

Elbridge S. Johnson and Donna N. Johnson

v.

Town of Gilford

Docket No. 5446-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$1,086,800.00 (land, \$571,750.00; buildings, \$515,050.00) on an approximately 4,865 square-foot home located on a 1.55-acre lot with 232 feet of frontage on Lake Winnepesaukee (the Property). At the hearing, the Town stated the revised assessment was \$1,002,400 (land, \$571,750; building, \$430,650). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved they were disproportionately taxed.

The Taxpayers argued the assessment was excessive, and they supported this argument by presenting expert testimony concerning the Property's April 1, 1988 value. The Taxpayers also submitted the property record cards for the comparables used in the appraisal.

The Town began its presentation by submitting a revised property record card, which had new calculations for the house as a 1 3/4-story rather than a

2-story house. The Town then argued the revised assessment was arrived at in a manner consistent with other assessments. Additionally, the land value, as calculated using front-foot values, was supported by the Town's and the Taxpayers' sales.

Based on the evidence, we find the correct assessment should be \$865,000.00.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices and with this decision.)

This assessment is ordered because of the following:

1) The Taxpayers' expert's testimony was credible and competent, and his testimony demonstrated the property was overassessed based on the equalized value of the 1988 assessment. However, the board, in using its judgment, concluded the expert's valuation was on the low side.

2) The assessments on the comparables indicated properties on the higher end of the market, like the Property, either did not appreciate as quickly as the rest of the market or were overassessed in 1986.

3) While the evidence showed the Property's total costs (of land (1982) and building (1987)) were approximately \$1,360,000 in 1987 and there was appreciation in the land improvement from 1982, the actual costs do not reflect the market value given the super-adequacy and overbuilt nature of the improvements.

4) Moreover, the Property's assessment was proportionately higher than the comparables' assessments.

Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979); see also Marshall Valuation Service, Section 1, Page 3, March (1989). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

If the taxes have been paid, the amount paid on the value in excess of \$865,000.00 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

May 2, 1991

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to Arthur G. Green, Esq., Counsel to the Taxpayers, and to the Chairman, Board of Selectmen, Town of Gilford.

Michele E. LeBrun, Clerk

May 3, 1991
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