

**Thomas U. and Michelle Lapierre**

**v.**

**Town of Fremont**

**Docket No.: 14042-93PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$126,450 (land \$48,800; building \$77,650) on a .42-acre lot with a manufactured home (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers submitted a brief that presented the Taxpayers' arguments in full. The Taxpayers also filed a rebuttal, which the board has read. The following is a summary of some of the arguments:

1) the assessment exceeds market value;

2) other lots in the area were assessed at a lower value per acre;

Page 2

Lapierre v. Town of Fremont

Docket No.: 14042-93PT

3) there are discrepancies in water and septic assessments (\$8,000 - \$11,000) between properties;

4) the double-wide manufactured home (MH) was purchased in 1988 for \$32,079; the lot was purchased for \$29,000 in 1988 and the foundation, well and septic bring the total cost of the Property to approximately \$75,000;

5) a fair market value as of April 1, 1993 would have been \$70,000 based on sales; and

6) the quality of the MH is less than stick-built houses and the basement is less functional due to low head room.

The Town argued the assessment was proper because:

1) there was a Town-wide revaluation in 1988 and land values were established by

deducting buildings' depreciated values and other improvements from selling prices, which resulted in a land residual value;

2) the Taxpayers' reference to water and septic charges varied, depending on a dug well versus an artesian well;

3) comparable sales demonstrated the Town's methodology and land values used in the Taxpayers' area as well as throughout the Town;

4) the Taxpayers' purchase price does not equate to market value and once the MH is placed on its own land, its value is greatly enhanced; and

5) the Taxpayers failed to provide any sales to support their opinion of value of similar type property and failed to prove disproportionality and, therefore, the appeal should be dismissed.

**BOARD FINDINGS**

Based on the evidence, we find the correct assessment should be \$115,200 (land \$48,800; building \$66,400). This assessment is ordered because:

Page 3

Lapierre v. Town of Fremont

Docket No.: 14042-93PT

- 1) the quality of the house should be graded a C-10 to reflect the inferior quality of construction of the MH;
- 2) 5% functional depreciation should be applied to the building to reflect the diminished basement utility;
- 3) the assessment of \$115,200, if equalized by the Town's 1993 ratio, provides an indicated market value of \$86,600 ( $\$115,200 \div 1.33$ );
- 4) the market value indication of \$86,600 is supported by the Taxpayers' cost estimate of \$75,000 if a 15% estimate for the developer's (builder's) profit is added; developer's profit represents the return expected for the risk, carrying costs and effort in taking the Property from an undeveloped lot to the final improved state; and
- 5) the Town's estimate of the well and septic contributory value of \$11,000, while it may exceed actual costs in some instances, is a reasonable estimate of the market contributory value of the utilities.

If the taxes have been paid, the amount paid on the value in excess of \$115,200 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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 Page 4  
Lapierre v. Town of Fremont  
Docket No.: 14042-93PT

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 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. 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, Member

\_\_\_\_\_  
Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas Waters, Agent for Thomas U. and Michelle Lapierre, Taxpayers; and Chairman, Board of Selectmen, Town of Fremont.

Dated: September 15, 1995

\_\_\_\_\_  
Melanie J. Ekstrom, Deputy

Clerk

0006

**Thomas U. and Michelle Lapierre**

**v.**

**Town of Fremont**

**Docket No.: 14042-93PT**

**ORDER**

The Taxpayers filed a request for rehearing on October 4, 1995 with three reasons for the request: 1) the Taxpayers' manufactured house and well and septic costs already include a 20% profit factor; 2) the board did not rule on discrepancies in the Town's assessments between \$8,000 and \$11,000 for differing types of well and septic; and 3) the decision did not address the inadequacies in the land assessments in the neighborhood.

The board denies the Taxpayers' request and clarifies its September 15, 1995 decision as follows.

1) First the board's finding of adding 15% as the developers profit to the Taxpayers' cost estimate of \$75,000 was not the sole basis for the decision; it was merely an alternative method of estimating value that supported the corrections ordered to the building portion of the assessment. The costs of a manufactured home on the dealer's lot versus one set up on its own land includes the costs of moving, set up and profit for the individual performing that work. Likewise the costs of well and septic include the actual cost of construction plus the profit for the subcontractor performing those functions. The board's Page 2  
Lapierre v. Town of Fremont  
Docket No.: 14042-93PT

decision focused on the Property as a whole as a contractor or developer would view the marketing of such a property after it had paid for the subcontracted costs of site work, building, well and septic, etc. The 15% profit the board estimated was for the developer or contractor for the risk and effort the developer or contractor would expect for coordinating and overseeing the work of various subcontractors.

2) The board finds the market generally will pay more for a drilled well versus a dug well. Based on the Town's submittal, the board understood that the difference between the \$8,000 and \$11,000 assessments for well and septic was attributable to the type of well. The board finds, based on its experience, the market generally recognizes drilled wells as a more reliable source of water and less susceptible to surface contamination than dug wells. While it is true there are instances where dug wells are equivalent to drilled wells as far as quality and quantity of water, the Town's approach in its mass appraisal system of making this general differentiation is reasonable given the time and cost constraints of performing a town-wide reappraisal.

3) The board did not find the Taxpayers' comparison of the land portions of the assessments with nearby properties to be conclusive of disproportionality. First neither party submitted any recent sales of either unimproved lots or improved properties. The Taxpayers and the Town both cited 1988 and prior evidence of land only sales and land and buildings sales in the neighborhood. Based on those sales (which indicate lot values in the \$25,000 to \$50,000 range and land and building values in the \$75,000 to \$99,000 range), the Town's methodology for assessing those properties showed proportionality between the lot values and the sales that occurred in 1988.

Page 3

Lapierre v. Town of Fremont

Docket No.: 14042-93PT

The board reviewed the assessments of lot 117-2 and 117-3 and lot 114 which further indicated consistent assessment methodology by the Town. These lots were approximately half the size of the Property and had land assessments slightly less, but not half, that of the subject Property. This is reasonable as it reflects the market's recognition of the primary factor affecting lot value is its ability to be improved residentially. Size influences lot value to a lesser extent. The Taxpayers had attempted to derive the Property's lot value by dividing the Town's assessment on lot 117 in half. The board finds that such analysis is not proper because while lot 117 is significantly larger than the Property and it has the future potential for two lots, it was assessed as one lot with the current unrealized potential for subdivision.

In short the board in its decision found factors with the building the Town had not properly recognized. However in its final analysis the board viewed the Property as a whole (land and buildings in total) because that is how the market will view the Property. The revised assessment's equalized value of \$86,600 is proportional to the assessment information submitted by the

parties and to the 1988 market data and 1993 cost information submitted by the Taxpayers.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Member

---

Michele E. LeBrun, Member

Page 4  
Lapierre v. Town of Fremont  
Docket No.: 14042-93PT

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas Waters, Agent for Thomas U. and Michelle Lapierre, Taxpayers; and Chairman, Board of Selectmen, Town of Fremont.

Date: October 13, 1995

---

Valerie B. Lanigan, Clerk

0006