

Joseph F. Hoffman

v.

Town of Gilford and Winnepesaukee Yacht Club

Docket No.: 15023-940S

DECISION

Mr. Joseph F. Hoffman (Hoffman) appeals, pursuant to RSA 71-B:16 I, the "Town's" 1994 assessment on "Property" owned by the Winnepesaukee Yacht Club (WYC) as follows:

\$51,700 on Map 223, Lot 499 (formerly Map 5 Lot 6-31), a/k/a Yacht Yard, consisting of a .52-acre lot with 33 feet of frontage on Lake Winnepesaukee and a 200 foot dock; and

\$312,300 on Map 223, Lot 021 (formerly Map 5 Lot 9-47), a/k/a Yacht Club, consisting of a 2.3-acre lot with 315 feet of frontage on Lake Winnepesaukee and improved with a clubhouse and accessory buildings.

For the reasons stated below, the appeal is granted.

Hoffman has the burden of showing the assessments were fraudulently, improperly, unequally or illegally assessed, resulting in WYC 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). Alone, we find Hoffman's testimony and evidence would not have carried his burden of showing the assessments were improper. However, based on the collective testimony and evidence presented at the hearing and based on the board's view of the Yacht

Club and Yacht Yard properties, we find the Property is underassessed.

Page 2

Hoffman v. Gilford and WYC

Docket No.: 15023-940S

Hoffman argued the assessments were improper because:

- (1) without an approved site plan, the Town is not able to properly assess WYC;
- (2) the assessments do not reflect the intense use of the land and water in Smith's Cove;
- (3) the assessments are disproportionate relative to the Petitioner's property; and
- (4) the proper assessments should be as follows: Lot 499 - \$218,200; Lot 021 - \$330,000.

The Town argued the assessments were proper because:

- (1) a board of tax and land appeals' ordered revaluation was performed for the 1993 tax year and the assessments were determined at that time by the company performing the revaluation;
- (2) WYC purchased an abutting tract, which was incorporated with the Yacht Yard sometime after April 1994, and thus, is not part of the 1994 assessment; and
- (3) WYC has not filed a 1994 application for abatement and there have been no changes to the assessment.

WYC, through their representative, stated that the assessments were determined as part of the 1993 revaluation and WYC is satisfied that the assessments are equitable and comparable to similar assessments.

Because of the numerous issues raised about the Property, the board, subsequent to the hearing, took a view of both the Yacht Club and Yacht Yard

properties. The board viewed the Property with the permission of WYC but without a representative of either WYC, the Town or Hoffman being present.

BOARD'S RULINGS

Hoffman, in his appeal of this Property, raised two general issues:

1) the Town of Gilford did not properly follow assessment and abatement procedures; and 2) the Yacht Club and Yacht Yard properties are underassessed.

Town's Reassessment and Abatement Procedures

The board finds that Hoffman presented no probative evidence of his allegation that the Town and/or its contracted appraisal company, CLT, improperly followed assessment and abatement procedures or that there was collusion on the part of assessing officials and Town counsel to adjust the assessments of the Property.

Based on the testimony and evidence, the board finds the following procedures were properly performed:

- 1) CLT performed the reassessment and posted the initial assessments prior to holding informal reviews with taxpayers;
- 2) after receiving both general and specific information from taxpayers, CLT adjusted those assessments that they deemed warranted revision;
- 3) no evidence was submitted of any statutory or other requirement that documentation exist for the revisions performed by CLT prior to delivering the assessments to the Town;
- 4) CLT delivered the revised assessments to the Town on which the tax rate was calculated and tax bills issued;
- 5) in 1994 no abatement request was filed by WYC subsequent to the notice of tax; and
- 6) WYC's purchase of adjoining property from Mr. Brown occurred after April 1, 1994 and, thus, was properly not included in the 1994 assessment.

In short, Hoffman's conspiratorial accusations are found to be without factual basis. The Town erred not in procedure but rather in not properly considering all factors that could affect value in assessing the WYC property.

Property Assessment

The board finds the proper assessments to be as follows: Yacht Yard (Lot 499) \$114,900 (land \$87,100; improvements \$27,800); and Yacht Club (Lot 21) \$367,200 (land \$286,400; buildings \$80,800).

Yacht Yard

The Yacht Yard property consists of a parcel of land with 33 feet of frontage on Lake Winnepesaukee and is approximately 600 feet deep. The parcel is generally level and devoid of trees. The improvements are a 6 x 200 foot finger dock, a "marine rail" and the building housing the engine and winch for the marine rail. During the board's view of the Property, the lot was completely occupied with in excess of 50 boats cradled for winter storage.

The Town testified that no separate boat slips were assessed in 1994 on the Property because the Yacht Yard had not gone through any site-plan review to create separate leasable or transferable boat slips. The board agrees with the Town that it would be improper to assess the Yacht Yard for boat slips because the Yacht Yard does not have approved boat-slip rights that could be transferred with the Property. However, we find the Town did not properly recognize the transferrable grandfathered rights that the Yacht Yard has due to its historic intensive use. The Yard and its finger dock have a transferrable value that exceeds the normal dock and water access value for a

residential access lot similar to those submitted by WYC. Obviously, the highest and best use of the Yard, if transferred, would be not for a single person or entity to have access to the lake. Rather, the highest and best use is a continuance of the higher intensity of use, similar to that WYC has had for many years, in providing water access and winter storage for a group of people (be that as a corporation, tenants in common, undivided interests or other similar ownership arrangements).

The board finds the Town's adjustment of 85% for the size and the shape of the lot to be excessive given this intensity of use. Consequently, the board has adjusted the factor to -25% (x 75%) to recognize both the intensity of use of the lot but also to recognize to some extent the effect the size and the shape of the lot may have on its utility. Further, the board finds, based on the testimony and its view, the marine rail has more value in use than in exchange. If it has any value in exchange, it is as an offsetting factor to the shallowness of the waterfront and is reflected in the board's .75 area adjustment.

Further, the board has corrected the dock assessment. The Town assessed the dock as 150 feet long, yet the testimony and evidence indicate the dock is 200 feet long.

Revisions to the Yacht Yard assessment are summarized as follows:

Waterfrontage 33 feet x \$500 per foot	=	\$ 16,500
Land area .52 acres x unit price of \$181,077 x .75	=	\$ 70,600
Dock 1,200 square feet x \$37.50 x .6	=	\$ 27,000
Shed (previous value)	=	<u>\$ 800</u>
Total	=	\$114,900

Yacht Club

The Yacht Club consists of a lot of approximately 2.3 acres with 315 feet of frontage on Lake Winnepesaukee. The lot is generally at road level and then slopes down near the waterfrontage to the clubhouse, bathroom facilities and picnic area improvements. Further, the Property has an "F" shaped dock system in front of the clubhouse. On the board's view, the Property appeared to be generally well maintained and nicely landscaped with an expansive lawn area adjacent to the parking lot and mature trees throughout the site.

The board has corrected the waterfrontage from 300 feet to 315 feet based on the Town tax map. Based on a review of the comparable assessment-record cards submitted by the parties, most frontages appeared to have been based on the Town's tax map. Therefore, the correction from 300 to 315 feet is consistent with the Town's methodology used on other properties.

Further, the board deleted the 50% factor on the waterfront assessment as it could find no basis for making such an adjustment. There was no evidence or testimony submitted for the basis of this adjustment other than the note on the assessment-record card of "restrictions" for this factor. The board finds there was no evidence submitted relative to any transferrable restrictions of the use of this Property. Any self-imposed restrictions that WYC may have of the use of this Property based on its bylaws affects only the Property's value in use, not in exchange.

The board reviewed the assessments on the buildings during its view and determined that they are reasonable.

Hoffman argued the mooring field in front of the Yacht Club should be assessed. However, the board rules that the moorings are obtained by license from the State of New Hampshire and are not taxable as real estate pursuant to RSA 270:63.

Revisions to the Yacht Club assessment are summarized as follows:

Waterfrontage 315 feet x \$333 per foot	=	\$104,900
Land area 2.3 acres (previous value)	=	\$181,500
Building (previous value)	=	<u>\$ 80,800</u>
Total	=	\$367,200

CONCLUSION

Yacht Yard

For tax year 1994, the Town shall, within 60 days of the clerk's date on this decision, issue a supplemental tax bill for the difference in value between that assessed in 1994 and the \$114,900 ordered assessment.

After April 1, 1994, WYC purchased and annexed two adjoining parcels to the Yacht Yard. Therefore, the assessment in 1995 reflects additional land not taxed to WYC in 1994. The Town shall at least correct the dock size in the 1995 assessment and make any further changes in the 1995 assessment in keeping with the board's 1994 ordered assessment relative to the original parcel. The Town shall similarly assess WYC for the 1995 assessed value in excess of that previously assessed.

The board's authority to order an increase in the assessed value for the year subsequent to that under appeal is contained in RSA 71-B:16, which in part reads, "the board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state" ... (emphasis added).

Yacht Club

The Town shall, within 60 days of the clerk's date of this decision, issue supplemental tax bills for both 1994 and 1995 for the difference between the value assessed in those years and the \$367,200 ordered assessment.

To avoid any confusion and for judicial economy, any appeal of these increased assessments shall be from this decision and not from the supplemental notices of tax.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing 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.

Page 9
Hoffman v. Gilford and WYC
Docket No.: 15023-940S

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph F. Hoffman, Petitioner; Chairman, Selectmen of Gilford; and the Winnepesaukee Yacht Club, Taxpayer.

Dated: April 2, 1996

Valerie B. Lanigan, Clerk

0005

Joseph F. Hoffman

v.

Town of Gilford and Winnepesaukee Yacht Club

Docket No.: 15023-940S

ORDER

This order responds to the Winnepesaukee Yacht Club's (WYC) motion for rehearing filed with the board on April 25, 1996. The Taxpayer's motion requested a rehearing to be able to submit evidence and testimony on the three following issues:

- 1) use of the tax map to determine the frontage rather than the actual frontage;
- 2) the discount rate on the waterfront assessment of map 223, lot 021 for restrictions; and
- 3) the effective length of the yacht yard dock.

The board grants the motion and schedules a limited rehearing for July 16, 1996 at 9:00 a.m. at the offices of the Board of Tax and Land Appeals located at 107 Pleasant Street, Concord, New Hampshire.

The board finds that the new evidence would assist the board in arriving at the proper valuation for the Taxpayer's Property. TAX 201.37 outlines the basis for requesting a rehearing. Normally, the board does not grant a

rehearing to allow new evidence to be presented. However, in this case the
Page 2
Hoffman v. Gilford and WYC
Docket No.: 15023-940S

board is concerned that since the appeal was filed by another (RSA 71-B:16 I) as opposed to the more common appeal under RSA 76:16-a, the WYC may not have fully understood the import of that previous hearing. Therefore, the board grants leave for the additional facts and arguments to be presented solely on the three issues raised in the rehearing motion. All evidence and testimony will be strictly limited to the three issues contained in the motion and outlined above.

Following the rehearing, the board will either affirm or amend its April 2, 1996 decision or issue a new decision if the evidence and testimony warrant.

Due to Chariman Twigg's retirement, Ignatius MacLellan will now sit on this matter.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

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 Joseph F. Hoffman, Petitioner; Chairman, Selectmen of Gilford; and the Winnepesaukee Yacht Club, Taxpayer.

Date: May 20, 1996 _____

0006

Valerie B. Lanigan, Clerk

Joseph F. Hoffman

v.

Town of Gilford and Winnepesaukee Yacht Club

Docket No.: 15023-940S

Decision Re: Motion for Rehearing

On May 20, 1996 the board granted the Winnepesaukee Yacht Club's (WYC) motion for rehearing and scheduled a rehearing for July 16, 1996. Based on the evidence submitted at the rehearing, the board amends its April 2, 1996 decision and finds assessments as follows: Yacht Yard (Lot 499) \$108,150 (land \$87,100; improvements \$21,050); and Yacht Club (Lot 21) \$338,550 (land \$257,750; buildings \$80,800).

At the rehearing, the board received testimony and evidence on the following three issues: 1) use of the tax map to determine the frontage rather than the actual frontage; 2) the discount rate on the waterfront assessment of Map 223, Lot 021 for restrictions; and 3) the effective length of the Yacht Yard dock.

Tax Map to Determine Frontage vs. Actual Frontage

WYC argued that the board incorrectly determined the Yacht Club's frontage on Lake Winnepesaukee to be 315 feet when the actual measurement

according to the three deeds was 300 feet. Further, WYC stated its treasurer, Dan Smith, who is also an appraiser measured the frontage to be 299 feet. The

Town testified at the rehearing that the tax maps were made in 1986 and actual meandering line measurements were considered for all parcels. In its decision, the board used the actual frontage listed on the Town's tax map which was determined based on a review of comparable assessment-record cards and their frontages which coincided with the Town's tax map. The board finds, based on its original review of the assessment-record cards and the subsequent testimony that the Town's use of meandering lines¹ to determine the frontage of all waterfront parcels (with adjustments to the base rate charge made from a 100 foot base) shows consistent methodology. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982). Therefore, the board finds that the evidence supports the a finding of 315 feet of frontage. To assess the frontage based on the deeds, which measured the land point to point, would not be consistent with the measurement of all other waterfront properties in the Town.

Restrictions on Yacht Club Property

WYC submitted evidence that the Yacht Club property was purchased in three separate deeds. The most southerly lot was conveyed subject to rights of seven previous grantees for beach purposes and one personal easement to maintain a boat at the site (note: originally three easements, two of which have lapsed). WYC argued that the easements and general limitations greatly reduce the lot's market value. Further, all three lots are subject to sewer

¹Meander lines. Lines run in surveying particular portions of the public lands which border on navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of land in the fraction subject to sale, and which is to be paid for by the purchaser. Black's Law Dictionary, 1979.

easements which cross the width of the property affecting the third lot extensively and a twenty-four inch (24") force main across the southernmost two lots which limit additional construction or improvements to the buildings.

In addition, a culvert carrying a brook runs from Dockham Shore Road to a point on the Baker property line which further restricts the use of that lot.

WYC argued that these encumbrances substantially limit the use of the property warranting a substantial adjustment to the assessment.

The Town stated that the Yacht Club property was considered one lot inasmuch as some of the improvements cross over the deeded lines. The Town testified that its position was that there should be no influence for the one remaining boat right because it is not assignable. Further, it was the Town's position that a nominal 5% adjustment for the deeded rights to use the beach and 5%-10% adjustment for the sewer influence would be appropriate.

The board concurs with the Town that the three lots should be assessed as one lot given its use and the location of the structures on the property. RSA 75:9 requires the assessors to assess two or more tracts as separate estates only when they do not adjoin or are structured so as to be separate estates.

"Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory."

It is clear based on the use of the property and the location of the improvements that these three parcels should be considered as one lot. Based on the evidence, the board finds that some adjustment is necessary to reflect the restrictions on the property. The board finds that the deeded rights to

use the beach and the sewer influence do affect the value of the property. The board concurs with the Town that no adjustment is warranted for the one remaining right to dock a boat which right will lapse. The board finds that a 5% adjustment for the deeded rights to the beach and a 5% adjustment for the sewer influence is reasonable and consistent with the methodology employed by the Town.

Effective Length of Yacht Yard Dock

WYC argued that fifty feet (50') of the dock closest to the shore is of limited use because of: 1) shallow water; 2) the proximity of the marine rail car; and 3) the proximity of a Fay's Marina dock. WYC argued that some adjustment to reflect these factors was appropriate. The Town stated that consistent with its methodology in assessing other docks that a minimum 25% functional depreciation would be appropriate. Based on the evidence, the board finds the size of the dock is correct as 200 feet; however, a 25% functional adjustment is appropriate to reflect the limited use of fifty feet (50') of the dock closest to shore.

The board amends its decision and rules the proper assessments are as follows:

Yacht Club (Lot 21)

Waterfrontage 315 feet X \$333 per foot	= \$104,900
Land area 2.3 acres	= <u>181,500</u>
Land (sub-total)	= 286,400
Minus 5% deeded rights and 5% sewer influence	= <u>X.90</u>
Land (total)	= 257,760
Building (total)	= <u>80,800</u>
Total (rounded)	= \$338,550

Yacht Yard (Lot 499)

Waterfrontage 33 feet X \$500 per foot	= \$ 16,500
Land area 0.52-acre X unit price of \$181,077 X .75	= 70,600
Dock 1,200 square feet X \$37.50 X .6 X .75	= 20,250
Shed	= <u>800</u>
Total	= \$108,150

The board finds these adjustments are reasonable and consistent with the methodology employed by the Town. The board finds no further adjustments are warranted because WYC did not present any credible evidence of the property's fair market value either in the hearing or the rehearing.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision Re: Motion for Rehearing has been mailed this date, postage prepaid, to Joseph F. Hoffman, Petitioner; Chairman, Selectmen of Gilford; and the Winnepesaukee Yacht Club, Taxpayer.

Date: August 2, 1996

Valerie B. Lanigan, Clerk

Joseph F. Hoffman

v.

Town of Gilford and Winnepesaukee Yacht Club

Docket No. 15023-94-OS

ORDER

This order responds to the "Petitioner's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing.

See RSA 541:3.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I certify that copies of the within Order have this date been mailed, postage prepaid, to Joseph F. Hoffman, Petitioner; Chairman, Selectmen of Gilford; and the Winnepesaukee Yacht Club, Taxpayer.

Date: September 27, 1996

Valerie B. Lanigan, Clerk

Joseph F. Hoffman

v.

Town of Gilford
and
The Winnepesaukee Yacht Club

Docket No.: 15023-940S

ORDER

This order responds to Mr. Joseph Hoffman's Continued Offer of Proof (Offer) filed February 1, 1996 with the board. The board returns the Offer for the following reasons.

A hearing was held pursuant to RSA 71-B:16 I on a complaint filed by Mr. Hoffman against the "Town" of Gilford and the Winnepesaukee Yacht Club. The board held the record open until February 12th for various individuals to submit additional documents requested by the board. The information contained in Mr. Hoffman's Offer was not one of the requested items.

Further, even if the board were to consider the issues raised in the Offer, the board would decline to take any of the requested actions. The board's jurisdiction is strictly statutory. Appeal of Gillin, 132 N.H. 311, 313 (1989); Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985). The board's general authority contained in ch. 71-B does not authorize the board to rule on alleged violations of the right to know law, RSA 91-A. Also, the entire

Cole Layer Trumble

Page 2

Hoffman v. Gilford and the Winnepesaukee Yacht Club

Docket No.: 15023-940S

printout requested by Mr. Hoffman is not relevant to this case as the appeal is strictly of the Winnepesaukee Yacht Club. The Taxpayer's request for the entire printout would have no probative value to the board in its deliberations in this case.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Joseph F. Hoffman, Taxpayer; Chairman, Selectmen of Gilford; and the Winnepesaukee Yacht Club.

Dated: February 14, 1995

Valerie B. Lanigan, Clerk

0005