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REAL ESTATE TAX ABATEMENTS IN NEW HAMPSHIRE

A Primer

REAL ESTATE | TAXES

As presented by

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"FAIR MARKET VALUE" VERSUS "ASSESSED VALUE"

Some Basics

A tax abatement is a reduction, or abatement, of one's real estate taxes by reducing the value of the subject real estate. Because taxes are calculated by multiplying a static tax rate against the assessed value of real estate, lowering the value will lower the tax.

"Fair market value" versus "assessed value"

Real estate must be valued at "market value," and market value means "the property's full and true value as the same would be appraised in payment of a just debt due from a solvent debtor." RSA 75:1. The value at which property is to be appraised is the market value or the price which the property would bring in a fair market after reasonable efforts have been made to find the purchaser who would pay the highest price. A town assesses a tax based on its appraisal of the property. In other words, appraisal determines value; assessment determines the amount of the tax.

The Superior Court does not have jurisdiction to increase an assessed value above the municipality's assessment. If the municipality wants to correct an error of undervaluation, it must do so within the time constraints of RSA 76:14.

Equalization Ratio

Use the equalization ratio to determine what percentage of fair market value an assessment should be. The equalization ratio is applied against the fair market value to yield the assessed value. Similarly, the equalization ratio divided into the assessed value yields the "equalized assessment," which is the equivalent to fair market value, for all practical purposes. Taxpayers often mistakenly believe their assessment value is proper by ignoring the equalization ratio.

GROUNDS FOR AN ABATEMENT

Grounds for an Abatement

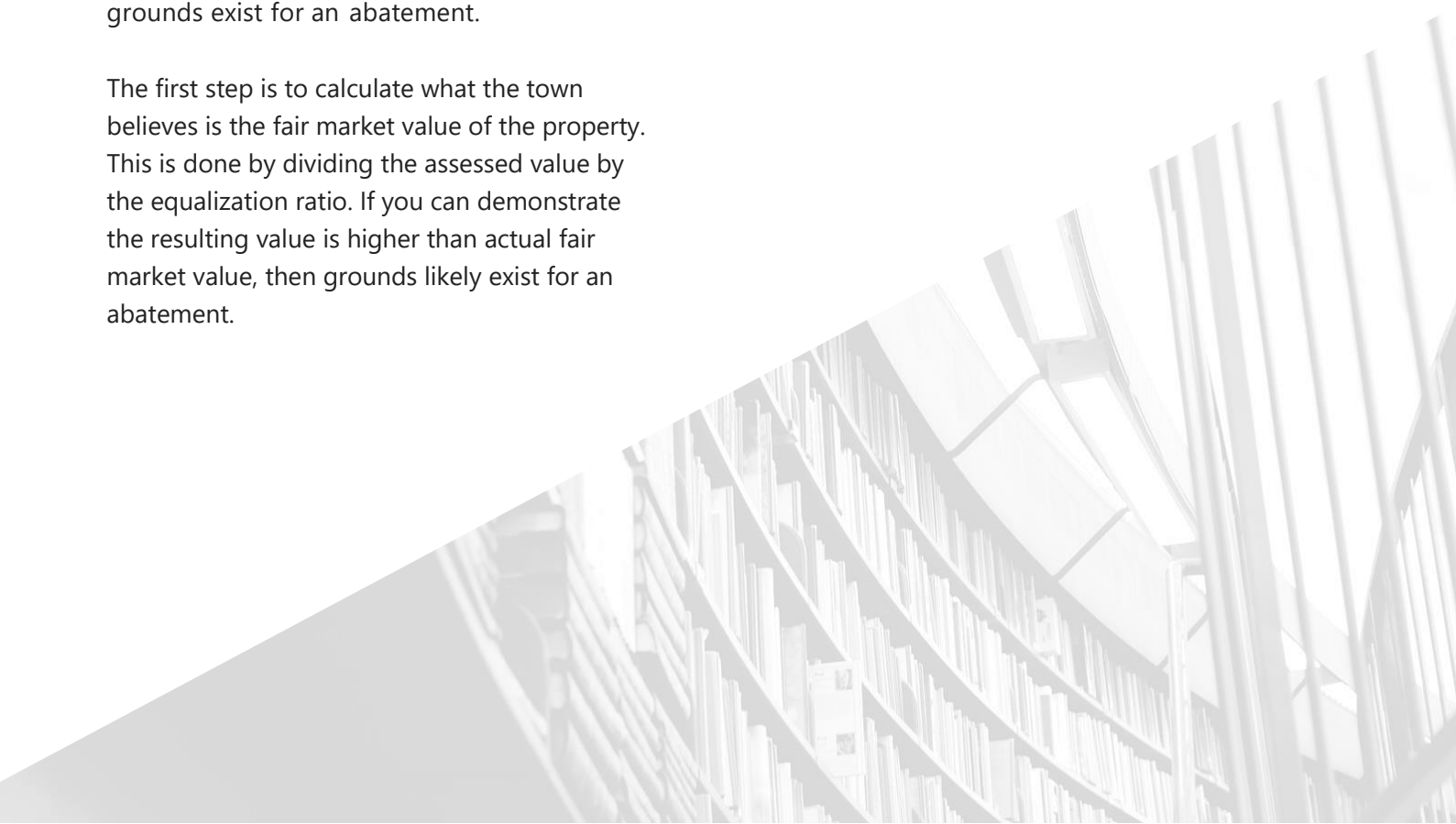
"[A]ny person aggrieved" may request an abatement. RSA 76:16. This includes someone who acquires the subject real estate after April 1 but before the December tax bill comes out.

The standard is whether a particular piece of property is assessed disproportionately higher than other properties in the same municipality. The standard is not whether the property is assessed at a value higher than fair market value, but whether it is assessed at a greater percentage of fair market value than other properties; therefore, if a parcel is assessed at a value 10% higher than fair market value and all other parcels in town are assessed at a value 10% higher than fair market value, then no grounds exist for an abatement.

The first step is to calculate what the town believes is the fair market value of the property. This is done by dividing the assessed value by the equalization ratio. If you can demonstrate the resulting value is higher than actual fair market value, then grounds likely exist for an abatement.

All other properties owned by the same taxpayer in the same municipality must be included when doing this analysis. If one property is over-assessed but another is under-assessed by an equal amount, then no grounds exist for an abatement.

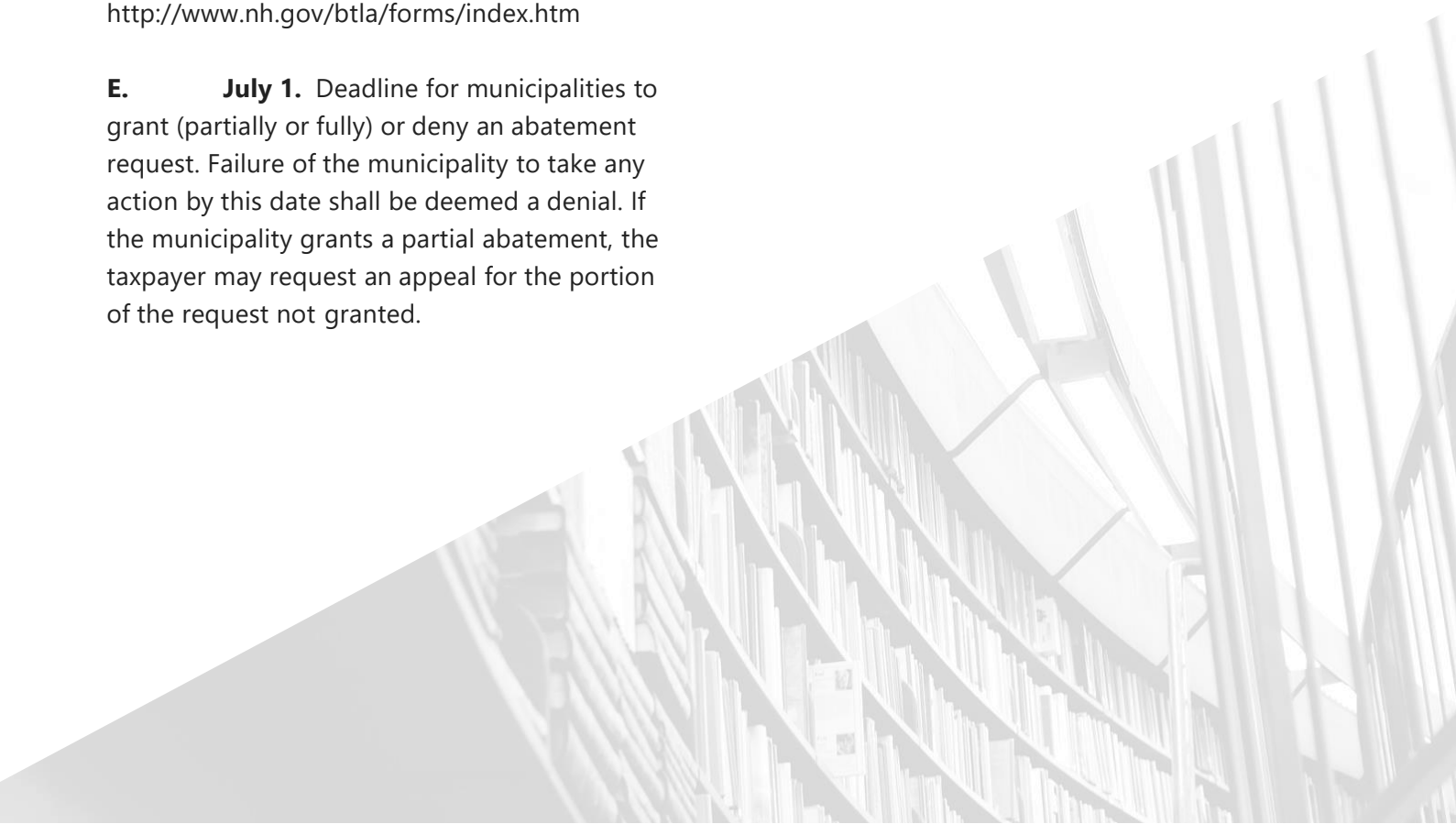
In determining whether other land of the owner must be introduced for purposes of determining proportionality, the key is whether the owner is the taxpayer on those parcels. A triple net tenant, for example, may be a taxpayer.



IMPORTANT DATES AND DEADLINES

Note: these dates assume the municipality issues two tax bills per year.

- A. April 1.** The beginning of the tax year and the valuation date for all real estate for that particular tax year.
- B. Summer.** Revaluation notices sent to roughly 20% of taxpayers.
- C. November/December.** Months in which “final,” or second-half tax bills are issued. These bills show, for the first time, the assessed value of the real estate for that tax year.
- D. March 1.** Deadline to file a written request for an abatement with the municipality. The form is available at: <http://www.nh.gov/btla/forms/index.htm>
- E. July 1.** Deadline for municipalities to grant (partially or fully) or deny an abatement request. Failure of the municipality to take any action by this date shall be deemed a denial. If the municipality grants a partial abatement, the taxpayer may request an appeal for the portion of the request not granted.
- F. September 1.** Deadline to file an appeal of the municipality’s decision with either the Board of Tax and Land Appeals or Superior Court. An appeal may be filed any time after the municipality denies an abatement request. If a taxpayer has not received an answer by July 1, the abatement request is considered denied under RSA 76:16, II and an appeal may be filed.



PROCESS

Inspections. Taxpayers are not barred from appealing assessments if they fail to permit the selectmen or assessing officials to enter their property for the purposes of obtaining information necessary to complete an appraisal for tax purposes.

Inventory forms. Taxpayers also are no longer required to file inventories to preserve the right to appeal the assessment.

Payment of taxes. New Hampshire does not require a taxpayer to pay his or her taxes to request an abatement; however, paying taxes is advisable because the town will assess 8% interest (RSA 76:13), while the taxpayer only is entitled to collect 6% if the abatement request is successful (RSA 76:17-a).

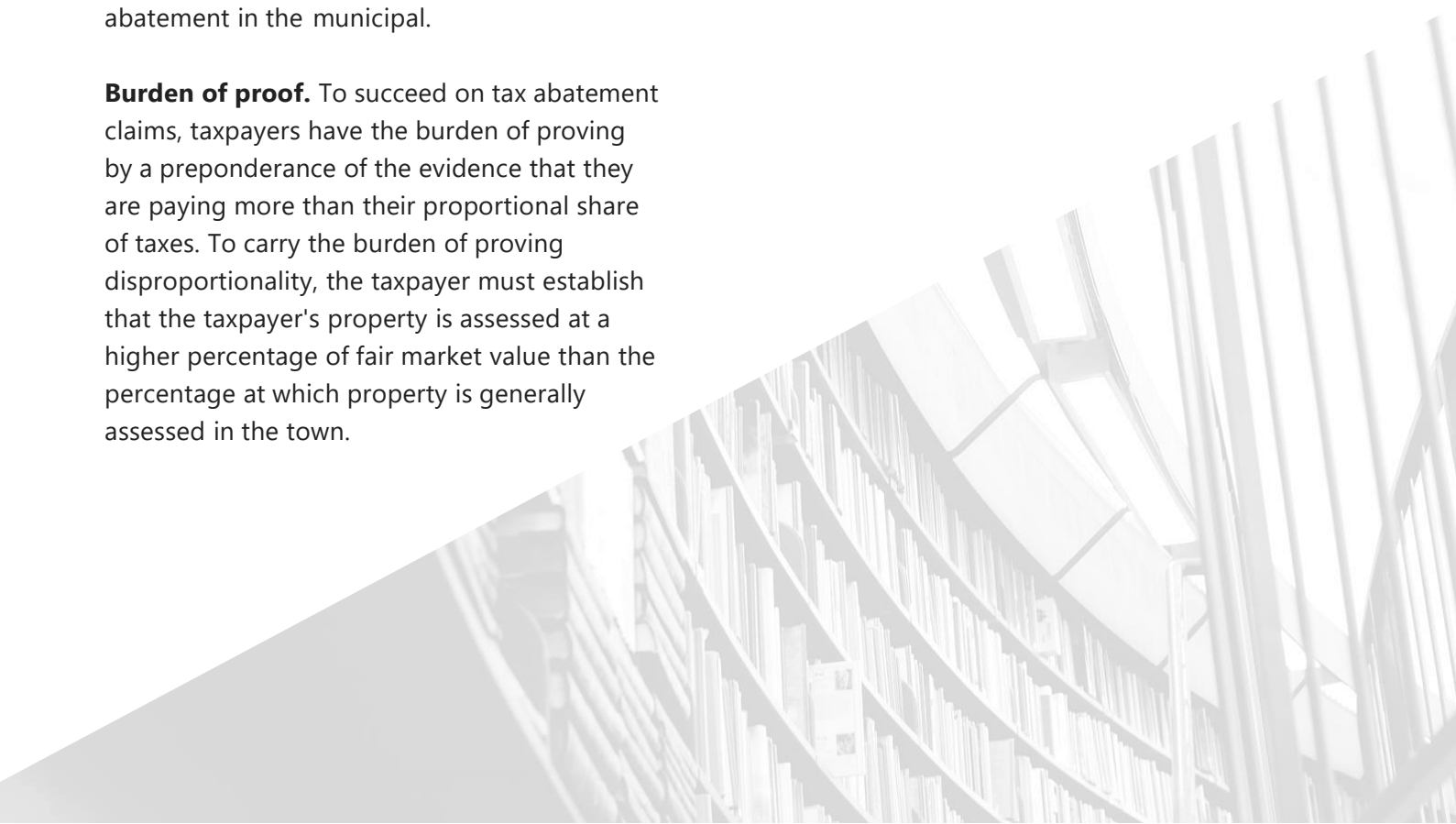
Filling out the application. The bar is low as to what constitutes "stating with specificity" the reason for a requested abatement in the municipal.

Burden of proof. To succeed on tax abatement claims, taxpayers have the burden of proving by a preponderance of the evidence that they are paying more than their proportional share of taxes. To carry the burden of proving disproportionality, the taxpayer must establish that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town.

What matters is disproportionality. You can't just challenge the methodology and claim an assessment was wrong as a result. 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.

When, however, there is uncontroverted evidence that the town did use the State's ratio in the assessment process for the tax year in question, the town cannot deny the validity of the ratio, and evidence of that ratio satisfies the taxpayer's burden to prove the general level of assessment.

A taxpayer may use the DRA's equalization ratio if the municipality stipulates to it or if the taxpayer can prove the town used it.



BTLA VERSUS SUPERIOR COURT

The two bodies have concurrent jurisdiction, but there are some important differences.

Filing Fees. The BTLA filing fee currently is \$65, whereas the superior court filing fee and cost of service will run approximately \$350 – \$375.

Rules of Evidence. The BTLA does not strictly follow the rules of evidence. Tax 201.30(a); RSA 71-B:7. This feature makes the BTLA a better venue for people who are not represented by counsel.

Staff Appraisal. The BTLA has the authority to use its own staff appraiser to value property after both sides have presented their cases. See RSA 71-B:7 and 14. Some trial attorneys find this feature frustrating.

Expertise of the Tribunal. The BTLA hears cases on property values all the time. A judge may not. It is difficult to say whether this is a plus or a minus, but it is something to consider.

Substance of Appeal Document. The three generally accepted appraisal methods are cost, comparable sales and income. An appeal filed with the BTLA must include each appraisal method the appellant plans to use at the final hearing; otherwise, the board will not accept that evidence. Specifically, “the grounds stated in the appeal document shall control the issues before the board.” Tax 203.03(g). Traditionally, superior court appeals have not required that level of detail. For an appellant who is not sure which appraisal method(s) he or she ultimately will rely on the most, superior court probably may be the better option.

Mediation/Settlement Conference. The BTLA does not have a formal mediation option, although there is nothing to prevent parties from voluntarily submitting to mediation. Tax 203.07 requires the board to issue an order instructing the parties to meet to discuss settlement. These meeting may take place by telephone. Although the parties are not required to settle the case, they must submit a report of the meeting within 120 days of the board's order. More than half of all appeals settle using this process. Superior court rules generally require parties to choose some form of ADR. Mediation seems to be the best fit for tax abatement appeals.

BTLA VERSUS SUPERIOR COURT

Continued

Appraisal. The taxpayer has the burden of proving he or she is paying more than his or her proportional share of taxes. Carrying this burden requires a showing the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property generally is assessed in the municipality. Accomplishing this task likely will require an expert appraiser.

Unless waived by the parties, RSA 516:29-b governs in superior court, meaning the parties will need to exchange appraisals no later than ninety (90) days prior to trial. If the municipality intends to offer its appraisal solely to contradict or rebut the taxpayer's appraisal, then the municipality has an additional thirty (30) days.

At the BTLA, the taxpayer must produce their appraisal no later than the filing of the report of the settlement meeting discussed above, which usually will mean sometime during the early spring following the September 1 appeal deadline. Failure to produce the appraisal at this time bars the taxpayer from entering the appraisal as evidence at the final hearing on the merits.

Tax 203.07(g). The municipality, on the other hand, need not produce its appraisal until fourteen (14) days prior to the hearing. See Tax 201.35.

Lack of Signature. RSA 76:16,III requires a taxpayer to sign the municipal application. The failure of the taxpayer to sign the application gives the municipality an "independent basis" to deny the application, but the taxpayer still may appeal the decision and request review by either the BTLA or superior court on the merits. If the appeal is to the BTLA, the taxpayer must demonstrate the absence of a signature was due to "reasonable cause and not willful neglect" (Tax 203:02(d)); otherwise, the appeal will be dismissed. If the appeal is to the superior court, the court may hear the case on its merits if it determines, pursuant to applicable legal or equitable principles, the taxpayer is entitled to consideration on the merits of its application.

Discovery. Full discovery is permitted in both venues, although only fifteen (15) interrogatories are permitted at the BTLA, whereas twenty-five (25) are permitted in superior court.

Trials and Hearings. Municipalities sometimes handle hearings without the assistance of counsel or without an appraisal. In those cases, the assessor will defend his or her value. In a superior court appeal, the municipality will need to use an attorney and most likely will hire an appraiser.

Tax consultants. Tax consultants may practice before the BTLA and handle hearings.

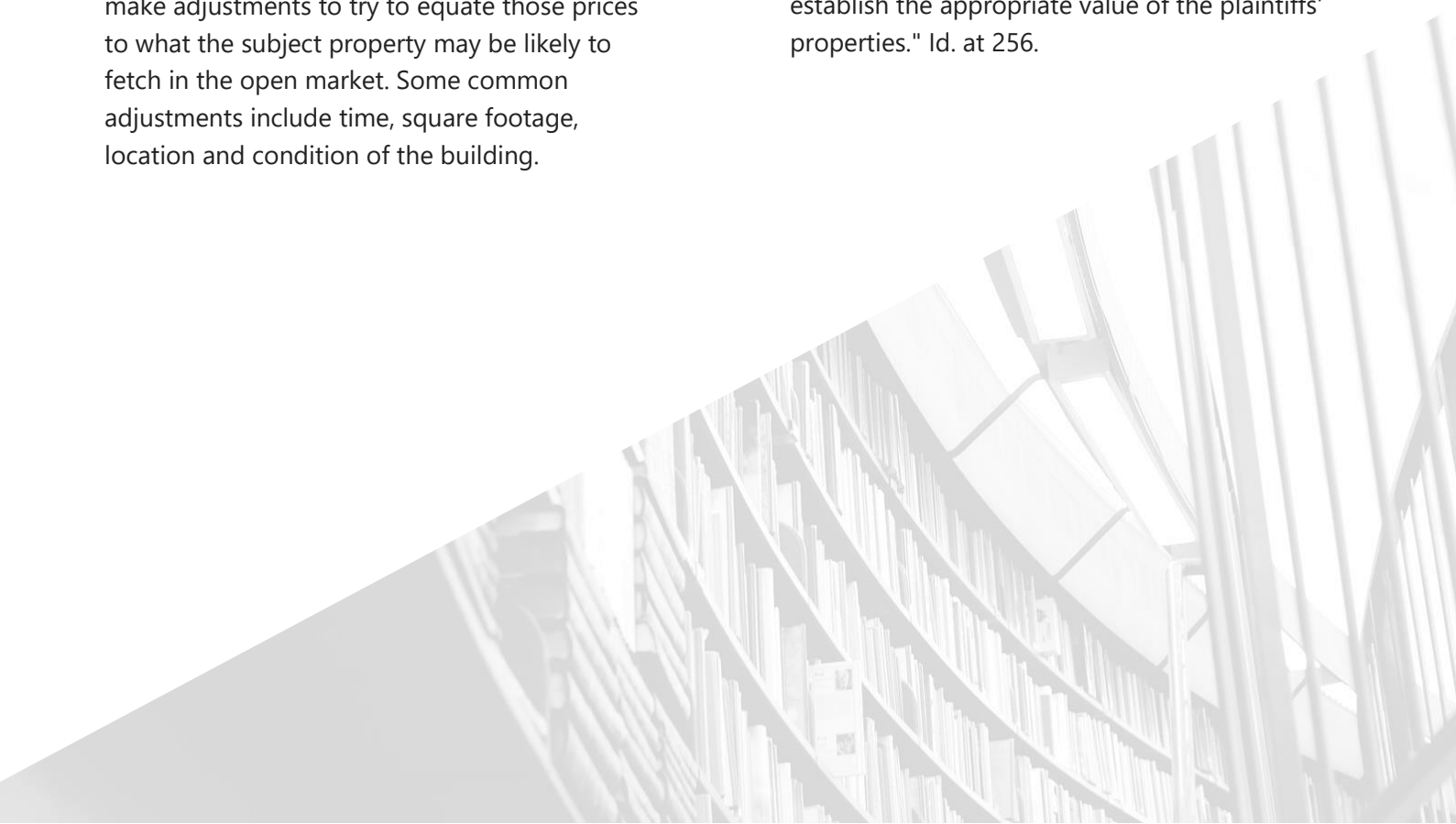
VALUING REAL ESTATE

Some General Principles. All relevant factors to property value should be considered when making an appraisal in order to arrive at a just result. Three primary methods recognized by the Supreme Court are comparable sales, income (the "income-producing power of the property") and reproduction or replacement cost methods. Generally speaking, appraisers value property real estate at its actual, or hypothetical, "highest and best use," although the Supreme Court does not appear to mandate that approach.

Intangibles. The New Hampshire Supreme Court has held that only a "taxable interest in real estate" may be used in valuing real estate. A license to use certain common amenities in a mobile park is not, for example, a taxable interest in real estate.

Comparable Sales. Find sales of similar properties in comparable markets, and then make adjustments to try to equate those prices to what the subject property may be likely to fetch in the open market. Some common adjustments include time, square footage, location and condition of the building.

Auction prices. "Ample evidence supports the trial court's finding that the market auction prices were not indicative of the fair market values of the properties sold. For example, there were no negotiations between the buyer and seller; the auction was a minimum bid, no reserve auction, meaning that once the minimum bid had been achieved, the seller could not stop the sale; and the plaintiffs' expert stated that auctions were not normally relied on for real estate appraisals. These facts support the trial court's ruling that the prices resulting from the auction did not constitute fair market value." *Society Hill at Merrimack Condominium Ass'n v. Town of Merrimack*, 139 N.H. 253, 256 (1994). "This court need not decide whether an auction of real estate can ever be used as an indicator of fair market value. We simply hold that the evidence supports the trial court's finding that in this case, the market auction sales did not result in fair market values, and therefore the sales could not be used to establish the appropriate value of the plaintiffs' properties." *Id.* at 256.



VALUING REAL ESTATE

Continued

“Overpaying” for property should not affect its value. The New Hampshire Supreme Court has noted: "It is sometimes good business to pay more for a thing than it will sell for in the market. The converse is equally true that it may be bad business to sell a thing for what it may thus be sold. In either event the special and exclusive advantage to the owner is personal to him, rather than pertaining to the nature of the thing."

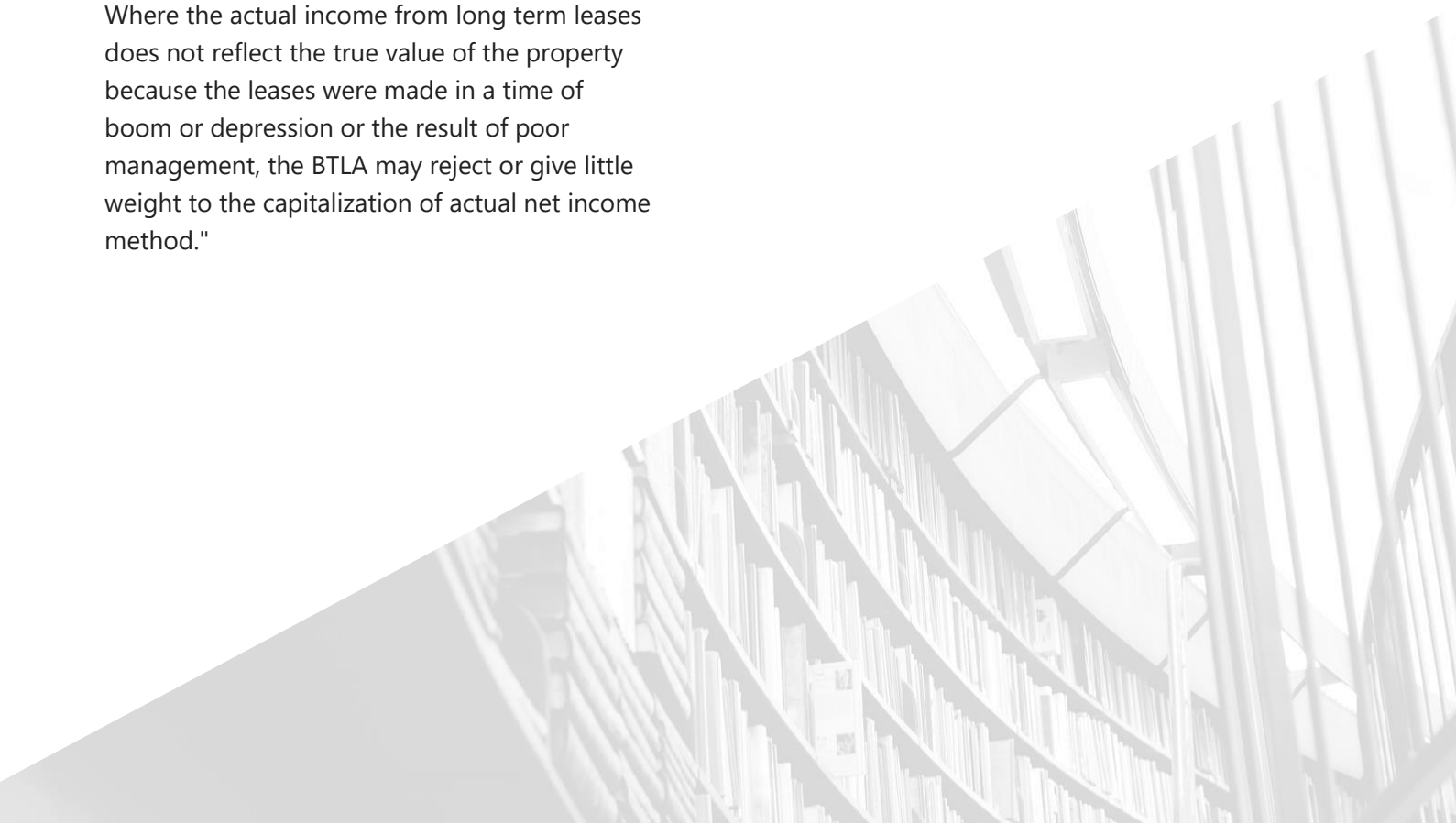
Income Method. A key formula when using the income method is:

$$\frac{\text{Net income}}{\text{Cap rate}} = \text{FMV}$$

Capitalization ("cap") rate = a fair return on an investment of the type involved (including) variables such as risk involved in the ownership and operation of the property.

Where the actual income from long term leases does not reflect the true value of the property because the leases were made in a time of boom or depression or the result of poor management, the BTLA may reject or give little weight to the capitalization of actual net income method."

Cost a/k/a Reproduction Cost Less Depreciation. The so-called cost method estimates the cost to replace the building, factoring in its age (depreciation). This method figures value by adding to the value of the land without buildings to the cost of reconstructing the buildings as adjusted by subtracting an allowance for physical, economic and functional depreciation of the buildings. The cost to build a functionally equivalent building, versus exact reproduction, is fine. The cost method generally used only when it is not feasible to use the sales or income approaches.



OTHER ISSUES

Assignment of Tax Abatement Appeals.

A superior tax abatement appeal may be assigned and continued by the buyer of real estate.

Property not subdivided until after April

1. (This probably includes condominiums.) RSA 674:37-a says individual lots may be assessed separately if subdivision approval "...has been granted on or before April 1 of a particular tax year, giving the owner a legal right to sell or transfer the lots, parcels or other divisions of land depicted on the plat without further approval or action by the municipality." 674:37-a, I (emphasis added). What about conditional approval? One could argue the lots still should not be assessed separately if the town needs to sign off on some conditions. RSA 674:37-a, II reads: "If subdivision approval does not become final until after April 1, then all assessments, appraisals, and tax warrants for that property during that tax year shall pertain to the entire non-subdivided property as it was configured on April 1, notwithstanding any later sale or transfer of subdivided lots or parcels which may occur during that year."

Whether properties "adjoin."

Two properties owned by the same person and connected by a private right of way do not "adjoin" for purposes of RSA 75:9, which requires such lots to be assessed separately. Assessors may not "assemble" lots under current ownership for valuation purposes if the lots do not adjoin.

Low-income housing. RSA 75:1-a. Owners of real estate receiving federal low-income tax credits can choose between having the value determined using the income approach under that statute, or an amount equal to 10% of the actual rental income and other income. The formula for calculating the income approach is set forth in the statute.

Subsequent Years Statute (a/k/a "roll over" statute).

Currently RSA 76:17-c; formerly RSA 76:16-a, I. A stipulation entered into by the parties for one tax year does not implicate the rollover statute for the following tax year. In order for RSA 76:17-c,II to apply, the superior court (or BTLA, by implication) must make an actual finding as to the correctness of the assessment.

Appeals to Supreme Court. Review by the New Hampshire Supreme Court is limited to whether the BTLA or superior court erred as a matter of law or abused its discretion.

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