

**Hopkinton State Fair Association**

**v.**

**Town of Hopkinton**

**Docket No.: 15227-94EX**

**PRELIMINARY DECISION**

This is a preliminary decision. The board will issue a final decision after it receives certain assessment information from the parties. Because this is a preliminary decision, parties shall not file rehearing motions to this preliminary decision. Rehearing motions shall be filed after the board issues its final decision.

The "Taxpayer" seeks an RSA 72:23 V (Supp. 1997) charitable exemption (the Exemption) on a part of its taxable estate.

The Taxpayer has the burden to show it is entitled to the Exemption. See RSA 72:23-m. The board finds the Taxpayer carried its burden, proving it was entitled to a partial exemption.

**Facts**

The Taxpayer is a New Hampshire corporation with federal Internal Revenue Code § 501(c)(3) exemption status. Additional information about the Taxpayer as an organization will be presented in the analysis below.

The Taxpayer owns five tax parcels in the "Town" and primarily uses those parcels for the annual Hopkinton State Fair. Municipality Exhibit A is a tax map that shows the five tax parcels. The parcels are also used for other non-fair events, but the vast majority of those events are agricultural in nature. See Taxpayer Exhibit 10 and Town Exhibit F for a list of other events. While the Taxpayer owns five parcels, it only seeks a partial

Exemption on one tax parcel -- map 222, lot 61 (the Appealed Property). The Appealed Property consists of approximately 34 acres and approximately 12 buildings and other improvements such as grandstands, and utilities. Taxpayer Exhibit 8 shows the Appealed Property and includes a legend that describes the various types of activities that occur on the Appealed Property. The board has reduced this plan and attached it to this decision.

The buildings on the Appealed Property have three general uses:

- 1) commercial uses, which include buildings occupied during the fair generally by for-profit vendors that sell various food and retail items;
- 2) display uses, which include buildings used for agricultural exhibits such as 4-H exhibits and other agricultural exhibits including competitions for the various agricultural prizes that are given out at the fair; and
- 3) fair-support uses, which include bathrooms, information booths, office, and first-aid stations.

The Taxpayer admitted the commercial-use buildings were not entitled to the Exemption, and therefore, the Taxpayer only sought Exemption on the agricultural-use buildings. See the map for the location of the agricultural buildings.

The Taxpayer originally sought Exemption for the entire land area of the Appealed Property, but later, at the hearing, admitted only a portion of the land should be exempt because only a portion of the buildings should be exempt. Additionally, part of the land (designated as "Midway" on the plan) is used by an outside vendor for carnival rides. (The term "Appealed Property" will now refer only to the buildings and land for which the Taxpayer seeks Exemption.)

**Analysis**

Charitable exemptions are provided by RSA 72:23 V (Supp. 1997), and the term "charitable" is defined in RSA 72:23-1.

**72:23 Real Estate and Personal Property Tax Exemption.** The following real estate and personal property shall, unless otherwise provided by statute, be exempt from taxation:

\*\*\*

V. The buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purpose for which they are established, provided that none of the income or profits thereof is used for any other purposes than the purpose for which they are established.

**72:23-1 Definition of "Charitable".** The term "charitable" as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization "charitable" for purposes of this chapter, nor shall the organization's treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of "charitable" under the common law of New Hampshire.

Therefore, to be entitled to an Exemption, the Taxpayer was required to show the following.

1) The Taxpayer is incorporated in this state and the Taxpayer's stated

purpose and actual activities meet the RSA 72:23-1 (Supp. 1997) definition of "charitable".

2) The Taxpayer directly used and occupied the Appealed Property for the Taxpayer's charitable purposes.

3) The Taxpayer did not use any of the income or profits earned from the Appealed Property for any other purpose other than the Taxpayer's charitable purpose.

Each of these requirements will now be examined.

Page 4  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

#### **Charitable Organization Criteria**

The Taxpayer meets the first criteria because it is a charitable organization that is incorporated in this state. The Taxpayer's articles of agreement state: "Art. 2. The object for which this corporation is established is the promotion of agriculture." Taxpayer Exhibit 2.

The Taxpayer's by-laws, Article 2 -- Purpose (Taxpayer Exhibit 3), state:

The primary purpose of this Association shall be:

- A. To provide a venue for the promotion of agriculture through education.
- B. The promotion and operation of an annual exhibition and fair commonly referred to as The Hopkinton State Fair.
- C. Promotion of the use of fairgrounds for special events as approved by the Board of Directors.

In addition to the documentary evidence, the board heard from Alan Hardy, the Taxpayer's general manager, who testified that the primary purpose of the Taxpayer was to promote agriculture. He testified that he spends a significant portion of his time throughout the year organizing the agricultural activities, including working with the 4-H clubs. Mr. Hardy also testified that the fair includes typical nonagricultural fair activities and vendors such as food vendors, rides, games and entertainment, but these activities and vendors are required attractions that enable the agricultural part of the fair to accomplish its goals.

The agricultural goals of the fair are: 1) to provide a forum for agricultural competitions; and 2) to provide a forum that presents agriculture to the general public. Mr. Hardy testified that the Taxpayer is committed to reminding the general public of our state's agrarian roots and our state's present agrarian activities.

Mr. Hardy testified that the Taxpayer spends over \$100,000 a year for running the agricultural events. These costs are incurred for such expenses as judges and awards to the contestants. Additionally, a portion of the

Page 5  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

Taxpayer's overall operating expenses for the fair, the organizational work for the fair and the maintenance of the fairgrounds are directly attributable to the agricultural activities. The nonagricultural activities generate income, such as rent paid to the Taxpayer to operate a ride or food booth, which is used to pay for the agricultural activities. Additionally, the nonagricultural activities generate the crowds that pay the entrance fee and then view the agricultural exhibits and activities as part of the fair experience.

Under RSA 72:23-1, the term "charitable" includes organizations that "perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public \*\*\*." The board finds the promotion of agriculture complies with this definition. Moreover, the board, having examined the documentary evidence and heard the testimony, is convinced that the Taxpayer is genuinely committed to this charitable purpose as defined in the statute and has a track record for achieving this purpose.

The Town argued that the Taxpayer did not meet the RSA 72:23-1 test or the test in Appeal of City of Franklin, 137 N.H. 622, 625-26 (1993), because the Taxpayer: 1) under RSA 72:23-1 was not "obligated by, its charter or otherwise, to perform \*\*\*" any charitable service; and 2) under the Appeal of City of Franklin, 137 N.H. at 625-26, the Attorney General's Office could not bring a lawsuit against the Taxpayer to force the Taxpayer to promote agriculture. The board disagrees with the Town's argument. As just stated

above, the evidence demonstrates that the Taxpayer was organized to promote agriculture and has been operating since 1916 as an institution that promotes agriculture. Additionally, the Taxpayer's articles of agreement specifically dedicate all of the Taxpayer's property to nonprofit charitable uses and requires that upon the Taxpayer's dissolution the assets and income be given to another agricultural organization. Thus, the documents concerning the Taxpayer's purpose, the testimony concerning the Taxpayer's history and

Page 6  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

current activities and the dedication of its assets to agricultural promotion is sufficient to meet the RSA 72:23-1 test and the Appeal of City of Franklin test concerning the Taxpayer having an enforceable duty to promote agriculture.

#### **Use of Property for Charitable Purposes Criteria**

The Appealed Property, for which the Taxpayer seeks the Exemption, was used and occupied by the Taxpayer directly for its charitable purposes, and therefore, the second criteria for Exemption is met.

The Taxpayer has only sought Exemption on those buildings that are used for agricultural purposes. The Taxpayer has not sought Exemption on the buildings that have commercial purposes, and therefore, the board will not address Exemption of those buildings.

Concerning the land, the Taxpayer initially sought full Exemption of the land, but at the hearing, the Taxpayer admitted that a proportional amount of the land may be a more proper approach. Because the board will only be exempting the agricultural buildings and a proportion of the land (explained below), the board finds that property has been "used and occupied by [the Taxpayer] directly for the purposes for which [the Taxpayer was] established \*\*\*." The testimony was clear that the agricultural buildings are used for agricultural activities such as displays and competitions that promote agriculture. Thus, these buildings are occupied to accomplish the Taxpayer's charitable (as discussed above) purpose.

The Town presented evidence about the use of the Taxpayer's properties for other events that are not related to the annual fair. Those activities

and events, shown on Taxpayer Exhibit 10 and Town Exhibit F, are secondary to the property's primary use -- the fair. Moreover, the substantial majority of the nonfair events are agricultural in nature. Thus, the other events do not adversely affect the Taxpayer's Exemption claim, but rather support the claim.

Page 7  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

#### **Use of Income and Profits Criteria**

The Taxpayer also meets the third exemption criteria because no profit or income derived from the Appealed Property has been used for any other purpose other than the Taxpayer's charitable purpose. This conclusion is supported by the testimony of Mr. Hardy and the Taxpayer's financial statements that were submitted to the board. This evidence demonstrated that the Taxpayer uses the fair income to run the fair and to maintain the fairgrounds and that no income is otherwise distributed. Moreover, the Taxpayer's articles of agreement, article 10, specifically requires that upon dissolution of the Taxpayer, the assets or income from dissolution shall be given to another IRC § 501(c)(3) organization, which prohibits any individual or other nonexempt entities from profiting from dissolution.

Concerning income produced on the tax parcel (lot 61) as a whole, it is true that entities and individuals other than the Taxpayer derive income and profits from the use of those portions. However, the Taxpayer has not sought Exemption on those buildings or on those parts of the land area where commercial activities exist. The board again notes that the evidence was clear that the nonagricultural fair activities are essential to fund the fair's agricultural activities. Were it not for these commercial activities on the fairgrounds, the Taxpayer could not provide the agricultural exhibits and competitions and could not achieve its goal of promoting agriculture through the fair exhibits and competition. The board was not, however, asked to exempt these commercial properties, and therefore, the board will not further delve into this issue.

#### **Exempt Buildings**

Based on the above analysis, the board finds the Taxpayer is entitled to Exemption on all buildings used exclusively for agricultural purposes. The board was not, however, provided with sufficient detail to determine the assessments attributable to buildings that were used for agricultural purposes. Therefore, the Town and Taxpayer shall communicate with each other

Page 8  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

and file, preferably a joint statement, of which buildings (and the assessments thereon) were used agriculturally and therefore entitled to the Exemption in accordance with the board's above conclusion.

**Land Exemption**

Concerning the land, the board finds a part of the land should be exempt. The parties did not submit any maps that delineated, by land area, the parts of the lot used for agricultural purposes versus commercial purposes. Therefore, the board will exempt the land based on the percentage value the agricultural buildings have to the total value of all buildings on the Property. Mathematically the formula is as follows.

$$\text{percentage of exempt land} = \frac{\text{value of exempt agricultural buildings}}{\text{total value of all buildings and improvements}}$$

Within 20 days of the clerk's date below, the parties shall file either a joint memorandum on what property (and assessments) should be exempted or a separate memorandum on the same.

Upon receipt of the parties' submission, the board will issue its final decision consistent with this preliminary decision and incorporating the provided information.

**Plymouth State Fair Case Distinguished**

For purposes of consistency and clarity, the board will briefly comment on how this instant case differs from the board's earlier decision in State Fair, Inc. a/k/a Plymouth State Fair Association v. Town of Plymouth, Docket

No.: 12815-92EX (June 13, 1994), in which the board denied the Plymouth State Fair's request for a total exemption on its fairgrounds and buildings.

Initially, the board states it attempts to issue consistent decisions so taxpayers and municipalities have a predictable way to act after the board has issued a decision. Nonetheless, all cases before the board must be decided as they are presented. This means that different cases present different facts and different legal arguments.

Page 9  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

The main differences between this instant case and the Plymouth State Fair case are as follows.

1) The Taxpayer's corporate documents more clearly express a charitable purpose consistent with 72:23-1. The Plymouth State Fair documents simply stated that the corporation's purpose was the "operation of an annual agricultural fair." The Taxpayer's corporate documents provide a much broader purpose -- the promotion of agriculture. This Taxpayer's fulfillment of this purpose was discussed above.

Additionally, the testimony from the Taxpayer was more convincing that promotion of agriculture is the Taxpayer's primary purpose and that the nonagricultural fair activities are conducted to fund and achieve the agricultural goals. The evidence on this point in the Plymouth State case was not convincing.

2) Since the Plymouth State Fair decision was issued, the supreme court issued its opinion in Appeal of the Kiwanis Club of Hudson, Inc., 140 N.H. 92 (1995), in which the supreme court held that the Kiwanis' entire hall was exempt because the hall's primary use (Kiwanis' bingo games) was charitable because money is necessary to run charitable organizations. Additionally, the court held the secondary use of the hall (rental to other nonprofit entities for bingo) was also consistent with the charitable use of the Kiwanis' hall. Under the Kiwanis case, therefore, just because an organization performs activities on a property that are not per se charitable, the property may still be exempt if the activities are essential to enable the organization to

achieve its charitable purposes. Again, the Taxpayer's charitable purposes cannot be achieved without the commercial uses on the property that generate the income and gate sales that are then used to fund the agricultural activities.

Page 10  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

3) In the Plymouth State Fair case, the board was presented with an all or nothing Exemption request. In the instant case, the Taxpayer only seeks Exemption on those portions of the Taxpayer's estate that are used exclusively for the promotion of agriculture.

The above three reasons provide a general itemization of differences between this case and the Plymouth State Fair case. While the specific facts are important, readers of this decision should not overemphasize the three factors. Rather, readers should remember the board decides the individual case before it based on the evidence and arguments made to it. The evidence and arguments in cases can vary greatly, and this can result in decisions that may appear divergent but may only be divergent because of the evidence and arguments presented rather than the board's conclusion concerning a specific issue.

**Findings of Fact and Rulings of Law**

In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;

- d. the request was irrelevant; or
- e. the request is specifically addressed in the decision.

**Taxpayer**

- 1) Granted.
- 2) Granted.
- 3) Granted.
- 4) Granted.

Page 11  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

- 5) Granted.
- 6) Granted.
- 7) Granted.
- 8) Granted.
- 9) Granted.
- 10) Granted.
- 11) Granted.
- 12) Granted.
- 13) Granted.
- 14) Granted.
- 15) Granted.
- 16) Granted, reading "shown" as "supported by".
- 17) Granted.
- 18) Granted.
- 19) Granted.
- 20) Granted.
- 21) Granted.
- 22) Granted.
- 23) Granted.
- 24) Neither granted nor denied.
- 25) Neither granted nor denied.
- 26) Neither granted nor denied.
- 27) Granted.
- 28) First sentence is granted; testimony is unclear on the second sentence.

**Town**

- 1) Granted.
- 2) Granted.
- 3) Denied.
- 4) Denied.
- 5) Granted.

Page 12  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

- 6) Granted.
- 7) Granted.
- 8) Granted.
- 9) Granted.
- 10) Granted.
- 11) Denied, operating income included revenue from general admission for people attending the fair for the agricultural activity.
- 12) Granted.
- 13) Granted, as to the listed expenses, but the listed expenses do not include overhead, repairs and maintenance.
- 14) Granted, but does not include overhead, repairs and maintenance.
- 15) Granted, includes both agricultural and nonagricultural uses.
- 16) Neither granted nor denied, the board assumes the commercial vendors are making significant revenue but no evidence was presented on this point.
- 17) Granted.
- 18) Granted.
- 19) Neither granted nor denied.
- 20) Denied.
- 21) Denied.
- 22) Denied.
- 23) Denied.

Page 13  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Chairman

\_\_\_\_\_  
Ignatius MacLellan, Esq., Member

\_\_\_\_\_  
Michele E. LeBrun, Member

\_\_\_\_\_  
Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark H. Puffer, Esq., Counsel for Hopkinton State Fair Association, Taxpayer; Russell F. Hilliard, Esq., Counsel for the Town of Hopkinton; and Chairman, Selectmen of Hopkinton.

Date: April 6, 1998

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

0006

**Hopkinton State Fair Association**

**v.**

**Town of Hopkinton**

**Docket No.: 15227-94EX**

**FINAL DECISION**

The "Taxpayer" seeks an RSA 72:23 V (Supp. 1997) charitable exemption (the Exemption) on a part of its taxable estate.

The Taxpayer has the burden to show it is entitled to the Exemption. See RSA 72:23-m. The board finds the Taxpayer carried its burden, proving it was entitled to a partial exemption.

**Introduction**

On April 6, 1998, the board issued a preliminary decision and ordered the parties to file statements concerning what buildings and what portion of the land should be exempt given the board's analysis and conclusions that were stated in the preliminary decision. Having reviewed that information, the board now issues this final decision.

In addition to deleting references to preliminary matters, the main revisions in this decision are as follows.

1) The board added additional discussion to page 6, paragraph 4 of the preliminary decision, which addressed the other nonfair uses of the buildings. This additional discussion is on page 7, paragraphs 2 - 5.

2) The board revised page 7, paragraph 3, sentence 1 of the preliminary decision by deleting the word "exclusively" and inserting "used and occupied by [the Taxpayer] directly." The new sentence is on page 8, paragraph 3 of this decision.

3) The board has listed which buildings are exempt and what part of the land is exempt.

**Facts**

The Taxpayer is a New Hampshire corporation with federal Internal Revenue Code § 501(c)(3) exemption status. Additional information about the Taxpayer as an organization will be presented in the analysis below.

The Taxpayer owns five tax parcels in the "Town" and primarily uses those parcels for the annual Hopkinton State Fair. Municipality Exhibit A is a tax map that shows the five tax parcels. The parcels are also used for other non-fair events, but the vast majority of those events are agricultural in nature. See Taxpayer Exhibit 10 and Town Exhibit F for a list of other events. While the Taxpayer owns five parcels, it only seeks a partial Exemption on one tax parcel -- map 222, lot 61 (the Appealed Property). The Appealed Property consists of approximately 34 acres and approximately 12 buildings and other improvements such as grandstands and utilities. Taxpayer Exhibit 8 shows the Appealed Property and includes a legend that describes the various types of activities that occur on the Appealed Property. The board has reduced this plan and attached it to this decision.

The buildings on the Appealed Property have three general uses:

- 1) commercial uses, which include buildings occupied during the fair generally by for-profit vendors that sell various food and retail items;
- 2) display uses, which include buildings used for agricultural exhibits such as 4-H exhibits and other agricultural exhibits including competitions for the various agricultural prizes that are given out at the fair; and
- 3) fair-support uses, which include bathrooms, information booths, offices, and first-aid stations.

The Taxpayer admitted the commercial-use buildings were not entitled to the Exemption, and therefore, the Taxpayer only sought Exemption on the agricultural-use buildings. See the map for the location of the agricultural buildings.

The Taxpayer originally sought Exemption for the entire land area of the Appealed Property, but later, at the hearing, admitted only a portion of the land should be exempt because only a portion of the buildings should be exempt. Additionally, part of the land (designated as "Midway" on the plan) is used by an outside vendor for carnival rides. (The term "Appealed Property" will now refer only to the buildings and land for which the Taxpayer seeks Exemption.)

**Analysis**

Charitable exemptions are provided by RSA 72:23 V (Supp. 1997), and the term "charitable" is defined in RSA 72:23-1.

**72:23 Real Estate and Personal Property Tax Exemption.** The following real estate and personal property shall, unless otherwise provided by statute, be exempt from taxation:

\*\*\*

V. The buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purpose for which they are established, provided that none of the income or profits thereof is used for any other purposes than the purpose for which they are established.

**72:23-1 Definition of "Charitable".** The term "charitable" as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to

render the organization "charitable" for purposes of this chapter, nor shall the organization's treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of "charitable" under the common law of New Hampshire.

Page 4  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

Therefore, to be entitled to an Exemption, the Taxpayer was required to show the following.

1) The Taxpayer is incorporated in this state and the Taxpayer's stated purpose and actual activities meet the RSA 72:23-1 (Supp. 1997) definition of "charitable".

2) The Taxpayer directly used and occupied the Appealed Property for the Taxpayer's charitable purposes.

3) The Taxpayer did not use any of the income or profits earned from the Appealed Property for any other purpose other than the Taxpayer's charitable purpose.

Each of these requirements will now be examined.

#### **Charitable Organization Criteria**

The Taxpayer meets the first criteria because it is a charitable organization that is incorporated in this state. The Taxpayer's articles of agreement state: "Art. 2. The object for which this corporation is established is the promotion of agriculture." Taxpayer Exhibit 2.

The Taxpayer's by-laws, Article 2 -- Purpose (Taxpayer Exhibit 3), state:

The primary purpose of this Association shall be:

- A. To provide a venue for the promotion of agriculture through education.
- B. The promotion and operation of an annual exhibition and fair commonly referred to as The Hopkinton State Fair.

C. Promotion of the use of fairgrounds for special events as approved by the Board of Directors.

In addition to the documentary evidence, the board heard from Alan Hardy, the Taxpayer's general manager, who testified that the primary purpose of the Taxpayer was to promote agriculture. He testified that he spends a significant portion of his time throughout the year organizing the agricultural activities, including working with the 4-H clubs. Mr. Hardy also testified that the fair includes typical nonagricultural fair activities and

Page 5

Hopkinton State Fair v. Town of Hopkinton

Docket No.: 15227-94EX

vendors such as food vendors, rides, games and entertainment, but these activities and vendors are required attractions that enable the agricultural part of the fair to accomplish its goals.

The agricultural goals of the fair are: 1) to provide a forum for agricultural competitions; and 2) to provide a forum that presents agriculture to the general public. Mr. Hardy testified that the Taxpayer is committed to reminding the general public of our state's agrarian roots and our state's present agrarian activities.

Mr. Hardy testified that the Taxpayer spends over \$100,000 a year for running the agricultural events. These costs are incurred for such expenses as judges and awards to the contestants. Additionally, a portion of the Taxpayer's overall operating expenses for the fair, the organizational work for the fair and the maintenance of the fairgrounds are directly attributable to the agricultural activities. The nonagricultural activities generate income, such as rent paid to the Taxpayer to operate a ride or food booth, which is used to pay for the agricultural activities. Additionally, the nonagricultural activities generate the crowds that pay the entrance fee and then view the agricultural exhibits and activities as part of the fair experience.

Under RSA 72:23-1, the term "charitable" includes organizations that "perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being of the general public \*\*\*." The board finds the promotion of agriculture complies with this definition. Moreover, the board, having examined the documentary evidence and heard the testimony, is convinced that the Taxpayer is genuinely committed to

this charitable purpose as defined in the statute and has a track record for achieving this purpose.

The Town argued that the Taxpayer did not meet the RSA 72:23-1 test or the test in Appeal of City of Franklin, 137 N.H. 622, 625-26 (1993), because the Taxpayer: 1) under RSA 72:23-1 was not "obligated by, its charter or

Page 6  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

otherwise, to perform \*\*\*" any charitable service; and 2) under the Appeal of City of Franklin, 137 N.H. at 625-26, the Attorney General's Office could not bring a lawsuit against the Taxpayer to force the Taxpayer to promote agriculture. The board disagrees with the Town's argument. As just stated above, the evidence demonstrates that the Taxpayer was organized to promote agriculture and has been operating since 1916 as an institution that promotes agriculture. Additionally, the Taxpayer's articles of agreement specifically dedicate all of the Taxpayer's property to nonprofit charitable uses and requires that upon the Taxpayer's dissolution the assets and income be given to another agricultural organization. Thus, the documents concerning the Taxpayer's purpose, the testimony concerning the Taxpayer's history and current activities and the dedication of its assets to agricultural promotion is sufficient to meet the RSA 72:23-1 test and the Appeal of City of Franklin test concerning the Taxpayer having an enforceable duty to promote agriculture.

#### **Use of Property for Charitable Purposes Criteria**

The Appealed Property, for which the Taxpayer seeks the Exemption, was used and occupied by the Taxpayer directly for its charitable purposes, and therefore, the second criteria for Exemption is met.

The Taxpayer has only sought Exemption on those buildings that are used for agricultural purposes. The Taxpayer has not sought Exemption on the buildings that have commercial purposes, and therefore, the board will not address Exemption of those buildings.

Concerning the land, the Taxpayer initially sought full Exemption of the land, but at the hearing, the Taxpayer admitted that a proportional amount of the land may be a more proper approach. Because the board will only be exempting the agricultural buildings and a portion of the land (explained below), the board finds that property has been "used and occupied by [the

Taxpayer] directly for the purposes for which [the Taxpayer was] established \*\*\*." The testimony was clear that the agricultural buildings are used for  
Page 7  
Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

agricultural activities such as displays and competitions that promote agriculture. Thus, these buildings are occupied to accomplish the Taxpayer's charitable (as discussed above) purpose.

The Town presented evidence about the use of the Taxpayer's properties for other events that are not related to the annual fair. Those activities and events, shown on Taxpayer Exhibit 10 and Town Exhibit F, are secondary to the property's primary use -- the fair. Moreover, the substantial majority of the nonfair events are agricultural in nature. Thus, the other events do not adversely affect the Taxpayer's Exemption claim, but rather support the claim.

The Town disagreed with this conclusion. In its statement filed after the preliminary decision, the Town asserted the nonagricultural use of the Property disqualified the Property for exemption. The board has several observations on this point.

First, the test is not exclusive use but whether the property is "used and occupied by [the taxpayer] directly" for charitable purposes. See RSA 72:23 V (Supp. 1997). (The board applied this correct test in its analysis, and stated so in the preliminary decision at page 6, paragraph 1. Mistakenly, the board later used the word "exclusively" at page 7, paragraph 3, sentence 1 of the preliminary decision. This error has been corrected.)

Second, while the board understands the Taxpayer allows nonagricultural uses on the Property, the board does not recall any evidence as to where and in what buildings, if any, these nonagricultural activities occurred. Further, the board does not recall any specific testimony that the Taxpayer-designated agricultural buildings were used for nonagricultural uses.

Third, even if the buildings were used for nonagricultural uses, the board finds these nonagricultural uses incidental to their primary use. The nonagricultural uses, if they existed, did not hinder in any way the Taxpayer's use of these buildings to promote agriculture and achieve its charitable purpose. See e.g., Appeal of Kiwanis Club of Hudson, 160 N.H. 92, 95 (1995) (incidental noncharitable use does not result in loss of exemption).

**Use of Income and Profits Criteria**

The Taxpayer also meets the third exemption criteria because no profit or income derived from the Appealed Property has been used for any other purpose other than the Taxpayer's charitable purpose. This conclusion is supported by the testimony of Mr. Hardy and the Taxpayer's financial statements that were submitted to the board. This evidence demonstrated that the Taxpayer uses the fair income to run the fair and to maintain the fairgrounds and that no income is otherwise distributed. Moreover, the Taxpayer's articles of agreement, article 10, specifically requires that upon dissolution of the Taxpayer, the assets or income from dissolution shall be given to another IRC § 501(c)(3) organization, which prohibits any individual or other nonexempt entities from profiting from dissolution.

Concerning income produced on the tax parcel (lot 61) as a whole, it is true that entities and individuals other than the Taxpayer derive income and profits from the use of those portions. However, the Taxpayer has not sought Exemption on those buildings or on those parts of the land area where commercial activities exist. The board again notes that the evidence was clear that the nonagricultural fair activities are essential to fund the fair's agricultural activities. Were it not for these commercial activities on the fairgrounds, the Taxpayer could not provide the agricultural exhibits and competitions and could not achieve its goal of promoting agriculture through the fair exhibits and competition. The board was not, however, asked to exempt these commercial properties, and therefore, the board will not further delve into this issue.

**Exempt Buildings**

Based on the above analysis, the board finds the Taxpayer is entitled to Exemption on all buildings "used and occupied by [the Taxpayer] directly" for agricultural purposes. See RSA 72:23 V (Supp. 1997). In the preliminary decision, the board ordered the parties to file a statement concerning what buildings qualified for the Exemption under the board's analysis. The

Hopkinton State Fair v. Town of Hopkinton  
Docket No.: 15227-94EX

Taxpayer submitted such a list; the Town did not. The board adopts the Taxpayer's list and exempts the buildings listed in attachments B, C, D and E to this decision.

Total of exemptions on buildings.

1994	\$257,200
1995	\$246,150
1996	\$245,150
1997	\$250,900

**Land Exemption**

Concerning the land, the board finds a part of the land should be exempt. The parties did not submit any maps that delineated, by land area, the parts of the lot used for agricultural purposes versus commercial purposes. Therefore, the board will exempt the land based on the percentage value the agricultural buildings have to the total value of all buildings on the Property. Mathematically the formula is as follows.

$$\text{percentage of exempt land} = \frac{\text{value of exempt agricultural buildings}}{\text{total value of all buildings and improvements}}$$

The Taxpayer submitted a statement consistent with the above formula, see attachments B, C, D and E to this decision.

	<u>Percentage of Land Exempt</u>	<u>Exempt Amount</u>
1994	51.66%	\$116,480
1995	46.78%	\$105,395
1996	46.59%	\$104,967
1997	47.89%	\$107,446

**Plymouth State Fair Case Distinguished**

For purposes of consistency and clarity, the board will briefly comment on how this instant case differs from the board's earlier decision in State Fair, Inc. a/k/a Plymouth State Fair Association v. Town of Plymouth, Docket No.: 12815-92EX (June 13, 1994), in which the board denied the Plymouth State Fair's request for a total exemption on its fairgrounds and buildings.

Initially, the board states it attempts to issue consistent decisions so taxpayers and municipalities have a predictable way to act after the board has issued a decision. Nonetheless, all cases before the board must be decided as they are presented. This means that different cases present different facts and different legal arguments.

The main differences between this instant case and the Plymouth State Fair case are as follows.

1) The Taxpayer's corporate documents more clearly express a charitable purpose consistent with 72:23-1. The Plymouth State Fair documents simply stated that the corporation's purpose was the "operation of an annual agricultural fair." The Taxpayer's corporate documents provide a much broader purpose -- the promotion of agriculture. This Taxpayer's fulfillment of this purpose was discussed above.

Additionally, the testimony from the Taxpayer was more convincing that promotion of agriculture is the Taxpayer's primary purpose and that the nonagricultural fair activities are conducted to fund and achieve the agricultural goals. The evidence on this point in the Plymouth State case was not convincing.

2) Since the Plymouth State Fair decision was issued, the supreme court issued its opinion in Appeal of the Kiwanis Club of Hudson, Inc., 140 N.H. 92 (1995), in which the supreme court held that the Kiwanis' entire hall was exempt because the hall's primary use (Kiwanis' bingo games) was charitable because money is necessary to run charitable organizations. Additionally, the court held the secondary use of the hall (rental to other nonprofit entities for bingo) was also consistent with the charitable use of the Kiwanis' hall. Under the Kiwanis case, therefore, just because an organization performs activities on a property that are not per se charitable, the property may still be exempt if the activities are essential to enable the organization to achieve its charitable purposes. Again, the Taxpayer's charitable purposes

cannot be achieved without the commercial uses on the property that generate the income and gate sales that are then used to fund the agricultural activities.

3) In the Plymouth State Fair case, the board was presented with an all or nothing Exemption request. In the instant case, the Taxpayer only seeks Exemption on those portions of the Taxpayer's estate that are used exclusively for the promotion of agriculture.

The above three reasons provide a general itemization of differences between this case and the Plymouth State Fair case. While the specific facts are important, readers of this decision should not overemphasize the three factors. Rather, readers should remember the board decides the individual case before it based on the evidence and arguments made to it. The evidence and arguments in cases can vary greatly, and this can result in decisions that may appear divergent but may only be divergent because of the evidence and arguments presented rather than the board's conclusion concerning a specific issue.

**Findings of Fact and Rulings of Law**

In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the request was irrelevant; or
- e. the request is specifically addressed in the decision.

**Taxpayer**

- 1) Granted.
- 2) Granted.
- 3) Granted.
- 4) Granted.
- 5) Granted.
- 6) Granted.
- 7) Granted.
- 8) Granted.
- 9) Granted.
- 10) Granted.
- 11) Granted.
- 12) Granted.
- 13) Granted.
- 14) Granted.
- 15) Granted.
- 16) Granted, reading "shown" as "supported by."
- 17) Granted.
- 18) Granted.
- 19) Granted.
- 20) Granted.
- 21) Granted.
- 22) Granted.
- 23) Granted.
- 24) Neither granted nor denied.
- 25) Neither granted nor denied.
- 26) Neither granted nor denied.
- 27) Granted.
- 28) First sentence is granted; testimony is unclear on the second sentence.

Docket No.: 15227-94EX

**Town**

- 1) Granted.
- 2) Granted.
- 3) Denied.
- 4) Denied.
- 5) Granted.
- 6) Granted.
- 7) Granted.
- 8) Granted.
- 9) Granted.
- 10) Granted.
- 11) Denied, operating income included revenue from general admission for people attending the fair for the agricultural activity.
- 12) Granted.
- 13) Granted, as to the listed expenses, but the listed expenses do not include overhead, repairs and maintenance.
- 14) Granted, but does not include overhead, repairs and maintenance.
- 15) Granted, includes both agricultural and nonagricultural uses.
- 16) Neither granted nor denied, the board assumes the commercial vendors are making significant revenue but no evidence was presented on this point.
- 17) Granted.
- 18) Granted.
- 19) Neither granted nor denied.
- 20) Denied.
- 21) Denied.
- 22) Denied.
- 23) Denied.

**Rehearing**

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, Chairman

\_\_\_\_\_  
Ignatius MacLellan, Esq., Member

\_\_\_\_\_  
Michele E. LeBrun, Member

\_\_\_\_\_  
Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark H. Puffer, Esq., Counsel for Hopkinton State Fair Association, Taxpayer; Russell F. Hilliard, Esq., Counsel for the Town of Hopkinton; and Chairman, Selectmen of Hopkinton.

Date: June 12, 1998

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

0006

**Hopkinton State Fair Association**

v.

**Town of Hopkinton**

**Docket No. 15227-94EX**

**ORDER**

This order responds to the "Town's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Chairman

\_\_\_\_\_  
Ignatius MacLellan, Esq., Member

\_\_\_\_\_  
Michele E. LeBrun, Member

\_\_\_\_\_  
Douglas S. Ricard, Member

**Certification**

I certify that copies of the within Order have this date been mailed, postage prepaid, to Mark H. Puffer, Esq., counsel for the Taxpayer; Russell F. Hilliard, Esq., counsel for the Town; and Chairman, Selectmen of Hopkinton.

Date: July 16, 1998  
0006

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

**Hopkinton State Fair Association**

v.

**Town of Hopkinton**

**Docket No.: 15227-94PT**

**ORDER**

This order raises the question of whether this appeal is properly before the board. The "Taxpayer" asserts its property is entitled to a charitable exemption under RSA 72:23 V. Exemption appeals are governed by RSA 72:34-a (supp. 1994), and such appeals must be filed with this board within six months of the notice of tax. Here, the notice-of-tax date was October 15, 1994, resulting in an April 17, 1995 filing deadline. The Taxpayer originally filed on May 9, 1995, and was informed that the exemption appeal was untimely. The Taxpayer then refiled under RSA 76:16-a, claiming relief as exempt or as overvalued. The parties' prehearing statements, however, only raised the exemption issue.

The board has always assumed that RSA 72:34-a, the specific exemption appeals statute, governs exemption appeals. See Petition of Dunlap, 134 N.H. 533, 548 (1991) (specific statute governs general statute). RSA 76:16-a is the general abatement statute and is primarily used to appeal claims of disproportionate assessment. To resolve this issue, the Taxpayer shall, within 14 days of the clerk's date below, file a memorandum showing cause why this exemption appeal should not be dismissed as untimely. Timely filing is a prerequisite for this board to have jurisdiction, and the Taxpayer's exemption appeal apparently was untimely. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's powers are entirely statutory); Arlington American Sample Book

Company

Page 2

Hopkinton State Fair Association v. Town of Hopkinton  
Docket No.: 15227-94PT

v. Board of Taxation, 116 N.H. 575, 576 (1976) (untimely appeal barred); see also Daniels v. B & J Realty, 134 N.H. 174, 176 (1991) (timeliness is a jurisdictional issue that may be raised at any time).

The board will either rule on this issue before the July 30, 1997 prehearing conference, or the board may use the prehearing conference to hear arguments on this issue and to address any other outstanding issues.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Chairman

\_\_\_\_\_  
Ignatius MacLellan, Esq., Member

\_\_\_\_\_  
Michele E. LeBrun, Member

\_\_\_\_\_  
Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Mark H. Puffer, Esq., counsel for the Taxpayer; Russell F. Hilliard, Esq., counsel for the Town; and Chairman, Selectmen of Hopkinton.

Date: July 3, 1997

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

0006

**Hopkinton State Fair Association**

**v.**

**Town of Hopkinton**

**Docket No.: 15227-94PT**

**ORDER**

This order relates to the issue of whether the "Taxpayer's" appeal of the "Town's" denial of an RSA 72:23 V charitable exemption was timely filed. As discussed below, the board asserts its RSA 71-B:16 II jurisdiction.

There is no dispute that the appeal was untimely under RSA 72:34-a (supp. 1994), which is the statute that provides a specific appeal process for exemptions and which has different deadlines from the RSA 76:16-a abatement appeal. The Taxpayer did, however, file a timely RSA 76:16 abatement application with the Town and a timely RSA 76:16-a abatement appeal with this board. Both documents raised two issues: 1) the Taxpayer's property qualified for a charitable exemption; and 2) if not exempt, some of the property was overassessed.

The board held a hearing on whether the RSA 76:16-a appeal provides jurisdiction over the exemption issue. The board deliberated concerning whether an RSA 76:16-a appeal could raise an exemption issue, and the board could not reach a unanimous decision. The consensus was, however, that RSA 72:34-a probably controls the appeal procedure for exemptions. Nonetheless, the board admits there is an interesting general question about whether exemption issues may be raised under RSA 76:16-a, especially when the abatement request includes

an exemption issue and a valuation issue. After deliberations, the board decided to not answer the specific appeal question. Rather, the board decided to assert jurisdiction under RSA 71-B:16 II, which states as follows.

**71-B:16 Order for Reassessment.** The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state:

\* \* \*

II. When it comes to the attention of the board from any source, \*\*\* that a particular parcel of real estate \*\*\* has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed \*\*\*.

The board finds the following factors support assertion of RSA 71-B:16 II jurisdiction.

1) While the Taxpayer may not have been artful in its appeal (by failing to follow RSA 72:34-a), the Taxpayer was not slothful and, in fact, filed a timely RSA 76:16 abatement application and a timely RSA 76:16-a appeal.

2) The Town received notice of the Taxpayer's exemption request when the Taxpayer filed the abatement application with the Town and then the appeal document with the board.

3) After the Town denied the Taxpayer's abatement application, the Town informed the Taxpayer it could appeal to the board or the court. (We are not concluding that any estoppel argument exists here. Rather, we are simply citing this as one of the factors.)

4) The board and the Town did not raise the timely filing issue early enough to allow the Taxpayer to file for a subsequent year and thereby protect its appeal rights (discussed more fully below).

5) The Taxpayer's filing of the appeal under RSA 76:16-a, especially when the abatement request included a valuation and an exemption issue, raised

a legitimate legal argument.

6) The Taxpayer briefly stated why its Property was entitled to exemption.

Page 3  
Hopkinton State Fair Association v. Town of Hopkinton  
Docket No.: 15227-94PT

Concerning factor four, the board notes that the Taxpayer initially filed and was told the exemption issue was untimely raised. The Taxpayer then contacted the board and was informed to simply refile, using the RSA 76:16-a procedure. The Taxpayer did this and was informed by the board that the appeal had met all the timelines and would be scheduled in due course. Had the board on its own, or by the Town's motion, reviewed this issue earlier, the board could have informed the Taxpayer of the timely filing issue that has recently been addressed. The Taxpayer could have then filed an RSA 72:34-a appeal for tax years 1995 and thereafter. The board has concerns that its actions may have misled the Taxpayer into concluding that a 1995 appeal was not necessary because the board had already told the Taxpayer that its 1994 appeal would be scheduled for a hearing.

As the board noted at the hearing, we exercise our RSA 71-B:16 II jurisdiction sparingly. This case appears to be a proper case to exercise our jurisdiction, and we have done so in this order. This case will now be scheduled in due course.

The Taxpayer made an oral motion to amend its prehearing conference statement to again raise the valuation issues that were raised in the abatement application and the appeal document. The board grants this request because we understand that the valuation issue should be easy to address. Specifically, we understand that the main issue is that certain buildings have been assessed that no longer exist and certain buildings that do exist have been overassessed. Given the relatively simple nature of inventorying the buildings and performing a cost analysis, it would be appropriate to allow the Taxpayer to amend the prehearing statement. The Taxpayer should know the board grants this request with some reluctance, especially where discovery has

already been conducted on the exemption issue.

The Taxpayer shall, within 60 days of the clerk's date below, file an amended prehearing statement, including with that statement a list of all witnesses who will discuss valuation, all documents that relate to valuation and Page 4  
Hopkinton State Fair Association v. Town of Hopkinton  
Docket No.: 15227-94PT

all appraisals that shall be relied upon. If the board does not receive the information within the 60 days, the board will rescind this grant and simply proceed on the exemption issue.

One final note concerning valuation, the board encourages that parties to explore whether the valuation issue could be addressed between the parties with an agreement about what the assessment should be if the board were to deny the exemption 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

---

Paul B. Franklin, Chairman

---

Ignatius MacLellan, Esq., Member

---

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Mark H. Puffer, Esq., counsel for the Taxpayer; Russell F. Hilliard, Esq., counsel for the Town; and Chairman, Selectmen of Hopkinton.

Date: September 11, 1997

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

0006

**Hopkinton State Fair Association**

**v.**

**Town of Hopkinton**

**Docket No.: 15227-94PT**

**ORDER**

This order responds to the "Town's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

The board does not read RSA 71-B:16 II as narrowly as the Town. If a property was entitled to an exemption but was assessed nonetheless, that property could be considered "improperly \*\*\* assessed" under RSA 71-B:16 II.

Concerning the timing of an appeal of the board's order, the board notes that the rehearing paragraph in the order specifically stated that "generally" appeals must be taken within 30 days. The board is aware that the appeal timelines may be different in certain situations.

We note, however, that some parties have taken the position that RSA 541:3 and RSA 541:6 require an appeal after a board order on what could have been a dispositive issue.

The ambiguity concerning when to appeal arises from several sources:

- 1) RSA 541:3 requires a rehearing motion after any board "order or decision";
- 2) RSA 541:6 requires an appeal "after the decision on such rehearing \*\*\*";

3) RSA 71-B:12 allows appeals, pursuant to RSA chapter 541, of board "decision" (query whether an order constitutes a "decision"), see also NHBA CLE, Appellate Advocacy 107 (1990) (examine statute authorizing RSA 541 appeal to determine scope of appeal rights); RSA 541-A:35 (supp. 1996) (definition of "decision" and "order"); and

4) except by interlocutory transfer without a ruling or petition for original jurisdiction, supreme court rules appear to only allow appeal after decision on merits or decision on motion that disposes of case. See Rules 3 ("Appeal from administrative agency by petition"; "Decision on the merits"; "Interlocutory transfer without a ruling"; Rule 4 ("Cases from administrative agencies shall be entered upon the filing of an interlocutory transfer without ruling or upon the filing of an appeal by petition"); Rule 10 ("Appeal from Administrative Agency").

Based on the above, it would appear the board's order should be appealed after the board rules on the rehearing motion concerning the decision on the merits. But some attorneys either: (a) appeal now and ask the court for a stay; (b) appeal later and assume correct even though rehearing already denied and only one rehearing motion allowed, Petition of Ellis, 138 N.H. 159, 161 (1993); or (c) ask the board to conditionally rule on rehearing and then rule finally with final rehearing order.

Bottom line, parties need to decide when to appeal.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Ignatius MacLellan, Esq., Member

---

Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Mark H. Puffer, Esq., counsel for the Taxpayer; Russell F. Hilliard, Esq., counsel for the Town; and Chairman, Selectmen of Hopkinton.

Date: October 23, 1997

---

Valerie B. Lanigan, Clerk

0006

**Hopkinton State Fair Association**

**v.**

**Town of Hopkinton**

**Docket No.: 15227-94EX**

**ORDER**

This order is a follow-up to the board's September 11, 1997 order, which granted the "Taxpayer's" motion to amend its prehearing conference statement provided the Taxpayer file certain information with the board by November 10, 1997. The board, having received nothing from the Taxpayer, rules as follows:

"Motion to Amend Taxpayer's Prehearing Conference Statement is recinded."

The board will now proceed on the exemption issue alone. The case will be scheduled for hearing in due course, and all parties will be so notified at least thirty (30) days before the scheduled hearing date. Note, the docket number's suffix has been changed from "PT" to "EX" to reflect the exemption issue.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Chairman

\_\_\_\_\_  
Ignatius MacLellan, Esq., Member

\_\_\_\_\_  
Douglas S. Ricard, Member

Page 2

Hopkinton State Fair Association v. Town of Hopkinton  
Docket No.: 15227-94EX

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Mark H. Puffer, Esq., counsel for the Taxpayer; Russell F. Hilliard, Esq., counsel for the Town; and Chairman, Selectmen of Hopkinton.

Date: December 1, 1997

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

0001

**Hopkinton State Fair Association**

**v.**

**Town of Hopkinton**

**Docket No.: 15227-94EX**

**ORDER**

In accordance with the New Hampshire Supreme Court clerk's November 16, 2000 notice of decision, the board dismisses the appeal.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Michele E. LeBrun, Member

---

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Page 2

Hopkinton State Fair Association v. Town of Hopkinton  
Docket No.: 15227-94EX

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Mark H. Puffer, Esq., counsel for the Taxpayer; Russell F. Hilliard, Esq., counsel for the Town; and Chairman, Selectmen of Hopkinton.

Date: December 1, 2000

\_\_\_\_\_  
Lynn M. Wheeler, Clerk

0006  
S:\DECISION\15000---94\15227-94