

**Joseph and Diann Pitre**

**v.**

**Town of Farmington**

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

**ORDER**

The board has reviewed the “Taxpayers’” June 8, 2012 letter which the board will treat as a rehearing motion pursuant to RSA 541:3 (“Motion”) because they state they wish to “appeal” the board’s May 9, 2012 Decision. (As stated in the Decision (p. 4), filing a rehearing motion is a prerequisite to any appeal to the supreme court.) The board has also reviewed the “Town’s” June 14, 2012 “Objection” to the Motion. The Motion is denied for the reasons stated below.

The Taxpayers have not demonstrated the board erred in the Decision and, thus, the Motion fails to show any “good reason” to grant a rehearing. See RSA 541:3; and Tax 201.37(e). Rehearing motions are not granted to consider evidence previously available to the moving party but not presented at the original hearing. Tax 201.37(g). As stated in the Objection (p.1), the Motion “merely restates facts and arguments” presented at hearing and ruled on in the Decision and “does not point out any errors of law or fact.”

The Taxpayers state in the Motion the “[t]otal assessment of property is based on Fair Market Value.” As noted in the Decision (p. 3), the parties do not dispute the location of the Property near two landfills and the environmental contamination issues raised by this proximity adversely impacts market value. The Town made adjustments to the total assessment to take these

impacts into account. The Taxpayers, however, failed to present market value evidence at the hearing to meet their burden of establishing these adjustments were not sufficient to result in a proportional assessment for tax year 2009, the year of a Town-wide revaluation. Even in the Motion the Taxpayers fail to provide any such evidence. (The Motion refers to a 1989 appeal (20 years before), and the alleged magnitude of adjustment<sup>1</sup> to the assessment for that tax year, but this is not probative of proportionality in this tax year 2009 appeal.)

Finally, the board will respond to the statement in the Motion that “the contamination problem was not mitigated, yet the State, Town and BTLA chose not to take responsibility for an egregious situation in hopes it will go away.” The only claim presented by the Taxpayers in this proceeding is a tax abatement appeal under RSA 76:16-a for tax year 2009, which the board has heard and decided. The board’s powers and jurisdiction are determined and limited by statute. Appeal of Land Acquisition, 145 N.H. 492, 494 (2000). This legal authority does not include mitigation of environmentally contaminated properties or determination of liability for the costs associated with such mitigation.

For all of these reasons, the Motion is denied.

Pursuant to RSA 541:6, any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of the Clerk’s date shown below, 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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<sup>1</sup> For the 1989 assessment, the board granted a “30% adjustment,” not the “50%” adjustment asserted in the Motion. See Pitre v. Town of Farmington, BTLA Docket No. 7089-89PT (March 5, 1992).

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**CERTIFICATION**

I hereby certify a copy of the foregoing Order 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; Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm; and Walter L. Mitchell, Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246, counsel for the Town.

Date: 7/5/12

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Anne M. Stelmach, Clerk