

STATE OF MAINE
KENNEBEC, SS.

STATE BOARD OF PROPERTY TAX REVIEW
DOCKET NO. 91-93

HARBOR ISLAND TRUST,
Petitioner

v.

TOWN OF FRIENDSHIP,
Respondent

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DECISION

This matter came before the State Board of Property Tax Review (hereinafter the "Board") on the timely appeal of Harbor Island Trust from the denial of its abatement application by the Assessor for the Town of Friendship. This appeal concerns the 1990 assessment placed upon property indicated on the Town of Friendship tax map as map 1, lot 2 commonly known as Harbor Island. Although the property is a 100 acre parcel, this appeal relates only to the assessment placed upon those 90 acres of the parcel which are classified as open space under the Farm and Open Space Tax Law, 36 M.R.S.A. §§ 1101-1121 (1990). Since this appeal relates to the assessment placed on open space lands, any appeal from the Assessor's denial of an abatement is directly to this Board pursuant to 36 M.R.S.A. § 1118 (1990).

Public hearing in this matter was convened on October 22, 1992. Board members Phillip Johnson, Gerald Poulin, Richard Auger, Dorcas Zeiner, and Frank Drigotas participated in this hearing. Also present at the hearing were Judith Shaw Chamberlain, Assistant Attorney General and Counsel for the Board; Leverett Davis, Jr. and Gordon Stein, Esq. on behalf of the petitioner; and Richard Sawyer, Assessor's agent on behalf of the Town of Friendship.

The petitioner filed an application for an abatement with the Assessors for the Town of Friendship on or about August 15, 1991. The Town denied the petitioner's application on or about October 1, 1991. The denial was received by the petitioner on October 3, 1991 and it filed a Petition for Assessment Review with this Board on December 2, 1991.

At the October 22, 1992 hearing, Leverett Davis, Jr., trustee for the Harbor Island Trust, testified about the current and past use of the property. Harbor Island is a total of 100 acres. Of those 100 acres, six were deeded to the National Audubon Society. The remaining 94 have been placed under a forever wild conservation easement by the Harbor Island Trust. The petitioner applied for open space status for 90 acres leaving the remaining four acres as a houselot. Mr. Davis testified that open space status was given by the Town for the 90 acres in August of 1990.

In 1990 the Town valued the entire 94 acre parcel, including buildings, at \$503,200. The petitioner does not contest the \$81,100 value placed on the buildings nor does it contest the value placed upon the four acres not classified as open space which value totalled \$62,100 in 1990. However, the petitioner does dispute the \$360,000 value placed upon the 90 acres classified as open space and existing under a forever wild conservation easement.

Mr. Davis testified that the property has been placed under a forever wild conservation easement in perpetuity in an effort to keep the island in its natural state. Access to the island is provided to anybody "willing to treat it nicely," in the words of Mr. Davis.

Mr. Davis stated that, in his opinion, placing a value of \$250,000, inclusive of improvements, on the property would be "a huge recognition of our effort to give the island to the world." To the best of his knowledge no sales of similarly encumbered islands are available for comparison.

Richard Sawyer, Assessor's Agent, testified on behalf of the Town of Friendship. The Town valued open space at \$3,000 per acre for 45 of the 90 acres and at \$6,000 per acre for the remaining 45 acres comprised of woodland. Mr. Sawyer believes that all 90 acres should be valued at the same per acre amount since it is all open space but was unable to convince the Town to change the 1990 assessment.

Currently, the Town assesses open space at \$2,000 per acre. Mr. Sawyer argues that all 90 acres should be valued at \$2,000 per acre which would result in an assessment of \$323,200 and an abatement of \$180,000 for the 90 acres of open space land. Mr. Sawyer stated that the existence of the forever wild conservation easement makes very little difference in valuation. Further, the Town considered the amount of shore frontage in establishing an average per acre price for the island.

In response to a question from the Board, Mr. Sawyer stated that land on the mainland without shore frontage would be valued at \$600 to \$1,000 per acre. The Town believes islands are more desirable and therefore established a value of \$6,000 per acre for the islands.

Assessments made upon property classified under the Farm and Open Space Tax Law, 36 M.R.S.A. §§ 1101-1121 (1990), are subject to the abatement procedures set forth in 36 M.R.S.A. § 841 (1990 and Supp. 1991). In abatement proceedings brought pursuant to Section 841, the taxpayer has the burden of showing that the determination by the assessors is so irrational or unreasonable that the subject property is substantially overvalued and injustice results, or there is unjust discrimination, or the assessment is fraudulent, dishonest or illegal. See Shawmut Inn v. Inhabitants of Town of Kennebunkport, 428 A.2d 384 (1981).

The subject property is currently used as residential - recreational property. Four acres represent a houselot while the remaining 90 are available to the general public for hiking, picnicking, and camping. All 94 acres is encumbered by a forever wild conservation easement which prohibits the development of the property beyond its present level of improvement. Additionally, 90 of the 94 acres are classified as open space. If the property owners change the use of the property to a use inconsistent with open space classification, they will be subject to a recapture penalty. See 36 M.R.S.A. § 1112 (1990).

The values established for open space properties must be based upon the current use of the property and may not consider development and market values. Further, open space value may not reflect value due to road frontage or shore frontage. See 36 M.R.S.A. § 1105 (1990) and Augusta Water District v. Inhabitants of Town of Readfield, 349 A.2d 768 (1976). Similarly, in determining just value, assessors must consider "... the effect upon value of any enforceable restrictions to which the use of the land may be subjected" See 36 M.R.S.A. § 701-A (1990). Accordingly, the effect of a forever wild conservation easement granted in perpetuity should be considered by the Assessors in determining value. See Camps Newfound/Owatonna, Inc. v. Town of Harrison, 604 A.2d 908 (1992).

In the case before this Board, the Assessor's Agent for the Town conceded that a value of \$6,000 was placed on island property due to the Town's belief that islands are more desirable. Additionally, Mr. Sawyer opined that conservation easements make very little difference and should not make the value any less than the value assigned to open space.

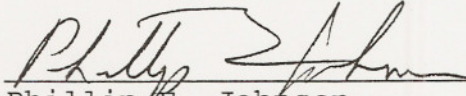
The Board finds that a value of \$6,000 per acre for property encumbered by a forever wild conservation easement and classified as open space does not account for the current restricted use of the property. Therefore, the Board finds that the subject property is substantially overvalued.

The record before the Board indicates that land without shore frontage is valued by the Town at \$600 to \$1000 per acre. In consideration of the restrictions placed upon the property, the Board finds that a just value for the 90 acres of open space land is \$600 per acre for a total of \$54,000. When added to the value placed upon the remaining four acres and the buildings, the total valuation for map 1, lot 2 for 1990 is \$197,200.

By unanimous vote of the Board, Harbor Island Trust is hereby granted an abatement of its taxes for 1990-1991 in the amount of \$306,000. The Town is directed to reimburse Harbor Island Trust for the amount of the overpayment with interest from the date of overpayment, pursuant to 36 M.R.S.A. § 506-A (1990).

Any party wishing to appeal this Decision must file a Petition for Review in the Superior Court within 30 days of receipt of this Decision pursuant to 5 M.R.S.A. §§ 11001-11008 (1990). If this Decision is not appealed, it shall become binding on the parties at the end of said 30-day period.

DATED: 12/1/92


Phillip E. Johnson
Chair, Panel A
State Board of Property Tax Review