

**Ricks Island LLC**

**v.**

**Town of Gilford**

**Docket No.: 18605-00PT**

**DECISION**

The “Taxpayer” appeals,<sup>1</sup> pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$447,800 (land \$264,000; buildings \$183,800) on a 2.64-acre lot with a single-family home on Mink Island (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, 138 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.

---

<sup>1</sup> This appeal was originally filed in the name of Richard Hassler as an individual. Upon further review of the assessment-record cards, and as confirmed by the parties at the hearing, the legal owner of the Property is “Ricks Island LLC,” resulting in a modification of the case name.

The Taxpayer argued the assessment was excessive because:

- (1) the land assessment increased by 211% from 1999 to 2000, well in excess of the increases in assessments of comparable 2.0 to 5.0-acre properties in the Town;
- (2) the Town's mathematical calibration of assessments based on waterfront footage and acreage results in an arbitrarily high land valuation because the Property is quite unique with respect to these two factors;
- (3) while there should be some differences in assessments based on water quality and other factors, no more than a 50% differential in assessments is appropriate; and
- (4) the market value of the Property is about \$400,000.

The Town argued the assessment was proper because:

- (1) while it is a challenge to value island properties, the Town used a conservative approach to assess the Property;
- (2) no market indications support the Taxpayer's assertion the Property is over-assessed;
- (3) the Property is on an island, with relatively large acreage and waterfront area;
- (4) a model calibrating these two factors results in an assessment which correlates well with observed sales; and
- (5) the Taxpayer failed to meet its burden of proof.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

As stated above, the Taxpayer has the burden to show the assessment is

disproportionately high or unlawful resulting in the Taxpayer paying more than its share of the tax burden. In this case, the Taxpayer provided no evidence of the Property's market value as of the April 2000 assessment date, other than a blanket statement that the value was approximately \$400,000. To carry that burden, the Taxpayer should have presented evidence of sales of island properties to compare to the Property to show the equalized market value (the assessed value of the Property divided by the equalization value of 87% for tax year 2000) was excessive when compared to sales of similar properties. The Taxpayer, however, compared the Property to some 30 island properties ranging in size from two to five acres, then averaged these properties by assessed land value per acre and assessed frontage per linear foot arguing that the Property's assessment was disproportionate. This analysis is of little relevance to the board for several reasons:

1) the Taxpayer submitted no evidence as to how the properties compared to the Property in terms of their topography, views, water depth, orientation,<sup>2</sup> location, water quality and access to each of the islands considered. All of these factors would have an impact on the value of the individual properties and would conceivably have been adjusted by the Town in arriving at assessed values;

2) the Taxpayer provided no evidence of the individual market values of the properties to compare to the Property; and

---

<sup>2</sup> The Town testified winds that come off the north side of Mink Island are tremendous, requiring a breakwater.

3) because the Taxpayer submitted no evidence of the market values of the properties, the board has no knowledge as to whether the 30 comparables used by the Taxpayer were properly assessed in tax years 1999 and 2000. In other words, some of the properties could have been under-assessed but no foundation or support was given for the board to make such a determination. The under-assessment of another property would not prove that the Property was over-assessed. The courts have held that in measuring tax burden, market value is the proper standard to determine proportionality, not just a comparison to a few other similar properties. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987).

The Town conceded it is a “challenge” to value island properties. The board concurs with this acknowledgment. Based on its experience in hearing and deciding water access, waterfront and island properties, the board agrees that island properties generally do sell for considerably less than waterfront properties. The board, however, finds the Town’s judgment that island properties sell for approximately 50% of the value of waterfront properties is reasonable<sup>3</sup> and the assessed value is supported by the comparables utilized by the Town.

In determining value, the board must look at the Property as a whole because that is how the market views property. The supreme court has held the board must consider a taxpayer’s

---

<sup>3</sup> The agency’s experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

entire estate to determine its market value. Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). The Town arrived at an indicated value of the Property by comparing it to four island properties which inherently takes into account any reduction in value for the Property being on an island.

Based on its analysis of the comparable sales, the Town arrived at a conclusion of the fair market value of the Property as of April 2000 of \$599,700 which, when equalized by the Town's 87% ratio for tax year 2000, indicates an assessed value of \$521,700. While the Town acknowledged it erred in its adjustment to the building value (allowing an adjustment of 40% incomplete when, in fact, it should have been 50% incomplete), the board finds correcting this adjustment would still result in a higher market value than the equalized value of \$514,700.<sup>4</sup> Further, upon reviewing and analyzing the Town's assessment-record card, the board finds, although its method of arriving at an assessed value for the land's water frontage may be somewhat unique, both the Town's testimony that the same methodology was utilized in the assessments of other waterfront properties with extensive frontage<sup>5</sup> and its market analysis of the Property support the assessment. Therefore, the request for abatement is denied.

---

<sup>4</sup> The actual assessment for tax year 2000, as agreed by the parties, was \$447,800, indicating a market value of \$514,700 rounded ( $\$447,800 \div .87$ ).

<sup>5</sup> This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

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 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

---

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Richard Hassler, 238 Liberty Hill, Gilford, New Hampshire, 03249, Taxpayer; Darla S. Sedgwick, Esq., counsel for Karen Hassler; and Chairman, Board of Selectmen, Town of Gilford, 47 Cherry Valley Road, Gilford, New Hampshire, 03246.

Date: February 20, 2003

---

Anne M. Bourque, Deputy Clerk