

Gilford Meadows Realty Corp.

v.

Town of Gilford

Docket No. 5497-88

DECISION

A hearing in this appeal was held, as scheduled, on November 13, 1990. The Taxpayer was represented by Gerry Prud'homme and R. William Gordon of Equitax. The Town was represented by Walter L. Mitchell, Esq., and Gene R. Littlefield, town appraiser. The Taxpayer appeals, pursuant to RSA 76:16-a, the 1988 assessment of \$2,009,400 (land, \$924,000; buildings, \$1,085,400) for 33 residential condominium units in various stages of completion at Gilford Meadows on Route 11. A listing of the unit numbers and values is as follows:

	<u>Land</u>	<u>Buildings</u>	<u>Total</u>	
Gilford Meadows Condo A1	28,000	47,350	75,350	
Gilford Meadows Condo A3	28,000	36,500	64,500	
Gilford Meadows Condo A4	28,000	36,500	64,500	
Gilford Meadows Condo A5	28,000	36,500	64,500	
Gilford Meadows Condo A6	28,000	47,350	75,350	
Gilford Meadows Condo B1	28,000	3,500	31,500	
Gilford Meadows Condo B2	28,000	3,500	31,500	
Gilford Meadows Condo B3	28,000	3,500	31,500	
Gilford Meadows Condo B4	28,000	3,500	31,500	
Gilford Meadows Condo B5	28,000	3,500	31,500	
Gilford Meadows Condo B6	28,000	3,500	31,500	
Gilford Meadows Condo C1	28,000	3,500	31,500	
Gilford Meadows Condo C2	28,000	3,500	31,500	
Gilford Meadows Condo C3	28,000	3,500	31,500	
Gilford Meadows Condo C4	28,000	3,500	31,500	
Gilford Meadows Condo D2	28,000	41,400	69,400	
Gilford Meadows Condo D3	28,000	41,400	69,400	

Gilford Meadows Condo D4	28,000	41,400	69,400
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Gilford Meadows Condo D5	28,000	41,400	69,400
Gilford Meadows Condo E2	28,000	41,400	69,400
Gilford Meadows Condo E3	28,000	41,400	69,400
Gilford Meadows Condo E4	28,000	41,400	69,400
Gilford Meadows Condo E5	28,000	41,400	69,400
Gilford Meadows Condo E6	28,000	53,750	81,750
Gilford Meadows Condo F1	28,000	53,750	81,750
Gilford Meadows Condo F2	28,000	41,400	69,400
Gilford Meadows Condo F3	28,000	51,100	79,100
Gilford Meadows Condo F4	28,000	41,400	69,400
Gilford Meadows Condo F6	28,000	53,750	81,750
Gilford Meadows Condo G1	28,000	66,550	94,550
Gilford Meadows Condo G2	28,000	51,100	79,400
Gilford Meadows Condo G3	28,000	51,100	79,100
Gilford Meadows Condo G4	18,000	51,100	79,100

Mr. David H. Peckham stated that he was the marketing representative that arranged the sale to the Taxpayer of the undeveloped land with approvals for 40 condominium units in the summer of 1986 for \$1,060,000. He stated that seven units were sold in 1987 to the developer's friends or marketing agent. The remaining units were left in various stages of completion as the condominium market softened and no additional units were sold until 1990.

Mr. Prud'homme testified that in 1990 two 3-bedroom units sold for \$99,100 and \$94,000 and the asking prices for 2- and 3-bedroom units were \$92,500 and \$98,900 respectively.

Mr. Prud'homme (as summarized in Tp Exhibit 1) used the comparable sales method to estimate the 1988 market value for the 2- and 3-bedroom units at \$95,000 and \$101,000 respectively.

Based upon the builder's estimate of the cost to complete the various units, Mr. Prud'homme then applied a percentage-complete factor to his estimates. After the application of Gilford's 1988 equalization ratio of 63 percent, Mr. Prud'homme proposed a correct total assessment of \$1,215,585.

Mr. Mitchell argued that the Taxpayer's representatives did not factor into their comparative sales analysis the sales of the seven Gilford Meadows units in 1987 that ranged from \$135,000 to \$160,000. He also argued that the percentage-complete factor should apply only to the building component of the assessment, not the total land and building value as estimated by the Taxpayer.

Mr. Littlefield stated that a 60 percent reduction was given to the "site and other amenities value" to reflect the incomplete (hard costs) and unmarketed (soft costs, e.g., marketing, taxes, interest, insurance, etc.) aspects of the sites still owned by the Taxpayer.

Mr. Mitchell submitted a copy of a report by David MacArthur (Exhibit Tn A). In his report Mr. MacArthur analyzed 136 arm's-length sales in Gilford that occurred from October 1, 1987, to October 1, 1988. He determined that the overall assessment ratio in Gilford for 1988 was 63 percent with a coefficient of dispersion of 27.6. He further stratified the sales in four categories and determined the stratified mean ratios were as follows:

Condominiums	83%
Vacant land	40%
Single-family houses	67%
Mobile homes	75%

In his report (Exhibit Tn D) he argued: "It is my opinion that true equity is not measured by a single number--'The DRA Ratio'--but by implementing a set of parameters within which the majority of taxpayers' assessments lie. These parameters are calculated by using the traditional, basic statistical theory of normal (sic) distribution, which states that 68% of a population falls within one standard deviation plus and minus the mean.

"In Gilford in 1988, the mean is 61% and one standard deviation is 21%. Therefore, two-thirds of the assessments have ratios between 40% and 82%. Assessments over 82% should be adjusted downward to 82%. . . .

"In order for the majority of assessments, two-thirds or 68%, to be within the parameters of normal distribution (sic), condominium assessments should be reduced by 1% (83% to 82%), and vacant land assessments should be increased by 1% (38% to 40%). Single-family housing should not be adjusted."

On one hand the board finds there are enough differences in location, quality, and amenities between the Taxpayer's comparables and the subject property for their appraisal to be less than conclusive evidence of market value. On the other hand the board finds that the Town's building value did not reflect the risk attributable to that component of the property that any prospective purchaser would recognize in completing the construction and carrying the project to sellout. The board rules that the building values should be reduced 20 percent for this consideration.

Both parties are very close on their estimate of percentage complete as of April 1, 1988. The most variance on any unit is 10 percent and, in those cases, the Town estimated the lower percentage. Thus, the board finds there is no compelling reason to change the percentages as determined by the Town.

The application of those percentages is another issue, however. The Town applied the percent complete only to the building component of the assessment. As testified by the Town, all sites with incomplete units owned by the Taxpayer received a minus 60 percent factor to reflect the incomplete and unmarketed condition of the approved sites. The Taxpayer estimated the total market value of each unit as if finished and then applied the building-

incomplete factor to that total. The board finds the Town's method more accurately reflects the market value of the Taxpayer's approved sites with incomplete construction on them. The Taxpayer's method ignores the market evidence of a value for the land with approved sites. To take the Taxpayer's method to its extreme conclusion would result in no value being attributed to approved sites on which no building had been begun. As it was, the 10 sites on which only 5 percent of the building was estimated to be complete, the Taxpayers proposed an assessed value of only approximately \$3,000. This is contrary to the evidence that the entire project was purchased with approvals but no improvements in 1986 for more than \$25,000 per site.

The board finds that the Town's minus 60 percent adjustment to the estimated site value as if complete, fairly accounts for the hard and soft costs that had not been added to or attributed as of April 1, 1988.

As to the general disproportionality issue of these condominiums to all other property in the Town, the board follows the same discourse it did in the Marina Bay, the Beaches, and Stonedrift decisions. It is as follows:

The Board finds that it is clear from the report of Mr. Estey, the Board's review appraiser, and from Mr. MacArthur's report that by stratifying the sales, condominiums, as a class, were assessed at 84 percent (median ratio) of market value, vacant-land parcels at 35 percent, and all properties at 63 percent of value. This large disparity from the central tendency of 63 percent is measured by the 1988 coefficient of dispersion of 27.6 and raises the concern for the need of a new complete revaluation. The courts have clearly held that to meet the "proportional and reasonable assessment" requirement of the New Hampshire Constitution, Part 2,

Article 5, no one class of property can be assessed at a higher level than all other property.

[A] town is obligated to assess all lots of land at the same percentage of fair market value. Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 206, 46 A. 470, 473 (1899). It is impermissible to maintain a class of real estate that is assessed at a higher level than other real estate, whether that class consists of one parcel or half the town. It is therefore irrelevant that all assessments within one such class may be uniform. Widespread disproportionality is no defense. The same obligation of uniform assessment explains why an appealing taxpayer is not required to prove that his land was valued higher than other supposedly similar land. If he can prove that it was valued at a higher level than the level generally prevailing, he is entitled to relief. Stevens v. City of Lebanon, 122 N.H. 29, 32, 440 A.2d 451, 453 (1982). Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985).

The Taxpayers' representatives would have the Board determine 1988 market value and adjust it by the 1988 equalization ratio of the Department of Revenue Administration. The Town argues that as long as any assessment falls within one standard deviation plus or minus from the central point on a normal distribution curve (which for Gilford is 21 percent plus and minus of the mean central point of 61 percent) then the assessment is as accurate as can be expected.

The Board chooses neither approach. To determine equitable assessments the Board must balance the requirements of the New Hampshire Constitution Part 2, Article 5, RSA 75:1 (appraise at market value), the realities of a variable marketplace and the pragmatic assessing functions used in carrying out these concepts.

The equalization ratio is not addressed specifically in any New Hampshire statute. The equalization of all town and city valuations is a responsibility granted the Department of Revenue Administration (hereafter

DRA) by RSA 21-J:3, XIII. A median ratio is determined by the DRA for all municipalities for the purpose of apportioning tax levies between municipalities in the same county, regional school district, etc. These median ratios, which are derived by comparing the assessments of properties that have sold in each town to their selling price, are appropriate factors to equalize total valuations as they are the midpoint in the array of sales and are not unduly influenced by any outlier sales.

However, the use of the ratio has often deviated from the original intent as described above and has been used to indicate the general level of assessment in a municipality. The New Hampshire Supreme Court ruled in Stevens v. City of Lebanon that deviation from the equalization ratio does not necessarily establish disproportionality.

The city relies on Milford Props., Inc. v. Town of Milford, 120 N.H. 581, 419 A.2d 1093 (1980) and Milford Props., Inc. v. Town of Milford, 119 N.H. 165, 400 A.2d 41 (1979). Those cases stand for the general proposition that in an abatement proceeding, the trial court must consider the State's equalization ratio on the issue of disproportionality. Milford Props., Inc. v. Town of Milford, 119 N.H. at 167, 400 A.2d at 43. See Snow v. City of Rochester, 119 N.H. 181, 183, 399 A.2d 972, 973 (1979). The State equalization ratio, however, standing by itself, is not sufficient to carry the plaintiff's burden to demonstrate that his property taxes are greater than those on other property in general. Milford Props., Inc. v. Town of Milford, 120 N.H. at 582-83, 419 A.2d at 1094; Milford Props., Inc. v. Town of Milford, 119 N.H. at 167-68, 400 A.2d at 43. Stevens v. City of Lebanon, 122 N.H. 29, 32, 33 (1982).

In the cases before the Board, the Town did not use the ratio as a factor in establishing the assessments. The reverse is true. The assessments were established during a town-wide revaluation in 1986 and have remained constant while the market has changed at different rates for different types of property, thus resulting in the median ratio in 1988 of 63 percent. The

Board rules that it is not reasonable taxation as envisioned by the drafters of the Constitution to strictly interpret such a ratio to mean that every property must be assessed exactly at the determined ratio. Automatic application of the ratio gives precision to it that just isn't warranted.

The statute makes the proceeding for the abatement of a tax a summary one, free from technical and formal obstructions. The question is, does justice require an abatement? . . . The justice to be administered is to be sufficiently exact for the practical purposes of the legislature, who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles. The points to be considered are such as the nature of each particular case presents. They cannot be fixed by an invariable rule. Manchester Mills v. Manchester, 58 N.H. 38, 39. (emphasis added)

Market value of real estate is not an objective technical determination. The marketplace is a morass of human subjectivity in which the random distribution of opinions of market value is the norm. That is the first element of variability. A second element of human subjectivity is when an appraiser makes judgements in valuing property in the assessing process. As a result, the Board has many times ruled that there is never one exact, precise, or perfect assessment, but rather a range of values that represent a reasonable measure of one's tax burden. What is an acceptable range? The Town's argument that a reasonable range is plus or minus one standard deviation departs too far from RSA 75.1 to be reasonable.

The Board rules that the best coefficient of dispersion (hereafter COD) possibly achievable in any town based on its property mix is the most accurate measurement of a reasonable and proportional valuation range. Generally the Board finds that the more homogeneous towns are capable of achieving CODs at the time of a revaluation of 5 percent to 10 percent, while more heterogeneous towns composed of diverse property types and owners with more divergent social

and economic backgrounds can usually only achieve CODs of 10 percent to 20 percent.

The Board finds that the Town of Gilford, following the 1986 revaluation, had a COD of 15.57, which, while not ideal, is not unusual for a town with a property mix such as Gilford and the volatility of the market that existed at that time. The Board rules that for 1988 a good range of valuation for the Town of Gilford would have been 10 percent plus or minus the median ratio. Therefore, an acceptable range for values to fall in to be proportional is 63 percent plus or minus 10 percent, or a range from 57 percent to 69 percent (rounded).

Therefore, the board rules that the total condominium values, after the building component has been reduced 20 percent for the developer's risk, should be reduced by a factor of 82 percent (69 percent divided by 84 percent) to be proportional.

The correct assessments are summarized as follows:

Unit A1	\$ 54,000
Unit A3	46,900
Unit A4	46,900
Unit A5	46,900
Unit A6	54,000
Unit B1	25,250
Unit B2	25,250
Unit B3	25,250
Unit B4	25,250
Unit B5	25,250
Unit B6	25,250
Unit C1	25,250
Unit C2	25,250
Unit C3	25,250
Unit C4	25,250
Unit D2	50,100
Unit D3	50,100
Unit D4	50,100
Unit D5	50,100
Unit E2	50,100

Unit E3	50,100
Unit E4	50,100
Unit E5	50,100
Unit E6	58,200
Unit F1	58,200
Unit F2	50,100
Unit F3	56,500
Unit F4	50,100
Unit F6	58,200
Unit G1	66,600
Unit G2	56,500
Unit G3	56,500
Unit G4	56,500
Total	\$1,469,400

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). Based on the evidence, our judgment is that the proper assessment is \$1,469,400.

Therefore, if the taxes have been paid, the amount paid on the value in excess of \$1,469,400 is to be refunded with interest at six percent per annum from date paid to refund date.

February 21, 1991

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to Gerry Prud'homme, representing the Taxpayer, and to the Chairman, Board of Selectmen, Town of Gilford.

February 21, 1991

Michele E. LeBrun, Clerk

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Gilford Meadows Realty Corp.

v.

Town of Gilford

Docket No. 5497-88

ORDER RE MOTION FOR REHEARING

On March 11, 1991, the Board received a motion for rehearing from the appellants' tax consultants stating in part:

(T)he Board decision was unreasonable and unlawful because the Board adopted in its decision a new rule incorporating a 10% variation in the equalization rate to be applied in this case. Such a variation is in violation of the New Hampshire Constitution, State Statutes, and the prior decisions of the New Hampshire Supreme Court.

On March 15, 1991, the Town submitted an objection to the appellant's motion for rehearing.

The Board denies the motion for rehearing as the appellant does not offer to present any evidence that existed but was unavailable at the time of the original hearing, nor does the motion raise any error of law.

The Board is very cognizant of the legal arguments raised by the appellant but believes the Supreme Court has never had the exact facts and legal issues as raised by these cases fully argued before it.

Succinctly stated, the issue raised for rehearing is: does an assessment to be reasonable and proportional need to be exactly at the same

percentage of market value as the Town's equalization ratio or is there an acceptable range from the ratio that the assessment can be.

Short of a total reassessment, the Board believes that strict adherence to the median of the assessment-to-sales ratios as an indication of proportionality is not practical or reasonable. To do such would theoretically have 50 percent of the properties eligible for an abatement--even right after a reassessment. This in the Board's opinion does not qualify as reasonable as the drafters of the constitution envisioned and required. Rather, the Board is of the opinion that a just measurement of proportionality is whether an assessment falls within a reasonable range from the median ratio as indicated by the best possible coefficient of dispersion obtainable following a good reassessment. Wise Shoe Co. v Town of Exeter, 119 N.H. 700, 702 states:

If (a taxpayer) can prove that (the property) was valued at a higher level than the level generally prevailing, he is entitled to relief. Stevens v. City of Lebanon, 122 N.H. 29, 32, 440 A.2d 451, 453 (1982). Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). (emphasis added)

The finding of market value or an exact proportional relationship to market value is not necessarily controlling evidence of disproportionality.

The matter in issue in tax abatement proceedings is whether the taxpayer has been required to pay a disproportionately higher tax than other taxpayers in the district. Trustees of Lexington Realty Trust v. Concord, 115 N.H. 131, 336 A.2d 591 (1975); Winnipiseogee etc. Co. v. Laconia, 74 N.H. 82, 84, 65 A. 378, 379 (1906). Actual market value is not technically the matter in issue in tax abatement proceedings but, rather, is only a matter in evidence. Winnipiseogee supra; See Amsler v. Town of South Hampton, 117 N.H. 504, 374 A.2d 959 (1977). Appeal of Public Serv. Co. of N.H., 120 N.H. 830, 833 (1980).

Where the appellant's property is a part of a distinguishable class of property that is significantly overassessed (see Board Decision Pg. 5), it

would not be reasonable, as the appellant argues, to reduce the assessments to the low end of an acceptable range. As an abatement causes a transferral of tax burden to all other taxpayers within the town, a reduction of that magnitude would cause an unreasonable and disproportionate shift of tax burden. The inverse argument is equally specious. It would not be equitable to increase the assessments of a class of property that was, as a whole, significantly underassessed (e.g. land in Gilford at 35 percent in 1988) to the upper end of an acceptable range as that would cause too large a share of the tax burden to be lifted from all the other taxpayers. A broad understanding of both the legal issues and assessing pragmatics, tempered with balanced judgement, produces the most equitable assessments possible. Assessing is not a simple arithmetic calculation. The marketplace, which is the basis for determining proportional assessments, is not without subjectivity.

The Board reaffirms that the original decision achieves the best practical balance between the demands of the constitution that a tax be reasonable and proportional, the statutes that require market value to be the basis for assessing property, and the innate vagaries of the market place.

SO ORDERED.

March 26, 1991

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within Order have been mailed this date, postage prepaid, to Gerry Prud'homme, the Taxpayer's representative, and to the Chairman, Board of Selectmen, Town of Gilford.

Michele E. LeBrun, Clerk

March 26, 1991

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