

Joseph F. Hoffman

v.

Town of Gilford

Docket Nos.: 18702-00PT and 19337-01PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$216,400 (land \$129,500; buildings \$86,900); and 2001 assessment of \$239,600 (land \$143,700; buildings \$95,900) on a 0.12-acre lot with a single-family home (the “Property”). For the reasons stated below, the appeals for abatement are denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) there are adverse impacts on the Property because of environmental damage caused by discharges from a drainage pipe on an abutting property and from boats docked on adjacent properties;
- (2) these impacts make it unsafe to swim or use the Property for any recreational purposes other than boating; and
- (3) comparison to one other property (Map 218, Lot 44, owned by Carolyn Scattergood, tax year 2000 assessment of \$169,300) indicates the proper assessment of the Property should be \$101,000 in each year.

The Town argued the assessments were proper because:

- (1) the Taxpayer did not provide the Town or the board with any market value information to support the request for abatement;
- (2) the Town obtained comparable sales information in both tax years and performed an analysis indicating the Property's market value fully supported the assessments in each year;
- (3) the Scattergood property mentioned by the Taxpayer is not located on the water and is not comparable;
- (4) the Property has a large dock with multiple boat slips and a canopy; and
- (5) the Taxpayer failed to meet his burden of proof.

Board's Rulings

Similar to an earlier appeal (Hoffman v. Gilford, Docket No.: 18000-98PT), the Taxpayer's primary argument was that the Property was devalued due to the number of alleged unpermitted boat slips in the area, high boat traffic and the attendant pollution to the water and a drainage culvert adjacent to the Property's boundary line. The Taxpayer, however, submitted no

evidence as to how these factors affected market value, despite repeated inquiry from the board. He did, however, compare his Property to one property located on Governor's Island identified as Map 218, Lot 44 (the "Scattergood Property"). Despite the requirement of TAX 201.33(f) that the assessment-record card of any comparable be submitted at hearing, the Taxpayer did not have the Scattergood assessment-record card available. Nonetheless, the board kept the record open for the sole purpose of allowing the Town to submit the 2000 through 2002 assessment-record cards for this property and a copy of the relevant tax map. After review of those cards, the board finds the Scattergood Property has no direct water frontage or water view and, therefore, the property is not comparable to the Taxpayer's and does not provide the basis required in RSA 75:1 for establishing the market value of the Property.

The Town submitted a report utilizing a direct sales comparison analysis for both tax years 2000 and 2001. The board finds that, while not all the comparables contained in the analysis have as many adverse factors as the Taxpayer's, several do, and the adjusted indicated value of those comparables indicates the Property is, if anything, underassessed for both tax years. In particular, Town Comparable #1 is just outside the Taxpayer's immediate neighborhood of Smith Cove and its recreational enjoyment of the waterfront is significantly and adversely affected by being adjacent to the State of New Hampshire Marine Patrol station. That property sold for \$245,000 in September of 2000 and, alone, supports the board's conclusion that the Town's assessments are, if anything, conservative.

The Taxpayer attempted to raise a number of general allegations regarding the Town's assessing practices which the board ruled were not germane to the Taxpayer's appeal under RSA

76:16-a.¹ Consequently, the additional issues raised by the Taxpayer are not addressed further in this decision as they are either without merit or irrelevant to the determination of the proper assessment of the Property. See Vogel v. Vogel, 137 N.H. 321, 22 (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

¹ The allegations contained in Taxpayer Exhibit #1 relative to the Town’s assessing personnel and practices are similar to those raised by the Taxpayer during the hearing of the reassessment petition, Docket No.: 18423-01RA. In that case, the board ruled in an order dated May 24, 2002 , that “. . . the Town’s . . . assessment process complies with the [applicable] constitutional, statutory and case law provisions. . . .”

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Joseph F. Hoffman, 55 Roberts Road, Gilford, New Hampshire, 03249, Taxpayer; Wil Corcoran, Assessors Office Town of Gilford, 47 Cherry Valley Road, Gilford, New Hampshire, 03246, representative for the Town; and Town of Gilford, Chairman, Board of Selectmen, 47 Cherry Valley Road, Gilford, New Hampshire, 03246.

Date: February 18, 2003

Anne M. Bourque, Deputy Clerk