

Joseph F. and Priscilla M. Hoffman

v.

Town of Gilford

Docket No.: 8964-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$169,450 (land \$87,650; building \$81,800) on a 5,090 square-foot, waterfront lot with a house (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

1) the land abuts a marina and is the smallest lot on Smith Cove, yet lots not directly on the marina received 25-50% reductions, and the Property has the

highest land value;

Page 2

Hoffman v. Town of Gilford

Docket No.: 8964-90

- 2) the proximity of the marina results in increased lighting and noise level, lack of privacy, a chain across the right-of-way blocks emergency access to the Property, and the parking/storage at the marina has resulted in a loss of trees and wetlands, affecting the drainage, and air and water quality;
- 3) the Property was purchased in October, 1990 for \$140,000; and
- 4) the land assessment should be \$53,745.

The Town reduced the assessment in 1991 to its current amount to address the boat traffic. The Town argued this assessment was proper because:

- 1) the Town submitted a graph to illustrate that smaller lots have a higher per-foot value than larger lots do;
- 2) the less lake frontage a lot has, the higher its square-foot price and lower its assessed land value;
- 3) the Property is zoned as resort commercial property;
- 4) economic influences in Smith Cove in general were reflected in the lower price per linear foot of lake frontage used to price the land;
- 5) the Taxpayers were given a 15% land influence factor to address their concerns, i.e., the abutting parcel and its external factors, and the boat traffic;
- 6) the pipe on the Property is for runoff water to prevent flooding;
- 7) the Property has Town/State water and sewer and any pollutants on the lake are only temporary; and
- 8) the assessment for the subject has the lowest land value of any parcel on the south side of Smith Cove.

The board's inspector reviewed the property tax card and filed a report with the board. This report concluded the assessment was proper.

Page 3

Hoffman v. Town of Gilford

Docket No.: 8964-90

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove their Property's assessment was disproportional.

Differing square-foot assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

The Taxpayers did not present any credible evidence of the Property's fair market value. The bulk of the Taxpayers arguments focused on previous years' assessments going back as far as 1970. This information is irrelevant. The board must determine the correct assessment for the tax year under appeal and no probative evidence was submitted for the board to make a finding of overassessment. In fact, the Taxpayers 1990 comparable land valuation sheets support consistency. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Taxpayers testified the Property's purchase price was \$140,000.

While this is some evidence of the Property's market value, it is not conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980).

Page 3
Hoffman v. Town of Gilford
Docket No.: 8964-90

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph F. and Priscilla M. Hoffman, Taxpayers; and Chairman, Selectmen of Gilford.

Dated: April 26, 1993

Melanie J. Ekstrom, Deputy Clerk

Joseph F. and Priscilla M. Hoffman

v.

Town of Gilford

Docket No.: 8964-90

ORDER

This order responds to the "Taxpayers'" request for an extension to file a rehearing motion. The board denies the request because the board is without authority to grant extensions of statutory deadlines. See Daniel v. B & J Realty, 134 N.H. 174 (1991).

In reviewing the Taxpayers' request, the board reviewed the file again, and even if we could have allowed the extension, the Taxpayers probably would not have been granted a rehearing because of the deficiency in the Taxpayers' arguments that were originally presented. The parties are not allowed to simply reargue and resubmit evidence with a rehearing motion. Rather, the parties must show how the board erred as a matter of law or fact.

In this case, the decision adequately sets forth why the Taxpayers' submittals to the board were insufficient. Specifically, the Taxpayers did not submit any credible evidence of the property's market value and much of the Taxpayers' arguments centered around increases in assessments. Thus, the Taxpayers rehearing motion could not rectify the original problems. For example, the lack of the market data was a major flaw in the Taxpayers'

original submission, and the Taxpayers could not submit market data with the rehearing motion.

The board is not insensitive to the Taxpayers challenges that were stated in the letter. However, the board is constrained in what it can do. Therefore, the Taxpayers' request for an extension is denied. To the extent their letter is a rehearing motion, it is also denied for failure to state any board error.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

MacLellan, Esq., Member

Ignatius

LeBrun, Member

Michele E.

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Joseph F. and Priscilla M. Hoffman, Taxpayers; and Chairman, Selectmen of Gilford.

Dated: May 27, 1993

Ekstrom, Deputy Clerk

Melanie J.