

**Mark and Donna Dutton, Sr.**

**v.**

**Town of Tilton**

**Docket No.: 22525-06EX**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 72:34-a, the “Town’s” 2006 denial of the Taxpayers’ request for elderly exemption as provided under RSA 72:39-a. The Property on which the exemption was sought is identified as Map 17/Lot 25 comprised of 9.50 acres improved with a dwelling, barn, several outbuildings and a pond located at 159 Colby Road (“Lot 25”). The Taxpayers also own the adjoining parcel, Map 17/Lot 25H, an unimproved 9.26 acre parcel located at Colby Road (“Lot 25H”). For the reasons stated below, the appeal for exemption is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, they were entitled to the statutory exemption or credit for the year under appeal. See RSA 72:34-a; RSA 72:39-a; and Tax 204.06.

The Taxpayers argued they were entitled to the elderly exemption because:

(1) the Town approved the exemption in 2005 and they should not be precluded from receiving the exemption because they own Lot 25H, which is not part of the homestead;

(2) at the time of purchase, the Taxpayers were told Lot 25H was not a buildable lot and was purchased as a buffer to the house lot;

(3) Lot 25H is leftover land from the subdivision of a farm which consists of woods, swamp, ledge and a brook which runs through the land three to four times a year; and

(4) the Town granted a hardship exemption but subsequently denied it.

The Town argued the denial of the elderly exemption was proper because:

(1) the combined value of the “non-residential” land of Lot 25 and Lot 25H exceeds the Town’s net asset limitation of \$70,000; and

(2) an onsite review of both Lot 25 and Lot 25H indicates that, even with some adjustment to the rear land of lot 25H for wet areas and ledge, the combined net asset still exceeds \$70,000.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayers are not eligible for an RSA 72:39-a elderly exemption (“Elderly Exemption”) because their net assets exceed the Town’s voted limitation of \$70,000.

Prior to 2006 the Taxpayers had received an Elderly Exemption, at that time qualifying for the income and asset limitations assessed by the Town. In 2006 the Town performed a reassessment which increased the assessed values of both Lots 25 and 25H to the extent the “non-residential land” (see RSA 72:39-a I(c)) exceeded the net asset limitation of \$70,000. The parties testified the Town did not have a warrant article at town meeting to increase the net asset limitations and thus the new ad valorem value for the “non-residential” land exceeded the existing assets limitation.

At the June 26, 2007 hearing, after receiving testimony and evidence from both the Taxpayers and Ms. Loren Martin, the Town’s contract assessor with Avitar Associates of New

England, Inc., the board held the decision in this matter in abeyance in order for Ms. Martin to review the values placed on Lots 25 and 25H to ensure they are appropriately reflective of the properties' physical attributes and of the general market. Ms. Martin filed a July 5, 2007 letter, with supporting documentation, which included a number of photographs taken during her site visit of both lots and an adjustment to the ad valorem value of Lot 25H for some of the rear land having wet and/or ledge characteristics. However, even with this reduction in the ad valorem assessment, the "non-residential" land market value still exceeds the Town's net asset limitation of \$70,000. The Taxpayers filed a July 25, 2007 response to Ms. Martin's letter which contained extensive description of both lots with maps and photographs indicating a number of wetland areas on both lots.

The Town's revised ad valorem assessment indicates the combined value of the "non-residential" land on Lot 25 and Lot 25H of \$94,200 is \$24,200 over the Town's \$70,000 limitation. The board reviewed, in detail, the Taxpayers' comments and photographs relative to the various assertions of wetlands and ledge on the two lots but finds the evidence does not support any further adjustment of the ad valorem market value. The board's review of the photographs reveals that, while there are certain wetland areas on both Lot 25 and Lot 25H, such areas do not appear to so substantially interfere with development potential of Lot 25H or the utility of Lot 25 to warrant further adjustments as to their market value.

As a further check to the photographs and descriptions submitted by both parties, the board reviewed the Belknap County Soil Survey available online at [www.nh.nrcs.usda.gov](http://www.nh.nrcs.usda.gov). The board recognizes that such soil surveys do not provide detailed soil delineation as an on-site soil survey would, but do provide general soil characteristics on a larger scale. The soil maps indicate both Lot 25 and Lot 25H contain some poorly drained Lyme and Moosilauke soils along

Packer Stream, but the majority of both lots are the Millsite-Woodstock-Henniker complex containing generally well drained soils including some farmland soils of local importance.

Based on the evidence submitted, the board cannot conclude that Lot 25H is unbuildable or that Lot 25 should have any adjustment due to any soil limitations. The Town's revised ad valorem value of \$56,000 appears reasonable and in line with the several sales indicating a basic lot value is in the \$60,000 range. And, as a consequence, the board must deny the Taxpayers' appeal of the denial of the request for Elderly Exemption for 2006.

As the parties noted during hearing and as Ms. Martin addressed in her correspondence to the Taxpayers, the Taxpayers have potential recourse in the future by requesting the selectmen place a warrant article at the next town meeting to consider increasing the net asset limitation for elderly exemption above \$70,000.

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(f). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark and Donna Dutton, Sr., 159 Colby Road, Tilton, NH 03276, Taxpayers; Loren Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representative; and Chairman, Board of Selectmen, Town of Tilton, 257 Main Street, Tilton, NH 03276.

Date: October 4, 2007

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Anne M. Stelmach, Clerk