

**Adeline Gendron**

**v.**

**Town of Hudson**

**Docket No.: 26772-13EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2013 denial of the Taxpayer’s request for elderly exemption as provided under RSA 72:39-a. For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, she was entitled to the statutory exemption or credit for the year under appeal. See RSA 72:34-a; RSA 72:39-a; and Tax 204.05.

**Board’s Rulings**

Based on the evidence, the board finds the Town did not err in denying the exemption and therefore the appeal is denied.

Pursuant to RSA 72:39-b, the Town adopted income and asset limitations (\$35,000 and \$150,000 for a single person, respectively) for purposes of qualifying for an RSA 72:39-a elderly exemption. RSA 72:39-a, I(c) states no exemption will be allowed under RSA 73:39-b unless the person applying for the exemption:

[o]wns net assets not in excess of the amount determined by the city or town for purposes of RSA 72:39-b, excluding the value of the person's actual residence and the land upon which it is located up to the greater of 2 acres or the minimum single family residential lot size specified in the local zoning ordinance.... [Emphasis added.]

The "Property" at issue in this appeal is identified as 299 Webster Street in Hudson, New Hampshire (Map 128/Lot 10) and consists of a single-family residence on 11.392 acres.<sup>1</sup> The Property's 2013 assessed value was \$587,500, which included contributory values of \$12,400 for "building", \$900 for "yard items", and \$574,200 for "land".

During the hearing on the merits, the Taxpayer testified she was aware the value of her residence and up to two (2) acres was excluded from the calculation of her "net assets" in determining her eligibility for the elderly property tax exemption. Further, she was aware that the market value of the additional 9.392 acres had to be included in the calculation of her net assets. In response to a board question regarding the value of the 9.392 acres, the Taxpayer indicated it was assessed for approximately \$20,000 per acre and that it was likely worth at least \$180,000.

Further, the Town presented evidence the Taxpayer marketed the Property for sale in 2011 with an asking price of \$1,000,000. The marketing material stated, "11.392 acres, older house on property, vacant and uninhabitable but value is in land frontage, 775'...." While the Property did not sell, the board finds this is some evidence of market value. See Municipality Exhibit G.

The board finds the evidence supports a finding the market value of the excess 9.392 acres is at least \$187,840 (\$20,000 per acre), and may be substantially more. However, a more

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<sup>1</sup> The Property's assessment-record card indicates the lot is 15.392 acres in size. However, Mr. Michaud (the Town's Assistant Assessor) indicated that was in error and the Town was in the process of correcting its records to reflect the correct size of 11.392 acres. See Taxpayer Exhibit No. 1.

specific market value finding is not necessary as the \$187,840 exceeds the Town's asset limit of \$150,000 for a single person.

For all these reasons, the board finds the Town did not err in denying the Taxpayer the elderly exemption in tax year 2013. While the Town presented other reasons they believe the Taxpayer did not qualify for the exemption, the board finds they are moot and need not address them in this decision.

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(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 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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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: Adeline Gendron, 299 Webster St., Hudson, NH 03051, Taxpayer; and Chairman, Board of Selectmen, Town of Hudson, 12 School Street, Hudson, NH 03051.

Date: 3/11/14

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Anne M. Stelmach, Clerk