Meadow Green-Wildcat Corp.

v.

Coos County Commissioners

Docket Nos.: 15046-94PT and 15047-94RA

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the Coos County Commissioners' (County) 1994 assessments of: $3,350,200 (land $400,000; buildings $2,950,200) on Map 1605-32/1 in Pinkham's Grant; and $771,000 (land $700,000; buildings $71,000) on Map 1605-33/1 in Bean's Purchase, collectively comprising the Wildcat Mountain Ski Area (the Property). Additionally, the Taxpayer petitions for reassessment pursuant to RSA 71-B:16 IV for that portion of the Property located in Bean's Purchase. On its own motion, the board consolidated the above matters. On May 8, 1995, the board denied the Taxpayer's reassessment petition. The Taxpayer filed for rehearing of the May 8th order, and the board will issue that order with the rehearing order from this decision or upon request. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) Bean's Purchase has a disproportionate tax rate due to the department of revenue administration's (DRA) equalized valuation methodology;

(2) the assessment includes exempt land owned by the U.S. Forest Service (USFS);

(3) the assessment placed an improper value for ski-lift towers by including exempt ski-lift machinery and equipment;

(4) the assessment of the base lodge and other buildings is improper; and

(5) the fair market value of the taxable assets as of April 1993 was $1,645,995.

The County argued the assessments were proper because:

(1) the Property is the 6th largest ski area in the State;

(2) the base lodge is mixed-occupancy and the best way to classify is as a restaurant (90% of the second floor is used for cafeteria/restaurant style service with a substantial bar and a few offices);

(3) a 50% reduction of the overall cost of the ski-lift equipment was applied for the exempt portions to account for the steep terrain and the permitting process; and

(4) the ski slope land value is considered to be the cost to develop ski slopes; the land value equals leasehold interest and any appraiser would have to apply some value to the leasehold interest.

BOARD'S RULINGS

INTRODUCTION AND PROPERTY DESCRIPTION

The Property in question is known as Wildcat Mountain Ski Area

(Wildcat), which began development in 1957. All the structures and improvements of the Taxpayer are located on USFS land and are subject to the provisions of a 20-year term, special-use permit (Permit) set to expire in 2006. The Property consists of approximately 110 acres of ski trails, 40 acres of which are in Pinkham's Grant and 70 acres in Bean's Purchase. The ski slopes are accessed by one detachable gondola lift, four triple-chair lifts, and one double-chair lift. There are multiple structures servicing the ski area. The primary structure, the base lodge, was initially built in 1970 with several additions in the late 1980's and early 1990's. The balance of the buildings (detailed in both the Property's assessment-record card and the Taxpayer's appraisal report) include several gondola buildings, an older lodge building converted to deli and grill use, a maintenance building, and a number of ski patrol, attendant and ticket buildings.

As stated earlier, approximately 70 acres of the ski slopes are located in Bean's Purchase. Further, only the summit gondola building, a shed, attendant booth and lookout tower are located in Bean's Purchase. The balance of the structures are located in Pinkham's Grant.

During its deliberations, the board requested a view of the Property, which was arranged and taken on November 17, 1995. The board, accompanied by general manager, Stanley Judge, viewed the base lodge, the Bobcat Deli and Grill, several of the gondola and base buildings and representative ski slopes.

The appeal raises five general issues as to why an abatement should be granted: I) the County's appraisal of the Taxpayer's base lodge and other buildings improperly valued those structures; II) the County's assessment improperly calculated the ski lifts' values and improperly allocated the value between the taxable and exempt portions pursuant to RSA 72:12-c; III) the ski slope land is owned by the USFS and should not be taxed; IV) the Permit affects the value of the improvements; and V) DRA's equalization methodology results in disproportionate tax rates for Bean's Purchase and Pinkham's Grant. Issues I, II, III and V were raised by the Taxpayer; issue IV became apparent during the board's deliberations and research.

The board will address each issue in the sections that follow. In summary, the board finds the proper 1994 assessments to be:

Pinkham's Grant: $2,374,050

Bean's Purchase: $658,900.

I. BUILDING VALUE

Both parties agreed the cost approach is the most appropriate approach in valuing the buildings because of their specialized purpose and use. However, the parties disagree as to the proper classification of the base lodge. The County used a restaurant cost section from the Marshall Valuation Service Manual whereas the Taxpayer's appraiser used a commercial retail replacement cost. The lodge is a unique property that has some of the physical characteristics of both types of use and is therefore difficult to exactly match in the Marshall Valuation Service Manual.[1] The lodge does

[1]The board does note Marshall Valuation Service Manual contains a clubhouse replacement cost, which generally supports the board's conclusion of a price per-square-foot 10% higher than the retail space price.

have some kitchen, cafeteria and additional bathroom space that normal retail buildings do not. However, during the view, the board noted that the majority of the space was open mill-type construction used for relaxation and eating and is not too dissimilar to open retail space. Therefore, the board concludes that the Taxpayer's base rate for the lodge of $37.25 ($36.21 after area, heat and current cost adjustments) is the more appropriate starting rate than the restaurant base rate used by DRA. The board, however, finds the retail base rate should be increased by 10% to recognize the additional cost relative to the restaurant, cafeteria and bathroom facilities. The DRA's square footage, depreciation and lump-sum estimate are found to be the most accurate and reasonable based on the testimony and the view and are used in the following summary of value for the base lodge.

Basement (9,945 sq.ft. x $29.78 x .80 x .90)	=	$ 213,250
Lodge 1st and 2nd floor (18,660 sq.ft. x $39.83 + $37,400 (lump sum) x .85)	=	$ 663,550
Wooden pedestrian bridge	=	$ 5,500
Concrete pedestrian bridge	=	$ 16,400
Base Lodge Total	=	$ 898,700

The board has reviewed the assessments on the balance of the buildings and finds that, while there are some differences in the parties' replacement costs and depreciation, the parties are quite similar in their final conclusion of value. The Taxpayer, for all other buildings, has a total value of $333,485, while DRA has a total valuation of $349,000. Therefore, the board finds that the assessed value for the balance of the buildings is reasonable.

The building values are summarized by reference to the DRA's card numbers:

Card #1	$ 898,700
Card #2	$ 198,000

Card #3	$ 121,700
Card #4	$ 10,500
Card #5	$ 10,000
Card #6	$ 8,800
Total building value	$ 1,247,700

II. SKI LIFTS

To estimate the taxable portions of the ski lifts pursuant to RSA 72:12-c, both parties computed the depreciated replacement cost of the entire ski-lift system and then allocated a percentage of that cost to the taxable portions (towers and bases). Both parties were reasonably close in their replacement costs new, less depreciation (RCNLD) of the lifts before the allocation process. The Taxpayer estimated the RCNLD at $2,772,000. The DRA estimated the RCNLD at $3,184,600. The DRA estimated the taxable portion to be 40% to 50% of the total RCNLD. The DRA testified that it chose those percentages to account for the costs of designing, permitting and installing the towers on the steep terrain. The Taxpayer's appraiser interviewed representatives of two ski-lift companies and determined the towers and footings accounted for 10% to 30% of the total cost of a new lift.

The board finds the methodology of depreciating the entire lift system first and then allocating a percentage of the RCNLD to the taxable portion is putting the cart before the horse. A ski-lift system is made up of various components that depreciate at different rates. While as a system there may be some functional obsolescence due to the change in the technology, the physical depreciation of the components varies. In a general fashion, the more fixed components (tower and base) depreciate at a slower rate than the items that move such as the cables, pulleys, motors, etc. The board finds it appropriate that the allocation of the taxable portion be determined first from the RCN and then depreciation applied to those slower depreciating components. The board has observed this methodology in public utility cases where towers and poles carrying the electric wires and fixtures have a longer life and depreciate at a slower rate than the other more frequently replaced components.

As to what is the appropriate allocation percentage, the board gives more weight to the testimony of the Taxpayer's appraiser due to his specialized experience in valuing ski areas and the market information he obtained from installers of ski lifts. The board finds the design and permitting of ski lifts are costs that should be proportionally spread amongst the various components of the ski lift. However, the board does agree with DRA that the installation cost of a ski lift is borne in a higher proportion by the tower and base components. Therefore, the board finds the proper allocation of taxable portions of all the chair lifts should be at 30% of the RCN and 20% of the RCN for the gondola.

Similarly, the board gives most weight to the Taxpayer's appraiser's RCN figures as they were obtained directly from the market. Applying the allocation percentages to those estimates results in the following allocated RCN estimates for the ski lifts.

Gondola	$4,500,000	x	.20	=	$ 900,000
Total chair lift RCN	$3,963,500	x	.30	=	$1,189,050

Determining what appropriate depreciation to apply to the taxable portion is indeed a difficult task. The Taxpayer's appraiser based his estimates on a 20-year estimated life for the lifts. Further, the gondola was depreciated extensively because the replacement costs obtained by the Taxpayer were based on the current technology for a 4-person gondola. The existing 2-person gondola was installed in 1957 and much of the technology no longer exists. The DRA provided no indication as to the basis of its depreciation;

however, by comparing the age of the lifts to the depreciation, it appears as if the depreciation was determined by an age/life methodology.

Based on the board's review of the evidence and testimony, it concludes the depreciation of the tower and base components for the gondola should be 80% (20% to the good). While the chair lifts were installed at various times and are both 2 and 3-chair lifts, the board has collectively reviewed the evidence and depreciation of the chair lifts. Collectively, the Taxpayer depreciated the chair lifts 47% while DRA depreciated them 14%. The board finds DRA's depreciation does not adequately account for some of the functional obsolescence due to the changes in technology for these types of lifts and thus, the depreciation should be greater. Conversely, the board finds the Taxpayer's appraiser's depreciation was based on all the components of the ski lift and is excessive when applied solely to the base and tower components. Based on the board's experience and judgment[2], the combined physical and functional depreciation of 30% is reasonable for the chair lifts.

Based on this depreciation, the board finds the market value of the taxable portion of the ski lifts to be as follows:

Lift Type	Allocation %	RCN	Depreciation	RCNLD
Gondola $4,500,000	x .20	$ 900,000	x .20	$ 180,000
Chair lifts $3,963,500	x .30	$1,189,050	x .70	$ 832,350
Total Ski Lift Value				$1,012,350

III. SKI SLOPES

The DRA assessed the ski slopes at $10,000 per acre for a total assessed valuation of $1,100,000 ($700,000 in Bean's Purchase and $400,000 in Pinkham's

[2] "Given all the imponderables in the valuation process, '[judgment is the touchstone.'" (Citations omitted.) Public Service Co. v. Ashland, 117 N.H. 635, 638-9 (1977).

Grant). This value was noted on the assessment-record card as: "Land value is considered to be the cost to develop. Land values equals leasehold interest."

The Taxpayer argued that because the Taxpayer's use of the land was governed by the Permit, it is not taxable because leaseholds for terms of years on federal lands are considered personalty. Indian Head National Bank v. City of Portsmouth, 117 N.H. 954 (1977). Further, the Taxpayer argued the cost of clearing trees and stumping the ski slopes is a value that is not separable from the land for tax purposes and thus, should not be included in the assessed value.

The issue of the taxability of the ski slopes presents two questions: (1) if the value is considered a leasehold interest, is it taxable; and 2) if the value is based on the physical improvements to the land, are those improvements taxable.

In short, the answer to the first question is no, based on established New Hampshire caselaw. However, there are lingering constitutional questions of equal protection that the board will raise but does not need to answer. The answer to the second question is yes; those improvements are taxable just as other improvements and structures are taxable in accordance with Lin-wood Development Corp. v. Town of Lincoln, 117 N.H. 709 (1977).

Leasehold Interests

The Taxpayer's authority to use the USFS land is contained in a 20-year term special-use permit (Permit). The Permit is a lengthy document covering the provisions of the Taxpayer's use and occupancy of the USFS land. The main provisions of the Permit are:

1) All development plans and construction are to be reviewed by

the USFS;

2) The Permit is subject to all valid claims;

3) The Taxpayer shall exercise diligence in use of the land and protect it from damage;

4) The Permit is not transferrable; however, if the improvements are transferred, the USFS may review the Permit and transfer it to the new owner or enter into a new Permit;

5) The Permit allows for subleasing of the land and improvements;

6) USFS, upon notice and determination of public interest, can terminate the Permit and pay the Taxpayer for the value of the improvements or require they be removed within a reasonable time;

7) A multi-faceted fee system is established to be paid by the Taxpayer for the use of the Property;

8) The Taxpayer is required to have adequate insurance to indemnify the USFS from any claim of liability;

9) Various safety and health provisions are required in the use of the Property;

10) The Permit is not exclusive; that is, it allows USFS to grant other individuals the use of the same land as long as those uses do not interfere with the rights and privileges authorized in the Permit;

11) The Taxpayer is required to notify USFS if an anticipated sale of the improvements is to occur; however, no consent from USFS is needed for the sale of the Property; and

12) The Permit terminates in the year 2006 with an opportunity for

a new special-use permit to be granted under the laws and regulations in effect at that future date.

The Permit creates rights similar to those a 20-year lease would create. New Hampshire statutes are not clear on how those rights are to be taxed, if at all. However, several statutes touch upon the issue. The statutory basis for what is taxable begins with RSA 72:6, which states, "All real estate, whether improved or unimproved shall be taxed except as otherwise provided." RSA 73:10 states, "Real and personal property shall be taxed to the person claiming the same, or to the person who is in possession and actual occupancy thereof, if such person will consent to be taxed for the same; but such real estate shall be taxed in the town in which it is situate." Further, RSA 75:2 states, "Whenever it shall appear to the selectmen that several persons are owners of distinct interests in the same real estate, or that one person is owner of land and another is the owner of any building, timber, or wood standing thereon, or ores or minerals therein, they may, upon request, appraise such interests and assess the same to the owners thereof separately, except as provided in RSA 75:3."

RSA 75:2 does not define the phrase "distinct interest in the same real estate." However, in interpreting RSA 75:2, we are mindful of the statutory rule of construction that all statutes concerning the same subject matter must be considered in interpreting any one of them. Barksdale v. Town of Epsom, 136 N.H. 511, 515-16 (1992). Because RSA 72:6 provides the starting point for all property taxation, the only distinct interest that would be subject to RSA 75:2 would be taxable real estate interests. RSA 21:21 I states: "The words 'land,' 'lands' or 'real estate' shall include lands, tenements, and hereditaments, and all rights thereto and interests therein." Under this broad definition, one might assume the Taxpayer's leasehold interest is a real estate interest. However, in Indian Head National Bank of Portsmouth v. City of Portsmouth, 117 N.H. 954, 955 (1977), the court held: "Only real estate has been made subject to tax under RSA 72:6. Leaseholds for a term of years are considered personalty and are not taxable to the lessee." (Citations omitted.) The court, citing Piper v. Town of Meredith, 93 N.H. 107 (1927), stated, however, that leaseholds in perpetuity may be taxed as real estate. In the Indian Head case, the taxpayer held a 25-year lease on land at Pease Air Force Base. At the end of the 25 years, the building that the taxpayer had built would vest in the United States without any compensation to the taxpayer.

Mindful of the court's holding in Indian Head, the board researched both New Hampshire law and the law in other states to determine whether leasehold interests are considered realty or personalty. This research demonstrated that leasehold interests are considered personalty in certain situations and realty in other situations. 3 Thompson, Commentaries on the Modern Law of Real Property § 1016 (1980); id. Volume 1, § 22; I Restatement of the Law of Property § 8 (1936) (term of years not included as real property); see also Introduction Restatement Second Landlord and Tenant (1977). Further, the board reviewed U.S. Supreme Court and other state's supreme court cases relative to the taxing of leasehold interests. However, the board was unable to place much reliance on those conclusions because most of the cases relied on the states' specific statute relative to the taxability of leasehold interests. United States v. City of Detroit, 78 S.Ct. 474 (1958); Miller v. Bauer, 517 F.2d 27 (1975); International Paper Company v. County of Siskiyou, 151 F.2d 285 (1974); Northstar Alaska Housing v. Board of Equalization, 778 P.2d 1140 (Alaska 1989); Oklahoma Industries Authority v. Barnes, 769 P.2d 115

(Oklahoma 1988); Duwamish Warehouse Co. v. Hoppe, 684 P.2d 703 (1984).

In short, because the Permit is for a term of 20 years, the leasehold interest would not be taxable in accordance with Indian Head.

The conclusion of not taxing the leasehold interest is particularly unsettling given the facts and circumstances in this case. While not pivotal to the board's determination of the taxability of the improvements to the ski slopes (discussed in the next section), the board will briefly discuss its concerns of not taxing the leasehold interest.

New Hampshire has no specific statute addressing the taxability of leasehold interest (particularly the use of federal land) as some other states do. However, the constitutional basis for taxation must always be kept in mind. N.H. CONST. Pt. 1, Art. 12 (Protection and Taxation Reciprocal) requires that each taxpayer contribute his just share in support of the common protection. Further, Pt. 2, Art. 5 requires that such taxes be "proportional and reasonable."

Ski slopes are an intregal part of the overall operation of any ski area and its ability to produce income, and thus, create value. The board wonders whether equal protection is provided, if under Indian Head, the Property's ski slopes would not be taxable while slopes of a similarly situated ski area on private land would be.

Further, it is interesting to note that New Hampshire does have a statute (RSA 72:23 I), which specifically allows state or municipal owned property to be taxed that is used and occupied by a taxable entity in accordance with a lease or other agreement. The State of New Hampshire owns two ski areas, Cannon Mountain and Mount Sunapee, which are presently under study by a legislative committee (HB 369, Chapter 241:2, Laws of 1995) as to whether it is best to continue their operation by the State or to be leased to private entities for their operation. Thus, if those state ski areas were leased to private entities, the statutory scheme exists for the private leasehold interests to be taxed pursuant to RSA 72:23 I. This potential for leasehold interest in state-owned ski areas to be taxed while leasehold interest in federal land not being taxed further highlights the question of equal protection.

This is an issue that the legislature may wish to address; however, as stated earlier, the board determines that the value of physically creating the ski slopes can be taxed without resolving the equal protection issue.

Valuation of Ski Slopes Based on Physical Improvements

Both parties agreed the cost of creating a ski slope was approximately $10,000 per acre as assessed by DRA. The Taxpayer's appraiser indicated recent bids for clearing, grubbing and shaping the ski slopes were in the $8,500 to $11,000 per-acre range.

The board, during its view, observed several of the ski slopes that had been cut out of the steep, wooded terrain of Wildcat Mountain. The creation of ski slopes entails cutting trees, stumping, grubbing, removal of surface boulders, shaping the slope, providing drainage ditches and water bars and finally seeding the slopes to retard erosion and allow mowing on an annual basis.

The board finds that these improvements are so intertwined with the overall use and occupancy of the ski area that they are just as taxable as the ski lifts and buildings that are also part of the overall operation. Clearly, one cannot have a ski area without a slope to ski down. Similarly, lodges, support buildings and lifts are needed to house and feed skiers and transport them to the top of the slopes. Snowmaking is needed to ensure consistent skiing conditions. All these improvements require extensive investment, which collectively generates income and creates value. The interest in real estate (RSA 21:21 I) and its value (RSA 75:1) are collectively what is taxable. Any sale of the Property would inherently have buildings, lifts and slopes as factors affecting the price. The physical improvements to the slopes meet the definition of real estate and are taxable. Further, it would be inconsistent to allow the taxation of site work related to buildings (both parties' Marshall Valuation Service replacement costs include normal site preparation for buildings) and not allow taxation of the ski-slope site work.

Lastly, in Lin-wood, 117 N.H. at 711, the court stated that ... "the Taxpayers are in possession and actual occupancy of the premises and clearly have all the benefits of ownership in their use of producing income therefrom. See RSA 73:10; RSA 80:18." Clearly, the income-producing ability of the ski area is not just related to the towers and the buildings but must include the ski slopes if one is to view the entire taxable estate of the Taxpayer.

IV. EFFECT OF PERMIT ON THE VALUATION OF THE IMPROVEMENTS

While not specifically raised by either party, the board, during its deliberations, became concerned with what possible effect the Permit may have on the market value of the taxable improvements. Based on the following analysis, the board has concluded the values of the structures should be reduced by 10% and the value of the physical improvements to the ski slopes should be reduced by 15%. This adjustment is required because the very instrument (the Permit) that creates the possessory and, to some extent, the transferrable interests in the Taxpayer's improvements is less secure and permanent than the fee-simple ownership rights that a warranty deed normally provides.

Real estate is not just the physical attributes of property, but more importantly, it is the rights that are associated with the use and enjoyment of the property. These rights are often referred to as the bundle of rights with the individual sticks separable from each other. These rights are comprised of: 1) the right to occupy, possess and use; 2) the right to transfer or give away property; 3) the right to enter or leave the property; and 4) the right to do none of these. The International Association of Assessing Officials, Property Appraisal and Assessment Administration 31 (1990).

The Taxpayer's right to use the Property, to construct buildings and make improvements to the land are extensively detailed in the Permit. As summarized earlier, USFS must review all proposed development plans and construction and give their approval before they take place. Further, the USFS can require the Taxpayer to remove (with compensation) the improvements within a reasonable time if there is public interest to terminate the Permit. These are restrictions or infringements on the Taxpayer's normal use of the Property and a factor to be considered in estimating its value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

The Permit clearly states that it is not transferrable. However, paragraph 13 goes on to describe the possibility of a subsequent owner obtaining a similar permit for the unexpired term of the existing Permit or acquiring a totally new Permit with similar provisions. The Permit does allow the sublease of the land and improvements provided permission has been obtained from the USFS. Thus, while not directly transferrable, the Permit does create the potential for a continuum of the use with a new owner by a new permit or by lease.

The provisions of the Permit when viewed in total create rights in the use and enjoyment of the Property that the board find are somewhat less than those created by fee ownership of a property. In a hypothetical situation, if two similar ski areas were available on the market, one existing on private land secured with a warranty deed versus one in a situation as the Taxpayer, the board concludes a prudent investor would consider the effects of the Permit as one of the factors in the consideration to be paid. While certainly the historical existence of this Property since 1957 would provide a prospective investor with some certainty that it would most likely continue to be permitted by the USFS for such uses in the future, there is no guarantee of such use. Similarly, the mere requirement that another entity, in this case the USFS, must review and approve all construction plans is at the very least an additional administrative burden and, in the extreme, could prohibit the development of certain structures or improvements on the Property. This potential limitation of development is also a factor that the board finds could affect market value and should be accounted for.

Obviously, it is impossible to quantify from the market the effect of such a Permit. However, the board, based on its experience,[3] determines a 10% reduction in the buildings and 15% reduction in the improvements to the ski slopes would be reasonable. The 5% differential accounts for the potential ability for the Taxpayer to salvage structures or portions of structures versus little or no salvage of any ski slope improvements.

Therefore, in summary, the board finds the values to be as follows:

[3] The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Grimm, 138 N.H. 42, 53 (1993)

Pinkham's Grant

Total building value $1,247,700 x .90 (effect of Permit)	=	$1,122,950
Ski Lifts $1,012,350 x .90 (effect of Permit)	=	$ 911,100
Ski Slopes $400,000 x .85 (effect of Permit)	=	$ 340,000
Total	=	$2,374,050

Bean's Purchase

Buildings $71,000 x .90 (effect of Permit)	=	$ 63,900
Ski Slopes $700,000 x .85 (effect of Permit)	=	$ 595,000
Total	=	$ 658,900

V. TAXPAYER'S CLAIM OF DISPROPORTIONATE TAXES DUE TO DRA'S EQUALIZATION METHODOLOGY

The board ruled in its May 8, 1995 order that the issue of DRA's methodology of calculating the equalized valuation as it relates to the Taxpayer's claim of excess taxation could be raised under the 1994 RSA 76:16 abatement requests in Pinkham's Grant and Bean's Purchase and under the board's general reassessment review of Bean's Purchase pursuant to RSA 71-B:16.[4]

Because of the rulings in the board's earlier orders, for the Taxpayer to prevail in its argument that DRA's equalization methodology results in a disproportionate tax, it must show that such methodology caused them to be aggrieved by the assessment of the tax pursuant to RSA 76:16 or that the methodology creates a basis for ordering a total reassessment pursuant to RSA 71-B:16. In short, the board must determine whether such methodology caused

[4]The Taxpayer filed a motion for rehearing of the May 8th order. In an order dated June 12, 1995, the board allowed the Taxpayer to reserve its right to appeal the board's earlier dismissal of several appeal avenues. As stated on page 1 of this decision, the board will issue an order relative to the Taxpayer's rehearing motion with a rehearing order from this decision or upon request.

disproportionate tax in Pinkham's Grant and Bean's Purchase in 1994 (RSA 76:16) or formed a basis for ordering a reassessment in Bean's Purchase (RSA 71-B:16).

Disproportionality Under RSA 76:16

Relative to Pinkham's Grant, the 1994 tax rate of $6.00 per thousand ($6.54 per thousand full-value tax rate) does not appear to have been significantly distorted by DRA's equalization methodology. Further, with Bean's Purchase's tax rate of $0.00 per thousand in 1994, it is hard to conceive how a taxpayer could be aggrieved with their zero tax bill for that tax year.

Reassessment Under RSA 71-B:16

Similarly, the evidence submitted does not warrant the board ordering an RSA 71-B:16 order for reassessment in Bean's Purchase. RSA 71-B:16-a establishes the five criteria the board must consider when considering ordering a reassessment. In part, RSA 71-B:16-a states:

> The board shall not order any such reassessment or new assessment unless it determines a need therefor utilizing the following criteria:
>
> I. The need for periodic reassessment to maintain current equity.
> II. The time elapsed since the last complete reassessment in the taxing district.
> III. The ratio of sales prices to assessed valuation in the taxing district and the dispersion thereof.
> IV. The quality of the taxing district's program for maintenance of assessment equity.
>
> V. The taxing district's plans for reassessment.

Obviously, these criteria are difficult to apply to such a small taxing jurisdiction. (Bean's Purchase has only three property owners, two of which are taxable.) However, Bean's Purchase was revalued by DRA in 1993, and the County intends to have DRA do annual pickups if new construction or changes warrant such a review. Further, the county commissioners in 1990, 1992 and 1993 issued substantial abatements to, in their estimation, keep Bean's Purchase's share of the county tax proportional. (See Municipality Exhibit

B.) Consequently, the board does not find where DRA's equalization methodology in 1994 warrants ordering a reassessment.

Obviously, the Taxpayer, by wanting the board to accept the 1993 appeal and requesting the board address DRA's equalization methodology for future tax years, wants the board to remove its horse blinders and assume broad jurisdiction in this issue. However, the board's jurisdiction is strictly statutory and is limited to the appeal avenues outlined above. Appeal of Gillin, 132 N.H. 311, 313 (1989); Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985).

However, arguendo, if the board did have jurisdiction to review the 1993 tax years for Pinkham's Grant and Bean's Purchase, the board still would not find, based on the evidence, that the Taxpayer had been disproportionately taxed due to DRA's equalization methodology for two reasons. First, the county commissioners have abated taxes several times to make them more proportional and, second, granting an abatement to the Taxpayer would not result in an equitable solution.

The Taxpayer presented interesting arguments that DRA's equalization methodology may create a distortion in the tax rate in small taxing jurisdictions comprised primarily of nontaxable USFS land. However, it appears that since 1989 when Chapter 81 gave the assessing authority of unincorporated places to the county commissioners, the commissioners have been sensitive to that possible distortion and have on three occasions in Bean's Purchase issued substantial abatements to cause Bean's Purchase's share of the county tax burden to be more proportional.

The Taxpayer's claim, if it were successful, of overtaxation due to

DRA's equalization process would affect not only the Taxpayer but other taxpayers in Pinkham's Grant, Bean's Purchase and all other towns and unincorporated places in Coos County. The New Hampshire Supreme Court has held in a line of cases where the wrong is against a body of taxpayers, to give relief to one taxpayer and not the others would be an inequitable solution. Keene v. Cheshire County, 79 N.H. 198 (1919); The Bretton Woods Co. v. Carroll, 84 N.H. 428 (1930); Madbury v. Durham, 108 N.H. 474 (1968); and Towns of Madbury and Lee v. State of New Hampshire, 115 N.H. 196 (1975). The board would suggest that a more appropriate forum for the Taxpayer to address its ongoing concerns with the equalization process would be to petition the DRA, pursuant to RSA 541-A:4, to adopt specific rules relative to the equalization process. The RSA 21-J:3 XIII requirement of equalizing valuations is a complex process that DRA has developed historically. The board has heard debates in several cases whether DRA's methodology results in a reasonable conclusion of equalized value for all the approximately 260 incorporated and unincorporated taxing jurisdictions in the state. With the exception of Rev Part 602[5], DRA has not incorporated the various steps in any rules. Since this process is such a complex issue, if DRA were to undertake rulemaking, there would be the opportunity during the rulemaking procedure and hearings to have input from all taxing jurisdictions as to what appropriate

[5] Rev Part 602 deals only with the process of obtaining market and assessment information relative to sales within the municipalities to calculate an equalization ratio.

adjustments and calculations should take place in the process. Such a broad legislative review would hopefully result in a better conclusion than the board ruling as to the appropriateness of the process in one of, if not the, smallest taxing jurisdiction in the state.

Refund

If the taxes have been paid for the Property in Pinkham's Grant, the amount paid on the value in excess of $2,374,050 shall be refunded with interest at six percent per annum from date paid to refund date. As no taxes were assessed in Bean's Purchase in 1994, no abatement is ordered. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless Pinkham Grant undergoes a general reassessment, the County shall also refund any overpayment for 1995. Until Pinkham's Grant undergoes a general reassessment, the County shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Rehearing and Appeal

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

George Twigg, III, Chairman

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 Randall F. Cooper, Esq., Counsel for the Taxpayer; Coos County Commissioners; and V. Hummel Berghaus, IV, Esq., Counsel for the Department of Revenue Administration.

Dated: January 9, 1996

Valerie B. Lanigan, Clerk

0005

Meadow Green-Wildcat Corp.

v.

Coos County Commissioners

Docket Nos.: 15046-94PT and 15047-94RA

ORDER

The Taxpayer filed a motion for rehearing (Motion) on January 24, 1996 which raised the sole issue of the board's ruling relative to the taxation of the ski slopes. For the reasons that follow, the Motion is denied.

In its January 9, 1996 decision (Decision), the board reviewed two options relative to the taxability of the ski slopes: 1) the taxation of a lease-hold interest; and 2) the taxation of the ski slope improvements. The board concluded in the Decision that under current statute and caselaw, the taxation of any lease-hold interest for a relatively short term period is not taxable. The board discussed this avenue of valuation so that the parties were fully aware that the board reviewed the facts of this case and compared them to the facts in previous cases establishing the nontaxability of such lease-hold interest. The board is fully aware of the significance of sovereign immunity. Both the Decision and this order detail the distinction the board sees between the private rights held by an individual relative to public land and the public rights held by the federal government relative to the land in question.

Page 2
Meadow Green Wildcat v. Commissioners of Coos County

Docket Nos.: 15046-94PT & 15047-94RA

The Taxpayer argued in paragraphs 8 and 9 of its Motion that the "Permit" causes a differentiation between certain improvements to the real estate, those that are conceivably removable (taxable) and those that are not and thus part of the land (not taxable). The board finds such distinction is improper for two general reasons: 1) such a distinction creates two classes of real estate; and 2) such distinction ignores the substitution principle of the cost approach to value and the capitalization of income in the income approach to value.

Two Classes of Real Estate

RSA 72:6 states "all real estate, whether improved or unimproved, shall be taxed except as otherwise provided." Except with the reference to RSA 72:12-c (exemption of certain ski area machinery and equipment and RSA 674:31 (definition of manufactured housing being greater than 320 square feet)), the board is unaware of any other statutory creation of two classes of property based on the distinction of one being "removable" and "portable" versus permanently fixed to the real estate. In fact, in most cases, all improvements, buildings, structures, etc., are considered to be permanent and not removable. Apparently it is only the provisions of the "Permit" in this case that leads the Taxpayer to attempt to create this new class of real estate. The board finds the Taxpayer's argument is inconsistent because site work relative to the buildings, which the Taxpayer readily agrees is taxable, is part of the replacement cost and the assessed value of the buildings. The board routinely sees other types of site work and improvements to real estate that are extremely difficult to remove that contribute value and are taxed. Examples are: greens and fairways of golf courses, wells, septic disposal systems including private sewage treatment plants and lagoons, roads, driveways, sidewalks, parking lots, underground utilities, retaining walls and breakwaters along water

frontage and extraordinary site work relative to intense development on difficult sites (e.g. terracing of mountainous condominium developments). The ski slope improvements are identical in nature to these other improvements and thus, should be taxed.

Cost and Income Approaches to Value

There are three approaches to value: 1) the cost approach; 2) the comparable-sales (market) approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate at 71 (10th Ed. 1991). While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate at 72; Property Assessment Valuation at 38.

The chore of any appraiser is to determine which of the three approaches accurately reflect how an owner and a potential purchaser would analyze the property and determine its value.

In the Decision, the board found both the cost and income approaches would be appropriate to use in estimating the value of the Property.

The cost approach relies on the principle of substitution. "This principle affirms that no prudent buyer would pay more for a property than the cost to acquire a similar site and construct improvements of equal desirability and utility without undue delay." Appraisal Institute, The Appraisal of Real Estate, 10th edition, page 313 (1992).

The board finds it difficult to believe that the Taxpayer, with all its historic costs in the Property, would exclude the cost of the development of the ski slopes as a factor in its determination of a selling price for the Property. Similarly, a prospective purchaser under the principle of substitution would be

willing to pay for the relative substitution value of the slopes (minus the effect of the Permit as contained in the Decision).

Income Approach

"The principle of anticipation is fundamental to the [income] approach. Because value is created by the expectation of benefits to be derived in the future, value may be defined as the present worth of all rights to those future benefits." I.d. at 409.

Similar to the cost approach, a prospective purchaser would estimate value based on the expected income stream of the Property. As discussed briefly in the

Decision, a ski area is made up of many interrelated components, the ski slopes being one of them. Collectively, these components generate an income stream which can be capitalized to provide an indication of value. Again, the board finds it illogical that the Taxpayer would be willing to reduce the income stream by some amount allocated to the ski slopes and transfer the Property for a price based on that lower income stream. While an income stream of any enterprise may involve non-real-estate items such as personal property (furniture, appliances, etc.) and business value, the board finds that the ski slope improvements were initially created to generate income as an integral part of the other components of the real estate. They are not personal property or part of the business value. They are part of the private improvements done by Permit on public property, and the income from those improvements should be included in any estimate of value by the income approach.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

____
George Twigg, III, Chairman

____
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 Randall F. Cooper, Esq., Counsel for the Taxpayer; Coos County Commissioners; and V. Hummel Berghaus, IV, Esq., Counsel for the Department of Revenue Administration.

Date: February 15, 1996

Valerie B. Lanigan, Clerk

0006

Meadow Green-Wildcat Corp.

v.

Coos County Commissioners

Docket Nos.: 15046-94PT and 15047-94RA

ORDER

On April 14, 1997 the New Hampshire Supreme Court remanded this appeal and issued an order finding the board "erred by including the value of the ski trail improvements in calculating the proper assessments for the appellant's property in Pinkham's Grant and Bean's Purchase."

Consequently, the board revises its January 9, 1996 decision (Decision) by removing the assessments attributable to the ski slopes. The proper assessments are: Pinkham's Grant: $2,034,050; Bean's Purchase: $63,900.

If taxes have been paid for the Property in Pinkham's Grant, the amount paid on the value in excess of $2,034,050 shall be refunded with interest at six percent per annum from the date paid to refund date. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless Pinkham Grant undergoes a general reassessment, the County shall also refund any overpayment for 1995 and 1996. Until Pinkham's Grant undergoes a general reassessment, the County shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

As ordered earlier by the board in the Decision, for 1994 no abatement is ordered for Bean's Purchase because no taxes were assessed for 1994. However, pursuant to RSA 76:17-c for 1995 and 1996 the County shall refund any taxes paid on the value in excess of $63,900 with interest at six percent per annum from date paid to refund date.

Until Bean's Purchase undergoes a general reassessment, the County shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Randall F. Cooper, Esq., Counsel for the Taxpayer; Coos County Commissioners; and V. Hummel Berghaus, IV, Esq., Counsel for the Department of Revenue Administration.

Date: May 9, 1997

Valerie B. Lanigan, Clerk

0006

Meadow Green - Wildcat Corp.

v.

Commissioner of Coos County

Docket No.: 15046-94PT and 15047-94RA

ORDER

This order responds to the "Taxpayer's" continuance motion, which is denied.

This matter was originally scheduled, by a June 16, 1995 hearing notice, for an August 22, 1995 hearing. On June 20, 1995, the Taxpayer then filed a timely continuance motion, which the board granted. The case was rescheduled for September 26, 1995, by agreement of the parties and confirmed through the board. The new hearing notice was mailed on June 29, 1995, and the board did not receive any objection until this August 14, 1995 continuance motion.

Under TAX 201.26(a)(1) continuance motions must be filed within 14 days of the clerk's date on the hearing notice. Additionally, under TAX 201.26(d), if a continuance is based on the unavailability of a witness, the motion must state the reason for the witness' unavailability. The Taxpayer's continuance motion, did not comply with either of these rules. Concerning the unavailability of the witness, the continuance motion stated "the undersigned attorney has just been informed by Kenneth Hamerly, of Sno-Engineering, Inc., the expert appraiser engaged by the applicant, that he has recently been called out of state on that week and would be unavailable to appear before the board." Continuance motion, paragraph 2 (emphasis added). Because the motion did not specify the reason for the unavailability, the board sought additional information, and the Taxpayer's attorney's secretary called the expert, and the secretary informed the board that the expert had vacation plans. While the board normally would consider a continuance based on vacation plans, this hearing was scheduled in June with confirmation of the parties. Therefore, the Taxpayer should have confirmed the witness' availability before agreeing to the date.

For the above reasons, the motion is denied.

The Taxpayer may present the witness' testimony via an affidavit attached to his report. We remind the Taxpayer of TAX 201.35, which requires that the report be provided to the other parties at least 14 days before the hearing.

SO ORDERED.
BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATE

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Randall F. Cooper, Esq., Counsel for the Taxpayer; V. Hummel Berghaus, IV, Esq., Revenue Counsel for the Department of Revenue Administration and the Commissioners for Coos County.

Dated: August 30, 1995

Melanie J. Ekstrom, Deputy Clerk

Meadow Green - Wildcat Corp.

v.

Commissioner of Coos County

Docket Nos.: 15046-94PT and 15047-94RA

ORDER

This order deals with the Department of Revenue Administration's (DRA) March 24, 1995 motion to dismiss and with the following issues raised by the "Taxpayer's" February 21, 1995 letter (Appeal):

1) An RSA 71-B:5 I petition for investigation, hearing and action;
2) An RSA 71-B:5 II Appeal of Bean's Purchase and Pinkham's Grant equalized valuation as determined by the department of revenue administration (DRA);
3) Petition for reassessment pursuant to RSA 71-B:16 IV;
4) A 1993 RSA 76:16-a Appeal; and
5) A 1994 RSA 76:16-a Appeal.

I. DRA'S MOTION TO DISMISS

First, the board denies DRA's motion to dismiss because the board determines it has jurisdiction to hear the Taxpayer's Appeal of excessive taxation.

The Taxpayer's reasons for appealing are fourfold: (1) disproportionate tax rate in Bean's Purchase due to DRA's equalization methodology; (2) whether leasehold interests in U.S. Forest Service land are taxable; (3) whether ski-lift towers were properly assessed according to RSA 72:12-c; and (4) whether other improvements were proportionately assessed. The DRA's motion to dismiss deals only with the first reason.

Under the board's general authority to order any reassessment (RSA 71-B:16), the court has determined the board has broad authority in rectifying improper or illegal taxation.

> "(D)uring the enactment of the current version of RSA ch. 71, a House Committee indicated that the board of taxation was established to decide "questions of tax assessments *and other matters of law*." (Emphasis added.) N.H.H.R. JOUR. 1318 (1973). The board of taxation thus has broad authority to remedy the inequities of improper and illegal taxation." Appeal of Wood Flour, Inc., 121 N.H. 991, 994 (1981).

Further, on any appeal properly filed pursuant to RSA 76:16-a, the board "shall make such order thereon as justice requires." (RSA 76:16-a I). With parallel authority given the board in tax matters as superior court (RSA 71-B:5, RSA 71-B:11), the board has broad authority to review any possible basis for overassessment and order an abatement. See New Hampshire Highway Hotel, Inc. v. City of Concord, 119 N.H. 122 (1979) and Lisbon Village District v. Town of Lisbon, 85 N.H. 173 (1931). Also, in Winnipiseogee Lake Cotton & Woolen Mfg. Co. v. City of Laconia, 74 N.H. 82, 84 (1906), the court stated one of the bases for an abatement was a showing of "too large a rate was made use of in computing the tax."

In short, for the above reasons and because DRA's methodology of calculating equalized valuation is so directly and significantly related to the Taxpayer's claim of excessive taxation, the board denies DRA's motion to dismiss.

II. TAXPAYER'S APPEAL

For the reasons that follow, the board denies Taxpayer's issues 1, 2 and 4 and grants issues 3 and 5 (subject to determination of timely filing with Coos County).

1) If a specific remedy exists, as it does for the Taxpayer under RSA 71-B:16 IV and RSA 76:16-a, the board will not assert jurisdiction under its very broad authority of RSA 71-B:5 I.

2) In 1993, an appeal of DRA's equalized valuation had to have been filed with the board within 30 days of the town's notification by DRA. This timeline was set out in TAX 203.02 and discussed at length in Town of Seabrook v. Department of Revenue Administration, Docket No.: 13730-92ER, which is attached and made a part of this order. The Taxpayer's filing with the board on February 21, 1995 is therefore too late.

On September 1, 1993, TAX 203.02 was repealed and no replacement rule was adopted setting the timelines for appeal of DRA's equalized valuations. Effective June 10, 1994, RSA 71-B:5 II was amended setting out the appeal timelines as 30 days from notification. Therefore, between September 1, 1993 and June 10, 1994, there existed no statute or rule defining the appeal timelines. The DRA's notification of Coos Co. Commissioners of Bean's Purchase and Pinkham's Grant equalized valuations would have occurred during this "gap." Lacking any set period for appeal, the board rules, as argued by DRA in its reply to objection to motion to dismiss, paragraph 2, a reasonable time period for appeal would have been 30 days from DRA's notification.

Further, the board rules RSA 71-B:5 II was intended to be an avenue only for <u>municipalities</u> to appeal DRA's RSA 21-J:3 XIII determination of equalized valuation. This was clarified by the 1994 amendment to RSA 71-B:5 II. Taxpayers are provided their specific remedy under RSA 76:16-a and 17 and RSA 71-B:16.

3) The board accepts the Appeal as an RSA 71-B:16 IV petition for reassessment for Bean's Purchase but not for Pinkham's Grant. RSA 71-B:16 IV specifically requires a petition to be signed by "50 taxpayers or ♋ of the property taxpayers in the taxing district, whichever is less." Based on the information submitted with the Appeal, the Taxpayer comprises at least one third of the taxpayers in Bean's Purchase but not in Pinkham's Grant.

4) The board has determined (RSA 76:16-a I) the Taxpayer's "notice of tax" for both Bean's Purchase and Pinkham's Grant was sent November 12, 1993. For a 1993

appeal to have been timely filed with this board, it would have had to have been filed by July 12, 1994. The Taxpayer did not file any Appeal until February 21, 1995; thus, the Taxpayer did not timely perfect its 1993 Appeal.

The Taxpayer indicated in its Appeal that the parties had agreed to extend the deadlines due to their ongoing discussions. The supreme court, however, has indicated that statutes and statutory deadlines must be complied with and cannot be extended. Dermody v. Gilford, 137 N.H. 294, 297 (1993); Daniels v. B & J Realty, 134 N.H. 174 (1991). The board, therefore, rejects the 1993 Appeal and returns the Appeal document and filing fee (check #2679).

5) If it is determined the Taxpayer has timely filed its RSA 74 inventory and RSA 76:16 request for abatement with the County, the board will accept jurisdiction of the Taxpayer's 1994 RSA 76:16-a Appeals in Bean's Purchase and Pinkham's Grant. The board's questionnaire to the County to determine timely filing is being sent the same date as this order. The 1994 RSA 76:16-a Appeal (BTLA Docket No.: 15046-94PT) will be, on the board's own motion, consolidated for hearing in due course. As discussed earlier, the issue of DRA's methodology

of calculating equalized valuation as it relates to the Taxpayer's claim of excess taxation can be raised under either the proportionality standard of RSA 76:16 or the general review of RSA 71-B:16.

The board notes DRA's filing of Special Appearance was limited "solely for the purpose of contesting jurisdiction." The board, on its own motion, will keep DRA as an interested party, copying DRA of any board notice, order or decision. The parties, Meadow Green-Wildcat Corp. and Coos County Commissioners shall copy DRA with any correspondence sent to the board. DRA may, if it desires, file a petition for intervention pursuant to RSA 541-A:32, stating the basis and extent of its intervention.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Randall F. Cooper, Esq., Counsel for Meadow Green - Wildcat Corp., Taxpayer; Commissioner of Coos County; and the Department of Revenue Administration.

Dated:

Valerie B. Lanigan, Clerk

0005

Meadow Green - Wildcat Corp.

v.

Commissioner of Coos County

Docket Nos.: 15046-94PT and 15047-94RA

ORDER

This order relates to the Taxpayer's Motion for Rehearing or Clarification (Motion) filed with the board on May 15, 1995.

The motion requested the board:

1) rehear and reverse its order of May 8, 1995 as to issues 1, 2 and 4 of that order;

2) either order the Taxpayer's RSA 541:6 appeal right has been preserved by the Motion or order the Taxpayer's RSA 541:6 appeal right is reserved until the final decision on the merits of issues 3 and 5; and

3) allow the Taxpayer to argue and present evidence of DRA's equalization methodology being a factor in the Taxpayer's claim of disproportionate taxation.

The board grants the Taxpayer's request to reserve its rights to appeal pursuant to RSA 541:6 issues 1, 2 and 4 as outlined in the board's order of May 8, 1995, until a final decision on the merits of the appeals has been issued. As part of the final decision the board will respond to the request for rehearing raised in the Motion. This will allow the Taxpayer to file only one appeal if an appeal is sought.

The third item raised in the motion was addressed in the board's earlier order of May 8, 1995 at the bottom of page 2 and again on pages 4 and 5. Specifically, on pages 4 and 5 the board stated "... the issue of DRA's methodology of calculating equalized valuation as it relates to the Taxpayer's claim of excess taxation can be raised under either the proportionality standard of RSA 76:16 or the general review of RSA 71-B:16."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Randall F. Cooper, Esq., Counsel for Meadow Green - Wildcat Corp., Taxpayer; Commissioner of Coos County; and the Department of Revenue Administration.

Date:

Valerie B. Lanigan, Clerk