

**Fournier Irrevocable Trust of 2002**

**v.**

**Town of Gorham**

**Docket No.: 23431-07PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2007 abated assessment of \$90,700 (land \$54,000; building \$36,700) on Map R6/Lot 21, a mobile home on 2.40 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) a small brook which runs through the Property is polluted and smells of sewage in the summer; the brook supplied water to a pond that existed on the Property which had to be drained five or six years ago because of potential health problems resulting in a large depression in the land;

(2) the land was abated by then assessor Andy Blais in 2006 to \$18,400 who agreed the land value was excessive; six months later, the 2007 assessment increased to \$54,000;

(3) the \$3,400 “septic” assessment is excessive as the septic system was installed in the late 1950’s and the 500 gallon metal tank has to be pumped every year and a half; and

(4) the total value of the Property as of April 1, 2007 was no more than \$70,000 to \$75,000.

The Town argued the assessment was proper because:

(1) Mr. Blais was the assessor in 2003 and not employed by the Town in 2006; further, the 2006 median ratio as determined by the department of revenue administration (“DRA”) was 57.2% indicating the 2006 assessments were substantially below market value;

(2) the value of land in the Town since year 2000 has about doubled;

(3) the outbuildings and yard items, including the septic, were depreciated with the value of the house and assessed at 49% good;

(4) approximately 25% of the residentially improved properties in the Town are manufactured homes which are divided as follows: pre 1976; post 1976; manufactured homes in parks; and manufactured homes on private land (as the Property); and

(5) three comparable sales were utilized to arrive at raw land values, 10 arm’s-length sales in neighborhood 8 (the same as the Property) were used to create the land schedule for the neighborhood, and four sales of manufactured homes on private land were submitted for review (Municipality Exhibit B).

### **Board’s Rulings**

Based on the evidence, the board finds the proper assessment to be \$81,600 (land \$44,900; building \$36,700). This assessment is based upon applying a minus 20% adjustment to the first land line which reflects the 1.40 acres the Town had attributed to the house site/frontage.

The board reviewed the various vacant land sales contained in Municipality Exhibit B to determine whether the Town's land assessment of \$54,000 for the entire 2.40 acre parcel was a reasonable estimate of the land's contributory value for the Taxpayer's entire estate. Both the four land sales in the immediate neighborhood and the 9 to 10 sales analyzed on the pages excerpted from the assessment manual (both by neighborhood code and tax map) indicate that most of the parcels in the Taxpayer's neighborhood that sold were of lots 1.0 acre or less (the average sale of vacant land for map U24 is 0.40 acres). Most of the vacant lot sales in the Taxpayer's neighborhood sold in the range of \$15,000 to \$25,000 reflecting the primary building site value being acquired in these transactions. While the board understands the land curve concept presented and argued by the Town, we question whether the \$.75 per square foot value attributed to a house lot up to 75,000 square feet is applicable to the Taxpayer's Property given the topography and stream/wetland that is also part of a portion of its 1.40 acre house site and the sales in the immediate neighborhood that reflect a lower value. Specifically, 9 Candy Lane, a 1.1 acre unimproved lot located two lots north of the Property, sold for \$22,000 on August 6, 2007; and 12 Perkins Brook Road, a 0.89 acre improved property located two lots northwest of the Property, sold for \$77,000 on June 28, 2007. Consequently, the board has adjusted both the size and quality of the 1.40 acre house lot by 20% relying upon judgment and expertise<sup>1</sup> and the market indications of the nearby sales.

As a test of reasonableness to the adjustment applied to the land portion of the assessment, the board compared the Taxpayer's abated \$81,600 assessment to the four manufactured home sales on their own lots submitted by the Town as part of Municipality Exhibit B. The four sales ranged in sale price from \$25,000 to \$77,000 but encompassed lots all

---

<sup>1</sup> The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of City of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

significantly smaller than the Taxpayer's Property. This revised assessment accounts for the difference in improvements and acknowledges that the four comparables and the Taxpayer's Property have similar situs value (the right to construct a dwelling) and recognizes the Taxpayer's larger lot size (albeit with topography and wetness issues) adds some privacy/buffer value.

The board finds no merit to the Taxpayer's argument that his land assessment should remain at \$18,400 as it was prior to the 2007 reassessment because the 2006 assessments on average were at 57.2% of market value while the 2007 reassessment achieved full market value (DRA determined the 2007 reassessment resulted in a median Town-wide ratio of 100.6 and a weighted mean ratio of 100.0 which neither party presented any contrary evidence at hearing).

The Taxpayer continued to assert that his 500 gallon metal septic tank and leach field installed in the 1950's were excessively assessed. However, the board notes that the assessment-record card reflecting the Town's abated assessment of \$90,700 reduced its contributory estimate of the septic system from \$8,700 to \$3,400. The board finds this estimate is reasonable and recognizes the age and maintenance requirements of such a system.

Last, the Taxpayer asserted the brook that bisects the Property is polluted from an off-site septic system and necessitating draining of the pond. The Taxpayer, however, submitted no documentary evidence as to the extent and frequency of the asserted pollution. Without some objective evidence, the Taxpayer failed to carry his burden to show that it is a factor that must be considered in valuing his Property.

If the taxes have been paid, the amount paid on the value in excess of \$81,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years.

RSA 76:17-c, I and II.

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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Michele E. LeBrun, Member

Fournier Irrevocable Trust of 2002 v. Town of Gorham

Docket No.: 23431-07PT

Page 6 of 6

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Denis T. Fournier, 54 Jimtown Road, Gorham, NH 03581, representative for Fournier Irrevocable Trust of 2002, Taxpayer; Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, NH 03581; and George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584, Contracted Assessing Firm.

Date: April 20, 2010

\_\_\_\_\_  
Anne M. Stelmach, Clerk