

**Joseph and Diann Pitre**

**v.**

**Town of Farmington**

**Docket No.: 25077-09PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 abated assessment of \$131,030 (land \$25,340, building \$105,690) on Map R19/Lot 023, 76 Cocheco Road, and the assessment of \$27,890 (building only) on Map R19/Lot 023/Bld-1, 74 Cocheco Road. The “Property” consists of a single lot with two residential buildings on 1.22 acres. For the reasons stated below, the appeal for abatement on the Property is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, that the total assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers argued the abated assessment was still excessive because:

(1) the Property is in close proximity to a contaminated site (the “Cardinal Landfill”) and the former municipal landfill;

(2) contamination of the Cardinal Landfill was first documented in the 1980's, has impacted the local water supply and, as a result, the Town connected the Property to the municipal water supply;

(3) a soil gas evacuation system installed on the Cardinal Landfill (designed to mitigate soil gas releases into nearby homes) has failed; and

(4) no one would buy the Property because of the well publicized contamination issues and therefore the total assessed value should be no more than \$100,000.

The Town argued the abated assessment was proper because:

(1) the Town performed a "full" revaluation in tax year 2009;

(2) as shown on the assessment-record card, the Town reduced the assessment on the land and main building (Map R19/Lot 023) at the municipal level (from \$152,010 to \$131,030) by applying a negative 50% factor to the land and a negative 20% factor to the building;

(3) the Taxpayers presented nothing more than speculation by a "lay person" (one of the Taxpayers, Mr. Joseph Pitre) regarding the contamination and its effect on the market value of the Property; and

(4) the Taxpayers did not present any evidence of market value, did not meet their burden of proving disproportionality and the appeal should be denied.

The parties agreed the level of assessment in the Town was 101%, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers did not carry their burden of proving the Property was disproportionately assessed and therefore the appeal is denied.

The Town did not dispute the location of the Property near the Cardinal Landfill and the former municipal landfill impacts its market value. The Town adjusted for the potential contamination issues by applying a negative 50% adjustment to the land portion of the assessment and a negative 20% adjustment to the assessment of the primary structure. These adjustments resulted in a total abated assessment of \$158,920 for the Property in tax year 2009.

The board considered Mr. Pitre's testimony and his submission of three documents (dating back to June, 2000, March, 2003 and May, 2011, respectively; see Exhibit Nos.1 -3) discussing problems associated with the Cardinal Landfill. These documents mention some testing and detection of soil and groundwater contamination pertaining to that adjacent site, but do not state whether there was any impact on the Property resulting from such contamination. Mr. Pitre has not had any testing done on the Property and did not call any expert witnesses to testify regarding his beliefs regarding the existence and extent of contamination on the Property. Instead, as the Town noted, he relied only on his own "layman testimony."

Although Mr. Pitre testified the assessed value of the Property should be no more than \$100,000 in tax year 2009, he presented no market value evidence in support of his opinion. In other documents submitted in this appeal, the Taxpayers stated the market value of the Property was "unknown" (see appeal document signed on August 29, 2010) or a total of "\$150,240 or less" (see abatement request signed February 23, 2010). The latter estimate is close to the total assessment (\$158,920) under appeal.

In brief, the board has no evidence before it that would allow the board to find the adjustments made by the Town for the contamination issues were insufficient and did not result in a proportional assessment for tax year 2009. In deciding tax appeals, whether they involve claims of environmental contamination or other issues, the board's authority to grant a tax

abatement depends on the market evidence presented. See, e.g., Harris Family Irrevocable Discretionary Trust v. Town of Loudon, BTLA Docket No. 23284-06PT (May 18, 2009) at pp. 3-4 (appeal denied where taxpayer claimed lead contamination from neighboring racetrack entitled property to a tax abatement, but failed to present any market value evidence).

For all of these reasons, the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

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**CERTIFICATION**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Joseph and Diann Pitre, 74-76 Cocheco Road, Farmington, NH 03835, Taxpayers; Chairman, Board of Selectmen, Town of Farmington, 356 Main Street, Farmington, NH 03835; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301.

Date: May 9, 2012

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Anne M. Stelmach, Clerk