

**Douglas P. and Mary A. Embree**

**v.**

**Town of Tilton**

**Docket No.: 27030-12PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2012 assessment of \$196,500 (land \$47,500; building \$149,000) on Map R26/Lot 27 (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the 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 assessment was excessive because:

- (1) as shown in Taxpayer Exhibit Nos. 4 and 5, the Property is triangular in shape with less acreage than the 0.575 acres assessed by the Town [as reflected on the assessment-record card (“ARC”)];
- (2) the sketch in Taxpayer Exhibit No. 7 shows the Property is impacted by wetlands that reduce its useable acreage and, according to Mr. Embree, a portion of the building, the driveway, parking lot and septic system are not on “my property”;
- (3) the commercial building on the Property is smaller than the Town states on the ARC and the Town failed to apply sufficient depreciation to take into account various issues impacting the Property’s market value including an old septic system and the condition of the heating system, roof and other improvements (cf. Taxpayer Exhibit No. 6);
- (4) while the Town relies on an appraisal completed in 2007<sup>1</sup> which estimated the market value of the Property was \$195,000, commercial property values have declined by 25% between 2007 and 2012; and
- (5) the assessment on the Property should be abated based on a market value of no more than \$150,000.

The Town argued the assessment was proper because:

- (1) the Taxpayers did not submit any deeds, surveys or any other credible evidence that the actual size of the Property was less than the 0.575 acres shown on the ARC;

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<sup>1</sup> The Town submitted portions of a May 2, 2007 appraisal completed by Cowall Appraisal and Consulting. [See Municipality Exhibit A and State of New Hampshire v. Douglas P. Embree, Mary A. Embree and Laconia Savings Bank, BTLA Docket No. 22559-07ED (August 10, 2009).] It was prepared for the State of New Hampshire Department of Transportation to estimate just compensation for an eminent domain taking of 0.08 acres and a temporary construction easement. Mr. Embree testified he was compensated for “land I didn’t own” as he only owned 0.03 acres of the taking.

- (2) the Taxpayers presented the same issue regarding the “triangular shape” and size of the Property to the superior court in a tax year 2009 abatement appeal and their arguments were not found to have merit (see Municipality Exhibit B, pp. 8-9);
- (3) the equalized value of the assessment is \$180,800 and Mr. Embree (who is a licensed real estate broker) has listed the Property for sale with an asking price of \$195,000;
- (4) the Town properly considered the age and condition of the Property and all other relevant factors affecting value and applied appropriate depreciation to the building; and
- (5) the Taxpayers did not meet their burden of proving disproportionality and the appeal should be denied.

The parties did not dispute the level of assessment in the Town was 108.7% in tax year 2012, the median ratio calculated by the department of revenue administration.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayers did not meet their burden of proving the Property was disproportionately assessed in tax year 2012. The appeal is therefore denied for the following reasons.

As the Taxpayers appear to recognize, an assessment must be based on market value adjustment by the level of assessment. See RSA 75:1 and Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003); see also Embree v. City of Franklin, BTLA Docket No. 27032-12PT (August 18, 2014). In order to obtain an abatement, the Taxpayers needed to meet their burden of proving the market value of the Property was substantially below the equalized value of the abated assessment under appeal: \$196,500 assessment divided by 108.7% level of assessment = \$180,800, rounded.

Instead of presenting an appraisal or other credible indication of market value or providing relevant details about the Property (e.g., historical rental income and expense information), the Taxpayers' principal contention is that the assessment is too high because the Town overestimated the lot size and the contributory value of the building (given its age and condition) and that the driveway, parking lot, septic system and portions of the building are not located on the Property. The board does not agree.

Further, the board finds the Taxpayers' reliance on the undated "sketch" in Taxpayer Exhibit No. 7 is misplaced. It was prepared by Deborah L. Hinds of Hinds Septic Design Services and specifically states: "This plan is not a boundary survey and is not to be utilized for boundary line determination or for matters relating to establishing lot lines. . . ." Consequently, even if accepted at face value, this exhibit and the Taxpayers' arguments are not probative of disproportionality. Mr. Embree argued the Town's tax map did not conform to the legal description in the deed to the Property, but he did not submit either the tax map or a copy of the deed to the Property.<sup>2</sup>

The Taxpayers did not present any market-based evidence to establish how the market value of the Property would change if, in fact, Mr. Embree is correct that the actual acreage is less than the 0.575 acres shown on the ARC. Without such evidence, the board is unable to agree the assessment in tax year 2012 was disproportional.

In summary, upon review of all the evidence pertaining to lot size and the building, the board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal is therefore denied.

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<sup>2</sup> The on-going dispute between the Taxpayers and the Town regarding lot size could most likely be resolved if the Taxpayers obtained a survey. See also Municipality Exhibit B, pp. 8-9, where the superior court suggested a "land survey" to the Taxpayers as a means of determining "the precise boundaries of their property."

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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Michele E. LeBrun, Chair

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Albert F. Shamash, Member

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Theresa M. Walker, Member

Douglas P. and Mary A. Embree v. Town of Tilton

Docket No.: 27030-12PT

Page 6 of 6

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Douglas P. and Mary A. Embree, 28 Liberty Ave., Franklin, NH 03235, Taxpayers; Chairman, Board of Selectmen, Town of Tilton, 257 Main Street, Tilton, NH 03276; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: April 8, 2015

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Anne M. Stelmach, Clerk