

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case No. 2021-0289

APPEAL OF ELEONORA POROBIC

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RULE 10 APPEAL FROM  
THE NEW HAMPSHIRE BOARD OF TAX AND LAND APPEALS

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BRIEF FOR THE TOWN OF BARTLETT

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TOWN OF BARTLETT

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The Town waives oral argument.

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## Text of Cited Statutes

### **RSA 21-J:14-f Certification Required. –**

I. Every person, whether working individually, for a firm or corporation, or as a municipal employee, making appraisals of a municipality for tax assessment purposes, except elected officials making appraisals pursuant to RSA 75:1, shall be certified by the department according to rules adopted by the assessing standards board as provided in paragraph II. Department of revenue administration employees shall be certified at the level appropriate to their duties.

II. The assessing standards board shall adopt rules, pursuant to RSA 541-A, relative to qualifications for certification, requirements for continuing education, and decertification of, suspension of, or other disciplinary actions against persons required to be certified in paragraph I. Such rules shall specify the minimum qualifications with respect to education and training required for certification according to the following functional job categories ranked in ascending hierarchical order:

- (a) Building measurer and lister.
- (b) Property assessor assistant.
- (c) Property assessor.
- (d) Property assessor supervisor.

III. No person, except boards of assessors and selectmen making appraisals pursuant to RSA 75:1, shall make appraisals without first obtaining the certification required by this section. Certification is non-assignable and cannot be transferred. Any person who willfully fails to obtain certification as provided in this section shall be subject to the penalties imposed under RSA 21-J:39, IV.

**RSA 71-B:1 Board Established. –** There is hereby established a board of tax and land appeals, hereinafter referred to as the board, which shall be composed of 3 members who shall be learned and experienced in questions of taxation or of real estate valuation and appraisal or of both. The members of the board shall be full-time employees and shall not engage in any other employment during their terms that is in conflict with their duties as members of the board.

**RSA 71-B:7 Hearing Procedure.** – Whenever the board shall hold hearings, it shall not be bound by the strict rules of evidence adhered to in the superior courts in this state. The board shall introduce into evidence and may take into consideration in determining any question any information obtained through its own investigation, including information obtained by persons employed under RSA 71-B:14. In addition to the provisions of RSA 91-A, the board shall tape record the proceedings of any taxation hearing before it and shall make such tape recording available to the public for inspection and recording from the date of the hearing to a date which is 15 working days after the board has made a final decision on the matter which is the subject of the hearing, or, if an appeal is made from such decision, the date upon which the matter has been finally adjudicated, whichever date is later.

**RSA 71-B:12 Appeal.** – Decisions of the board may be appealed by either party only in accordance with the provisions of RSA 541 as from time to time amended; provided, however, that there shall be only one appeal allowed per person on each parcel of land until such time as a reassessment has been made.

**RSA 71-B:14 Staff.** – The board shall have upon its staff at least one review appraiser who shall be a classified state employee and who shall be competent to review the value of property for tax and eminent domain purposes. In addition, the board shall have such clerical and technical staff as may be necessary within the limits of appropriation made therefor.

**RSA 76:16-a By Board of Tax and Land Appeals.** –

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V. Either party aggrieved by the decision of the board of tax and land appeals may appeal pursuant to RSA 71-B:12. For the purposes of such appeal, the findings of fact by the board shall be final. Any such appeal shall be limited to questions of law.

...

**RSA 541:13 Burden of Proof.** – Upon the hearing the burden of proof shall be upon the party seeking to set aside any order or decision of the commission to show that the same is clearly unreasonable or unlawful, and all findings of the commission upon all questions of fact properly before it

shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable.

**RSA 541-A:33 Evidence; Official Notice in Contested Cases. –**

I. All testimony of parties and witnesses shall be made under oath or affirmation administered by the presiding officer.

II. The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence.

Agencies shall give effect to the rules of privilege recognized by law.

Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing requirements, any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.

III. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

IV. A party may conduct cross-examinations required for a full and true disclosure of the facts.

V. Official notice may be taken of any one or more of the following:

(a) Any fact which could be judicially noticed in the courts of this state.

(b) The record of other proceedings before the agency.

(c) Generally recognized technical or scientific facts within the agency's specialized knowledge.

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

VI. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

### **Issues Presented**

1. Whether the BTLA, as the finder of fact, properly exercised its authority to weigh evidence and make findings of fact?
2. Whether the BTLA properly exercised its authority to determine the admissibility of certain evidence?

### **Statement of the Case**<sup>1</sup>

This appeal involves Eleonora Porobic's (the "Taxpayer") request for a tax abatement for her Property in the Town of Bartlett (the "Town") for Tax Year 2018. The Town denied the Taxpayer's abatement request, and the Taxpayer appealed the Town's denial to the Board of Tax and Land Appeals ("BTLA") pursuant to RSA 76:16-a.

The BTLA held a hearing on the Taxpayer's appeal, during which the Taxpayer and the Town each presented evidence. The Taxpayer argued its property had a fair market value of \$270,000, relying primarily upon an appraisal of the Property by Nanci Stone-Hayes. The Town argued that the Property's Tax Year 2018 assessment of \$408,400 was lawful and proper, relying primarily upon testimony and evidence from its assessing contractor, David Woodward of Avitar Associates of New England, Inc. Based on the evidence presented, the BTLA found that the Property's assessment should have been \$345,400, and the BTLA granted the Taxpayer a partial abatement to that amount.

The Taxpayer appealed to this Court. On appeal, the Taxpayer challenges the BTLA's factual findings and the BTLA's decision to admit evidence from Mr. Woodward.

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<sup>1</sup> **Record & Pleading Citations:** The Taxpayer's Brief is cited as "Tax Brief #." The Taxpayer's Appendix is cited as "Tax Appx #." The Transcript is cited as "Transcript #."



### **Statement of Facts**

The BTLA found the following facts:

The Taxpayer owns the Property, a single-family home on a 0.88-acre parcel, which is located on Town of Bartlett Tax Map 2LNDRH, Lot 225 (the “Property”).<sup>2</sup>

In 2017, the Taxpayer constructed an addition to the Property’s house, and she cleared trees on the Property.<sup>3</sup> Based on a full update of property values that the Town performed in 2017, the Town updated property tax assessments in Tax Year 2018.<sup>4</sup> The assessment of the Taxpayer’s Property increased from \$206,000 in Tax Year 2017 to \$408,400 in Tax Year 2018.<sup>5</sup> The Property’s \$408,400 assessment was comprised of a \$260,900 assessment on the Property’s land and a \$147,500 assessment on the Property’s improvements.<sup>6</sup>

The Taxpayer sought a tax abatement for the Property for Tax Year 2018, and the Taxpayer appealed the Town’s denial to the BTLA.<sup>7</sup> The BTLA held a hearing on the merits on April 13, 2021.<sup>8</sup>

During the hearing, the Taxpayer did not dispute the assessed value of the Property’s improvements, instead arguing that the assessed value of the Property’s land was disproportionate.<sup>9</sup> Specifically, the Taxpayer

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<sup>2</sup> Tax Appx 418.

<sup>3</sup> Tax Appx 419.

<sup>4</sup> Tax Appx 419.

<sup>5</sup> Tax Appx 419.

<sup>6</sup> Tax Appx 418.

<sup>7</sup> Tax Appx 418.

<sup>8</sup> Tax Appx 418.

<sup>9</sup> Tax Appx 419, 421.

argued that other lots in the Property's same development had lower adjustments for mountain views despite having better mountain views than the Property.<sup>10</sup> The Taxpayer relied upon an appraisal of the Property's fair market value by Nanci Stone-Hayes, a certified general appraiser (the "Hayes Valuation").<sup>11</sup> The Hayes Valuation estimated that the Property had a market value of \$270,000 as of April 1, 2018.<sup>12</sup>

The Town argued that the Property's Tax Year 2018 assessment was fair, proportional, and properly accounted for the addition to Property's house and for enhancements to the Property's view.<sup>13</sup> The Town relied upon a comparable sales approach performed by David Woodward, a Certified Property Assessor Supervisor employed by Avitar Associates of New England, Inc.<sup>14</sup> Mr. Woodward estimated the Property's fair market value was approximately \$425,700 to \$499,300 (the "Woodward Valuation").<sup>15</sup> Mr. Woodward additionally argued that the Hayes Valuation understates the value of the view, understates the value of the first floor, and has little or no support for its \$270,000 market value conclusion.<sup>16</sup>

The BTLA considered each Party's arguments and evidence, and ultimately found that the Property had a fair market value, adjusted by the Town's general level of assessment, of \$345,400.<sup>17</sup> The BTLA noted that the Taxpayer did not offer an opinion of market value, and she only relied

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<sup>10</sup> Tax Appx 419.

<sup>11</sup> Tax Appx 419.

<sup>12</sup> Tax Appx 419.

<sup>13</sup> Tax Appx 419-20.

<sup>14</sup> Tax Appx. 318, 420.

<sup>15</sup> Tax Appx 420.

<sup>16</sup> Tax appx 420.

<sup>17</sup> Tax Appx 420. The Parties agreed that the general level of assessment in the Town for Tax Year 2018 was 89.1%.

upon the Hayes Valuation's \$270,000 market value estimate. The BTLA found that the Hayes Valuation understated the market value of the Property for the reasons stated by the Town.<sup>18</sup> The BTLA found to be not credible Ms. Hayes' testimony that buyers would not play a contributory value of more than \$25,000 to \$30,000 for a property with a view because that opinion was not supported by market evidence.<sup>19</sup>

The BTLA acknowledged that the Parties and their experts disputed the contributory value of the Property's view, and the BTLA ultimately used its judgment and experience, considered all of the evidence presented, and determined that the contributory value of the Property's view for Tax Year 2018 was \$90,000.<sup>20</sup>

The Taxpayer appeals the BTLA's decision to abate the Property's Tax Year 2018 assessment to \$345,400.

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<sup>18</sup> Tax Appx 420-21.

<sup>19</sup> Tax Appx 421.

<sup>20</sup> Tax Appx 422.

### **Summary of the Argument**

The BTLA's decision should be affirmed. The BTLA's decision is explained thoroughly in the BTLA's well-reasoned Orders on the merits<sup>21</sup> and on the Taxpayer's request for rehearing,<sup>22</sup> and the BTLA's factual findings regarding the Property's fair market value are supported by evidence in the record.

The Taxpayer appeals the BTLA's decision that the Property's assessment should be abated to \$345,400. The Taxpayer's arguments challenge the BTLA's factual findings regarding the credibility of each expert's opinion of fair market value, how each expert accounted for the value of the Property's views, and how the BTLA ultimately weighed the evidence and made a finding of fact that the Property's assessment should be abated to \$345,400.<sup>23</sup>

The BTLA's findings of fact, including findings on the credibility of experts, "shall be final," and appeals from BTLA decisions are "limited to questions of law." RSA 76:16-a, V; see also RSA 541:13. Moreover, the BTLA is a specialized administrative board made up of persons with knowledge and experience regarding taxation, real estate valuation, and appraising. See RSA 71-B:1. As such, the BTLA is empowered to use its experience, technical competence, and specialized knowledge regarding the fair market value of property to evaluate evidence, and may properly make findings of fact that do not exactly correspond to either party's evidence. RSA 541-A:33, VI; RSA 71-B:7 (authorizing the BTLA to consider

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<sup>21</sup> Tax Appx 418.

<sup>22</sup> Tax Appx 436.

<sup>23</sup> Tax Brief 11.

evidence obtained through its own investigation and to employ a staff review appraiser).

Here, the BTLA received evidence from the Taxpayer's expert that the Property had a fair market value of \$270,000, and the BTLA heard conflicting evidence from the Town's expert that the Property had a fair market value of \$425,700 to \$499,300. The BTLA ultimately determined that the Property's assessment should be \$345,400, which is within the range of values offered by the Parties' experts. The BTLA's factual findings are supported by the evidence in the record, including the two conflicting expert opinions. See Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (recognizing that the BTLA can employ its "experience, technical competence, and specialized knowledge" to make "findings of fact that do not exactly correspond to either party's evidence, but are within the parameters of the conflicting evidence submitted"). Therefore, this Court should reject the Taxpayer's evidentiary challenges and affirm the BTLA's ruling.

### **Argument**

#### **1. Standard of Review**

Appeals from BTLA decisions are governed by RSA chapter 541. See RSA 71-B:12; RSA 76:16-a, V. On appeal, the BTLA's factual findings "shall be final," and appeals are limited to questions of law. RSA 76:16-a, V; see also RSA 541:13. In reviewing the BTLA's findings, the Court's "task is not to determine whether [it] would have found differently than did the board, or to reweigh the evidence, but rather to determine whether the findings are supported by competent evidence in the record." Appeal of N.H. Elec. Coop., 170 N.H. 66, 74 (2017) (quotation omitted).

The Board's decision shall not be set aside or vacated except for error of law, unless the appellant demonstrates by a clear preponderance of the evidence that the Board's decision was unjust or unreasonable. RSA 541:13.

“Determination of fair market value is an issue of fact.” Appeal of N.H. Elec. Coop., 170 N.H. at 73 (quotation omitted). Therefore, the Taxpayer can only overcome the presumption that the BTLA's fair market value determination is prima facie lawful and reasonable by “showing that there was no evidence from which the BTLA could conclude as it did.” Appeal of Wilson, 161 N.H. 659, 661 (2011) (quotation omitted).

When faced with conflicting expert testimony, the BTLA “is free to accept or reject an expert's testimony, in whole or in part.” Appeal of N.H. Elec. Coop., 170 N.H. at 74 (quoting LLK Trust v. Town of Wolfeboro, 159 N.H. 734, 740 (2010)). When evaluating evidence, the BTLA is authorized to utilize its experience, technical competence, and specialized knowledge. RSA 541-A:33, VI; Appeal of City of Nashua, 138 N.H. at 265 (recognizing that the BTLA can employ its “experience, technical competence, and specialized knowledge” to make “findings of fact that do not exactly correspond to either party's evidence, but are within the parameters of the conflicting evidence submitted”). Furthermore, the BTLA has knowledge and experience regarding taxation and real estate valuation, the BTLA is authorized by statute to consider information obtained through the BTLA's own investigation, and the BTLA is authorized to employ a review appraiser to review the value of property for tax purposes. RSA 71-B:1; RSA 71-B:7; RSA 71-B:14.

**2. The BTLA determination that the Property's assessment for Tax Year 2018 should be \$345,400 is supported by competent evidence in the record.**

**A. The BTLA properly determined the Property's assessment for Tax Year 2018.**

The BTLA determined that the Property's assessment for Tax Year 2018 should have been \$345,400. In other words, the BTLA determined that the Taxpayer had carried its burden of proving disproportionate taxation only to the extent that the Town's assessment exceeded \$345,400. The BTLA's finding of fact is supported by competent evidence in the record, including:

- (1) The Property was assessed at \$206,000 for Tax Year 2017
- (2) In 2017, the Taxpayer constructed an addition to the house<sup>24</sup> on the Property and cleared some trees resulting in a view.<sup>25</sup>
- (3) Nancy Stone-Hayes is a certified general appraiser and qualified to appraise the Property's fair market value.<sup>26</sup>
- (4) The Hayes Valuation estimated that the Property had a fair market value of \$270,000.<sup>27</sup>
- (5) David Woodward is a Certified Property Assessor Supervisor with 22 years of assessing experience and is qualified to assess the Property's fair market value.<sup>28</sup>

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<sup>24</sup> Transcript 71 (Ms. Hayes describing the additions to the Property, including an 18x24 addition, a deck on the front of the building, an office and bedroom added to the first floor, and a bed room, mud room, and family room added to the second floor).

<sup>25</sup> Tax Appx 384 (photos depicting the Property's view).

<sup>26</sup> Transcript 34; Tax Appx 78.

<sup>27</sup> Tax Appx 56.

<sup>28</sup> Transcript 108-09; Tax Appx 318, 411-12, 417.

- (6) The Woodward Valuation used a comparable sales approach, which is a recognized method for valuing real estate.<sup>29</sup>
- (7) The Woodward Valuation estimated that the Property had a fair market value of \$425,700 to \$499,300.<sup>30</sup>
- (8) Because the Hayes Valuation and Woodward Valuation estimate different fair market values for the Property, each valuation contradicts the other valuation and is evidence that the other valuation does not credibly reflect the fair market value of the Property.
- (9) Mr. Woodward opined that the Hayes Valuation understated the value of the finished area on the first floor of the building on the Property.<sup>31</sup>
- (10) Mr. Woodward opined that the Hayes Valuation understated the value of the view.<sup>32</sup>
- (11) The BTLA received photographic evidence regarding the Property's view.<sup>33</sup>

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<sup>29</sup> Tax Appx 369.

<sup>30</sup> Tax Appx 370.

<sup>31</sup> Transcript 160 (Mr. Woodward's opinion); Transcript 72-75 (Mr. Woodward's cross-examination regarding Ms. Hayes' treatment of the finished area of the "basement"); Transcript 85-86 (Chair Lebrun's questions regarding the "basement" being finished and having a master bedroom and additional bedrooms)

<sup>32</sup> Transcript 160 (Mr. Woodward's opinion); Transcript 77-78 (Member Shamash's questions regarding Ms. Hayes not accounting for the difference between a panoramic view and a narrow view); Transcript 76 (Mr. Woodward's cross-examination regarding Ms. Hayes' rationale for selecting a subjective view adjustment of \$25,000, which rationale lacked market support).

<sup>33</sup> Tax Appx 33, 384.



(12) Mr. Woodward opined that the Hayes Valuation's comparable sales were not sufficiently comparable to the Property to be reliable.<sup>34</sup>

In sum, the BTLA received two contradictory expert valuations of the fair market value of the Property. Because each expert valuation contradicted the other expert valuation, there was competent evidence in the record from which the BTLA could determine that neither the Hayes Valuation nor the Woodward Valuation exactly estimated the fair market value of the Property for Tax Year 2018. Faced with that conflicting expert evidence, the BTLA was free to reject each expert's valuation "in whole or in part." See Appeal of N.H. Elec. Coop., 170 N.H. at 74 (emphasis added); Appeal of City of Nashua, 138 N.H. at 265 (ruling that the BTLA has the authority to make "findings of fact that do not exactly correspond to either party's evidence, but are within the parameters of the conflicting evidence submitted"); RSA 71-B:1 (providing that "the BTLA's members shall be learned and experience in questions of taxation or of real estate valuation and appraisal or of both").

Therefore, the BTLA determination that the assessment for the Property should be \$345,400 was proper and supported by the evidence because it was within the range of values that Ms. Hayes and Mr. Woodward estimated, and the BTLA had evidence from which it could conclude that neither the Hayes Valuation nor the Woodward Valuation exactly estimated the fair market value of the Property.

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<sup>34</sup> Transcript 160.

B. The BTLA did not err by determining the Property's assessment for Tax Year 2018 rather than the Property's fair market value.

The Taxpayer appears to argue that the BTLA erred by determining what the assessment for the Property should be rather than the fair market value of the Property.<sup>35</sup>

The test in a tax abatement case is whether the Taxpayer is paying more than their proportional share of taxes. Appeal of N.H. Elec. Coop., 170 N.H. at 73. To succeed in this burden, the Taxpayer needs to prove the fair market value of the Property and the general level of assessment in the Town. Id.; Appeal of City of Nashua, 138 N.H. at 265. The fair market value of a property and the general level of assessment of the Town are each issues of fact. See Appeal of City of Berlin, \_\_ N.H. \_\_, N.H. Slip. Op. at 5 (decided June 22, 2021).

Here, the BTLA had evidence before it that supported a fair market value for the Property of between \$270,000 and \$499,300 for Tax Year 2018.<sup>36</sup> The BTLA additionally had evidence before it that the general level of assessment for the Town for Tax Year 2018 was 89.1%.<sup>37</sup> The BTLA determined that the assessment for the Property should be \$345,400 for Tax Year 2018. Because the BTLA had found the general level of assessment to be 89.1%, the BTLA's finding that the assessment should be \$345,400 implies the BTLA found the market value of the Property to be \$387,654, which is within the range of fair market values estimated by the

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<sup>35</sup> Tax Brief 24

<sup>36</sup> Tax Appx 419-20.

<sup>37</sup> Tax Appx 421.

two experts. Therefore, there is no error with the BTLA determining the proportionate assessment of the Property to be \$345,400.

C. The Taxpayer's criticisms of the Town's assessment methodology do not carry the Taxpayer's burden of proving the equalized fair market value of the Property for Tax Year 2018.

The Taxpayer argues that the BTLA's decision was somehow unlawful or unreasonable based on Avitar's use of the CAMA system<sup>38</sup> and based on the Taxpayer's criticism of the CAMA system's handling of property views.<sup>39</sup> However, the Taxpayer's arguments continue to overlook the Taxpayer's burden in a tax abatement appeal. On appeal of an assessment, the Taxpayer must ultimately prove the fair market value of the property and the general level of assessment of properties in the Town—not just that the Town's methodology may somehow be flawed. The BTLA then compares the proportional fair market value of the Property to the Town's actual assessment of the Property to determine whether and to what extent the Taxpayer had been disproportionately assessed (i.e., harmed).

For purposes of the Taxpayer's abatement appeal, the Town's assessment methodology and the Taxpayer's criticisms of that methodology are not relevant. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 369 (2003) (ruling that proof of a flawed methodology does not carry a taxpayer's burden of proving disproportionality, and ruling that the trial court must focus upon the actual harm to the taxpayer rather than the validity of a town's methodology); Appeal of N.H. Elec. Coop., 170 N.H. at 81 (same); Appeal of Public Service Company of N.H., 170 N.H. 87,

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<sup>38</sup> Tax Brief 29-32.

<sup>39</sup> Tax Brief 33-43.

100-01 (2017) (same). Nor is it relevant whether the BTLA could have found the Woodward Valuation or the Town's assessment to be less credible. Rather, the BTLA properly applied the correct burden of proof when the BTLA made its determination that the Taxpayer had proven the Town's assessment was disproportionate only to the extent the assessment exceeded \$345,400.

Regardless, the BTLA did not find the Town's assessment methodology or even the Woodward Valuation to exactly reflect the proportionate fair market value of the Property. The BTLA ultimately found neither expert's opinion to accurately estimate the fair market value of the Property. The BTLA, in its role as fact-finder, had the authority to find each expert's opinion to not be credible. See Appeal of N.H. Elec. Coop., 170 N.H. at 74. As the BTLA noted,<sup>40</sup> the purpose of the Taxpayer's arguments regarding Avitar's methodology for assessing the value of views appears to be an attempt to force the BTLA to accept the opinion of value from the Hayes Valuation. However, attacking the methodology employed by the Town's expert cannot change the fact that the BTLA weighed all of the evidence regarding fair market value and found the Hayes Appraisal to not be credible.<sup>41</sup>

Put differently, the impact of the Property's view on the Property's fair market value is a factual issue that the BTLA properly decided in its role as fact-finder, and the Court's "task is not to determine whether [it] would have found differently than did the board, or to reweigh the evidence, but rather to determine whether the findings are supported by

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<sup>40</sup> Tax Appx at 437.

<sup>41</sup> Tax Appx at 420-21.

competent evidence in the record.” Appeal of N.H. Elec. Coop., 170 N.H. at 74.

Here, the BTLA weighed the evidence and determined that the Taxpayer had only carried its burden of proving disproportionality to the extent the assessment exceeded \$345,400. As described above, and as the BTLA thoroughly explained in its Orders, there was ample evidence to support the BTLA’s decision that that the Taxpayer had not carried its burden of proving that the Property’s fair market value was \$270,000.

D. The Taxpayer’s burden is to prove equalized fair market value, not simply that the assessment is flawed

The Taxpayer appears to argue that her burden was only to prove that the fair market value of the Property was “less” than the equalized assessment of the Property for Tax Year 2018.<sup>42</sup> The Taxpayer is incorrect.

A taxpayer bears the burden of proving the actual fair market value of their property and the actual general level of assessment in the town. Appeal of N.H. Elec. Coop., 170 N.H. at 73. Proving a specific fair market value and general level of assessment is necessary for the Taxpayer to establish the extent of the harm the taxpayer suffered. This is precisely why this Court in Porter, Appeal of N.H. Elec. Coop., and Appeal of Public Serv. Co. of N.H. repeated that a taxpayer cannot rely on challenges to an assessment methodology—the taxpayer must prove the fair market value of their property. Proving that an assessment should have been “lower,” possibly because of flaws in the Town’s methodology, with proving how much lower that assessment should be is not sufficient to carry the

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<sup>42</sup> Tax Brief 51.

Taxpayer's burden of proof. See Porter, 150 N.H. at 369 (“While it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result.” (Emphasis added)); cf. Sirrell v. State, 146 N.H. 364, 383 (2001) (declining to invalidate an allegedly unlawful taxing scheme absent proof of harm).

**3. The BTLA did not abuse its discretion by allowing Mr. Woodward to testify at trial.<sup>43</sup>**

Administrative agencies, such as the BTLA, are “given broad discretion in determining the admissibility of evidence.” Appeal of Town of Gorham, 2014 N.H. Lexis 180, \*10 (Non-precedential Order, November 25, 2014) (quoting Ruel v. N.H. Real Estate Appraiser Bd., 163 N.H. 34, 45 (2011)). Furthermore, the rules of evidence do not apply to BTLA proceedings. See RSA 71-B:7 (BTLA is not “bound by the strict rules of evidence adhered to in the Superior courts”); N.H. Admin. R., Tax 201.30 (same).

Notably, the BTLA has experience and expertise in evaluating the qualifications of persons offering opinions of market value and in evaluating opinions of market value. See, e.g., RSA 71-B:1 (providing that “the BTLA’s members shall be learned and experience in questions of taxation or of real estate valuation and appraisal or of both”); RSA 71-B:14. Therefore, the BTLA is uniquely qualified to determine whether a witness is qualified to offer an opinion of market value or to critique another witness’s opinion of market value.

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<sup>43</sup> See Tax Brief 56-60 (arguing that the BTLA erred by admitting the testimony of Mr. Woodward).

Here, the BTLA admitted the testimony of Mr. Woodward. Mr. Woodward is employed by Avitar, which is the Town's contract assessor. The New Hampshire Department of Revenue Administration has certified Mr. Woodward as a Property Assessor Supervisor.<sup>44</sup> As a Certified Property Assessor Supervisor, Mr. Woodward is required to comply with the Assessing Standards Board's rules regarding education qualifications, training, and continuing education. See RSA 21-J:14-f. Mr. Woodward testified that he has 22 years of experience assessing.<sup>45</sup> Mr. Woodward testified that he understood statutory requirements applicable to assessors.<sup>46</sup> Based on these facts, the BTLA reasonably exercised its discretion to admit evidence from Mr. Woodward.

In sum, the BTLA did not err in admitting the testimony of Mr. Woodward because the BTLA has broad discretion to determine the admissibility of evidence, the BTLA has experience and expertise in determining the qualifications and valuation opinions of witnesses, and Mr. Woodward has knowledge, experience, and state-certifications regarding the valuation of real estate.

### **Conclusion**

The Taxpayer's appeal is effectively just a list of grievances regarding the BTLA's factual findings and how the BTLA weighed the evidence presented at trial. In other words, the Taxpayer seeks to have this Court substitute its judgment for that of the BTLA regarding purely factual issues, something that by statute this Court should not do. The BTLA

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<sup>44</sup> Tax Appx 318.

<sup>45</sup> Transcript 108.

<sup>46</sup> Transcript 94-95.

regularly hears tax-related matters, has experience in weighing the credibility of real estate valuations, and has expertise in determining the fair market value of real estate. Here, the BTLA weighed two conflicting valuations, identified numerous flaws in the Taxpayer's expert's opinion, and ultimately found in two well-reasoned orders that the evidence only supported an abatement to the extent the Town's assessment of the Property exceeded \$345,400. Therefore, the Town respectfully submits that this Court should affirm the BTLA's decision.

Respectfully submitted,

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Date: February 3, 2022

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**Certification of Compliance**

This brief complies with the word limit set forth in Supreme Court Rule 16(11), containing 3939 words.

**Certificate of Service**

I hereby certify that on February 3, 2022 that a copy of the foregoing was forwarded to opposing counsel via the Supreme Court's electronic filing system.

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