

Robert A. Gillin and Virginia B. Gillin

v.

Town of Hollis

Docket No. 3538-86

ORDER RE MOTION FOR RECONSIDERATION AND HEARING

By motion dated and received on January 5, 1990, the Taxpayers requested reconsideration and hearing with respect to the Board's Revised Order dated December 20, 1989. The Board has no record that a copy of the motion was sent to the opposing party as required by New Hampshire Code of Administrative Rules Part Tax (hereafter Tax) 501.05(d).

The Board denies the motion for the following reasons:

1. The Taxpayers did not offer to present any evidence that existed but was unavailable at the time of the original hearing. See Tax 201.05(d).

2. The Board's review appraiser viewed the subject property on August 17, 1987; however, he determined the market value of the subject property as of April 1, 1986. See attached cover sheet of Mr. Estey.

3. The Town's 1988 assessment of \$211,000 was based on full market value as of April 1, 1986, the effective date of the townwide reassessment, and the date for which the Department of Revenue Administration determined the equalization ratio to be 100 percent. Reducing the assessment by \$5000 for the upgraded heating system still results in deviation of less than 2 percent from the value of the Board's review appraiser.

4. In appraising value for ad valorem taxation purposes pursuant to RSA 75:1, "full and true value in money" is defined as the market value or the price which the property will bring in a fair market after reasonable efforts have been made to find the purchaser who will give the highest price for it. Public Service Co. v. Seabrook, 126 N.H. 740 (1985); Public Service Co. v. New Hampton, 101 N.H. 142, 146 (1957); Trustees of Phillips Exeter Academy v. Exeter, 92 N.H. 473, 481 (1943); Winnepesaukee v. Gilford, 67 N.H. 514, 515 (1893). The sale price of the subject property was not evidence of full and true value since the property was only on the market 3 to 4 days without the use of a realtor. See pages 29 and 47 of the transcript.

5. The Board, based on its past experience and expertise, does not give great weight to bank appraisals as evidence of the highest price a seller could get after reasonable marketing efforts.

6. The Taxpayers' appraiser, Mr. Hanlon, did not appear at the hearing and has not appeared before the Board in the past. The Taxpayers were unsure of exactly what actions Mr. Hanlon took to come up with his values. See Transcript pages 37-41 and pages 88-91.

7. No convincing evidence was presented that the easement affected market value either up or down. See Transcript pages 33-35.

The Board denies the request for costs and attorneys' fees for the following reasons.

1. The Joint Legislative Committee on Administrative Rules has determined that the Board does not have authority to authorize the payment of attorneys' fees.

2. The Board's authority to award costs is derived from RSA 71-B:9 (supp) which states:

Administration of Oaths, Subpoenas, etc. The board shall have authority to administer oaths and to compel the attendance of witnesses to proceedings before it. The board shall have the power to subpoena and subpoena duces tecum. Witnesses compelled to appear shall be paid the same fee and mileage that are paid to witnesses in the superior court of the state. A subpoena or subpoena duces tecum of the board may be served by any person designated in the subpoena or subpoena duces tecum to serve it. Any testimony given by a person duly sworn shall be subject to the pains and penalties of perjury. All applications to the board shall be accompanied by a filing fee equal to the filing fee established by law for bills in equity in the superior court. Costs may be taxed as in the superior court.

and RSA 525:3 which states:

Limiting. In all actions or petitions in the superior court costs may, on motion and good cause shown, be limited, allowed and such security therefor be ordered, as the court may deem just.

3. The Board awards costs where the party taxed ignored a prior Board decision for no reason satisfactory to the Board, caused an appeal to be filed unnecessarily or acted oppressively, vexatiously, arbitrarily, capriciously, or in bad faith. None of the aforementioned occurred, therefore the Board declines to award costs.

For the above stated reasons the order is:

Motion for reconsideration and hearing denied.
Request for costs and attorneys' fees denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

January 18, 1990

Anne S. Richmond, Chairman

George Twigg, III

(Mr. Donahue sid not sit)

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Order have been mailed this date, postage prepaid, to Carol A. Rolf, Esq., Counsel for the Taxpayers, to Robert A. and Virginia B. Gillin, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Hollis.

January 18, 1990

Michele E. LeBrun, Clerk