

**David and Donna Missle**

**v.**

**Town of Waterville Valley**

**Docket No.: 23403-07PT**

**ORDER**

The “Town’s” September 2, 2008 letter states this appeal filed by the “Taxpayers” on July 24, 2008 “should have been denied” by the board; that letter will therefore be treated as a motion to dismiss (“Motion”). The Motion contends the appeal should not be allowed to proceed: (1) because of an alleged lack of specificity in the abatement request filed at the local level; and (2) because the “Taxpayers” submitted “additional information pertaining to market value” to the board that was not presented at the local level. Upon consideration of these grounds on the record presented, a majority of the board finds the Motion should be denied.

The level of specificity required under the statute and the board’s rules is not amenable to a fixed and absolute standard, but rather is one calling for judgment and consideration of the specific facts and circumstances involved. The Maloney Associates appeals, cited in the dissent filed herewith (by Paul B. Franklin, Chairman), are distinguishable. For example, in those appeals, unlike here, the municipalities made follow-up requests for information to the taxpayers

regarding the grounds for their abatement requests but the taxpayers' representatives did not respond. Here, it appears the Town made no such effort before denying the abatement request.

While the majority recognizes and shares the concerns articulated in the dissent, we simply cannot reach the same conclusion. Our decision to deny the Motion is influenced by the relevant case law, including GGP Steeplegate v. City of Concord, 150 N.H. 682, 686 (2004), also cited by the dissent. In Steeplegate, the supreme court stated:

RSA 76:16, I (2003) permits any person aggrieved by the assessment of a tax to apply in writing to the selectmen or assessors for abatement of the tax. Selectmen or assessors may abate any tax assessed by them for good cause shown. RSA 76:16, I. The BTLA prescribes the abatement application form. RSA 76:16, III. RSA 76:16, IV (2003) explicitly provides, however, that “[f]ailure to use the [prescribed] form ... shall *not* affect the right to seek tax relief.” (Emphasis added.) The tax abatement scheme is written to make the proceedings free from technical and formal obstructions. Arlington Mills v. Salem, 83 N.H. 148, 154, 140 A. 163 (1927). “It should be construed liberally, in advancement of the rule of remedial justice which it lays down.” Id. (quotation omitted).

To ensure that tax abatement proceedings remain free from technical and formal obstructions, we conclude that the threshold for properly completing an abatement application is minimal. Therefore, a taxpayer who provides a brief explanation of the reason or reasons the taxpayer seeks an abatement remains entitled to seek tax relief. The language of [the applicable statute] and our well-established rule that tax abatement proceedings remain free from technical impediments support our conclusion that the selectmen or assessors may not deny an abatement application solely because a taxpayer failed to provide in the application a detailed explanation why the taxpayer is entitled to tax relief.

Id. The supreme court in Steeplegate reversed a superior court ruling dismissing the taxpayer's appeal, which is consistent with our finding that dismissal is not warranted here.

The board further notes a taxpayer is not required to present the same grounds for appeal, or even the same evidence to the board, that may have been presented at the local level when the taxpayer made the abatement request to the municipality. Compare RSA 76:16-a with RSA 76:16. In other words, while the grounds stated in the appeal document control the

determination of this appeal, these grounds can be different than those presented to the municipality before the appeal was filed with the board.

In brief, the majority finds the appeal should not be dismissed and the Motion is denied. The timeline for completing and filing a “Report of Settlement Meeting” stated in the board’s August 28, 2008 Order remain in effect.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Dissenting Opinion**

I respectfully dissent from the majority's decision and would have granted the Motion. The Motion's representation as to the brevity of the Taxpayers' Abatement Application reasons falls below the "minimal" threshold set out in GGP Steeplegate, Inc. v. City of Concord, 150 NH 683, 686 (2004).

Further, denying the Motion is contrary to the board's longstanding holdings in Maloney Associates, Inc, et al v. Town of Hanover, BTLA Docket No.: 14291-93, et al. (October 20, 1994), that an appeal should be dismissed where the taxpayer simply relied upon canned, perfunctory language that provides no indication to the town as to the basis of the taxpayer's dissatisfaction with the assessment.

Respectfully dissenting;

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Paul B. Franklin, Chairman

**CERTIFICATION**

I hereby certify a copy of the above Order has been mailed this date, postage prepaid, to: David and Donna Missile, 3 Susan Lane, Ashland, MA 01721, Taxpayers; Chairman, Board of Selectmen, Town of Waterville Valley, PO Box 500, Waterville Valley, NH 03215; and Commerford Nieder Perkins, LLC, 556 Pembroke Street, Suite #1, Pembroke, NH 03275, contracted assessing firm for the Town.

Dated: November 17, 2008

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Anne M. Stelmach, Clerk