

John A. Moynihan

v.

Town of Gilford

Docket No.: 14602-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$74,600 on a single-family home. The Taxpayer 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 granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried his burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the assessment was higher than assessments on larger homes;
- (2) 112 Woodland sold in July 1992 for \$99,800 yet was only assessed at \$65,800;

Page 2

Moynihan v. Town of Gilford

Docket No.: 14602-93PT

- (3) the Property has some topographical problems, especially a flooding problem in the spring; and
- 4) the assessment should be \$69,000.

The Town argued the assessment was proper because:

- (1) the same methodology that was used to assess properties throughout the Town was used to assess this Property;
- (2) the Taxpayer purchased the Property in August 1992 for \$75,000, and this purchase price was consistent with three other ranch sales;
- (3) adjustments were made for the Property's grade (fair) to reflect the siding problem;
- (4) the Taxpayer's assessment analysis of comparable properties was flawed especially because the Taxpayer did not consider the buildings' ages; and
- (5) the water problem was not a major problem.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$72,030 (land \$23,130; building \$48,900).

The board extensively reviewed the information submitted by the parties, and we find the Taxpayer did not show the assessment should be \$69,000, but we do conclude that a -10% adjustment should be made to the land assessment because of the seasonal flooding problem.

The Taxpayer's 1992 \$75,000 purchase price provides a strong indication of the Property's value. This value, moreover, was supported by the Town's analysis of other sales, and the board's similar analysis. The Taxpayer argued the purchase price did not reflect the problem with the siding or the

flooding because the Taxpayer was unaware of these problems or the extent of

Page 3

Moynihan v. Town of Gilford

Docket No.: 14602-93PT

these problems when he purchased the Property. The board concludes the assessment considered the siding, as indicated by the Town, but because the Taxpayer was unaware of the water problem we find some adjustment is required to the land assessment. We understand the Town objected to the Taxpayer's photograph of the flooding, but the board finds this photograph appropriate evidence for the board to consider because it shows the extent of the flooding and supports the Taxpayer's other statements concerning the flooding issue.

If the taxes have been paid, the amount paid on the value in excess of \$72,030 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law.

Thus, new evidence and new arguments are only allowed in very limited

circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds

Page 4

Moynihan v. Town of Gilford

Docket No.: 14602-93PT

on appeal are limited to those stated in the reconsideration motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Timothy J. Vaughn, Esq., counsel for the Taxpayer; and Chairman, Selectmen of Bethlehem.

Date: October 27, 1995

Valerie B. Lanigan, Clerk

0006