

**Vonda Inman Cram Trust**

**v.**

**Town of Gilford**

**Docket No.: 17830-98PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$66,000 (land \$61,900; buildings \$4,100) on a .08-acre waterfront lot with a dock and retaining wall (the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the per linear foot value of the water frontage is disproportionately high;
- (2) the water depth is too shallow to allow the docking of more than a 19' foot boat;
- (3) boats must be docked stern out to allow sufficient depth for the motor; and

(4) the lot should be assessed without regard to the developed lot on the opposite side of Varney Point Road held in the title of Milton B. Cram, Trust (Milton Cram Property).

The Town argued the assessment was proper because:

(1) the two properties should be considered together to maximize their value and recognize their highest and best use;

(2) most boats dock with the stern out in this area due to the water depth; and

(3) after Governor's Island, the Varney Point area is the next most expensive area.

### **Board's Rulings**

Based on the evidence, the board finds none of the arguments raised by the Taxpayer carried the Taxpayer's burden to show that Property was disproportionately assessed.

Despite the narrow width (25 feet) of the parcel, the board finds, based on the Town's testimony and the photographs, the assessment of the lot is a reasonable estimate of its value even as a separate estate. The Town submitted a report in support of its assessment that analyzed the Property and the Milton Cram Property on the opposite side of Varney Point Road as if they were one estate. The board finds the two parcels should be viewed as separate estates because they have separate and distinct title and because the Milton Cram Property has separate lake access through a nearby common lot. Nationwide case law in eminent domain actions (see Nichols on Eminent Domain, 4a §14B.06[2] (3<sup>rd</sup> ed.)) allow consideration of unity of ownership despite that lack of technical legal unity of ownership if there is an equitable relationship between the owners. However, for taxation purposes, the board rules that separate title in this

instance requires the treatment of the two parcels as separate estates. See RSA 75:9<sup>1</sup> (authorizes unity of assessment when there is unity of ownership); Fearon v. Town of Amherst, 116 N.H. 392, 393 (1796) (whether two or more adjoining tracts “are situated so as to become separate estates” is a matter to be determined from all the facts and circumstances of each case.)

The Property contains a grassed slope down to the waterfront with a retaining wall and dock. The Taxpayer testified there is an area adjacent to the road where one vehicle can be parked out of the Town’s right-of-way. Consequently, the board finds the Property has significant value as a separate water front lot providing lake access. While the shallowness of the water and the strong winds are certainly factors in the ease of accessing the lake by boat, the board finds they do not preclude boat access and, as testified to by the Town, is not that uncommon in this area of the lake. In addition to the boating access rights, this lot provides access to the lake for all other water-related activities and, thus, has a significantly higher value than a boat slip. Indeed as testified to by the Taxpayer at the conclusion of the hearing, an abutter could conceivably be interested in acquiring this access lot to provide greater water

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<sup>1</sup> **75:9 Separate Tracts.** Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory. In determining whether or not contiguous tracts are separate estates, the selectmen or assessors shall give due regard to whether the tracts can legally be transferred separately under the provision of the subdivision laws including RSA 676:18, RSA 674:37-a, and RSA 674:39-a.

frontage and privacy to an adjoining owner.

The board was not convinced by the Taxpayer's argument that it is being disproportionately assessed when the assessment is viewed on a per-front-foot basis. While certainly the Taxpayer's assessment per-front-foot is higher than lots with more frontage, it does not unreasonably recognize the inverse relationship between size and per-unit value. The market generally indicates higher per-square-foot (or per-front-foot) prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-front-foot basis to differ to reflect this market phenomenon. In short, while certainly the Property is a small lot, can be separately transferred, has lake frontage, including boat access facilitated by a dock and retaining wall (albeit not without some difficulty) and has the capability to park a car on the lot; the Town's assessed value of \$66,000 is not unreasonable when the totality of the rights embodied in the Property is considered.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances

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as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing

motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Milton B. Cram, Trustee for the Vonda Inman Cram Trust, Taxpayer; and Chairman, Board of Selectmen of Gilford.

Date: August 17, 2000

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Lynn M. Wheeler, Clerk

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