

**Richard and Judith Asdot**

**v.**

**Town of Fremont**

**Docket No.: 13943-93-PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$159,500 (land, \$60,000; buildings, \$99,500) on a .458-acre lot with a house (the Property). The Taxpayers also own, but did not appeal, a vacant .58-acre lot assessed at \$4,300. 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 denied.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) properties twice as large as the Property had lower assessments;

- (2) the Town failed to adjust the land value to address the steep slope;
- (3) a May 1993 appraisal estimated a \$25,000 value for the land; and
- (4) the land value should be \$25,000.

The Town argued the assessment was proper because:

- (1) recent sales support both the Town's 1988 revaluation methodology and the Property's assessment;
- (2) the Taxpayers' appraisal, when equalized by the Town's 133% equalization ratio, is well within range of the Taxpayers' combined \$163,800 assessment for both lots;
- (3) the Property's topography is quite typical of the poor topography in the neighborhood; and
- (4) one of the Taxpayers' comparables is mostly wet and, therefore, not comparable, and the other has the same usable area as the Property.

#### Board's Rulings

The Taxpayers' sole basis for appeal was that their land portion of the assessment was excessive compared to the estimate in the cost approach in their appraisal and relative to nearby lots that were larger in size.

The board denies the appeal because the Taxpayers failed to provide market evidence that the Property, as a whole, was disproportionately assessed. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted.

See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

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The board finds the Town was proper in its analysis of comparing the assessed value of the Taxpayers' two lots (Lot 82, which was appealed, and adjoining Lot 83, which was not appealed) to the Taxpayers' appraisal of both parcels. The total assessed valuation of Lot 82 and Lot 83 is \$163,800. The Town of Fremont's 1993 equalization ratio is 133% (which provides a general indication that assessments were 33% higher than market value in 1993). By applying the equalization ratio to the combined assessments results in an indicated 1993 market value of \$123,150 ( $\$163,800 \div 1.33$ ). This indication of market value is within one percent of the Taxpayers' May 1993 appraisal for \$122,000.

Further, the Town submitted several sales that supported the Town's assessment methodology and the 133% level of assessment.

Lastly, the Taxpayers' appraisal contained an estimated site value of \$25,000 in the cost approach. This estimate of land value was not documented. And further, the Taxpayers' appraiser did not rely on the cost approach, but rather on the market approach to provide a total valuation of land and buildings of \$122,000.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A

reconsideration motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments

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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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard and Judith Asdot, Taxpayers; and the Chairman, Selectmen of Fremont.

Dated: March 29, 1995

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Lynn M. Wheeler, Deputy Clerk

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**ORDER**

In correspondence received May 3, 1995, the Taxpayers asked the board to clarify the statement on page 2 of the board's March 29, 1995 order that one of the Taxpayers' comparables was mostly wet and not comparable.

The Taxpayers should note the sentence they referred to on page 2 is not one of the board's findings but simply a recitation of the Town's arguments. The board's decision was largely based on the ruling on page 3 that the Taxpayers' appraisal when adjusted by the 1993 equalization ratio was within 1% of the total assessment of both the Taxpayers' lots.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard and Judith Asdot, Taxpayers; and the Chairman, Selectmen of Fremont.

Date: May 17, 1995

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Valerie B. Lanigan, Clerk

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