

November 8, 2024

VIA: HAND DELIVERY and EMAIL

cahoon@cumberlandcounty.org
Cumberland County Board of Assessment Review
c/o Administrative Assistant
142 Federal Street
Portland, ME 04101

RE: David Smith and Rodney Smith,
PID # 444; Prop Loc: 168 Ring Landing Road, Town of Casco; Map and Lot: 0019 /0055
/2

Dear Reader:

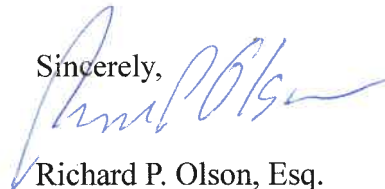
Enclosed please find the original copy of the following:

- Tab A: Application for Abatement of Property Taxes (pursuant to Title 36 M.R.S. § 844-M) with supporting documents for the above referenced matter.
- Tab B: Original Tax Abatement Application to Municipal Assessor and Enclosures.
- Tab C: Municipal Assessor's Response.
- Tab D: Consent to Extension of Deadline for Decision on Tax Abatement Appeal to Cumberland County Board of Assessment Review.

In lieu of 10 copies, as you advised, we have sent an electronic copy to the email address above.

Please schedule the hearing in this matter at the same time as the hearing for the Thomas O'Brien appeal also filed today.

Sincerely,



Richard P. Olson, Esq.

RPO/cw
Enclosure

cc: Mr. David Smith (w/encl.)
Mr. Rodney Smith (w/encl.)

Cumberland County

CUMBERLAND COUNTY BOARD OF ASSESSMENT REVIEW

APPLICATION FOR ABATEMENT OF PROPERTY TAXES

(Pursuant to Title 36 M.R.S.A. § 844-M)

NOTE: Application must **first** be made to the Assessor

1. NAME OF APPLICANT: David Smith and Rodney Smith
2. ADDRESS OF APPLICANT: 4 Cabot Circle, Westborough, MA 01581
3. TELEPHONE NUMBER: 508-560-7095
4. NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY/AUTHORIZED AGENT, IF ANY: Richard P. Olson, Esq., Curtis Thaxter LLC, One Canal Plaza, Suite 1000, P.O. Box 7320, Portland, ME 04112-7320
207-774-9000
5. STREET ADDRESS OF PROPERTY: 168 Ring Landing Road MAP/LOT: 0019/0055/1
6. MUNICIPALITY IN WHICH PROPERTY IS LOCATED: Casco
7. ASSESSED VALUATION:

(a)	LAND:	<u>\$ 928,200.00</u>
(b)	BUILDING:	<u>\$ 66,600.00</u>
(c)	TOTAL:	<u>\$ 994,800.00</u>
8. OWNER'S OPINION OF CURRENT VALUE:

(a)	LAND:	<u>\$ 696,200.00</u>
(b)	BUILDING:	<u>\$ 66,100.00</u>
(c)	TOTAL:	<u>\$ 762,300.00</u>
9. ABATEMENT REQUESTED (VALUATION AMOUNT): \$232,500.00
(#7(c) minus #8(c) = #9)
10. TAX YEAR FOR WHICH ABATEMENT REQUESTED: 2024
11. AMOUNT OF ANY ABATEMENT(S) PREVIOUSLY GRANTED BY THE ASSESSOR FOR THE ASSESSMENT IN QUESTION: \$41,500.00
12. DATE OF ASSESSOR'S DECISION: September 24, 2024
13. A BRIEF STATEMENT OF ALL PRIOR PROCEEDINGS BEFORE THE ASSESSOR CONCERNING THE DISPUTED ASSESSMENT: See attached

14. REASONS FOR REQUESTING ABATEMENT. PLEASE BE SPECIFIC, STATING GROUNDS FOR BELIEF THAT ASSESSMENT IS "MANIFESTLY WRONG" FOR ASSESSMENT PURPOSES. ATTACH EXTRA SHEETS IF NECESSARY. Note that the Maine Supreme Court has held in tax abatement cases that in order to prevail, the taxpayer must prove one of three things:

- (1) The judgment of the Assessor was irrational or so unreasonable in light of the circumstances that the property is substantially overvalued and an injustice results;
- (2) There was unjust discrimination; or
- (3) The assessment was fraudulent, dishonest or illegal.

Only if one of these three things is proven by the taxpayer, is the assessment said to be "manifestly wrong."

See attached

15. ESTIMATED TIME FOR PRESENTATION AT HEARING: 1 hour to be combined with the O'Brien appeal.

Submit **TEN (10) COPIES** (an original plus 9 copies) of the application and any documentation available to support your claim. **ONE COPY MUST** be submitted to your municipal tax assessor that sent you the denial letter. All documentation **MUST** be submitted with the application or at least **fourteen (14) days prior to hearing date** to Cumberland County Board of Assessment Review, c/o Administrative Assistant, 142 Federal Street, Portland, ME 04101. You will be notified of the scheduled hearing date.

To the Cumberland County Board of Assessment Review: In accordance with the provisions of 36 M.R.S.A. § 844-M, I hereby make written application for an appeal of the assessed value of the property as noted above. The above statements are correct to the best of my knowledge and belief.

November 8, 2024
Date


Richard P. Olson, Attorney for Petitioner

THIS APPLICATION MUST BE SIGNED.

A separate application form should be filed for each separately assessed parcel of real estate claimed to be "manifestly wrong."

13. A BRIEF STATEMENT OF ALL PRIOR PROCEEDINGS BEFORE THE ASSESSOR CONCERNING THE DISPUTED ASSESSMENT:

For tax year 24 the Town underwent a revaluation. After receiving informal notice of the proposed new valuation the Smiths were unable to obtain from the revaluation firm's representative answers to his questions about the new assessment. By letter dated August 6, 2024 (behind Tab B) the Smiths through counsel contacted the Assessor seeking information on the new value. By letter dated August 22, 2024 (behind Tab B) the Assessor responded. Then a meeting occurred on September 17, 2024 with the Assessor, the taxpayers and others including George Koutalakis (a Maine appraiser and licensed real estate broker) and more information was provided to show the land value was overstated (behind Tab B.). While no formal abatement form had been submitted, the Assessor treated the meeting as an abatement request and by letter dated September 24, 2024 (behind Tab C) he granted an abatement, but in an amount much less than requested.

14. REASONS FOR REQUESTING ABATEMENT. PLEASE BE SPECIFIC, STATING GROUNDS FOR BELIEF THAT ASSESSMENT IS "MANIFESTLY WRONG" FOR ASSESSMENT PURPOSES. ATTACH EXTRA SHEETS IF NECESSARY. Note that the Maine Supreme Court has held in tax abatement cases that in order to prevail, the taxpayer must prove one of three things: (1) The judgment of the Assessor was irrational or so unreasonable in light of the circumstances that the property is substantially overvalued and an injustice results; (2) There was unjust discrimination; or (3) The assessment was fraudulent, dishonest or illegal. Only if one of these three things is proven by the taxpayer, is the assessment said to be "manifestly wrong."

The basis for the request is set forth in the letter, email and supporting material behind Tab B as well as opinions of Mr. Koutalakis. It is anticipated that Mr. Koutalakis will be available at the hearing. The Taxpayer also will provide additional information at the hearing in the nature of showing the difference between the subject property and nearby lots and homes. This will include a video as well as statistical analysis.

The crux of the issue is that the Town is valuing the subject property as if it was similarly situated to the lots and homes nearby. But the subject property is not similarly situated, and the assessment does not take that fully into account. The same problem occurred when the Town last did a revaluation in 2013 but after the filing of an abatement the then assessor made adjustments to reflect the differences. The present Assessor acknowledges the differences but takes the view absent market data quantifying the differences, he is not willing to make the adjustments the prior assessor made.

Here the differences that are known and obvious relate to access. The subject property does not have year-round road access and is served by a 2000-foot woods road which crosses 5 separate properties. The cost of maintaining that road is shared with just one other property at 162 Ring Landing Road. In comparison, the other “neighborhood” parcels used to develop land values all have year-round access on improved roads. Below is a depiction of the woods road.

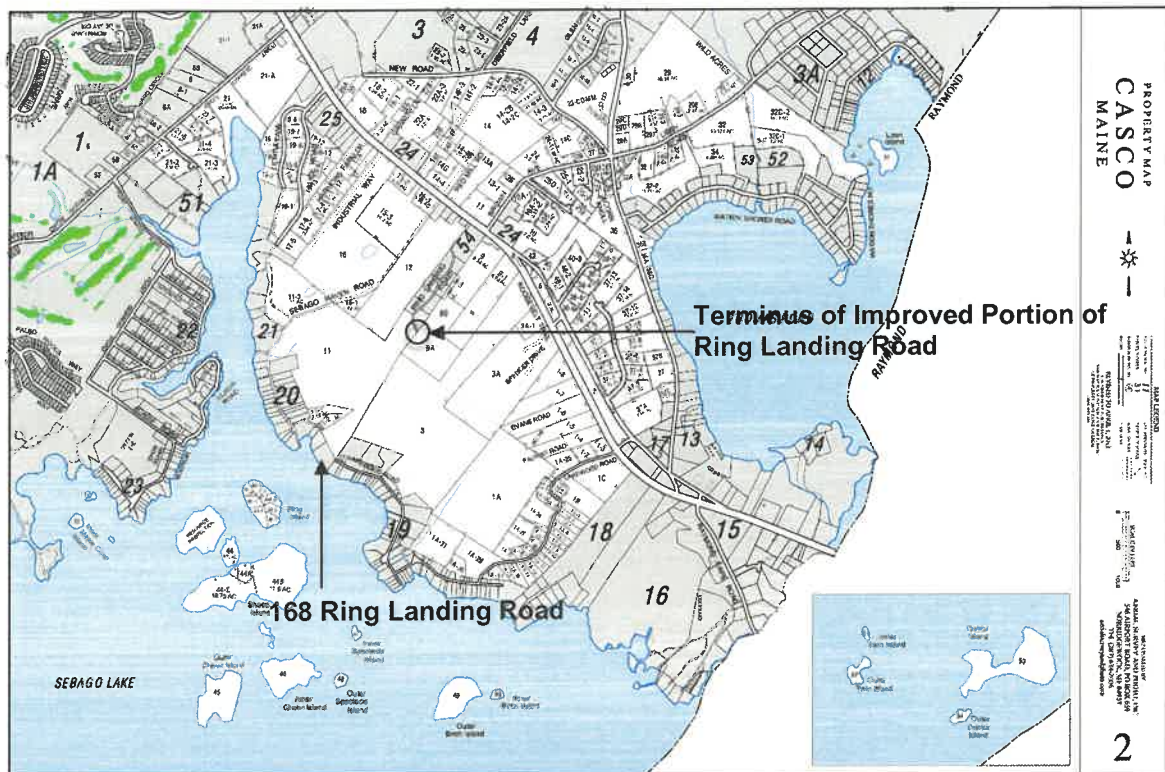
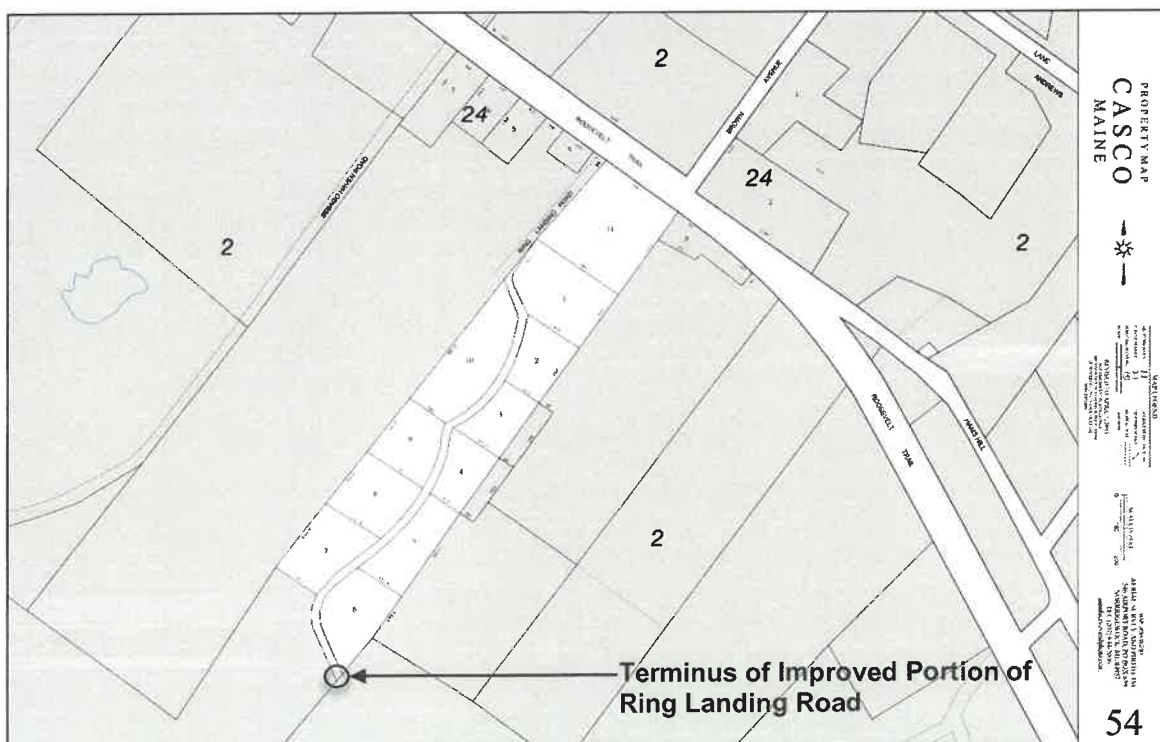


Figure 1. Town of Casco, Maine Property Map 2



At the hearing a video will be shown of the woods road and of the access roads serving the other lots in the “neighborhood.”

The same information presented here was presented to the then assessor in 2014.

The two factors related to access are (1) the condition of Ring Landing Road, the last 2000 feet of which is an unimproved right of way through the woods, currently passable when the way is not covered with snow and ice and is dry. The use of the way necessitates annual maintenance to address washout areas from rains and ruts; (2) the fact that access to the 168 Ring Land Road property is across 162 Ring Landing Road, running within 10 feet of the houses at that address.

An independent estimate obtained in 2014 and behind Tab B of the cost to upgrade the unimproved 2000 foot portion of Ring Landing Road to the quality equivalent to nearby Sebago Haven and Lakewood roads was \$207,000. This estimate did NOT include surveying, engineering, legal research, acquiring approvals from owners of properties the road crosses and obtaining Town, State, DEP and Portland Water District permits which would be additional costs. Ten years later the cost easily has doubled. Current annual maintenance costs are approximately \$2000/year, are additional. These costs would be borne by only the owners of 162 and 168 Ring Landing Road as other properties on Sebago Haven Road with rights of way to Ring Landing Road also have year-round access over Sebago Haven Road and would have no reason to incur these costs. This condition has not yet been adequately reflected in the assessment.

Second, access to the 168 Ring Land Road property is across 162 Ring Landing Road, running within 10 feet of the houses at that address. This condition has not yet been adequately reflected in the assessment.

Third, leaving aside the cost associated with providing year-round access, the location of power lines and ledge on the lot further minimizes any reasonable likelihood the seasonal homes on the lot would be viewed as potential tear downs to convert to year-round use as has been the case in nearby developments in the neighborhood. These factors in 2014 caused the then assessor to make meaningful adjustments to the land value for the subject given that the land value was developed based on sales in the nearby neighborhood that had dramatically different access features. The taxpayer here is seeking the relief on the same basis.

With the present revaluation, comparing the data cards provided for other properties in the neighborhood to their previous assessments, 162 and 168 Ring Landing were the ONLY ones found where the C-factors had changed from the assessment 10 years ago. In granting a partial abatement, all the Assessor did was to re-instate the previous C-factors to the subject property. (Why they changed in the first place, when none of the surrounding ones changed, is a mystery). This reduced the percentage growth in the land valuations to be similar to the growth in surrounding parcels – all of which are on year-round roads.

Both 162 and 168 Ring Landing Road have limiting features that make it unjust to apply the same land valuation growth rate as derived from surrounding properties which do not have similar use restrictions. While in 2013, the then assessor accounted for this, the Assessor position is absent market derived proof quantifying the difference it will not be recognized.

The valuations with the current C-factors do not accurately reflect the use restrictions nor the costs associated with maintaining the road or upgrading it to a standard for year-round access. The Assessor continues to value the properties as if they were on year-round, plowed roads and has ignored the length, condition, maintenance costs and cost to upgrade the unimproved section of Ring Landing Road, a 2000-foot+/- right of way through the woods, which restricts the use of 162 and 168 Ring Landing Road properties to seasonal use and effectively limits tear down and rebuilt opportunities that are seen in the SH neighborhood. The road condition does not conform to the Fannie Mae requirements.

The assessing manual states that the property must be evaluated for the highest and best use considering the following: (1) What uses are physically possible, (2) what uses are legally permissible, (3) which of these possible and permissible uses are financially feasible, and (4) which of the financially feasible uses will provide the highest present worth. Given costs to upgrade the road today, upgrading the road to year-round is not financially feasible and this fact certainly affects the market values of the properties, but this is not reflected in the C-factors applied.

The manual further states in the “Standard Land Condition Factor Values” section that a C-factor of 0.95 should be applied for right of way access. This factor was applied to the larger portion of the Smith property. The reasonable definition of “standard right of way” is for a much shorter right of way (say from the end of Ring Landing Road across O’Brien’s property to the Smith property) but that the almost half mile right of way down Ring Landing Road across 5 properties is certainly not standard.

Also, the 0.95 factor was applied to the larger part of the Smith property but not the smaller portion. We believe that this was not consistent with rule. This is one parcel which is not able to be sub-divided. How can one portion of the property have ROW/Access issues but not the other when it is one piece of property? The manual makes no mention of applying this adjustment to only one portion of a property. Whatever factor is appropriate for the road/right of way (per above) should be applied to both “pieces” of the Smith property.

In sum, the taxpayers believe that the new assessment should have been and should be adjusted for the obvious and known negative influences on the subject in comparison to the neighborhood the subject is made part of due to the factors stated above. Only 162 and 168 Ring Landing Road are impacted by the access issue. Nothing has changed from 2013 when after reviewing the above information the then assessor made the adjustments needed as the

revaluation failed to take into account these local conditions. Given the unique conditions (2000 feet of access over a seasonal woods road to seasonal dwellings) that do not otherwise exist in the town, it would be nearly impossible to point to market sales to quantify the negative influences. Assessing is not exact but assessors should and do make adjustment all the time for the obvious influences and that is what the assessor after a review of the situation did in 2013.

For the above reasons, and consistent with the assessment manual and as estimated by Mr. Koutalakis, to avoid unjust discrimination an adjustment should be made in the nature of 25% (5% reduction for Right-Of-Way across 162 Ring Landing Road and 20% reduction due to greater Ring Landing Road access issues) to the original assessed land value of \$928,200 resulting in an abatement of \$232,500 with the original land value reduced from \$928,200 to \$696,200. **Given the assessor previously granted an abatement of \$41,500 the taxpayer here is requesting this Board grant an additional abatement of \$191,000.**

