

Gerald F. and Gail H. Donahue, Docket No.: 16366-95PT  
Harry M. Dufresne, Docket No.: 16370-95PT  
Jeana Georgiou, Docket No.: 16371-95PT  
Richard and Donna Heffron, Docket No.: 16373-95PT  
Debra Tiano, Docket No.: 16374-95PT  
Richard Heffron, Docket No.: 16375-95PT  
Karen and Richard Chisholm, Docket No.: 16376-95PT  
Barbara Hambrick, Docket No.: 16466-95PT

v.

Town of Weare

**DECISION**

The above captioned "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessments as follows:

<b>Docket No.</b>	<b>Name</b>	<b>Lot</b>	<b>Assessment</b>
16366-95PT	Donahue <sup>1</sup>	115	\$ 42,800
16370-95PT	Dufresne	26	\$ 18,400
		28	\$ 27,100
16371-95PT	Georgiou	80	\$ 37,000
16373-95PT	Heffron	89	\$ 18,000
16374-95PT	Tiano	45	\$ 18,000
		51	\$ 34,000

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<sup>1</sup> The Donahues were not present at the hearing. Normally, the board would default the appeal for the Donahue's nonattendance. TAX 202.06. However, other Taxpayers indicated that Mr. Donahue was recently deceased. Consequently, the board waives its rules relative to hearing attendance and takes official notice of testimony and evidence presented in all the other appeals and includes the Donahues as part of this consolidated decision.

16375-95PT	Heffron, R.	90	\$ 39,300
16376-95PT	Chisholm	46	\$ 38,200
16466-95PT	Hambrick	106	\$ 41,900

(the Properties). The Properties consist of condominium campsites ranging in size from .07 to .12 acres with limited common area and a 1/130th interest in

the All Seasons Campground common area. The Properties that are improved contain trailers, additions and/or porches (the Appealed Units). For the reasons stated below, the appeals for abatement are denied.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued their assessments were excessive because:

- (1) their trailers are not permanent dwellings as they are not affixed to the land;
- (2) they may only use the campground 10 months of each year, therefore, the assessments should be pro-rated;
- (3) the Town is assessing the travel trailers as manufactured housing although All Seasons Campground does not allow manufactured housing; and
- (4) they do not have all the rights of year-round residents, i.e., they are not permitted to send their children to the Town's schools or vote due to their non-resident status.

The Town argued the assessments were proper because:

- (1) market value is the key and any lack of public amenities is reflected in the selling prices;
- (2) when the campground became condominiumized in 1985-1986, it was understood that it could only be used 10 months of the year and that it was not available

for permanent residency; and

(3) the best sales available were used to determine a reasonable range of values.

Subsequent to the hearing the board viewed All Seasons Campground and the Properties from their exterior.

### **BOARD'S RULINGS**

These appeals raise three general issues: 1) are the Appealed Units taxable as real estate or are they personalty and therefore not taxable; 2) does the Taxpayers' lack of access to certain town services (schools, voting, etc.) affect their tax responsibility; and 3) are the Town's assessed values proportional to market value.

### **IMPROVEMENTS: REALTY OR PERSONALTY**

The applicable statutes necessary to address the first issue follow.  
**RSA 72:6 Real Estate.** All real estate, whether improved or unimproved, shall be taxed except as otherwise provided.

#### **RSA 21:21 Land; Real Estate.**

- I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interest therein.
- II. Manufactured housing as defined by RSA 674:31 shall be included in the term "real estate."

#### **RSA 72:7-a Manufactured Housing.**

- I. Manufactured housing suitable for use for domestic, commercial or industrial purposes is taxable in the town in which it is located on April 1 in any year if it was brought into the state on or before April 1 and remains here after June 15 in any year; except that manufactured housing as determined by the commissioner of revenue administration, registered in this state for touring or pleasure and not remaining in any one town, city or unincorporated place for more than 45 days, except for storage only, shall be exempt from taxation. This paragraph shall not apply to manufactured housing held for sale or storage by an agent or dealer.

**RSA 674:31 Definition.** As used in this subdivision, "manufactured housing" means any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined RSA 674:31-a.

The Appealed Units range from the more traditional travel-trailer structure with an addition as contained on the Dufresne property to more modern units (often characterized as "park models") that have in many cases pitched roofs, additions, porches or decks adjacent to them. All the Appealed Units are connected to the campground's water, sewer and electrical utilities.

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By restrictions in the deed, the Properties are limited to occupation for only 10 months during the year. The placement of the Appealed Units on the respective sites varies from remaining on the wheels of the trailer chassis as in the case of the Dufresne property, to sitting on concrete blocks on leveled sites, to sitting on concrete blocks resting on a concrete slab as in the case of the Georgiou property.

The Appealed Units can be taxable as real estate in two manners, either as manufactured housing under RSA 674:13 or as fixtures.

#### **Manufactured Housing**

The board finds the Town's analysis of the Properties to be taxable as manufactured housing is correct. With the exception of the Dufresne Appealed Unit, all the Appealed Units were designed not to be mobile as travel trailers in the common sense but rather to be placed on a site for a prolonged period of time. The design and nature of the Appealed Units was not for cross-country travel and intermittent campground set up. The Appealed Units all have an excess of 320 square feet of seasonal dwelling area in either their primary section, or by a combination of the primary section and additions. Neither the seasonality of the dwelling or the permanency of the foundation are determining criteria for taxability. RSA 674:31 simply states a unit must

be "designed to be used as a dwelling with or without a permanent foundation...". (emphasis added). The Appealed Units are all designed for habitation and are all connected to utilities necessary for such seasonal habitation. With the exception of the Dufresne property, the Appealed Units clearly meet the definition of RSA 674:31 and fulfill the legislative intent of capturing those Appealed Units as real estate versus the more conventional travel trailers, which are registered as motor vehicles under RSA 261:40.

#### **Taxable as Fixtures**

As it principally applies to the Dufresne Appealed Unit, the board finds it is taxable as a fixture. A review of the definition of fixtures and the authority to tax fixtures follows.

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The authority to tax fixtures as real estate is found in RSA 72:6 and RSA 21:21. RSA 72:6 states: "All real estate, whether improved or unimproved, shall be taxed except as otherwise provided." This statute is to be broadly interpreted. King Ridge, Inc. v. Sutton, 115 N.H. 294, 298-99 (1975).

RSA 21:21 states: "The words 'land,' 'lands' or 'real estate' shall include lands, tenements, and hereditaments, and all rights thereto and interests therein." (Emphasis added).

In addition to these statutory criteria, the caselaw on fixtures must be examined -- fixtures being taxable as realty. As stated in New England Telephone Co. v. City of Franklin, 141 N.H. 449, 453 (1993):

A mixed question of law and fact, Graton & Knight Co. v. Company, 69 N.H. 177, 178, 38 A. 790, 790 (1897), whether an item of property is properly classified as either personalty or a fixture turns on several factors, including: the item's nature and use; the intent of the party making the annexation; the degree and extent to which the item is specially adapted to the realty; the degree and extent of the item's annexation to the realty; and the

relationship between the realty's owner and the person claiming the item." See, e.g., The Saver's Bank, 125 N.H. at 195, 480 A.2d at 84; Automatic Sprinkler Corp. v. Marston, 94 N.H. 375, 376, 54 A.2d 154, 155 (1947); Graton & Knight Co. v. Company, 69 N.H. at 178, 38 A. at 790; Dana v. Burke, 62 N.H. 627, 629 (1883); Wadleigh v. Janvrin, 41 N.H. 503, 518 (1860). The central factors are "the nature of the article and its use, as connected with the use" of the underlying land, Langdon v. Buchanan, 62 N.H. 657, 660 (1883); see Despatch Line of Packets v. Bellamy Man. Co., 12 N.H. 205, 233 (1841), because these factors provide the basis for ascertaining the intent of the party who affixes or annexes the item in question. Wadleigh 41 N.H. at 518."

Further, as stated in The Saver's Bank at 195:

A chattel loses its character as personalty and becomes part of the realty when there exists "an actual or constructive annexation to the realty **with the intention of making it a permanent accession to the freehold**, and an appropriation or adaptation to the use or purpose of that part of the realty with which it is connected." However, if a chattel becomes an intrinsic, inseparable and untraceable part of the realty, it is deemed a fixture regardless of the intent of the parties. (Citations omitted).

Black's Law Dictionary defines "fixture," in part, as "an article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the land. Goods are fixtures when they become so related to particular real estate that an interest in them arises under real estate law." Black's Law Dictionary 574 (5th ed. 1979).

Based on the evidence and testimony, the board finds the Dufresne unit is taxable as a fixture because of its integral relationship with the supporting condominium site. In the Dufresne case, he has used the unit as his primary dwelling. Despite the unit sitting on its wheels, it is connected to the campground's utilities. The testimony was that his and other units would most likely be sold in place (in fact, Mr. Dufresne purchased his unit on the existing site) and would not be removed from the site despite the ability of the unit to be removed. On the view, the board noted the addition to the trailer and the surrounding landscaping are clear indications of the owner's intent to have the unit remain at the site. Mr. Dufresne's actions in use of this unit clearly show it was intended to be left at the site for a prolonged period of time and used for seasonal residential purposes.

**IMPACT OF TAXPAYERS' LACK OF USE OF TOWN SERVICES**

Lack of municipal services is not necessarily evidence of disproportionality. The basis of assessing property is market value. See RSA 75:1. Any effect on value due to lack of municipal services would be reflected in the selling prices of comparables and consequently in the resulting assessments. See Barksdale v. Epping, 136 N.H. 511, 514 (1992). The New Hampshire legislature has not seen fit to provide for any differential taxing or assessments for properties based on their demand for services or

their seasonal nature. Given no statutory basis for any pro-ration, the board has no authority to do so.

**MARKET VALUE OF THE PROPERTIES**

As stated earlier, the burden of proof is with the Taxpayers to show that their Properties are disproportionately assessed relative to market

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value. In this case, the general level of assessment in the community, as determined by the department of revenue administration's 1995 equalization ratio, was 129%. Consequently, all the assessments listed earlier would need to be reduced by 29% to provide an approximate estimate of each Properties' market value.

The sales submitted by the Taxpayers were generally for sites only and not improvements. In fact, as testified to by the Town, there were only two sales of units and sites within the two to three-year time period before the tax year. The board finds the sales submitted by the Taxpayers were not conclusive that their Properties as a whole were overassessed. Because the Taxpayers did not submit additional evidence or sales, their burden of proof was not met.

Did the total market evidence submitted by both parties, raise a question as to whether the Properties could be overassessed? Yes, but it did not answer the question. The Taxpayers' market data and testimony were not convincing enough to tip the scale for the board to find that the Properties were disproportionately assessed. The board does not fault the Town for its analysis of the neighboring campground, Cold Springs Campground. As testified to by both sides, there have been few qualified sales of improved sites in All

Seasons Campground recently (only one was submitted as evidence). However, the board has questions as to whether the sales of travel trailers on leased sites at Cold Springs Campground accurately depict such units' contributory value in the Properties' condominium setting. The board encourages the Town to continue to review the sales of properties within All Seasons Campground and, if necessary, make revisions in future tax years if the market data warrants it. RSA 75:8.

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

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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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**CERTIFICATION**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gerald F. and Gail H. Donahue, Harry Dufresne, Jeana Georgiou, Richard and Donna Heffron, Debra Tiano, Richard Heffron, Karen and Richard Chisholm, and Barbara Hambrick, Taxpayers; George Hildum, Agent for the Town of Weare; and Chairman, Selectmen of Weare.

Date: October 6, 1997

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Valerie B. Lanigan, Clerk

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