

Joseph F. and Priscilla M. Hoffman

v.

Town of Gilford

Docket No.: 18000-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$188,900 (land \$106,800; buildings \$82,100) on a .12-acre lot with a 1-story dwelling (the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) applying frontage and acreage prices from a board decision in a prior appeal dated April 2, 1996, indicates the proper assessment is \$140,036; and
- (2) intensive uses on a number of nearby properties adversely impact the Property including a

right-of-way to 81 boat slips, a drainage pipe and congested boat, vehicle and people traffic.

The Town argued the assessment was proper because:

- (1) a report submitted by the Town estimated the market value of the Property at \$242,800 or an indicated assessment of \$228,200, well in excess of the existing assessment;
- (2) the Smith Cove neighborhood in which the Property is located is the lowest-valued area of waterfront in Town and all the sales utilized in the report have adverse conditions similar to the Property; and
- (3) a 15% reduction was applied to the land calculation to account for the Property abutting a busy marina.

Board's Rulings

The primary argument submitted by the Taxpayers is that their Property is overassessed due to the adverse impact of unpermitted boat slips in the area, vehicle and pedestrian traffic across a right-of-way and a drainage culvert from an adjoining mobile home park. The board finds the Town's assessment adequately accounts for the congested nature of the Smith Cove area, and particularly, for the Property abutting a marina. The Town testified that Smith Cove had the lowest front-foot and base-land area prices of any waterfront neighborhood within the Town. Specifically, the Smith Cove base rates (base values before size, condition and other adjustments are applied) were \$1,000 per-front foot and \$110,000 per acre, while other waterfront neighborhoods had \$1,500 per-front foot and \$150,000 per acre base valuations (Governor's Island was even higher at \$1,750 per front foot and \$175,000 per acre). The Town

also further adjusted the Property by 15% due to it abutting a marina.

The board also finds the Town's appraisal (Municipality Exhibit A) establishes the Property was, if anything, underassessed and not overassessed. The sales utilized by the Town were, with the exception of one, from the Smith Cove area and all were in similarly-congested areas comparable to the Property. Consequently, the sales and the adjusted-indicated value for the Property reflect the congestion of the area.

The board finds the Taxpayers' assessment calculation contained in Taxpayers' Exhibit #1, paragraph 12 to be without merit. The calculation applies a finding by this board in Joseph F. Hoffman v. Town of Gilford and Winnepesaukee Yacht Club, Docket No.: 15023-94OS of an assessed value of a property owned by the Winnepesaukee Yacht Club that Mr. Hoffman appealed pursuant to RSA 71-B:16, I. Mr. Hoffman's use of the front-foot value and the acreage value in that case is not applicable to his Property as the size of the parcels and the amount of frontage are totally different.

Any additional issues raised by the Taxpayers need not be addressed as they are either without merit or are irrelevant to the determination of the proper assessment of the Property. See Vogel v. Vogel, 137 N.H. 321, 322 (1993).

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

CERTIFICATION

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

Date: August 16, 2000

Lynn M. Wheeler, Clerk

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Board/PFDR/18000

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ORDER

This order responds to the “Taxpayers” September 14, 2000 “Response to Decision Dated August 16, 2000,” which the board treats as a motion for rehearing (“Motion”) pursuant to RSA 541:3 and TAX 201.37. The Taxpayers also filed on September 18, 2000, an “Amended Response to Decision” dated August 16, 2000. While the September 18, 2000 document is past the 30-day RSA 541:3 time line for filing a rehearing motion, the board accepts the September 18, 2000 document as it appears to be the cover letter to and certification of copying the Motion.

The board denies the Taxpayers’ Motion. The Motion has in excess of 150 pages containing a chronology of various actions relative to other properties in the Taxpayers’ vicinity and argues the board should “defer” jurisdiction to the U.S. Federal Court in Boston, Massachusetts for a jury trial in this matter.

The board’s jurisdiction is strictly statutory. Appeal of Gillin, 132 N.H. 313 (1989);

Appeal of Sunapee, 126 N.H. 214, 216 (1985). RSA 76:16-a authorizes the board on appeal to determine whether the Taxpayers' assessment is proportional. The board does not have the jurisdiction of determining whether the multitude of actions by town officials as alleged by the Taxpayers are appropriate. For all the reasons contained in the board's decision of August 16, 2000, the board finds none of the information submitted in the Motion forms a basis for reopening the record and scheduling a rehearing.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

CERTIFICATION

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

Date: October 2, 2000

Lynn M. Wheeler, Clerk