**Jack Friedman and Jane Friedman**

**v.**

**Town of Freedom**

**Docket No.: 9576-90**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $169,800 (land $112,800; buildings $57,000) on a .70-acre lot on Pequawket Trail Road (the Property). The Taxpayers 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 Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

1) the Property was assessed as preferred, beach-front property with no adjustments made for the flood plain;

2) the Property has limits on construction and occupancy, and a high cost for

property insurance; and

3) the Property lines are continually eroding and require constant maintenance.

The Town argued the assessment was proper because:

1) it cannot be held responsible for things it has no control over, such as flooding;

2) the Town has been approved for the flood plain insurance plan; and

3) the Town is one of three towns that has authority to operate the Ossipee Lake Dam, and can provide immediate assistance if the lake levels change.

Board's Rulings

Based on the evidence, we find the correct assessment should be $135,850. This assessment is ordered because:

1) the Taxpayers presented credible evidence their property was subject to more frequent and severe flooding than other properties also in the 100-year flood hazard zone;

2) such flooding, while not as injurous to the market value of seasonal property as it would be to year-round property, does have a significant affect on the market value; and

3) while no market data was submitted as to comparably affected properties (apparently there were no recent sales of similar properties), the board, based on its experience, finds a 20% reduction in value reasonable.

The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

If the taxes have been paid, the amount paid on the value in excess



of $135,850 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Jack and Jane Friedman, Taxpayers, and Chairman, Selectmen of Freedom.

Dated: November 6, 1992

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Melanie J. Ekstrom, Deputy Clerk