that the Town could say, "This is what we would like to see you do so that we could do otherwise." What we have here is the famous line, "failure to communicate." The way I see it is I think if Mr. Philbrook had been aware of that then he probably would have been able to go those angles and discover, what looks very obvious, the value of that property.

W. Shorey: Well we have two questions: We have the property and we have the personal property. How would you feel Mr. Philbrook about trying to resolve your issue of valuation of the land by making that request from the town if you could get a permit?

L. Philbrook: That is fine. I will do that if we need to do that. What do you commissioners feel?

B. Johnson: Well, if this is what the assessors are saying that they need, then I would think that...

A. Fowler: And they would recognize it and then rectify.

(Numerous voices all at once)

B. Johnson: Have a fair discussion on this on the things that he has to do to prove and help educate him. So much of that is letting people know where you are coming from and what is required of them. I think that has been a failure here.

W. Shorey: Would it be fair in this part of the case if we tabled that to give it an opportunity to see how that worked out on your land value?

B. Johnson: And maybe you can even resolve it.

W. Shorey: We always try to get the parties working together if we can so that they can resolve it with what they have in place in their communities and citizens, too. I think I would like to leave it there as far as the land is concerned.

B. Johnson: Are the board of assessors willing to do this?

J. LeGore: Sure, I'm not sure what that means, technically, as far as you cannot make a decision.

W. Shorey: Or we can one way or another.

A. Fowler: We have 30 days to reach a decision on anything anyway. What we are trying to say is leave here and do it right. Go get your permit and bring it to them and they decide whatever and we try to resolve as much as we can. We have had people step out in the hallway before. I think what Commissioner Shorey is saying is we will table that portion of the abatement in hopes that we will get a call from someone in two weeks that says this is what we did.

W. Shorey: Well, if both parties do not have a good faith intension of trying to solve it, then we will make a ruling and that will be it.

J. LeGore: We are definitely interested in...

W. Shorey: It seems that is the reasonable thing to do and I realize that is separate. Is that O.K. with you, Mr. Philbrook?

L. Philbrook: As long as I am given the proper steps that are to be taken.

A. Fowler: Absolutely. You need to be educated on what....

B. Johnson: The Board of Assessors has a responsibility to inform you what you need to come back to them. If you fail to do that, then, of course, they have a case. If you bring it back and are still not in agreement, then come back here.

W. Shorey: Is this something that you can accomplish in 30 days?

J. LeGore: I would think so. I think the code enforcement officer would need to be involved.

A. Fowler: Who is your code enforcement officer?

J. LeGore: Bob Temple. So, I think if you and him could get together and maybe make up a sketch.

L. Philbrook: My one question with that is we were talking about the concerns about the high and low water levels and how big this stream actually gets. Right now it is this wide and another month it will be that wide.

B. Johnson: Excuse me, but I think this is something now that you need to meet with him and not here. So, I am hoping that you will meet with him and tell him what the zoning is so that both of you are clear.

H. Peaslee: The thing that is confusing to me, and I have no problem trying that, but we have half acre lots in Montville right now that are in shore land zoning and we know they are there. So, what do you do in a case like that? Do you say he is not interested in going that route so then he is not going to build on it? I just don't understand.

W. Shorey: All we are asking for is that he has an opportunity to get a "yes" or a "no" or a "yes with special exceptions." We are just trying to facilitate something that will work out between the two parties. Now, when we come to the personal property when you were given your answer on how you handle that, it sounds to me that you were making a strong effort to get to it. The numbers were coming up every year. You probably have no way of measuring if people hide material to say what percentage you have done. Probably, in your mind, how do you feel what percentage of the personal property that you have got evaluated?

H. Peaslee: We make every effort but like we said before personal property tax is one of those things that someone says, "Hey, that is not my excavator - it is my boss's," what do you do? How do you prove it unless you keep going back? It is a very hard thing to prove. But we make every effort.

B. Johnson: If it is an established business why aren't those all lumped together as far as your valuations? The other type of personal property, if someone has a tractor and not a business, from what I heard Mr. Philbrook say is that there are other businesses that haven't been paying personal property and it sounds to be like all of the businesses have been evaluated and are paying personal tax property.

H. Peaslee: I'm not quite sure what you said.

B. Johnson: If it is a business and established, then you know that they have personal property.

H. Peaslee: A couple of those he listed off, really, whether or not they are a business it is more or less the guy that says, "Yeah, I will change your tire or something if you come by." Like here is Sunoco. Montville has very few. So, these are small places. They are not big.

L. Philbrook: Neither am I.

B. Johnson: It doesn't have to be big businesses. He is an established business and he has to list his property for tax purposes, for depreciation.

H. Peaslee: I guess the point I am trying to make is a Sunoco might have a lift, a wheel alignment machine, so on and so on. Where "Joe Mechanic" might have a tool box with some wrenches and even those they may say, "It is leased." We have made every effort.

G. Widmer: I am Glen Widmer and I am the second selectmen and assessor. I think the biggest problem is there is a State law that the assessors are required to go out and assess people's personal property and we are all very part time assessors and we are also selectmen and we wear different hats we wear in this town. We have made every effort, we made a list of the businesses in town that we knew of and visited them but our expertise is somewhat limited by the amount of time that we have to devote to our positions. So if I go and look at a business and the person says, "That is worth so much, and that is worth so much," I don't have the time to go and find out exactly how much that equipment is worth. So, somewhat, we have to rely on the word of the people who are reporting. In Lance's case he was very upfront and he told us everything he had. That is the problem with this law and we are trying our best to do our part to make this law valid but there is problems with the law and that is not our issue; we are doing what we can to make sure that everybody is paying their taxes that they are suppose to. As Herman was saying, we can only do so much when people are not telling us the truth. Now how that impacts the truthful people in town, we don't have any part in that, unfortunately, because we are given a law that we are supposed to implement and that is what we have been doing.

W. Shorey: Any other questions?

B. Johnson: He [Mr. Philbrook] has a good list here, and you would think, other businesses, you would also require them to do a list of what they have.

W. Shorey: I think the answer lies in federal income taxes and some people pay them willingly and some not quite so willingly. If someone decides they don't want to do it, there is thousands of pages of tax laws they could try to get around. You are almost punished if you give a good honest list to the town of what you have. It is a difficult job and I am sure it sounds to me that you are trying to be fair and equitable and the people that are answering your questions that make it somewhat unfair for the other tax payers that are paying.

A. Fowler: I was just curious, Lance; looking at your personal property listing, I am not familiar with some of this equipment and they do have a depreciation schedule down here, which I appreciate. Are the prices on there roughly within kilter of what they should be? How do you feel about the figures that they have down?

L. Philbrook: I haven't looked at it recently. I think the last one that I looked at; some of the current values were actually higher than what I told him I paid for it.

B. Johnson: Do you have what you gave him?

L. Philbrook: Herman's comment about the other business's in town which are just "Joe Schmoe" on the corner these are regular shops that I know. A couple that I have mentioned do not get personal property, they have a sign out front like I do and they have the same equipment I do. That is at least two of the other shops that are not getting taxed. So, I don't know where that information is coming from. Just because they chose not to put in any information when they were given or mailed that form, I don't think it makes it fair and equitable because I willingly filled that out.

J. LeGore: Can we clarify which businesses these are that you are speaking of?

L. Philbrook: I know you have had the conversation with Cal Keithan's at Montville Motors.

J. LeGore: He is not being taxed?

L. Philbrook: Not that I can see. I know he has equipment in there. I am not going to sit here and do your job and give you a list.

G. Widmer: I did go to his shop last year and his shop, from what I could tell, is much different than yours. You have a much nicer set up then he does.

L. Philbrook: He chooses not to clean his that is his business.

G. Widmer: My expertise is not in the value of equipment in automotive equipment, so we do rely heavily on what people report.

L. Philbrook: So, if I fill out that form this coming year and tell you that I don't have any of this equipment, then I am all set. Is this what it comes down to?

G. Widmer: All I can say is we are relying so heavily on what people report because that is the process in town.

L. Philbrook: Mike Light on Trues Pond road took over a business, I have heard his name for years and he has been in business for as long as I have, and I am sure he is not operating with no equipment.

A. Fowler: It really concerns me that is has taken, and I was a selectman and I know what a crappy part time job it is and sometimes it is more than that, but what concerns me is how long it has taken to do the personal property. If there is that big of discrepancy, where there is businesses or people that haven't been touched...

J. LeGore: My understanding of the law is it is not a basis for him not paying his taxes because we happen to miss someone else.

B. Johnson: When I was saying something about looking at all of the businesses this is what it boils down. The other type of personal property that owns a tractor, that is a different category and I can understand going on for a long time. If you have four or five businesses that you have not seen I think that....

G. Widmer: I did go to Cal Keithan's garage last year and we made an extensive list of every business we could think of in town and then we broke up that list and I went to Mr. Keithan's garage last April and he showed me his equipment. I was going on what he gave me for information but it is not the same and we made every effort as to what the businesses are in town. If there is someone that is operating that we don't know about, then it makes it hard for us to go and assess them as a business.

B. Johnson: It sounds like some of them have a sign out and you have missed them.

J. LeGore: I don't see how that is relevant that we have missed some; I mean, we are not perfect but that is not a basis for this appeal.

B. Johnson: What I am saying is it, I mean that was one of his complaints when asking for an abatement, it sounds like you haven't gotten all of the established businesses that have a sign outside their door. To get onto something else here – there are three of these that are leased to buy on Snap-on tools. Do you value those the same way as if he actually owned it?

J. LeGore: I think we would look at that the same way as if you went to the bank and borrowed the money to buy it. You are making payments on it.

G. Widmer: Correct me if I am wrong here; I believe there is a clause in that lease agreement that has you as being responsible for paying taxes on it. I did call the company and is that correct?

W. Shorey: Well, when you lease a car, a lot of times you have to pay the excise tax. I think we have enough information now because we are being repetitive with a lot of it. We are getting ready to close this hearing. I think what I would like to do is it is at least 30 days to get an answer out.

B. Arseneau: I believe so. That is the minimum. It may be 60.

B. Johnson: One question before we go on: the amount of the abatement on the property was \$155.72 what was the actual tax?

J. LeGore: That's probably the tax on the personal property.

L. Philbrook: Well, there again, I am not sure what the process is but I thought where it is in my opinion very unfair because they are not looking at all of the businesses. Why am I targeted and singled out?

W. Shorey: So, here is where we are. We are going to close this hearing and we will give you a decision in 30 days and we are hopeful that in 30 days you will have an opportunity to ask for a permit and find out if you have a buildable lot or not. That information needs to come back to us and then at that time we will make a decision. Is that fair enough, gentlemen? I appreciate you all coming in.

L. Philbrook: Thank you.

W. Shorey: Consider this case closed for the moment.

B. Johnson: We should make a motion to meet on a certain date.

**\*\*B. Johnson moved, A. Fowler seconded to meet on the date of March 8, 2011 to present a decision on the matter of Lance Philbrook vs. Town of Montville, Pet. 352. Unanimous.**

Respectfully submitted by \_\_\_\_\_  
Veronica Spear, Deputy County Clerk