Robert and Rosemarie Auger, Docket #14101-93PT
Mary A. Bartel, Docket #14102-93PT
Marie C. Butt, Docket #14103-93PT
William Colman, Docket #14104-93PT
John and Margaret Couturier, Docket #14105-93PT
John J. and Rita M. DiClemente, Docket #14106-93PT
Wesley E. and Aline M. Eckley, Docket #14107-93PT
Allison J. Elward and Theresa I. Elward, Docket #14108-93PT
Wilfrid and Cecile A. Gagnon, Docket #14109-93PT
Charles H. and Nancy D. Minnich, Docket #14110-93PT
Carol A. Newcomb, Docket #14111-93PT
Robert E. and Georgette Pruneau, Docket #14112-93PT
Vivian I. Purselley, Docket #14113-93PT
Arthur E. Richer, Docket #14114-93PT
Peter J. and Doris M. Riemer, Docket #14115-93PT
Raymond and Lucienne Roberge, Docket #14116-93PT
Robert M. Starita, Docket #14117-93PT
Florence Schultz and Ruth Puff, Docket #14118-93PT
John and Monica Sorrentino, Docket #14119-93PT
Hubert J. and Pauline L. Sweeney, Docket #14120-93PT
Walter H. and Rosemarie Volkman, Docket #14121-93PT
Wenona A. Bolduc Irrevocable Trust, Docket #14122-93PT
Gerald W. and Irene Chamberlain, Docket #14123-93PT
Angelyn Christon, Docket #14124-93PT
Charles W. and Ann E. Hitchcock, Docket #14125-93PT
Margaret Howe, Docket #14126-93PT
Valentine Klement and Elvine Klement, Docket #14127-93PT
Joanne Levesque, Docket #14128-93PT
Eva L., Samuel and Irene Martel, Docket #14129-93PT
John A. and Helen Mitchell, Docket #14130-93PT
Henry R. O'Neill, Docket #14131-93PT
Nadine Conley and Barbara Gay Rice, Docket #14132-93PT
Virginia Studt, Docket #14133-93PT
Charles B. and Jo-Ann K. Thorp, Docket #14134-93PT
Anita G. Vincent, Docket #14556-93PT

v.

Town of Goffstown

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessments listed below. The "Properties" consist of fourteen mobile homes located in Medford Farms and twenty-one mobile homes located in the Village of Glen Falls. For the reasons stated below, the appeals for abatement are denied.

Taxpayer	Docket No.	Property	Assessment
Auger	14101-93PT	72 Glen Falls	$ 69,600
Bartel	14102-93PT	127 Medford Farms	$ 66,600
Butt	14103-93PT	149 Medford Farms	$ 62,400
Colman	14104-93PT	61 Glen Falls	$ 65,200
Couturier	14105-93PT	97 Glen Falls	$ 79,200
Diclemente	14106-93PT	108 Glen Falls	$ 62,100
Eckley	14107-93PT	54 Glen Falls	$ 71,700
Elward	14108-93PT	21 Glen Falls	$ 64,600
Gagnon	14109-93PT	58 Glen Falls	$ 60,300
Minnich	14110-93PT	81 Glen Falls	$ 72,200
Newcomb	14111-93PT	62 Glen Falls	$ 60,900
Pruneau	14112-93PT	98 Glen Falls	$ 77,300
Purselley	14113-93PT	143 Glen Falls	$ 72,700
Richer	14114-93PT	52 Glen Falls	$ 71,300
Riemer	14115-93PT	79 Glen Falls	$ 72,900
Roberge	14116-93PT	64 Glen Falls	$ 72,100
Starita	14117-93PT	31 Glen Falls	$ 68,200
Schultz/Puff	14118-93PT	37 Medford Farms	$ 63,800
Sorrentino	14119-93PT	39 Glen Falls	$ 64,100
Sweeney	14120-93PT	69 Glen Falls	$ 67,100
Volkman	14121-93PT	124 Glen Falls	$ 71,200
Bolduc Trust	14122-93PT	38 Medford Farms	$ 52,300
Chamberlain	14123-93PT	35 Glen Falls	$ 59,600
Christon	14124-93PT	129 Medford Farms	$ 59,700
Hitchcock	14125-93PT	59 Medford Farms	$ 55,200
Howe	14126-93PT	60 Medford Farms	$ 61,900
Klement	14127-93PT	112 Medford Farms	$ 59,300
Levesque	14128-93PT	61 Medford Farms	$ 50,500

Martel	14129-93PT	11 Medford Farms	$ 68,300
Mitchell	14130-93PT	40 Medford Farms	$ 56,700
O'Neil	14131-93PT	8 Glen Falls	$ 57,700
Conley/Rice	14132-93PT	89 Medford Farms	$ 56,400 adj.
Studt	14133-93PT	54 Medford Farms	$ 56,700
Thorp	14134-93PT	35 Medford Farms	$ 57,700 adj.
Vincent	14556-93PT	71 Glen Falls	$ 68,500

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to prove the Properties were disproportionately assessed.

The Taxpayers argued the assessments were excessive because:

(1) a ratio study analysis shows in general terms that assessments are not in par with the Town;

(2) the size adjustments applied to the units create incorrect assessments; and

(3) proper size adjustments should be applied to the Properties and abatements ordered.

The Town argued the assessments were proper because:

(1) the Taxpayers used a size adjustment formula which is not correlated to actual market data;

(2) when MMC revalued the Town in 1988, there was a built-in adjustment for smaller manufactured homes which was inappropriate for the larger subject properties; the size factor adjustment was applied against the grade factor as an offset;

(3) the way to evaluate disproportionality is through the ratios and the studies indicate that manufactured homes are well within the defined ranges of COD's and medians; and

(4) the market data when adjusted by the equalization ratio supports the assessments.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Properties were disproportionately assessed.

This decision will address four general issues raised at the hearing: 1) the comparative ratio calculations submitted with the Taxpayers' appeal documents; 2) whether the size adjustment argument presented at the hearing should be considered due to the fact it was not included as an argument in the appeal documents in accordance with Tax 203.03; 3) evidence and testimony submitted by Ralph J. Cutting; and 4) the Taxpayers' motions submitted.

Comparative Ratio Calculations

All the Taxpayers were represented by Jimmie D. Purselley ("Purselley"). Purselley, in filing the appeal documents with the board, used basically the same arguments and calculations for all thirty-five appeals. Purselley argued that based on the department of revenue administration's (DRA) 1993 stratified ratio study for manufactured homes, manufactured housing had a median ratio of 1.55. Purselley divided the assessed value of each appealed property by the 1.55 ratio to provide an indicated market value. Purselley subtracted that indicated market value from one similarly derived by applying a Town-wide

ratio of 1.26 to the assessments. This difference of indicated market value

was subtracted from each Taxpayers' assessments to arrive at an adjusted assessment. As an example, the Purselley (Docket# 14113-93PT) calculations are as follows:

ASSESSED VALUE	÷	EQUALIZATION RATIO	=	MARKET VALUE
$72,700	÷	1.26	=	$57,698
$72,700	÷	1.55	=	$46,903
				$10,795

ASSESSED VALUE	-	MARKET VALUE DIFF.	=	ASSESSMENT ADJUSTMENT
$72,700	-	$10,795	=	$61,905

We find these calculations did not prove any disproportionality for several reasons:

1) several subsequent ratio studies indicate the general level of assessment for manufactured housing was not 1.55 but quite similar to the 1993 town-wide ratio of 1.30; Purselley's ratio studies contained in TP Ex. 1 for manufactured housing indicated a median ratio of either 1.31 or 1.22 depending on whether or not appraisals are included as surrogate sales; a ratio study by the board's appraiser, Mr. Bartlett, in Docket No. 14100-93RA (Goffstown Reassessment) indicated a median ratio for qualified manufactured home sales of 1.28; the ratio study prepared by Mr. Ralph J. Cutting at the request of Purselley indicated mean and median ratios of 1.22

and 1.25 respectively;

2) even if the ratio for manufactured housing had been shown to be significantly different than that for the Town, such disparity is some evidence of market value but more property specific market data needs to be presented and analyzed to show individual property disproportionality;

3) further, even if the 1.55 ratio was correct, Purselley's calculations are incorrect because he subtracts an indicated market value difference from an assessed value which in this case is generally 130% of market value.

In short, even Mr. Purselley at the hearing stated the Taxpayers were no longer challenging the ratio issue.

Admissibility of Size Adjustment Issue

At the hearing, the board raised the issue of whether the size adjustment factor Purselley wished to now argue could be presented since it was not contained in the Taxpayers' appeal arguments. The board's rule, Tax 203.03 (d) (g), requires that the Taxpayers' appeal details their arguments with sufficient specificity and that the Taxpayers are limited to the arguments raised in the appeal.

(d) **Specificity Required.** The Taxpayer's Appeal Document shall state the grounds for the appeal with sufficient specificity to allow the Board and the Municipality to understand the Taxpayer's arguments and to allow the Municipality the opportunity to further review and address the Taxpayer's arguments....

(g) **Grounds Limited.** Throughout the appeal, the Taxpayer shall be limited to the grounds stated in the Appeal Document. The Board, on its own or by Municipality's motion, shall limit the Taxpayer's presentation to the issues raised in the appeal. Concurrent specificity between the Abatement Application and the Appeal Document is not required, but

the grounds stated in the Appeal Document control the issues before the Board.

This was one of many revisions in the board's new 1993 rules that was intended to 1) focus the Taxpayers' issues so as to permit the municipality prior to the hearing to be fully aware of the Taxpayers' arguments and 2) create some finality to the extent of the arguments raised by the Taxpayers.

At the hearing, the board preliminarily ruled that the size adjustment argument was not in compliance with the above rules; however, we further stated we would take the issue under advisement, hear the parties' arguments relative to the size adjustment issue and rule on its admissibility in the Decision. To adhere to the board's rules, we conclude that the size adjustment argument should not be admissible as evidence in these appeals.

However, even if the board were to conclude otherwise and considered the size adjustment argument, we find that argument also does not carry the Taxpayers' burden for the following reasons.

1) Purselley focused on the size adjustment in isolation from the other factors that were applied to the manufactured home base rate. The Town testified that at the time of the 1988 reassessment, there was built in to the computerized assessment program a modified size adjustment factor which when applied against the grade factor corrected for a programmed average size of 408 square feet for manufactured housing versus the actual average size of approximately 1200 square feet for the Properties. Consequently, any analysis focusing on just the size adjustment does not reflect the actual combined <u>market</u> adjustments made by the

Town;

2) Purselley argued the manufactured home size adjustment was incorrect because it did not conform to a size factor contained on page 356 of Property Appraisal and Assessment Administration, The International Association of Assessing Officers (1990), whereas the Town's single family home size adjustment did conform to the IAAO size factor. We find comparison to the textbook size factor is totally inappropriate. The textbook size factor was not intended to be a universally applied formula but rather a formula drawn

from a set of fictitious market data meant solely to be an example. The fact the textbook formula approximately corresponded to the size adjustments the Town used for single family homes was either mere coincidence or due to the fact the example was of fictitious market data for single family homes.

3) If the size adjustment factor was as incorrect as Purselley argued, it would have been exhibited in a significantly higher assessment to sales ratio. Conversely, if the assessments were adjusted as recommended by Purselley, the resulting ratio would be lower than the Town-wide ratio indicating possible underassessment.

Evidence and Testimony of Ralph J. Cutting (Cutting)

The board gives no weight to Cutting's replacement cost estimates for 6 selected manufactured housing units. Cutting, during testimony, admitted that the replacement cost estimates for these units does not equate to market value, but rather is just a component of each unit's total market value. Without Cutting comparing the replacement cost estimates with sales of similar units, his conclusions have little bearing on a determination of market value. The board did consider and give some weight to Cutting's sales analysis/ratio study. Generally,

as stated earlier, the board finds his ratio study parallels those performed by DRA, Purselley and Mr. Bartlett.

The issue of the appropriateness of Cutting's several appraisals being used as surrogate sales in Purselley's ratio studies is moot because the board has found that even considering his appraisals, the resulting ratio generally is in keeping with the Town-wide ratio.

Taxpayers' Motions and Requests

Motion for Costs

We deny the Taxpayers' motion for costs.

The board's authority to assess costs is contained in two statutes:

(1) RSA 76:17-b, which states, "(w)henever, after taxes have been paid, the board of tax and land appeals grants an abatement of taxes because of an incorrect tax assessment due to a clerical error, or a plain and clear error of fact, and not of interpretation, as determined by the board of tax and land appeals, the person receiving the abatement shall be reimbursed by the city or town treasurer for the filing fee paid under RSA 76:16-a, I."; and

(2) RSA 71-B:9, in part, which states, "(c)osts may be taxed as in the superior court."

Generally, the courts and this board do not have the authority to award costs against a municipality in a tax abatement case unless there is a specific statute authorizing such an assessment of costs. See Tau Chapter of Alpha XI Delta Fraternity v. Town of Durham, 112 N.H. 233, 235 (1978).

RSA 76:17-b

RSA 76:17-b does give the board specific authority to have the filing fee reimbursed by the Town if the tax assessment was due to a "clerical error or a plain and clear error of fact and not of interpretation as determined by the board of tax and land appeals ***." In this case, no clerical errors were presented to warrant an abatement. Therefore, the board declines to order the Town to reimburse the Taxpayers for their filing fees.

RSA 71-B:9

The board's general statutory authority to assess costs as in the superior court is further detailed in TAX 201.39 (a).

TAX 201.39 (a) Costs. Except as otherwise provided by law, Costs and attorney's fees shall be awarded as in the superior court in accordance with RSA 71-B:9, RSA 498-A:26-a, and RSA 21-J:28-b VI. The Board shall order a Party to pay the other Party's Costs when the Board finds the matter was frivolously brought, maintained or defended. All awards of Costs shall be limited to reasonable Costs.

In these cases, because the board has found no abatements are warranted, the Taxpayers are not the prevailing parties. Further, because we find the assessments are reasonable and proportional, the Town clearly was not frivolous in defending the assessments.

Requests for Return of Quashed Subpoena Fees

The board grants Purselley's request for the return of all fees associated with the subpoenas quashed in the board's order of April 16, 1996. In other words, all subpoena fees except that fee related to Ronald Mace should be returned. We find the Town's objection to the request not convincing and in fairness to Purselley, any official not required to be in attendance

due to the quashed subpoena should not be entitled to retain the subpoena fee.

Requests for Findings of Fact and Rulings of Law

The board responds to the Taxpayers requests for findings and fact and rulings of law as follows:

1. Denied.

2. Denied.

3. Denied.

4. Denied.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed 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(e). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Member

_____
Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jimmie D. Purselley, Agent for all Taxpayers listed above; Raymond A. Cloutier, Esq., Counsel for the Town of Goffstown;

Dated:May 29, 1996

_____
Valerie B. Lanigan, Clerk

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