

State of New Hampshire
Supreme Court

NO. 2018-0217

2018 TERM

OCTOBER SESSION

Appeal of Town of Belmont

RULE 10 APPEAL OF FINAL DECISION OF THE
NEW HAMPSHIRE BOARD OF TAX AND LAND APPEALS

BRIEF OF TAXPAYER/APPELLEE
ROBIN M. NORDLE 2013 TRUST

October 29, 2018

Joshua L. Gordon, Esq.
Law Office of Joshua L. Gordon
(603) 226-4225 www.AppealsLawyer.net
75 South Main St. #7
Concord, NH 03301
NH Bar ID No. 9046

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... [3](#)

QUESTION PRESENTED..... [6](#)

STATEMENT OF FACTS AND STATEMENT OF THE CASE..... [7](#)

 I. Summer Camp Converted to Year-Round
 Homestead..... [7](#)

 II. Louis Nordle is a Vietnam Veteran Disabled by
 Agent Orange..... [8](#)

 III. Veterans Administration Grant Adapts Home for
 Disabilities..... [9](#)

 IV. Belmont Denies Disabled Veteran Property Tax
 Exemption..... [11](#)

 V. Board of Tax and Land Appeals Approves
 Exemption..... [13](#)

SUMMARY OF ARGUMENT..... [14](#)

ARGUMENT..... [15](#)

 I. New Hampshire Law Regarding Construction of
 Tax Exemption Statute..... [15](#)

 II. Louis Owns a Specially Adapted Homestead
 Acquired With VA Assistance..... [19](#)

 III. Belmont’s Arguments are Unreasonable..... [20](#)

 IV. Belmont’s Position is Unreasonable..... [23](#)

CONCLUSION..... [25](#)

REQUEST FOR ORAL ARGUMENT..... [25](#)

CERTIFICATIONS..... [26](#)

ADDENDUM..... [26](#)

 1. BTLA DECISION (granting taxpayer exemption) (Feb. 14, 2018).... [27](#)

 2. BTLA DECISION (denying reconsideration) (Mar. 27, 2018)..... [34](#)

TABLE OF AUTHORITIES

New Hampshire Cases

<i>Appeal of New Hampshire Electric Cooperative, Inc.</i> , 170 N.H. 66 (2017).	20
<i>Brewster Academy v. Town of Wolfeboro</i> , 142 N.H. 382 (1997).	24
<i>Carter v. Concord General Mutual Insurance Co.</i> , 155 N.H. 515 (2007)..	15
<i>Cecere v. Loon Mountain Recreation Corp.</i> , 155 N.H. 289 (2007).	15
<i>In re City of Nashua</i> , 164 N.H. 749 (2013).	25
<i>Czyzewski v. New Hampshire Department of Safety</i> , 165 N.H. 109 (2013).	15
<i>DirecTV, Inc. v. Town of New Hampton</i> , 170 N.H. 33 (2017).	17
<i>Dube v. New Hampshire Department of Health & Human Services</i> , 166 N.H. 358 (2014).	15
<i>East Coast Conf. of Evangelical Covenant Church, Inc. v. Town of Swanzey</i> , 146 N.H. 658 (2001).	17, 24
<i>General Insulation Co. v. Eckman Const.</i> , 159 N.H. 601 (2010).	16
<i>Goodrich Falls Electric Co. v. Howard</i> , 86 N.H. 512 (1934).	16
<i>Housing Partnership v. Town of Rollinsford</i> , 141 N.H. 239 (1996).	17
<i>Leavitt v. Town of North Hampton</i> , 98 N.H. 193 (1953).	16
<i>Mountain Valley Mall Associates v. Municipality of Conway</i> , 144 N.H. 642 (2000).	16

<i>Nashua Coliseum, LLC v. City of Nashua,</i> 167 N.H. 726 (2015).....	15
<i>Pennelli v. Town of Pelham,</i> 148 N.H. 365 (2002).....	15
<i>Scribner v. Wikstrom,</i> 93 N.H. 17 (1943).....	16
<i>Senior Citizens Hous. Dev. Corp. of Claremont v. City of Claremont,</i> 122 N.H. 1104 (1982).....	17
<i>Simonsen v. Town of Derry,</i> 145 N.H. 382 (2000).....	15
<i>State v. Jennings,</i> 159 N.H. 1 (2009).....	16
<i>State v. Uhrig,</i> 82 N.H. 480 (1927).....	17
<i>Town of Hanover v. City of Lebanon,</i> 116 N.H. 264 (1976).....	24
<i>Town of Peterborough v. MacDowell Colony, Inc.,</i> 157 N.H. 1 (2008).....	24
<i>Wolfboro Camp Sch., Inc. v. Town of Wolfboro,</i> 138 N.H. 496 (1994).....	15

Other States' Cases

<i>Brattleboro Savings & Loan Association v. Hardie,</i> 94 A.3d 1132 (Vt. 2014).....	17
<i>Frazer v. Weld,</i> 59 N.E. 118 (Mass. 1901).....	18
<i>In re Wolff's Estate,</i> 182 A. 187 (Vt. 1936).....	17

Federal Statutes and Regulations

38 U.S.C. § 2101A..... 17
38 U.S.C. § 2102..... 17
38 C.F.R. § 36.4404. 21

New Hampshire Statutes and Regulations

RSA 72:29, VI..... 13
RSA 72:36-a. 6, 11, 16, 19, 21, 22
RSA 72:37-a. 21
RSA 72:37-a, I(a)..... 21
RSA 198:56..... 17
RSA 480:1..... 17
N.H. Admin. Rules, Rev 407..... 12

Secondary Sources

BLACK’S LAW DICTIONARY (10th ed. 2014)..... 16
WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED (2002). 16

QUESTION PRESENTED

- I. Was the Board of Tax and Land Appeals correct in its holding that the disabled veteran is entitled to a real estate tax exemption, pursuant to RSA 72:36-a, because he acquired his specially adapted homestead with assistance of the VA?

STATEMENT OF FACTS AND STATEMENT OF THE CASE

I. Summer Camp Converted to Year-Round Homestead

Louis Nordle grew up in Manchester, New Hampshire, and in 1969 was honorably discharged from the United States Air Force, with the rank of Sergeant, after serving in Vietnam. MILITARY HONORABLE DISCHARGE (Oct. 29, 1969), *CR*¹ at 69; *Trn.* at 12. As a child and teen, he spent summers at his aunt's camp on the bank of Lake Winnisquam in Belmont, New Hampshire, and as an adult he vacationed there with his wife, Robin Nordle, and their four children. *Trn.* at 13-14, 16-17; *see* TAX CARD (Feb. 15, 2017), *CR* at 114-15 (photo of house with lake in background).

Louis's career was a dispatcher for the electric company. *Trn.* at 13. In 1998, in a financial reach, Louis and Robin bought the summer camp from his aunt's estate. TAX CARD (Feb. 15, 2017); *Trn.* at 13, 19. The house was later placed in a trust, in which Louis has a life estate. DECLARATION OF TRUST (Jan. 2, 2013), *CR* at 32 (creating "Robin M. Nordle 2013 Trust"); QUITCLAIM DEED (June 22, 2015), *CR* at 50; LETTER FROM ATTY TO VA (Sept. 9, 2015), *CR* at 108; SECOND AMENDMENT TO DECLARATION OF TRUST (Sept. 15, 2015), *CR* at 41.

In 2007, Louis and Robin razed the old camp, rebuilt it as a single-family, four-season residence, sold their house in Hooksett, New Hampshire, and made Belmont their home. The acquisition required financing, and, unaware of any veterans' housing finance benefits, they facilitated the transaction through their local credit union. TAX CARD (Feb. 15, 2017); *Trn.* at 14, 18-20. While Louis and Robin incorporated some thoughtful features for old age into their Belmont home, the house was not compliant with any handicapped standards. *Trn.* at 16-17.

¹Citation to "CR" indicates the certified record the BTLA filed with this court.

II. Louis Nordle is a Vietnam Veteran Disabled by Agent Orange

At about the same time as the original renovation, Louis was developing significant mobility issues, and needed crutches to walk. After release from military duty, Louis had not been involved with the Veterans Administration (VA), but at breakfast with friends one morning, Louis heard about Agent Orange's effect on veterans' health, and enrolled with the VA. He then learned that, having been stationed at a storage facility in Da Nang where Agent Orange was ubiquitous, his health conditions, including heart problems, breathing issues, and diabetes, were related to his military service. *Trn.* at 15-16.

Louis became progressively sicker at work, to the point that he could not concentrate, could not walk, and could not move. He had several back operations, with limited success. *Trn.* at 13-14. Beginning in 2013, the VA gradually escalated its declaration of Louis's disability. Louis explained that as of 2015:

I am a paraplegic.... I am declared a hundred percent for the loss of use of the lower extremities due to diabetic peripheral neuropathy associated with diabetes mellitus type 2 with hypertension and erectile dysfunction. So, essentially, I have very little use from my waist down. I'm confined to a wheelchair.

Trn. at 4-5; LETTER FROM VA TO NORDLE (Aug. 12, 2015) at 2-3, *CR* at 75.

Louis is thus entitled to a variety of veterans' benefits, including monetary compensation, unemployability and educational assistance, help with conveyance and adaptive equipment, and – though he did not know it and may not have yet been eligible in 2007 when they razed and rebuilt the camp into a homestead – housing finance benefits. *Id.*; LETTERS FROM VA TO NORDLE (Aug. 24, 2015), *CR* at 73, 94, 96; *Trn.* at 14, 16, 20.

III. Veterans Administration Grant Adapts Home for Disabilities

As he became increasingly disabled in 2014 and 2015, it became apparent that Louis could not live in his home without extensive adaptations. In the process of being evaluated by the VA, Louis learned that the “VA provides grants to ... [v]eterans with certain permanent and total service-connected disabilities to help purchase or construct an adapted home or modify an existing home to accommodate a disability.” DEPARTMENT OF VETERANS AFFAIRS HOUSING GRANTS FOR DISABLED VETERANS FACT SHEET (undated), *CR* at 11. Such grants are available to buy or build a homestead, or to “[r]emodel an existing home if it can be made suitable for specially adapted housing.” *Id.*; SECTION 2101(a) GRANT FACT SHEET (undated), *CR* at 7 (listing qualifying disabilities).

The Nordles applied for a grant. In 2015 the VA conducted a site visit and deemed the house feasible to be adapted under the VA program. LETTER FROM VA TO NORDLE (Aug. 12, 2015), *CR* at 75; LETTERS FROM VA TO NORDLE (Aug. 24, 2015), *CR* at 73, 94, 96. The VA required insurance, a land survey, deeded ownership, architectural drafting, a materials list, an approved contractor, and a building contract with specified terms. *Id.* The Nordles complied, and the VA approved a “Specially Adapted Housing” grant in the amount of \$73,768. LETTER FROM VA TO NORDLE (Sept. 22, 2016), *CR* at 98; CHECK FROM UNITED STATES TREASURY PAYABLE TO LOUIS NORDLE (Nov. 3, 2016), *CR* at 82; ESCROW AGREEMENT - SPECIALLY ADAPTED HOUSING (Nov. 8, 2016), *CR* at 14; ESCROW AGREEMENT - SPECIALLY ADAPTED HOUSING (Feb. 1, 2017), *CR* at 79; *Trn.* at 10.

In October 2016, the Nordles’ contractor performed the work the VA had approved. The entire house was brought into compliance with ADA standards. *Trn.* at 4-5. The doors were widened so Louis’s wheelchair could fit through, all floors were made flush, ramps at the appropriate slope and width

were installed so Louis has egress, and the bathroom was completely gutted so the shower is wheelchair usable, the vanity is open underneath to be wheelchair drive-in accessible, the toilet area is equipped with grab bars, and the whole room is tiled. Afterwards, the VA and the Town inspected the result. *Trn.* at 5, 16-18.

The Nordles had been paying their town property taxes, and in 2017, with the house assessed at \$384,300, total tax paid was \$11,321.48. TAX CARD (Sept. 15, 2017), *CR* at 112; BELMONT REAL ESTATE TAX BILL (Dec. 12, 2017), *CR* at 111.

IV. Belmont Denies Disabled Veteran Property Tax Exemption

Shortly after the renovations, Louis came across a portion of the New Hampshire municipal tax code, first enacted in 1965, which includes a property tax exemption for “certain disabled veterans.” *Trn.* at 5. It provides:

Any person, who is discharged from military service of the United States under conditions other than dishonorable, ... who is totally and permanently disabled from service connection ... and who is ... paraplegic, ... and *who owns a specially adapted homestead which has been acquired with the assistance of the Veterans Administration* or which has been acquired using proceeds from the sale of any previous homestead which was acquired with the assistance of the Veterans Administration, ... shall be exempt from all taxation on said homestead.

RSA 72:36-a (emphasis added). While many states have tax exemptions for disabled veterans, *see e.g.*, <<https://www.veteransunited.com/futurehomeowners/veteran-property-tax-exemptions-by-state/>>, the language of RSA 72:36-a appears to be unique to New Hampshire.

In March 2017, the Nordles applied to Belmont for the exemption, for tax year 2017 and thereafter. PERMANENT APPLICATION FOR PROPERTY TAX EXEMPTION (Mar. 6, 2017), *CR* at 70, 72. Cary Lagace, Belmont’s administrative assistant, had no experience with the statute, so at the direction of her Town Manager, she emailed Linda Kennedy, identified only as an employee of the New Hampshire Department of Revenue Administration (DRA). *Trn.* at 28-29. After quoting the statute, Belmont queried:

We read this to say that if the VA has helped them purchase their home through a VA mortgage loan? This particular individual has a standard mortgage but the VA is helping them financially to adapt the house for his handicap. We don't believe this is qualifying assistance... Are we misinterpreting the RSA?

Linda Kennedy replied: "You are correct that the VA had to help 'purchase' the home not adapt it." EMAILS BETWEEN CARY LAGACE AND LINDA KENNEDY (Dec. 9, 2016), *CR* at 26. The Town did not seek any other advice, did not consult its attorney, and concedes no reference was made to VA regulations, DRA regulations, court cases, or other supporting documentation. *Trn.* at 6, 25-16, 28-29; *see N.H. Admin. Rules*, Rev 407 (Certain Disabled Veterans' Exemption).

In March 2017, Belmont denied the Nordles' application for exemption based on its interpretation of the language of the statute. *Trn.* at 6, 26-27. The Town explained:

[W]e have determined that ... your home was not "acquired" or "purchased" by or with the assistance of a VA loan. We understand that the VA is providing a grant to adapt the home for Mr. Nordle's disabilities, however the statute regarding this exemption states that the property must be acquired with the assistance of the VA, which you have advised us it was not.

LETTER FROM BELMONT TO NORDLE (Mar. 7, 2017), *CR* at 25; APPLICATION FOR EXEMPTION at 2 (marking exemption application "denied").

V. Board of Tax and Land Appeals Approves Exemption

The Nordles appealed to the New Hampshire Board of Tax and Land Appeals (BTLA), which held a hearing in January 2018. The Nordles appeared *pro se*, and Louis testified. Appearing for Belmont, and testifying on its behalf, was its contract assessor, George Lickiss. APPEARANCE (Jan. 17, 2018), *CR* at 57.

The BTLA held – and Belmont did not contest – that Louis met all the other conditions of the exemption statute. *Trn.* at 26. Louis was honorably discharged and permanently disabled as a result of his military service, he is an owner of a specially adapted homestead, *see* RSA 72:29, VI, and he received a VA grant to adapt it. DECISION (Feb. 14, 2018) at 1-3, *CR* at 121; *Addm.* at 27. The Board found:

To the extent the Town (and this DRA employee) equates the statutory phrase “acquired with the assistance of the Veterans Administration ...” to only mean assistance with the purchase of a property (through a VA loan secured by a mortgage, for example), the board does not agree.

Id. at 4. The Board thus held that the Nordles are entitled to the exemption and reversed the Town’s decision. *Id.* at 5.

The Town filed a motion for rehearing, MOTION FOR REHEARING (Mar. 15, 2018), *CR* at 126, to which the Board replied:

It would be illogical ... to require a veteran to relocate in order to qualify for an exemption intended by the legislature to benefit one who is totally and permanently disabled (due to his military service to our country ...) who needs to live in a specially adapted homestead because of his disabilities.

DECISION (Mar. 27, 2018) at 2, *CR* at 133; *Addm.* at 34, and chastised the Town’s “reticence and reluctance” to grant the exemption. *Id.* at 2-3.

The Town appealed to the New Hampshire Supreme Court.

SUMMARY OF ARGUMENT

New Hampshire has established a property tax exemption for disabled veterans who acquire a specially adapted homestead with VA assistance. Louis Nordle is a veteran disabled by Agent Orange as a result of his service in Vietnam. He received a VA grant to acquire his specially adapted homestead, but the Town of Belmont denied an exemption. The Board of Tax and Land Appeals wisely rejected the Town's position based on the plain language of the tax statute, and granted the exemption. Belmont appealed, and this court should affirm.

ARGUMENT

I. New Hampshire Law Regarding Construction of Tax Exemption Statute

Tax exemption statutes are construed in the context of their purposes. *Nashua Coliseum, LLC v. City of Nashua*, 167 N.H. 726, 728 (2015) (elderly tax exemption). This is so that the court is “better able to discern the legislature’s intent, and therefore better able to understand the statutory language in light of the policy sought to be advanced by the entire statutory scheme,” *Pennelli v. Town of Pelham*, 148 N.H. 365, 366 (2002), and to avoid “mak[ing] a fortress out of the dictionary.” *Simonsen v. Town of Derry*, 145 N.H. 382, 386 (2000). Thus, “[a] tax exemption statute is construed not with rigorous strictness but to give full effect to the legislative intent of the statute, ... gleaned from the plain language of the statute.” *Wolfeboro Camp Sch., Inc. v. Town of Wolfeboro*, 138 N.H. 496, 499 (1994) (quotations omitted).

Likewise, courts “must construe phrase[s] in the context of the[ir] overall statutory scheme.” *Czyzewski v. New Hampshire Dep’t of Safety*, 165 N.H. 109, 112 (2013). When a single word is embedded in a phrase, it is not detached from the phrase, but construed in its context. *Dube v. New Hampshire Dep’t of Health & Human Servs.*, 166 N.H. 358, 367 (2014) (“were we to adopt the defendants’ interpretation, we would detach the word ... from the phrase in which it is embedded”); *Carter v. Concord Gen. Mut. Ins. Co.*, 155 N.H. 515, 523 (2007) (“it is not unreasonable, in the context of the specific policy language we are interpreting, to construe the word ‘vehicle’ in the phrase ‘any vehicle or equipment’”); *Cecere v. Loon Mountain Recreation Corp.*, 155 N.H. 289, 297 (2007) (presence of word “nordic” in phrase “nordic ski jump”).

Modifying or qualifying language in a statute tends to modify those words and phrases immediately preceding the modifying language.

The last antecedent rule ... is the general rule of statutory as well as grammatical construction that a modifying clause is confined to the last antecedent unless there is something in the subject matter or dominant purpose which requires a different interpretation.

Gen. Insulation Co. v. Eckman Const., 159 N.H. 601, 610 (2010) (quotations and citations omitted). “Therefore, qualifying phrases are to be applied to the words or phrases immediately preceding and are not to be construed as extending to others more remote.” *Mountain Valley Mall Assocs. v. Municipality of Conway*, 144 N.H. 642, 652 (2000) (quotation omitted).

“Acquire” has been interpreted broadly in New Hampshire law. It generally means “taking with or against consent.” *Goodrich Falls Elec. Co. v. Howard*, 86 N.H. 512 (1934). “While in a primary sense acquisition means to become the owner, the term is broad enough to include the right to the benefits ... without ownership and title,” *Leavitt v. Town of North Hampton*, 98 N.H. 193, 197 (1953), and also includes mere possession. *Scribner v. Wikstrom*, 93 N.H. 17, 19 (1943). The dictionary defines “acquire” as “[t]o gain possession or control of; to get or obtain,” BLACK’S LAW DICTIONARY 28 (10th ed. 2014), or “to come into possession, control, or power of.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 18 (2002). Acquire is a transitive verb, *id.*, needing an object to describe what is being acquired. See *State v. Jennings*, 159 N.H. 1, 8 (2009).

While the Town focuses on the word “acquire,” it ignores that the object of the transitive verb “acquire” in RSA 72:36-a is a “specially adapted homestead.” In the context of this case, to get an exemption, the disabled veteran must acquire a specially adapted homestead with VA assistance.

“Specially adapted” has not been directly defined in New Hampshire, but generally means “necessary to the functioning” of the thing in question. See

DirectTV, Inc. v. Town of New Hampton, 170 N.H. 33, 38 (2017) (whether communications gear “specially adapted” to function of facility); *see also State v. Uhrig*, 82 N.H. 480 (1927) (describing petroleum storage in buildings “specially adapted to the purpose”). In *Housing Partnership v. Town of Rollinsford*, 141 N.H. 239, 243 (1996) (citing *Senior Citizens Hous. Dev. Corp. of Claremont v. City of Claremont*, 122 N.H. 1104 (1982)), this court noted it had approved a tax exemption for elderly housing because of the often “specially adapted nature of elderly and disabled housing.” By contrast, in *East Coast Conference of Evangelical Covenant Church of America, Inc. v. Town of Swanzey*, 146 N.H. 658, 663 (2001) (subsequent history omitted), this court denied a tax exemption because rooming houses, kitchens, and other buildings were not “specially adapted to religious uses or purposes.”

The VA defines the suitability of housing for the disabled veteran as: “It must be medically feasible for the veteran or servicemember to reside in the house.” 2101(a) GRANT FACT SHEET §4a (undated), *CR* at 7; *Trn.* at 8; 38 U.S.C. §§ 2102 & 2101A (Specially Adapted Housing for Disabled Veterans); 38 C.F.R. § 36.4404 (Eligibility for assistance).

In the context of this case, “specially adapted” thus means that the Nordles’ house accommodates Louis’s disabilities such that he can function there safely and conveniently.

“Homestead” means a “dwelling which is owned and used as [a person’s] principal place of residence.” RSA 198:56 (education property taxes); *see also* RSA 480:1 (“homestead right” exempting certain homestead value from attachment). “The term ‘homestead’ signifies the dwelling house in which the family resides, with the usual and customary appurtenances.” *Brattleboro Sav. & Loan Ass’n v. Hardie*, 94 A.3d 1132, 1136 (Vt. 2014); *In re Wolff’s Estate*, 182 A. 187, 189 (Vt. 1936) (“To be a homestead, ... it must be used or set apart and kept for a fixed, permanent home and principal establishment, to which,

whenever the owner is absent, he has the intention of returning.”); *Frazer v. Weld*, 59 N.E. 118, 118-19 (Mass. 1901) (homestead “means not only the dwelling and its appurtenances, but includes, also, the land on which they stand.”).

Accordingly, a “specially adapted homestead” here means a dwelling especially suited to Louis’s needs.

II. Louis Owns a Specially Adapted Homestead Acquired With VA Assistance

The disputed phrase of RSA 72:36-a says that the exemption applies to a disabled veteran who owns a “specially adapted homestead which has been acquired with the assistance of the Veterans Administration.”

The purpose of the statute is plainly to benefit disabled veterans. The modifying phrase “which has been acquired with the assistance of the Veterans Administration,” appears immediately after its antecedent object, “a specially adapted homestead.”

The statute does not specify how acquisition is to be accomplished; there are no words connoting purchasing or mortgaging. Rather, the statute more broadly allows coming into ownership by any unspecified means, provided it was with VA assistance.

Before the 2016 renovations, the Nordles’ home was not specially adapted. It was only with VA assistance that the home became specially adapted, and could then feasibly be used by Louis as his homestead. Without the VA-assisted special adaptations, it would not be a homestead for Louis, because he could not live there safely and conveniently. Thus, Louis is the owner of a “specially adapted homestead which has been acquired with the assistance of the Veterans Administration.” RSA 72:36-a.

III. Belmont's Arguments are Unreasonable

Belmont makes a number of arguments, none of which can be justified in law or logic.

The Town suggests this court should construe the word “acquire” to mean only obtaining title or a purchase-money mortgage. BELMONT’S BRF. at 7-9. “Acquire” is not so narrow – New Hampshire law allows one to “acquire” without taking title. Despite the DRA employee’s email, which included a purported quotation, and upon which Belmont’s denial was based, the word “purchase” is not in the statute. *See Appeal of New Hampshire Elec. Coop., Inc.*, 170 N.H. 66, 76-79 (2017) (BTLA free to reject DRA employee’s opinion of value). The Town’s position cannot be defended by the dictionary or the law.

The Town raises a *de minimus* argument, questioning whether a person could obtain a VA grant of \$10,000 for a modest adaptation, and then be fully exempt from town property taxes. BELMONT’S BRF. at 10. There are several flaws in the assertion. First, the statute does not contain a minimum amount to trigger it. Second, the statute does not contemplate minor disabilities – it applies only to a veteran “who is a double amputee of the upper or lower extremities or any combination thereof, paraplegic, or has blindness of both eyes with visual acuity of 5/200 or less.” The VA grant program, also, applies only to serious service-related disabilities.² This suggests it is improbable that adequate adaptations could be accomplished for small sums.

²38 C.F.R. § 36.4404, VA assistance available for certain disabilities: “(i) Loss, or loss of use, of both lower extremities so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; (ii) Blindness in both eyes having only light perception, plus loss or loss of use of one lower extremity; (iii) Loss, or loss of use, of one lower extremity, together with - (A) Residuals of organic disease or injury; or (B) The loss or loss of use of one upper extremity, which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; (iv) Loss, or loss of use, of both upper extremities so as to preclude use of the arms at or above the elbows; or (v) Any other injury identified as eligible for assistance under 38 U.S.C. § 2101(a).

Even if only minor modifications were necessary to create a “specially adapted homestead,” it might trigger the exemption, because the purpose of the statute is to benefit disabled veterans and to avoid municipal taxation of federal funds.

Belmont points to a statute providing partial exemptions for those who make improvements for a disabled occupant, RSA 72:37-a, and suggests the legislature did not intend a full exemption for someone in Louis’s circumstances. BELMONT’S BRF. at 9. That statute, however, specifically limits itself to improvements and not acquisition, and applies to a much wider array of disabilities. RSA 72:37-a, I(a) (“a person who by reason of a physical defect or infirmity permanently requires the use of special aids to enable him to propel himself”). The statute in this case provides a more comprehensive exemption, but only to veterans with narrowly specified, more serious disabilities, specifically resulting from their military service.

Belmont refers to a 1977 amendment to RSA 72:36-a, claiming it supports the Town’s position. BELMONT’S BRF. at 9-10. Whereas the statute formerly provided an exemption only for “a specially adapted homestead which has been acquired with the assistance of the Veterans Administration,” it now also allows the exemption when the specially adapted homestead “has been acquired using proceeds from the sale of any previous homestead which was acquired with the assistance of the Veterans Administration.” The amendment allows disabled veterans to maintain their exemption even if they sell their VA-assisted, specially adapted homestead, and use the proceeds to relocate to another specially adapted homestead. Contrary to the Town’s claim that the amendment limited the exemption, it actually expanded it.

Belmont variously claims RSA 72:36-a is both ambiguous, BELMONT’S BRF. at 5, 9, and unambiguous, BELMONT’S BRF. at 5, 10, but offers no legislative history beyond reference to the 1977 amendment, and therefore the

issue is inconsequential. The statute is nonetheless clear on its face, and provides the Nordles the exemption BTLA approved.

IV. Belmont's Position is Unreasonable

The Town's argument is unreasonable in two ways.

First, the Town's position implies that life-events must occur in a particular order to make a veteran eligible for the exemption. The Town would require that a veteran *first* get disabled, and *then* acquire the specially adapted homestead.

The Town admitted that under its interpretation, a service member who owns a home, but returns to civilian life disabled and needing a specially adapted homestead, would not be eligible. *Trn.* at 25. And it argues in this case that a veteran who owns a home, and whose disability gets progressively more serious over time, thus gradually arising a need for a specially adapted homestead, is likewise not eligible.

Nothing in the statute, however, suggests the legislature conceptualized ownership and disability occurring in a prescribed order.

Second, under the Town's reading, there are two ways a veteran whose ownership predates their disability could proceed. One would be to sell the home, locate another which is suited to the veteran's disability, and then purchase it with VA assistance. That presupposes the existence of a house, then on the market, within the veteran's budget and other constraints, and which is *already* adapted for that veteran's particular disability. The second way would be for the veteran to temporarily sell the home, install the adaptations, and re-purchase it with VA funds – sort of a sham sale-buyback. Either would be costly and absurd in most communities. And it would be cruel to force such rigmarole on a category of taxpayers the legislature was obviously attempting to aid.

The Town says "it is difficult to imagine that the legislature intended that a person should have a full, 100% exemption from taxes if s/he makes any adaptations to the property using Veterans Administration funds." BELMONT'S BRF. at 10.

But it is perfectly possible to imagine. The “certain disabled veterans” exemption here is narrowly targeted, and as of 2016 there were only 51 in the entire state. 2016 VETERANS TAX CREDIT, LIST OF TOWNS at 6, column 1, *CR* at 102, 107. New Hampshire’s code has other property tax benefits that dwarf the exemption here. See e.g., *Town of Peterborough v. MacDowell Colony, Inc.*, 157 N.H. 1 (2008) (charitable exemption); *East Coast Conference of Evangelical Covenant Church of America, Inc. v. Town of Swanzey*, 146 N.H. at 658 (religious exemption); *Brewster Academy v. Town of Wolfeboro*, 142 N.H. 382 (1997) (educational institution exemption); *Town of Hanover v. City of Lebanon*, 116 N.H. 264 (1976) (public property exemption).

CONCLUSION

Belmont's position is unreasonable and unsupported by the statute, and the BTLA wisely rejected it. This court "review[s] the BTLA's statutory interpretation de novo," *In re City of Nashua*, 164 N.H. 749, 751 (2013), and should affirm.

REQUEST FOR ORAL ARGUMENT

Because the novel issue raised in this appeal is of concern to municipalities and disabled veterans, this court should entertain oral argument.

Respectfully submitted,

Robin M. Nordle 2013 Trust
By its Attorney,
Law Office of Joshua L. Gordon

Dated: October 29, 2018

Joshua L. Gordon, Esq.
Law Office of Joshua L. Gordon
(603) 226-4225 www.AppealsLawyer.net
75 South Main St. #7
Concord, NH 03301
NH Bar ID No. 9046

CERTIFICATIONS

I hereby certify that the decision being appealed is addended to this brief. I further certify that this brief contains no more than 4,270 words, exclusive of those portions which are exempted.

I further certify that on October 29, 2018, copies of the foregoing will be forwarded to Laura Spector-Morgan, Esq.

Dated: October 29, 2018

Joshua L. Gordon, Esq.

ADDENDUM

1. BTLA DECISION (granting taxpayer exemption) (Feb. 14, 2018). . . . [27](#)
2. BTLA DECISION (denying reconsideration) (Mar. 27, 2018). [34](#)

State of New Hampshire

Board of Tax and Land Appeals

Michele E. LeBrun, Chair
Albert F. Shamash, Esq., Member
Theresa M. Walker, Member

Anne M. Stelmach, Clerk



Governor Hugh J. Gallen
State Office Park
Johnson Hall
107 Pleasant Street
Concord, New Hampshire
03301-3834

Robin M. Nordle 2013 Trust

v.

Town of Belmont

Docket No.: 28830-17EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" 2017 denial of the Taxpayer's application for an RSA 72:36-a exemption (for "Certain Disabled Veterans") on Map 114, Lot 14, 8 Walnut Street (the "Property"). The appeal for exemption is granted for the reasons stated below.

The Taxpayer, represented by Louis F. Nordle, Jr., argued the Property was entitled to the RSA 72:36-a exemption because:

- (1) as demonstrated by the documents in Taxpayer Exhibit No. 1 and his testimony, Mr. Nordle satisfies all of the statutory requirements for the Property to qualify for this exemption¹;
- (2) Mr. Nordle "acquired" the improvements to make the Property a "specially adapted homestead" with Veterans Administration ("VA") "assistance" (in the form of a grant of approximately \$80,000 as stated in an "Escrow Agreement – Specially Adapted Housing") and

¹ There is no dispute Mr. Nordle is a beneficiary of the trust that is the Taxpayer of this appeal, is a totally and permanently disabled veteran and resides on the Property as his "homestead," satisfying these specific statutory requirements.

nothing in the statute requires a VA “loan” or mortgage in order to qualify for this property tax exemption;

(3) the Town’s interpretation of the statute is too strict and limited and the denial based on these undisputed facts is unreasonable;

(4) the Town had no “familiarity” (prior experience) in applying this statute causing it to place mistaken reliance on an e-mail response received from an employee at the department of revenue administration (“DRA”), included in Taxpayer Exhibit No. 1; and

(5) the appeal should be granted.

The Town, represented by its contract assessor, George Lickiss of KRT Appraisal, argued the denial of the exemption was proper because:

(1) the Town’s “point of view” is that the word “acquired” in the statute means “to get” (not “remodel”) and there is no dispute the Taxpayer did not “get” or purchase the Property “with the assistance of a VA loan” (see the Town’s March 7, 2017 denial letter included in Taxpayer Exhibit No. 1);

(2) the Town ‘did not consult a lawyer’ to interpret the statute, but did raise the issue with a DRA employee (Linda Kennedy) who stated the Town’s interpretation was “correct” in an e-mail (also included in Taxpayer Exhibit No. 1); and

(3) while the Town does not dispute the Taxpayer satisfies all of the other statutory requirements for this exemption, the appeal should be denied on the sole ground noted above.

Board’s Rulings

The Taxpayer has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory exemption for the year under appeal. See RSA 72:34-a; RSA 72:36-a; and Tax 204.05.

Based on the evidence and arguments presented, the board finds the Taxpayer met its burden of proving it was entitled to the RSA 72:36-a property tax exemption in tax year 2017. The appeal is therefore granted for the following reasons.

This is a case of first impression: the crux of the dispute between the parties involves interpretation of a statute originally enacted in 1965 with which the Town and its assessing contractor were not familiar.² The board has specific authority to hear and decide this appeal under RSA 72:34-a. Upon review of the undisputed facts and the law, the board finds the Town erred in its interpretation of RSA 72:36-a.³

The Taxpayer presented undisputed facts regarding the significant financial assistance Mr. Nordle received from the VA for necessary improvements to make his homestead “specially adapted” for a person “who is totally and permanently disabled from service connection,” as this statute requires. Mr. Nordle testified these improvements (widening the doors, raising/leveling the floors and porch, constructing access ramps and a complete remodeling of the bathroom) were made in compliance with all of the standards prescribed by the VA and the Town. Mr. Nordle made these improvements some years after he began to occupy the Property (a lakeside

² For example, the latest DRA report (for tax year 2016) shows that many municipalities, including the Town, have not granted any exemptions under this statute. See <https://www.revenue.nh.gov/mun-prop/property/equalization-2016/documents/etc-alpha.pdf> (“2016 Exemptions and Veterans’ Credit Report”); pages from this website are also included in Taxpayer Exhibit No. 1.

³ “**72:36-a Certain Disabled Veterans.** – Any person, who is discharged from military service of the United States under conditions other than dishonorable, or an officer who is honorably separated from military service, who is totally and permanently disabled from service connection and satisfactory proof of such service connection is furnished to the assessors and who is a double amputee of the upper or lower extremities or any combination thereof, paraplegic, or has blindness of both eyes with visual acuity of 5/200 or less as the result of service connection and who owns a specially adapted homestead which has been acquired with the assistance of the Veterans Administration or which has been acquired using proceeds from the sale of any previous homestead which was acquired with the assistance of the Veterans Administration, the person or person’s surviving spouse, shall be exempt from all taxation on said homestead. “

camp previously owned by a family member) as his homestead. He testified, however, he sought VA assistance and made these improvements only after he became totally disabled.

The Town's contract assessor did not dispute these facts. He acknowledged the Town did not seek legal advice or assistance prior to denying the exemption, relying instead on its own reading and interpretation of the statute and some input (in the form of an e-mail) from a DRA employee. To the extent the Town (and this DRA employee) equates the statutory phrase "acquired with the assistance of the Veterans Administration . . ." to only mean assistance with the purchase of a property (through a VA loan secured by a mortgage, for example), the board does not agree.

Support for this finding is contained in the relevant documents from the VA included in Taxpayer Exhibit No. 1. For example, a "Grant Fact Sheet" for this program indicates the VA assistance is available to veterans, like Mr. Nordle, who "may remodel an existing home if it can be made suitable for specially adapted housing." This is but one of four circumstances ("plans") enumerated by the VA under which a totally disabled veteran like Mr. Nordle can qualify for financial assistance under this program. Clearly, the improvements to the homestead enumerated above satisfy this condition, a fact further confirmed by the many VA and other documents in Taxpayer Exhibit No. 1.

In addition, while the contrary interpretation by the Town is somewhat plausible, it is unreasonable and not borne out by the words actually used by the legislature in enacting RSA

72:36-a. A less narrow interpretation of the statute is amply supported by New Hampshire law.⁴

In particular, the word “acquired” in the statute has a plain meaning broader than simply “purchased” (as in the purchase of a house with specially adapted improvements financed by a VA loan or mortgage). In fact, common usage of the word “acquire” includes the following: “to come into possession, control or power of disposal . . .” [Webster’s Third International Dictionary of the English Language (2002 ed.)]; or “to gain possession or control of; to get or obtain” [Black’s Law Dictionary (10th ed. 2014)] There can be no doubt Mr. Nordle obtained, and is now in possession of, a specially adapted homestead (the Property) only because of the financial assistance he received from the VA.

For all of these reasons, the board finds the Property is entitled to the RSA 72:36-a property tax exemption. The appeal for tax year 2017 is therefore granted.

⁴ See, generally, Nashua Coliseum, LLC v. City of Nashua, 167 N.H. 726, 728 (2015):

“In matters of statutory interpretation, we are the final arbiter of the intent of the legislature as expressed in the words of the statute considered as a whole.” Appeal of Local Gov’t Ctr., 165 N.H. 790, 804 (2014). “We first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning.” Id. “We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Id. “We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” Id. “Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole.” Id. “This enables us to better discern the legislature’s intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.” Id. See also Appeal of Town of Charlestown, 166 N.H. 498, 500 (2014).

The board will therefore “interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Appeal of Walsh, 156 N.H. 347, 355 (2007).

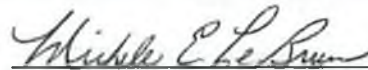
In determining legislative intent and in construing a statute, the basic purpose – the problem the statute was intended to remedy – should be considered; inquiry must be made into the statute’s declared purpose and the “mischief” it was intended to remedy. Appeal of Town of Newmarket, 140 N.H. 279, 283 (1995); American Automobile Assoc. v. State, 136 N.H. 579, 585 (1992). “While we first look to the plain meaning of words to interpret statutes, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish.” Simonsen v. Town of Derry, 145 N.H. 382, 386 (2000) (quotations omitted).

If the taxes have been paid for tax year 2017 based on denial of the exemption, the amount paid shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

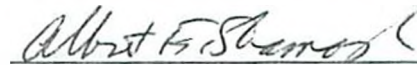
Any party seeking a rehearing, reconsideration or clarification of this decision must file a motion (collectively "rehearing motion") within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; Tax 201.37(a). The rehearing motion must state with specificity all 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. 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 541:3 and 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS



Michele E. LeBrun, Chair



Albert F. Shamash, Member

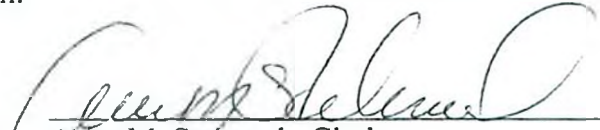


Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robin M. Nordle 2013 Trust, Louis F. Nordle, Jr. and Robin M. Nordle, 8 Walnut Street, Belmont, NH 03220, Taxpayer; Chairman, Board of Selectmen, PO Box 310, Belmont, NH 03220; and George Lickiss, KRT Appraisal, 191 Merrimack Street - Suite 701, Haverhill, MA 01830, Contracted Assessing Firm.

Date: February 14, 2018


Anne M. Stelmach, Clerk

State of New Hampshire

Board of Tax and Land Appeals

Michele E. LeBrun, Chair
Albert F. Shamash, Esq., Member
Theresa M. Walker, Member

Anne M. Stelmach, Clerk



Governor Hugh J. Gallen
State Office Park
Johnson Hall
107 Pleasant Street
Concord, New Hampshire
03301-3834

Robin M. Nordle 2013 Trust

v.

Town of Belmont

Docket No.: 28830-17EX

ORDER

The board has reviewed the "Town's" March 15, 2018 "Motion for Rehearing" ("Motion") and the March 20, 2018 "Opposition" to the Motion filed by the "Taxpayer" with respect to the board's February 14, 2018 Decision granting an exemption on the "Property" under RSA 72:36-a (for "Certain Disabled Veterans"). To the extent the Motion argues the Decision errs in applying this statute to the facts presented in this appeal, the board does not agree. Consequently, the suspension Order issued on March 16, 2018 is hereby dissolved and the Motion is denied.

The Motion was filed by an attorney who did not attend the January 30, 2018 hearing on the merits of this appeal, but has now filed an appearance. The only representative of the Town who did attend the hearing was an employee of its assessing contractor and he did not raise the "legislative history" or any of the other new arguments presented in the Motion.

See Tax 201.37 (g): "rehearing motions shall not be granted . . . to consider new arguments that could have been raised at the hearing."

In any event, the arguments in the Motion are not persuasive, either on narrow textual or broader policy grounds. If the legislature had intended to restrict the plain meaning of the language in the exemption statute (such as the word “acquired,” for example) to exclude an otherwise qualified veteran with a homestead “specially adapted” at great expense with financial assistance from the Veterans Administration after he became “totally and permanently disabled,” it could have plainly said so.

The Motion admits there is “scant legislative history” to support the Town’s contrary arguments regarding this exemption statute or why it should not apply to the facts presented in this appeal. The 1977 amendment to RSA 72:36-a (referenced in the Motion) broadened, rather than narrowed, the scope of the exemption (to allow coverage for subsequently acquired property) and, in this respect, does not support the narrower reading urged by the Town.

It would be illogical and an unnecessary hardship, to say the least, to require a veteran to relocate in order to qualify for an exemption intended by the legislature to benefit one who is totally and permanently disabled (due to his military service to our country: “service connection”) who needs to live in a specially adapted homestead because of his disabilities (as determined by the Veterans Administration and after satisfying all of its requirements for financial assistance to accomplish this purpose.¹) The Town’s reticence and reluctance to grant a “100% exemption” (Motion, p. 2) is not a proper basis for disregarding the plain meaning and

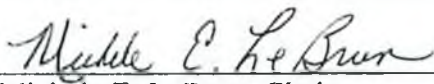
¹ In this appeal, the Town does not claim the \$80,000 in financial assistance provided by the Veterans Administration for major improvements to specially adapt the homestead was insubstantial; the board need not decide what hypothetical lesser amount (such as “\$10,000 for a relatively modest adaptation” under different circumstances, Motion, pp. 2-3) might qualify another veteran for this exemption. *Cf. Duncan v. State*, 166 N.H. 630, 641 (“the judicial power in this State is limited to deciding actual, and not hypothetical, cases”).

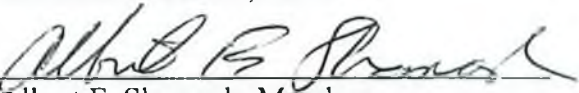
intent of the statute.² If the Town believes the tax entitlement provided by the legislature to certain totally and permanently disabled veterans in RSA 72:36-a (“exempt[ion] from all taxation on said homestead”) is overly generous, the obvious remedy is to seek amendment of the statute, not prevent its application to a qualified veteran.


For all of these reasons, the Motion is denied. Pursuant to RSA 541:6, any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of the date on this Order, with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS


Michele E. LeBrun, Chair

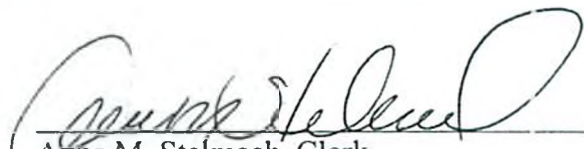

Albert F. Shamash, Member


Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Robin M. Nordle 2013 Trust, Robin M. Nordle, 8 Walnut Street, Belmont, NH 03220, Taxpayer; Chairman, Board of Selectmen, PO Box 310, Belmont, NH 03220; and George Lickiss, KRT Appraisal, 191 Merrimack Street - Suite 701, Haverhill, MA 01830, Contracted Assessing Firm.

Date: March 27, 2018


Anne M. Steinhilber, Clerk

² Cf. RSA 72:37-a (cited in the Motion, p. 3), a partial exemption statute, enacted ten years after RSA 72:36-a, intended to benefit any person having a “physical defect or infirmity” that “permanently requires the use of special aids to enable him to propel himself.” Contrary to the Town’s arguments, the fact the legislature provided a separate, more limited, exemption to any person in those circumstances does not negate entitlement to a broader exemption under a separate statute enacted to benefit a specific class of persons: veterans who are totally and permanently disabled because of their military service who obtain financial assistance from the Veterans Administration in order to live in a specially adapted homestead.