

R. Arthur and Sara J. Roberson-Gindin

v.

Town of Middleton

Docket Nos.: 17807-98PT and 18034-99CU

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 property-tax assessments of \$55,800 on a lot identified as 89-004 ("Lot 4"), a vacant, 0.66 acre lot, and \$110,000 on a lot identified as 4-003 and 5-4-003 ("Lot 3"), a vacant, 124-acre lot (the "Properties") [Docket No. 17807-98PT]. The Taxpayers also appeal, pursuant to RSA 79-A:9 and RSA 76:16-a, the Town's 1999 current-use ("CU") assessment of \$65,770 on Lot 3 (99 acres in CU and 25 acres not in current use ("NICU")) and the \$55,800 assessment on Lot 4. [Docket No. 18034-99CU]. For the reasons stated below, the appeals are granted.

On August 23, 2000, the board held a hearing on both appeals, attended by the Taxpayers but not by the Town. The board then requested its review appraiser, Stephan W. Hamilton, to inspect the Properties and submit a written report. His October 16, 2000 report (the "Report") was supplied to the parties by an order dated October 19, 2000, and each party was given an opportunity to file written comments with the board. Neither party filed a response to the Report.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); TAX 206.06; and Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessments were excessive because:

- (1) the Properties are in reality one parcel, which was purchased as a whole, but the Town divided it into two lots;
- (2) the smaller, lakefront lot is only 0.66 acres and does not satisfy the Town's zoning requirements for a buildable lot;
- (3) the road that divides the two lots is an easement, and is not owned by the Town even though the Town maintains it;
- (4) the Properties were bought in an arms-length transaction for \$60,000 from an experienced realtor, after being advertised and marketed nationally (in *The Wall Street Journal*), as well as locally, and \$60,000 is its total market value;
- (5) the Properties have only a small amount of useable land and a large amount of wetlands (approximately 50 acres);

(6) the 1998 CU rules did not have a “stewardship” category, but the 1999 rules do and the Town never investigated the Taxpayers’ qualifications for stewardship, which are more than sufficient; and

(7) the Town has “frivolously defended” the appeal and the Taxpayers should be awarded costs in the amount of \$5,130, consisting of a refund of their filing fees (\$130) and a reasonable value for their time (100 hours at \$50 per hour).

The Town did not attend the hearing but argued in previous written communications with the Taxpayer that the assessments were proper because:

- (1) the sale of the Properties was unusual because the seller was not typically motivated but rather wished to quickly dispose of the land after having logged off all of the marketable timber;
- (2) a separate assessment on the waterfront lot is appropriate despite any restrictions due to its size;
- (3) CU assessment ranges for the stewardship forest land were not granted in 1999 because no stewardship plan was submitted with the CU application; and
- (4) the actual assessment on the tax bill for 1999 was less than the calculated assessment on the assessment-record card.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be as follows: 1998 - \$81,000; 1999 - \$57,334. The board will address its findings relative to each tax year separately.

1998 Ad Valorem Assessment

The Taxpayers applied for CU too late to qualify for the 1998 tax year. Consequently, the 1998 assessment under appeal relates solely to the ad valorem assessment.

The board finds several pieces of evidence indicate the Properties' 1998 market value was approximately \$60,000. First, for the reasons outlined in the Report, Mr. Hamilton concluded a market value of \$60,000. The board has reviewed his analysis and assumptions relative to highest and best use and zoning restrictions and agrees that both Lot 3 and Lot 4, while separately assessed, should be viewed as one estate for taxable purposes; therefore, it places the most weight on the Report. It is clear from the analysis and information contained in the Report that Lot 4 could only be used as access to Sunrise Lake and any residential development would have to take place on Lot 3 located on the opposite side of Fox Road. Mr. Hamilton's analysis, which splits these lots in two economic units (house lot with water access and rear land) is supported by the legal and economically feasible uses of the Properties . Cf. RSA 75:9¹.

Second, the board reviewed the evidence relative to the Taxpayer's purchase of the Properties and finds it is some evidence of the Properties' market value. Where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best

¹ **75:9 Separate Tracts.** Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory. In determining whether or not contiguous tracts are separate estates, the selectmen or assessors shall give due regard to whether the tracts can legally be transferred separately under the provisions of the subdivision laws including RSA 676:18, RSA 674:37-a, and RSA 674:39-a.

indicators of the Properties' value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 255 (1994). The board has considered the Town's argument that the seller may have been unduly motivated to sell as the Properties had been logged and were the remnant of a larger tract that had been subdivided. However, on balance, the board was convinced, based on the Taxpayers' testimony as to the length of time the Properties had been marketed, the manner in which it had been marketed and, as a most compelling factor, the poor quality of a vast majority of the land, that the sale price is reasonably reflective of the market value for this unique parcel.

Finally, an appraisal was done for financing purposes as of March 17, 1998, and it concluded a market value of \$60,000. The board places the least amount of weight on the appraisal because it was done for financing purposes with the appraiser likely knowledgeable of the agreed-upon transfer price. However, the sales contained in the appraisal do provide some evidence of the water access value of the Properties.

The 1998 equalization ratio as determined by the department of revenue administration (DRA) was 1.35. Therefore, the assessment, based on the market value finding of \$60,000, is \$81,000 ($\$60,000 \times 1.35$).

1999 CU and Ad Valorem Assessment

As with many CU appeals, the issues raised in 1999 occur, not due to any inherent complexities of the Properties, but largely due to lack of communication between municipal officials and the Taxpayers and the lack of understanding of the requirements on both sides for

requesting and processing CU applications. The board's findings in this section are based upon applying the facts from the testimony and the documents submitted in this case to the statutory requirements of Chapter RSA 79-A and the CU board (CUB) regulations. Further, because it is important that CU properties be clearly defined and liened so that subsequent actions that may disqualify any land from CU can be properly administered, the board in its last section will require the parties to clarify the application, map and the acreage liened at the Strafford County Registry of Deeds.

CU Assessment

The first issue to be resolved is for what land did the Taxpayers request CU assessment. The application and accompanying map are not definitive by themselves. However, based on the testimony and a review of those documents, the board concludes the Taxpayers applied for 50 acres of wetland and 49 acres of forest land. The board also concludes that the areas retained out of CU (land not in CU - "LNICU") is comprised of one parcel of 15.66 acres (15 acres on the northeasterly side of Fox Road and .66-acre waterfront lot Lot 3) and two parcels of four and six acres fronting on King's Highway. While the Taxpayers' map associated with the CU application did not indicate Lot 3 (the waterfront lot) being specifically retained out of CU, the total acreage requested for CU on the map does not include the waterfront lot. Therefore, the board finds Lot 3 was not requested for CU classification and its highest and best use is as a lake access parcel associated with the 15-acre area retained out of CU on Lot 4. Consequently, the

board concludes the actual area shown as "Lot 1" on the Taxpayers' map should be valued by combining the 15 acres from Lot 4 with the .66 acres from Lot 3.

The Taxpayers revised their application in November 1998 to indicate 50 acres of wetlands was being requested rather than 40. While no reduction in the acreage of the forest land was made in that revision, the board concludes from the testimony that this was the intent of the Taxpayers. Further, the revised 50 acres of wetland was based on better information the Taxpayers had obtained and comports with Mr. Hamilton's inspection of the Properties and estimate of wetlands in the Report. Consequently, the board finds the 50 acres of wetland should be classified for CU at the CUB's 1999 assessment of \$15 per acre.

As a result, the forest land category request by the Taxpayers should be reduced to 49 acres.

Four distinct issues relative to proper classification and assessment of the forest land were raised: 1) which category ("white pine," "hardwood" or "all other") the forest land should be classified in; 2) whether stewardship forest assessment ranges should apply; 3) where within the appropriate assessment range the forest land should be assessed; and 4) what equalization ratio to apply to the CU assessments.

First, Cub 304.03 (f) defines the three categories of forest land:

(f) Forest land classification shall be as follows:

(1) White pine, which means those forest standing in which white pine trees make up the majority of the stocking;

(2) Hardwood, which means those forest stands in which any combination of hardwood trees listed below, along with other less common hardwood species make up the majority of the stocking:

- a. Red Oak; c. Yellow birch; and
- b. Sugar Maple; d. White birch; or

(3) All other, which means those forest stands in which tree species not included in (1) and (2) above, make up the majority of the stocking.

Based on the photographs in the Report and the Taxpayers' testimony, the board concludes that because of the tree species remaining on the 49 acres, the forest land is more appropriately assessed in the "all other" category.

Second, Cub 304.03 (i) and (j) contain the rules in effect for 1999 relative to assessing forest land at lower values due to stewardship:

(i) The assessment ranges for forest land with documented stewardship shall be as follows:

(1) The assessment range for the category of white pine shall be \$55 to \$103 per acre;

(2) The assessment range for the category of hardwood shall be \$15 to \$33 per acre;

(3) The assessment range for the category of all other shall be \$40 to \$81 per acre;

(j) If the local assessing officials require the landowner to justify assessments within the ranges in (i), above, at the time of application for open space assessment, and periodically thereafter at intervals of 5 or more years, the landowner shall submit the following documentation to the local assessing officials;

(1) A statement of past forestry accomplishments; and

- (2) A statement of present forestry conditions; and
- (3) Plans for forest improvement and harvest for the following 5 or more years; and
- (4) An updated map or drawing showing changes in forest type acreage as required under Cub 302.01; or
- (5) In lieu of items (1) through (4), above, the landowner may provide documentation of a certified tree farm.

The Taxpayers' CU application checked off "yes" to item #7 which asks "is evidence of responsible stewardship attached?" The Taxpayers' evidence of responsible stewardship attached to the application reads as follows "[t]o the best of our knowledge there are no written criteria for 'evidence of responsible steward ship.' We feel we qualify for such designation by periodic examination of the property, familiarity with the law, research into forest management, and consultation with experts in the subject. We have called the State of NH, the Town of Middleton, and left a message with selectman, Mr. Corcoran and cannot find anyone who has an application to attach."

The board concludes that the Taxpayers' written words attached to the application do not provide the "documented stewardship" as the CU rule 304.03 (i) requires. While it is true the Town has the option to request, which it did not, more complete information under 304.03 (j), the term "documented stewardship" in (i) requires more than simply a statement that the Taxpayers are periodically examining the Properties and familiarizing themselves with forest management. The board concludes that documented stewardship requires something more

definitive either in plan or in action to qualify for the lower stewardship assessment ranges. Consequently, the board concludes that the proper assessment range is forest land without stewardship as contained in 304.03 (h) (3) of \$78 to \$119.

Third, CU rules provide guidance for determining where within individual assessment ranges certain forest properties should be assessed. See Cub 304.03 (a), (k), (l) and (m). In short, those provisions require the effects of any physical geography, accessibility and environmental capacities (soil, climate, elevation, etc.) of a piece of land to be taken into account in determining where within the range to assess. Neither party presented any specific argument relative to this issue. However, the board, after reviewing the photographs and description contained in the Report, the Taxpayers' physical description and the parcel's configuration and road frontage, concludes the Properties have some positive and some negative factors that offset each other so that midpoint in the assessment range is a reasonable value to assess the forest land. Consequently, the board concludes the 49 acres of forest land should be assessed at \$99 per acre.

Fourth, CUB 304.03(g) requires CU assessments be adjusted by the "municipality's most recent equalization ratio."

(g) In accordance with RSA 79-A:5, I, the assessed value of forest land shall be equalized by multiplying the assessment by the municipality's most recent equalization ratio.

The board finds the most recent equalization ratio that would have been available to the assessors for the 1999 tax year which would have been the prior year's 1998 ratio of 1.35.²

In summary, the 1999 CU assessments are calculated as follows:

Wetlands - 50 acres x \$15 x 1.35 = \$1,013

All other forest category - 49 acres x \$99 x 1.35 = \$6,549

Ad Valorem Assessments for LNICU

As the board has earlier found, three separate parcels have been retained from CU:

- 1) 15.66 acres of Lot 3 and part of Lot 4 along Fox Road and having access to Sunrise Lake;
- 2) a 6-acre parcel on King's Highway; and 3) a 4-acre parcel on the northerly side of the Properties on King's Highway.

15.66-Acre Parcel NICU

The best evidence of the 15.66-acre parcel's market value is Mr. Hamilton's 1998 estimate in the Report of \$27,000. To adjust that 1998 estimated market value to 1999, the board has applied the 6% annual time adjustment contained in Mr. Hamilton's Report. Consequently, the indicated 1999 market value of the 15.66-acre parcel is \$28,620 (\$27,000 x 1.06). Utilizing the 1999 equalization ratio of 1.18 equates this market value estimate to an assessed value of \$33,772 (\$28,620 x 1.18).

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² The DRA determines on an annual basis each municipality's equalized valuation and, as part of that process, their equalization ratios. However, due to the timing of the calculations, the equalization ratios are not issued until May of the following year. For example, the 1999 equalization ratio was not available until approximately May of 2000 and, as a consequence, the equalization to be applied to the 1999 CU calculation made by the Town of Middleton during the summer of 1999 would have been the prior year's 1998 equalization ratio of 1.35. (The Report on page 10, inadvertently, reports this ratio as 1.15)

4 and 6-Acre Parcels NICU

No specific evidence of the market value of these two parcels was submitted either by the Taxpayers or detailed in Mr. Hamilton's Report. The Taxpayers upon questioning, indicated these two parcels had been retained from CU classification as possible building sites for sometime in the future because of their frontage on King's Highway. Mr. Hamilton in his Report noted the poor quality of the land on both sites (see page 4) but did not assess them separately from the balance of the back land of the parcel. The board finds the \$325-per-acre market value estimate contained in the Report for the back land is an average of the better, more accessible land and the worse, inaccessible wetland of the parcel. Consequently, applying the \$325 per acre value to these two frontage parcels would result in too low a value. The only other evidence relative to their value is the Town's assessment at essentially \$1,600 an acre (\$2,000 x .8). Applying the \$1,600 per acre value produces a \$9,600 assessment for the 6-acre parcel and a \$6,400 assessment for the 4-acre parcel. The board finds these assessments are reasonable and reflect the best evidence submitted. These assessments recognize the less than ideal physical characteristics of the parcels (ledge and wetland areas - see page 4 of the Report) and their good access due to frontage on King's Highway.

Conclusion

In summary, the board finds the 1999 CU and ad valorem assessments are as follows:

Wetlands - 50 acres	\$ 1,013
Forest land - 49 acres	\$ 6,549
15.66-acre site NICU	\$33,772
6-acre site NICU	\$ 9,600
4-acre site NICU	<u>\$ 6,400</u>
Total	\$57,334

As mentioned earlier, the Taxpayers' map lacks the clarity and specificity as required by Cub 302.02 (d):

(d) Form A-10 shall be accompanied by a map or drawing of the entire parcel, which shall include:

(1) Both current use and non-current use land, adequately identified and oriented to establish its location, and sufficiently accurate to permit computation of acreage;

(2) The interior boundaries;

(3) The acreage of farm, forest, and/or unproductive land which the application is seeking current use assessment; and

(4) The forest type category for any forest land; and

(5) All portions of land not to be classified under current use.

As noted in the Report, the Taxpayers' sketch of the three parcels retained out of CU do not calculate (using the indicated frontages and scaled depths) to the acreage listed by the Taxpayers. Further, as the board has noted earlier, the map does not clearly indicate that Lot 3

has been retained out of CU. Consequently, the Taxpayers shall submit a new map to the Town to comply with the requirements of Cub 302.02 (d) showing in reasonable scale the dimensions of the area retained from CU and revise the NICU and CU acreage to reflect the proper total acreage of Lots 3 and 4. (This map shall reflect the findings of this decision for the 1999 tax year. The Taxpayers may, if they wish for 2001 or future years, timely apply to the Town to place additional land in CU). The Taxpayers shall submit this map to the Town within 30 days of the date of this decision, copying the board. The Town shall within 60 days file with the Strafford

County Registry of Deeds a corrected description of the Properties in CU for 1999 in accord with this decision. As stated earlier, the purpose of these corrections is to clarify the status of CU land and NICU land for the future.

Costs

The Taxpayers claim a total of \$5,130 as “costs” against the Town. They stated this sum consisted of preparation time (100 hours x \$50/ hour for their own time = \$5,000) and filing fees (2 x \$65 = \$130) for the property tax and LUCT appeals. The Taxpayers cite TAX 201.39 in support of this claim.

TAX 201.39 requires a threshold finding that “the matter was frivolously brought, maintained or defended” for the board to enter an award of costs against another party. While the Taxpayers did sustain their burden of proof and are entitled to a partial abatement of their taxes in this case, the board finds at least some basis for the Town’s position and cannot conclude the appeals were the result of ‘frivolous’ actions by the Town.

In addition, to the extent the Taxpayers seek compensation for their own time, rather than for attorney's fees,³ the supreme court has held that such costs are not recoverable even in a case where sanctions may be appropriate. Emerson v. Town of Stratford, 139 N.H. 629, 632 (1995) ("any award of sanctions may not include compensation for the plaintiffs' time spent researching, writing, making copies, and preparing for court"). In Emerson, the supreme court struck down an award of \$807.99 by the district court to the prevailing parties ("for mileage, photocopies, postage and compensation for their time spent researching, writing, making copies, and preparing for court"), id. at 630; this is essentially the type of compensation the Taxpayers have requested here.

As a consequence, the board denies the Taxpayers' request for costs in this case.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$81,000 for 1998 and \$57,334 for 1999 shall be refunded with interest at six percent per annum from date paid to

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³ While the board does have some statutory authority to award attorney's fees in certain tax cases, see RSA 21-J:28-b (appeals of DRA assessments), the supreme court has recently made it clear the board has no "inherent authority" (without a statutory provision) to award attorney's fees, because the board's "remedial authority is expressly limited by statute." Appeal of Land Acquisition, Slip. Op.98-672, ___N.H.___ (December 8, 2000), <<<http://www.state.nh.us/courts/supreme/opinions/0012/landacq.htm>>> No such statutory authority exists in property tax abatement or LUCT appeals.

refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 2000. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to R. Arthur and S. Roberson-Gindin, Taxpayers; and Chairman, Selectmen of Middleton.

Date: January 11, 2001

Lynn M. Wheeler, Clerk

R. Arthur and Sara J. Roberson-Gindin

v.

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ORDER

This Order responds to the “Taxpayers” rehearing motion (“Motion”), which is denied. The Motion did not demonstrate the board erred in its “Decision,” and thus, the Motion failed to show any “good reason” to grant a rehearing. See RSA 541:3 and TAX 201.37.

While the Motion is detailed in its comments, it appears to raise several questions which the board takes the opportunity to clarify in this Order.

First, the Taxpayers request the board’s help in clarifying the correctness of any refund received from the “Town.” This request is premature at this time. Once the refund has been issued, the Taxpayers may file a TAX 203.05(j) motion for enforcement with the board if they find the Town miscalculated the refund and interest. The Taxpayers have requested the Town explain how it arrived at the amount already refunded (on August 8, 2000); the board suggests the Town comply with this request and provide a detailed summary of both the August 8, 2000 check and the refund ordered in the board’s January 11, 2001 Decision to avoid further proceedings.

Next, the Taxpayers reference page 11 of the Decision, where the board made a 6% annual time adjustment to Mr. Hamilton's 1998 market value estimate of \$27,000 for the 15.66-acre parcel. Page 11 of the Decision relates to the calculation of a portion of the "ad valorem"⁴ assessment of land not in current use (LNICU) for the 1999 tax year. (This is clear from the heading on page 5 of the Decision which begins the board's findings for the 1999 tax year.) Mr. Hamilton's estimate for the 15.66-acre site was its market value as of 1998 (not its assessed value); therefore, the board trended that value to reflect its market value for tax year 1999. Once a time adjustment was applied to the 1999 market value finding, the board then utilized the 1999 equalization ratio of 1.18 to arrive at its assessed value.

Last, the Taxpayers referred to the 4 and 6-acre parcels NICU discussed on pages 12 and 13 of the Decision. The values found for these two pieces of property were "assessed values," not market values; therefore, there was no need to equalize them by the 1999 equalization ratio as they were already equalized. As the board indicated in its Decision, only current use values are adjusted each year by the equalization ratio (CUB 304.03(g)). All other values are assessed values that are already at the level of assessment relative to market value. The board refers the Taxpayers to the conclusion on page 13 of its Decision, which summarizes the 1999 current use

⁴"Ad valorem" means according to value. Black's Law Dictionary, Fifth Edition at 48. Ad valorem is a general term applied to taxes based on value as opposed to some other basis, such as current use, which has no relation to market value, and is used to differentiate them; even if ad valorem assessments are not at 100% of market value, they are at some relationship to market value (i.e. equalized value).

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values and the ad valorem assessments for a total of \$57,334. The board did not state or infer that the current use values were ad valorem values, contrary to what the Taxpayers suggest.

To the extent the Taxpayers comment on the board's denial of their request for costs, the board thoroughly discussed this issue in its Decision and finds it needs no further elaboration.

SO ORDERED

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify copies of the above order have this date been mailed, postage prepaid, to R. Arthur and Sara Roberson-Gindin, Taxpayers; and Chairman, Board of Selectmen of Middleton.

Dated: March 8, 2001

Lynn M. Wheeler, Clerk

R. Arthur and Sara J. Roberson-Gindin

v.

Town of Middleton

Docket Nos.: 17807-98PT and 18034-99CU

ORDER

This order responds to the letter dated April 9, 2001, from the “Taxpayers.” The letter complains about an alleged lack of compliance by the “Town” and asks the board to “reinforce” its ruling. Consequently, the board will treat the letter as a motion for enforcement under TAX 203.05(j) (“Motion”). The board has reviewed both the Motion and the attached April 2, 2001 memorandum (“Memo”) from Wil Corcoran to the board of selectmen detailing the abatement calculations relative to the abatements ordered by the board in these two appeals. The board has determined that a hearing on the Motion is not necessary given the arguments raised by the Taxpayers and the Town’s straightforward calculations contained in the Memo. For all the reasons that follow, the board denies the Motion.

The Town was not present at the August 23, 2000 hearing, did not file any comments to the board appraiser’s report and did not file any rehearing motion to the board’s January 11, 2001 decision. Consequently, the board was unaware until now that the “Property” is located in

“two taxing districts” (“Lake” and “Town”). This fact, however, does not change the outcome since a municipality has the authority to establish districts which may vary in rates of taxation. See RSA 52:16 (tax rate setting procedure for village district).⁵ From the Memo, it appears the Lake District in 1998 had a tax rate that was 35 cents (per thousand dollars of assessed value) higher than the Town District (\$20.42 versus \$20.07, a difference of 1.7 percent). In 1999, each district apparently had the same tax rate (\$15.42).

The board is unable to conclude how this evidence would impact its decision in any material way. The board ruled that both the waterfront and rear lots should be viewed as one estate for assessment purposes. The board finds the Town’s calculations conform to the board’s decision, and the Town’s allocation of value between the two taxing districts is a reasonable way to carry out the effect of the ordered abatement. Indeed, as noted above, the difference in the tax rates between the two districts is very slight and is essentially *de minimis*. The Taxpayers appear to recognize this fact, but not the conclusion the board must reach.⁶ Since

⁵ RSA 75:9, cited by the Taxpayers, refers to the “appraisal” (valuation and assessment) process, not the setting of tax rates. It is therefore not inconsistent with RSA 52:16 and requires no “exception.”

⁶ The Taxpayers state in their letter: “We also note the rates for the two districts vary very little, sometimes zero, suggesting the distinction is of little value.” Whether of “little” or great value, no error or abuse of

the Town properly applied the board's finding of assessed values and allocated these values between the two districts, no error has been shown by the Taxpayers and the Motion is denied.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this Order must be filed within thirty (30) days of the clerk's date below, not the date the Order is received. RSA 541:3; TAX 201.37(a). 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(f). 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.

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authority by the Town has been shown by the Taxpayers. In addition, the Taxpayers have not objected to the reasonableness of the Town's allocation parameters (46% and 54%, respectively, to the lakefront and rear lots), but only to the Town's authority to impose separate rates in each district rather than a "unitary" rate to the Property located in both districts.

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to R. Arthur and S. Roberson-Gindin, Taxpayers; and Chairman, Selectmen of Middleton.

Date: April 26, 2001

Lynn M. Wheeler, Clerk