

**Earl R. & Eloise R. Brunkhorst**

**v.**

**Town of Freedom**

**Docket No.: 14399-93PT**

**ORDER**

This order is a request for additional information from the parties.  
Both

parties mistakenly based their arguments on the \$210,600 assessment, which was the adjusted 1994 adjusted assessment. The appeal is for 1993, and the 1993 assessment was \$178,600 (see attached card). The Taxpayers did not file a 1994 appeal. Thus, the only issue before the board is the 1993 assessment. The parties shall, within 20 days of the clerk's date below, file with the board (sending a copy to the other party) any supplemental material that relates to the 1993 assessment.

**SO ORDERED.**

**BOARD OF TAX AND LAND APPEALS**

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member



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**CERTIFICATION**

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Earl R. & Eloise R. Brunkhorst, Taxpayers; and Chairman, Selectmen of Freedom.

Dated:

Valerie B. Lanigan, Clerk

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**Earl R. and Eloise R. Brunkhorst**

**v.**

**Town of Freedom**

**Docket No.: 14399-93PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 adjusted assessment of \$178,600 (land \$107,500; buildings \$71,100) on a .48-acre lot with a house (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 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 their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the house was constructed from 1991 to 1993 at an \$82,239 cost;
- (2) two comparative analyses prepared by realtors estimated a \$183,000-\$189,000 value in August 1994 and \$186,364 value in November 1994;

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(3) the building value was excessive compared to other homes in the neighborhood;

(4) there were errors on the assessment-record card and the selectmen failed to apply any market adjustment as they did for other properties;

(5) a larger neighboring lot with a larger home sold in August 1994 for \$189,000; and

(5) the assessment should be \$186,000. (NOTE: The Taxpayers erroneously assumed the assessment was \$210,600, which was the 1994 assessment. The 1993 assessment was \$178,600.)

The Town argued the assessment was proper because:

(1) the building value was adjusted in 1993 and 1994 after finding errors in the measurements;

(2) the Property's land value was comparable to neighboring waterfront lots;

(3) the building's per-square-foot value was comparable to neighboring homes; and

(4) the Property's building value was higher because the building is larger than other homes and of better quality.

The board's inspector reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board (copy enclosed). The inspector did not perform an on-site inspection. This report concluded the assessment was proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the

inspector's recommendation.

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#### Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property's assessment was disproportional.

To carry their burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986). The only market evidence from the Taxpayers was the two realtors' estimates for 1994. To compare those estimates to the assessment, two adjustments are required: 1) the assessment must be equalized; and 2) the realtors' estimates must be adjusted because the Property was not complete in 1993.

The 1993 assessment was \$178,600. The revenue department determined the equalization ratio in the Town to be 1.13, and thus the equalized assessment, which should approximate market value, was \$158,050 ( $\$178,600 \div 1.13$ ). Thus, to show overassessment, the Taxpayers should have shown the Property was worth less than \$158,050.

The realtors' indicated a value range of \$183,000 to \$189,000 as of 1994. The board selects \$186,000 as the value determined by the realtors. This value must be reduced by 15% to reflect the unfinished condition of the Property in 1993. (The 15% figure was calculated by comparing the 1993 assessment for the incomplete Property with the 1994 assessment for the complete Property.) This calculation results in a \$158,100 value ( $\$186,000 \times$

.85), and this value is almost exactly equal to the equalized value.

Therefore, the Taxpayers have not shown overassessment.

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Because the market information supports the equalized assessment, the Taxpayers' arguments concerning the Town's methodology do not carry any weight.

Finally, the board's conclusion is consistent with the board's inspector's conclusion.

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 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

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Earl R. and Eloise R. Brunkhorst, Taxpayers; and Chairman, Selectmen of Freedom.

Dated: October 27, 1995

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Lynn M. Wheeler, Deputy Clerk

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