

Paul E. Wiener and Blanche Wiener

v.

Town of Gilford

Docket No. 5528-88

DECISION

A hearing in this appeal was held, as scheduled, on September 26, 1990. The Taxpayers were represented by Robert W. Gordon and Gerry Prud'homme, Principals, Equitax. The Town was represented by Walter L. Mitchell, Esq., and Gene R. Littlefield, Appraiser.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$355,200 placed on their real estate located on Route 11B, for the 1988 tax year. The subject property consists of a commercial-type building of approximately 7,000 square feet, situated on an approximately 2-acre parcel of land with 150 feet of road frontage.

The parties agreed that the equalization ratio for the Town of Gilford for the 1988 tax year was 63 percent. Based on that ratio the Taxpayers' assessment equates to a market value of \$563,800, as of April 1, 1988.

The Taxpayers' representatives argued the current use as a retail sports and marine paraphernalia store at 44 Weirs Road was the highest and best use of the subject property. Mr. Prud'homme explained the subject property was a second-site for the taxpayer-owner-operators which they obtained for their business, which might have resulted in the Taxpayers' having paid a

higher price than market for the particular property. The Taxpayers' agents stated they used market comparables and the income approach to determine the market value for the subject property as of April 1, 1988. The Equitax representatives stated in their opinion the market value of the subject property as of April 1, 1988, was \$360,000, which would indicate a proper assessment of \$226,800.

The Taxpayers' agents testified they polled the market for market rents and noted the Taxpayers had office space which had been vacant and had been converted to other use. The Taxpayers' agents gave their opinion that the rate of appreciation for the period 1985 through 1988 was 10 percent per year, even though it was noted that the comparable sale presented indicated a 2-percent-per-month rate of appreciation (Taxpayers' Exhibit 1A).

Mr. Littlefield testified for the Town that the 1985-1988 appreciation rate was 2 percent per month as opposed to the less than 1 percent per month as stated by the Taxpayers' agents. Mr. Littlefield calculated that the original purchase price of the subject property of \$400,000 trended to April 1, 1988, would indicate a market value of \$595,000, which would result in an assessment based on the agreed equalization ratio of 63 percent of \$372,000. Mr. Littlefield observed the location of the Wiener property on Weirs Road was in an area of much better exposure and broader mix of uses than the comparables presented by the Taxpayers.

The Taxpayers' agents responded that the rate of appreciation of 2 percent per month was for residential-type property as well as vacant land, while the commercial properties did not appreciate at that same rate. The agents also stated that the property was in average condition in 1988.

The Town's representatives noted no significant change in the subject building had occurred in the period 1986 to 1988 and also observed that the Gilford East Drive area, which is where one of the comparables is located, is not as good a location and that several business ventures had failed.

The Board finds the subject property, as originally purchased by the Taxpayers, was designed as a combination office and warehouse facility. The Board notes that the Taxpayer did attempt to rent office space but then converted that space to warehouse use. The Board finds the subject property suffers from functional obsolescence due to its configuration and original design.

The Board therefore rules the proper adjustment to the subject property results in a functional depreciation of 20 percent, resulting in an assessed value for the buildings of \$167,000 and a land assessment of \$167,400, for a total assessment of \$335,000.

If the taxes have been paid, the amount paid in excess of \$335,000 is to be refunded with interest at 6 percent per annum from date of payment to date of refund.

November 2, 1990

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue

Paul B. Franklin, Acting Chairman

Ignatius MacLellan

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

November 2, 1990

Michele E. LeBrun, Clerk