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**THE STATE OF NEW HAMPSHIRE  
SUPREME COURT**

Case No. 2018-0217

Appeal of Town of Belmont

**BRIEF OF THE APPELLANT, TOWN OF BELMONT**

Appeal Pursuant to Supreme Court Rule 10  
From the Order of the New Hampshire Board of Tax and Land Appeals in  
Docket No. 28830-17EX

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*To Be Argued By:*  
*Laura Spector-Morgan, Esquire*

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**QUESTIONS PRESENTED FOR REVIEW**

I. Did the Board of Tax and Land Appeals err when it found that the taxpayer was entitled to a 100% real estate tax exemption pursuant to RSA 72:36-a when the taxpayer did not acquire its specially adapted homestead with the assistance of the Veterans Administration, as explicitly required by the statute; instead, this property had been earlier acquired and was later modified with the financial assistance of the Veterans Administration?

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, OR  
REGULATIONS INVOLVED IN THE CASE**

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.

**STATEMENT OF THE CASE AND FACTS**

Louis Nordell is the beneficiary of the Robin M. Nordel 2013 Trust, which is the owner of the property at issue: a .34 acre parcel of property fronting on Lake Winnisquam in Belmont assessed at \$384,300. That home was purchased from Mr. Nordel's aunt's estate in 1998 and, in 2007, the original home was torn down and rebuilt, in part to accommodate his disability, both without the assistance of the Veteran's Administration. In 2016, Mr. Nordell obtained funding from the Veteran's Administration in the amount of \$73,768 to modify his existing home to further accommodate his service connected disability which limits his lower mobility. Specifically, taxpayer widened the doors of the home to from 32 to 36 inches, leveled the floors, replaced ramps on the outside of the home, and remodeled the bathrooms to accommodate Mr. Nordel's wheelchair. Taxpayer then sought an exemption from property taxes based on RSA 72:36-a for tax year 2017, which was denied. Taxpayer appealed that denial to the Board of Tax and Land Appeals which found that it was entitled to a 100% real estate tax exemption because the improvements to the home had been financed using funds from the Veterans Administration. The town filed a motion for rehearing, which was denied. This appeal followed.

### **SUMMARY OF ARGUMENT**

There is no factual dispute in this case. Resolving the issues presented in this appeal requires that the Court engage in statutory interpretation: what is the meaning of the word “acquired” in RSA 72:36-a.

Tax exemption statutes are construed to give full effect to the legislative intent of the statute, which, absent formal legislative history, must be gleaned from the plain language of the statute. See Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496, 499 (1994)(quoting In re Estate of Martin, 125 N.H. 690, 691 (1984)). The word “acquired,” is not defined in RSA 72:36-a. There is no guidance from this Court regarding the meaning of the word “acquire” in that statute, nor do the Department of Revenue Administration Administrative Rules offer any definition. See Rev 407. Therefore, we look to the plain meaning of the word. See, e.g., Kenison v. Dubois, 152 N.H. 448, 452 (2005).

Black’s Law Dictionary defines “acquire” as follows: “to gain by any means, usually by one’s own exertions; to get as one’s own; to obtain by search, endeavor, practice or purchase; receive or gain in whatever manner; come to have.” It goes on to state: “In law of contracts and of descents, to become owner of property.” Black’s Law Dictionary 41 (4th ed.a1951). Taxpayer became the owner of the property in 1998. It did not utilize Veteran’s Administration funds to do so; nor was the home “specially adapted” at that time. The specially adapted homestead was therefore not acquired with the assistance of the Veterans Administration, and the taxpayer is not entitled to a 100% exemption for the property.

The Board of Tax and Land Appeals found that by using the Veteran's Administration funding to make the improvements, taxpayer "obtained and is now in possession of a specially adapted homestead," and therefore acquired the special adapted home using the assistance of the Veteran's Administration. The Board's interpretation of the statute goes far beyond the actual words thereof. Had the legislature intended to allow a full tax exemption from all real estate taxes for veterans who financed any modifications to their homes through Veterans Administration grants, it could have done so. It did not and the Board of Tax and Land Appeal's decision wrongfully adds the words "or modified" to the statute.

Given the competing interpretations of the word "acquire," in RSA 72:36-a and the ambiguity created thereby, it is appropriate to look to the legislative history of the statute. See, e.g., Lake Forest R.V. Resort, Inc. v. Town of Wakefield, 169 N.H. 288, 292 (2016). While there is scant legislative history from the 1965 original adoption of the statute, the amendment history of the statute supports the town's interpretation of the statute that it requires that the homestead, and not just the special adaptations, be acquired with funds from the Veterans Administration.

RSA 72:36-a specifically limits the exemption to those veterans who have "acquired" their specially adapted homestead with the assistance of the Veterans Administration. It does not provide for an exemption for those who have "adapted" their homestead with such assistance, and the Board should not have so held. See, e.g., Bradley Real Estate Trust. v. Taylor, 128 N.H. 441, 445 (1986)(courts should literally interpret unambiguous statutes). This Court should reverse that decision.



## **ARGUMENT**

### **I. STANDARD OF REVIEW**

Resolving the issues presented in this appeal requires that the Court engage in statutory interpretation. As to questions of statutory interpretation, this Court employs a *de novo* standard of review. Petition of New Hampshire Division for Children, Youth and Families, 182 A.3d 1266, 1271 (2018)(citing In re G.G., 166 N.H. 193, 195 (2014)). In matters of statutory interpretation, this Court first looks to the language of the statute itself, and, if possible, it construes that language according to its plain and ordinary meaning. Id. It interprets legislative intent from the statute as written and does not consider what the legislature might have said or add language that the legislature did not see fit to include. Id. The Court does not consider words and phrases in isolation, but rather within the context of the statute as a whole. Id. This enables the Court 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. (citing In re G.G., supra, at 196).

### **II. THE BOARD OF TAX AND LAND APPEALS ERRED WHEN IT FOUND THAT TAXPAYER WAS ENTITLED TO A 100% REAL ESTATE TAX EXEMPTION PURSUANT TO RSA 72:36-A BECAUSE TAXPAYER DID NOT ACQUIRE ITS SPECIALLY ADAPTED HOMESTEAD WITH THE ASSISTANCE OF THE VETERANS ADMINISTRATION**

There is no factual dispute in this case. It is purely a question of statutory interpretation: what is the meaning of the word "acquired" in RSA 72:36-a.

Louis Nordell is the beneficiary of the Robin M. Nordel 2013 Trust, which is the owner of the property at issue: a .34 acre parcel of property fronting on Lake Winnisquam in Belmont assessed at \$384,300. Because Mr. Nordell has a life estate

in the property even after his wife Robin M. Nordel passes away, he qualifies as an “owner” pursuant to RSA 72:29, VI.

In 2016, Mr. Nordell obtained funding from the Veteran's Administration in the amount of \$73,768 to modify the home he obtained from his aunt's estate in 1998 to accommodate his service connected disability. Specifically, taxpayer widened the doors of the home to 36 inches, leveled the floors, added ramps to the outside of the home and remodeled the bathrooms. Taxpayer then sought an exemption from property taxes based on RSA 72:36-a for tax year 2017. That statute provides:

*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.*

(emphasis added).

“A tax exemption statute is construed not with rigorous strictness but to give full effect to the legislative intent of the statute, and absent formal legislative history, intent must be gleaned from the plain language of the statute.” Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496, 499 (1994)(quoting In re Estate of Martin, 125 N.H. 690, 691 (1984)).

The word “acquired,” is not defined in the statute. There is no guidance from this Court regarding the meaning of the word “acquire” in RSA 72:36-a, nor do the

Department of Revenue Administration Administrative Rules offer any definition of the meaning of the word “acquire.” See Rev 407, Appendix at 1. Therefore, we look to the plain meaning of the word. See, e.g., Kenison v. Dubois, 152 N.H. 448, 452 (2005).

Black’s Law Dictionary defines “acquire” as follows: “to gain by any means, usually by one’s own exertions; to get as one’s own; to obtain by search, endeavor, practice or purchase; receive or gain in whatever manner; come to have.” It goes on to state: “In law of contracts and of descents, to become owner of property.” Black’s Law Dictionary 41 (4th ed.a1951). Taxpayer became the owner of the property in 1998. It did not utilize Veteran’s Administration funds to do so; nor was the home “specially adapted” at that time. The specially adapted homestead was therefore not acquired with the assistance of the Veterans Administration, and the taxpayer is not entitled to a 100% exemption for the property.

This interpretation of the statute was supported by Linda Kennedy, a supervisor of the Property Appraisal Division of the Department of Revenue Administration. Ms. Kennedy opined:

You are correct that the VA had to help “purchase” the home not adapt it. I know this is causing problems. However, the legislature will need to amend the language in order to allow a VA adapted home to qualify.

See December 19, 2016 e-mail from Linda Kennedy to Cary Lagace, Appendix v at 3.

The Board of Tax and Land Appeals found that by using the Veteran’s Administration funding to make the improvements, taxpayer “obtained and is now in possession of a specially adapted homestead,” and therefore acquired the special adapted home using the assistance of the Veteran’s Administration. The Board’s interpretation of the statute goes far beyond the actual words thereof.

In interpreting a statute, it is appropriate to look beyond the particular statute at issue, and to examine the statutory scheme as a whole. See, e.g., Nashua Coliseum, LLC v. City of Nashua, 167 N.H. 726, 728 (2015). This Court does not add words that the legislature did not see fit to include. See, e.g. Verizon New England v. City of Rochester, 151 N.H. 236, 266 (2004). Had the legislature intended to allow a full tax exemption from all real estate taxes for veterans who financed any modifications to their homes through Veterans Administration grants, it could have done so. For example, RSA 72:37-a allows an exemption for the value of improvements made for the purpose of assisting a person with a disability who resides at the property.<sup>1</sup> Clearly, then, the legislature understood the difference between “acquiring” a homestead and “improving” one. It did not include the latter situation in RSA 72:36-a--it only spoke to the acquisition of the property. The Board of Tax and Land Appeal's decision adds the words “or modified” to the statute. This it cannot do.

Given the competing interpretations of the word “acquire,” in RSA 72:36-a and the ambiguity created thereby, it is appropriate to look to the legislative history of the statute. See, e.g., Lake Forest R.V. Resort, Inc. v. Town of Wakefield, 169 N.H. 288, 292 (2016). Unfortunately, there is scant legislative history from the 1965 original adoption of the statute. The amendment history of the statute, however, supports the town's interpretation of the statute that it requires that the homestead, and not just the special adaptations, be acquired with funds from the Veterans Administration.

In 1977 the statute was amended to add the language “or which has been acquired using proceeds from the sale of any previous homestead which was acquired

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<sup>1</sup>Taxpayer is entitled to this exemption.

with the assistance of the Veterans Administration.” Clearly, this amendment speaks to the acquisition of the homestead as a whole, not adaptations to an existing whole. It makes sense, then, that the prior sentence also relates to the purchase of the home, and not simply the modifications to that home.

Moreover, 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. By this logic, a person could obtain a Veterans Administration grant of \$10,000 for a relatively modest adaptation, and then be fully exempt from property taxes for the rest of his or her life. Though the service of veterans is greatly valued and cherished, there is nothing in RSA 72:36-a or any other exemption statute which suggests that veteran status alone should fully exempt someone from taxes.

RSA 72:36-a specifically limits the exemption to those veterans who have “acquired” their specially adapted homestead with the assistance of the Veterans Administration. It does not provide for an exemption for those who have “adapted” their homestead with such assistance, and the Board should not have read the statute broader than it is written. See, e.g., Bradley Real Estate Trust. v. Taylor, 128 N.H. 441, 445 (1986)(courts should literally interpret unambiguous statutes). This Court should reverse that erroneous decision.

**CONCLUSION**

Because taxpayer did not acquire its specially adapted property with the assistance of the Veterans Administration, nor did it acquire the property using proceeds from the sale of any previous homestead which was acquired with the assistance of the Veterans Administration, the property is not exempt from taxation. This Court should so find and reverse the decision of the Board of Tax and Land Appeals to the contrary.

**REQUEST FOR ORAL ARGUMENT**

The Town of Belmont does not believe oral argument is necessary to resolve the issues before the Court; however, should the Court determine that such argument would be helpful, the Town of Belmont requests oral argument not to exceed 15 minutes, to be presented by Laura Spector-Morgan, Esquire.

**CERTIFICATION**


I have forwarded, by first class mail, two copies of the foregoing brief to Joshua Gordon, Esquire.

Respectfully submitted,

**TOWN OF BELMONT**

By Its Attorneys  
**MITCHELL MUNICIPAL GROUP P.A.**

Date: Oct 1, 2018

By:   
Laura Spector-Morgan, Bar No. 13790  
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Laconia, New Hampshire 03246  
(603) 524-3885

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annually by the municipality so that a portion of the service-connected total disability tax credit shall apply to each property tax payment to be made.

Source. (See Revision Note at chapter heading for Rev 400) #9309, eff 10-30-08 (from Rev 404.02); ss by #12027, eff 10-28-16

Rev 405.03 Residency Requirements. The applicant shall have been a resident of the municipality on April 1 in the tax year in which the service-connected total disability tax credit is claimed.

Source. #12027, eff 10-28-16

Rev 405.04 Additional Eligibility Requirements. The applicant shall not be eligible for the service-connected total disability tax credit unless, in addition to meeting the ownership requirements of Rev 402.03, and the residency requirements of Rev 405.03, the applicant is also one of the following:

- (a) A person honorably discharged or honorably separated from military service of the United States who:
  - (1) Has a total and permanent service-connected disability; or
  - (2) Is a double amputee or paraplegic because of a service-connected injury; or
- (b) The surviving spouse of a person eligible for the service-connected total disability tax credit pursuant to (a) above.

Source. #12027, eff 10-28-16

#### PART Rev 406 SURVIVING SPOUSE TAX CREDIT

Rev 406.01 Definition. For purposes of this part, “surviving spouse tax credit” means the standard or optional surviving spouse tax credits pursuant to RSA 72:29-a.

Source. (See Revision Note at chapter heading for Rev 400) #9309, eff 10-30-08; ss by #12027, eff 10-28-16

Rev 406.02 Standard or Optional Surviving Spouse Tax Credits.

- (a) An applicant shall not be entitled to the surviving spouse tax credit unless the applicant meets all the eligibility requirements of this part.
- (b) The standard surviving spouse tax credit shall be the amount provided in RSA 72:29-a.
- (c) The optional surviving spouse tax credit shall be an amount adopted by the municipality in accordance with RSA 72:29-a, if applicable.
- (d) The optional surviving spouse tax credit shall replace the standard surviving spouse tax credit in its entirety and shall not be in addition to the standard surviving spouse tax credit.
- (e) The surviving spouse tax credit shall be subtracted from the property taxes due on an entitled applicant’s property, whether or not residential real estate, in the same municipality where the entitled applicant is a resident.

Source. (See Revision Note at chapter heading for Rev 400) #9309, eff 10-30-08; ss by #12027, eff 10-28-16

Rev 406.03 Residency Requirements. The applicant shall have been a resident of the municipality on April 1 in the tax year in which the surviving spouse tax credit is claimed.

Source. (See Revision Note at chapter heading for Rev 400) #9309, eff 10-30-08; ss by #12027, eff 10-28-16

Rev 406.04 Additional Eligibility Requirements. The applicant shall not be eligible for the surviving spouse tax credit unless, in addition to meeting the ownership requirements of Rev 402.03, and the residency requirements of Rev 406.03, the applicant is the surviving spouse of any person who was killed or died while on active duty in any qualifying war or armed conflict in RSA 72:28, as established by United States Department of Defense Form 1300 (DD Form 1300).

Source. (See Revision Note at chapter heading for Rev 400) #9309, eff 10-30-08; ss by #12027, eff 10-28-16

#### PART Rev 407 CERTAIN DISABLED VETERANS’ EXEMPTION

Rev 407.01 Certain Disabled Veterans’ Exemption.

- (a) An applicant shall not be entitled to the certain disabled veterans’ exemption pursuant to RSA 72:36-a unless the applicant meets all the eligibility requirements of this part.
- (b) An entitled applicant shall be exempt from all taxation on the applicant’s residential real estate.

Source. (See Revision Note at chapter heading for Rev 400) #9309, eff 10-30-08; ss by #12027, eff 10-28-16

Rev 407.02 Residency Requirements. The applicant shall have been a resident of the municipality on April 1 in the tax year in which the certain disabled veterans' exemption is claimed.

Source. #12027, eff 10-28-16

Rev 407.03 Additional Eligibility Requirements. The applicant shall not be eligible for the certain disabled veterans' exemption unless, in addition to meeting the ownership requirements of Rev 402.03, and the residency requirements of Rev 407.02, the applicant is a person discharged under conditions other than dishonorable, or honorably separated from military service of the United States, who:

- (a) As the result of a total and permanent service-connected disability:
  - (1) Is a double amputee of the upper or lower extremities or any combination thereof;
  - (2) Is a paraplegic; or
  - (3) Has blindness of both eyes with visual acuity of 5/200 or less; and
- (b) Owns a specially adapted homestead which has been acquired:
  - (1) With the assistance of the United States Department of Veterans Affairs; or
  - (2) Using proceeds from the sale of any previous homestead which was acquired with the assistance of the United States Department of Veterans Affairs.

Source. #12027, eff 10-28-16

#### PART Rev 408 ELDERLY EXEMPTION

##### Rev 408.01 Elderly Exemption.

- (a) An applicant shall not be entitled to an elderly exemption pursuant to RSA 72:39-b unless the applicant meets all the eligibility requirements of this part.
- (b) The municipal assessing officials shall grant an elderly exemption to an entitled applicant in an amount adopted by the municipality in accordance with RSA 72:39-b.
- (c) The elderly exemption shall be deducted from the assessed value of an entitled applicant's residential real estate.

Source. (See Revision Note at chapter heading for Rev 400) #9309, eff 10-30-08; ss by #12027, eff 10-28-16

Rev 408.02 Residency Requirements. The applicant shall have been a New Hampshire resident for at least 3 consecutive years preceding April 1 in the tax year in which the elderly exemption is claimed.

Source. (See Revision Note at chapter heading for Rev 400) #9309, eff 10-30-08; ss by #12027, eff 10-28-16

##### Rev 408.03 Additional Eligibility Requirements.

- (a) The applicant shall not be eligible for an elderly exemption unless, in addition to meeting the ownership requirements of Rev 402.03, and the residency requirements of Rev 408.02, the applicant also meets the following requirements:
  - (1) The applicant is 65 years of age or older on April 1 in the tax year in which the elderly exemption is claimed;
  - (2) In the calendar year preceding April 1 in the tax year in which the elderly exemption is claimed, the applicant does not have a net income or, if married, a combined net income, greater than the maximum amount adopted by the municipality in accordance with Rev 412; and
  - (3) The applicant does not own net assets or, if married, combined net assets, greater than the maximum amount adopted by the municipality in accordance with Rev 412.
- (b) The maximum combined net asset amount for married persons adopted by the municipality shall continue to apply to a surviving spouse until:
  - (1) The sale or transfer of the property by the surviving spouse; or
  - (2) The remarriage of the surviving spouse.

Source. (See Revision Note at chapter heading for Rev 400) #9309, eff 10-30-08; ss by #12027, eff 10-28-16

#### PART Rev 409 EXEMPTION FOR IMPROVEMENTS TO ASSIST PERSONS WITH DISABILITIES

## Cary Lagace

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**From:** Kennedy, Linda <Linda.Kennedy@DRA.NH.GOV>  
**Sent:** Monday, December 19, 2016 11:15 AM  
**To:** Cary Lagace  
**Subject:** RE: Veterans Exemption question

Cary:

I know these provisions can be very confusing. I offer the following:

- (1) You are correct that the VA had to help "purchase" the home not adapt it. I know this is causing problems. However, the legislature will need to amend the language in order to allow a VA adapted home to qualify. Hopefully, if the legislature does tackle this issue, they will be clear as to the level of adaption that must take place to qualify.
  
- (2) What the highlighted wording means is that if a town has adopted a tax credit amount other than the minimum, the veteran will receive the new amount and not standard amount. For example, if Belmont adopted the \$2,000 amount, the veteran would receive the \$2,000 tax credit and not the \$700 tax credit. This does not prohibit the veteran from receiving the RSA 72:28 credit from \$50 to \$500. In short, the veteran can receive both the 72:28 and 74:35 tax credits if qualified.

Hope this helpful!

Merry Christmas!

Linda Kennedy

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**From:** Cary Lagace [mailto:assessing@belmontnh.org]  
**Sent:** Monday, December 19, 2016 10:31 AM  
**To:** Kennedy, Linda  
**Subject:** Veterans Exemption question

Hi Linda,

Jeanne asked me to run these 2 questions by you. We recently had a veteran come in to request: **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. 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??

Additionally; our recent review of RSA 72:35 has us questioning if we are administering our credits properly... in this statement "l-a. The optional tax credit for service-connected total disability, upon adoption by a city or town pursuant to RSA 72:27-a, shall be an amount from \$701 up to \$2,000. The optional

tax credit for service-connected total disability shall ~~replace the standard tax credit in its entirety and shall not be in addition thereto.~~ " Is it excluding this credit as it becomes the "optional veterans credit" when its increased to more than \$50.00? "II. The optional veterans' tax credit, upon adoption by a city or town pursuant to RSA 72:27-a, shall be an amount from \$51 up to \$500. The optional veterans' tax credit shall replace the standard veterans' tax credit in its entirety and shall not be in addition thereto.

Currently, if someone receives the service connected total disability credit \$1400 they also receive our "optional veterans credit" of \$500 for a total of \$1900 if they qualify for both... Is this correct?

I appreciate your input on both these issues. Thank you!

Cary Lagace  
Administrative/Assessing Assistant  
Town of Belmont  
PO Box 310, Belmont, NH 03220  
603-267-8300 x118

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# 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 exemption<sup>1</sup>;
- (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

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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

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<sup>2</sup> 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.

<sup>3</sup> “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.<sup>4</sup>

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 (10<sup>th</sup> 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.

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<sup>4</sup> 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

Robin M. Nordle 2013 Trust v. Town of Belmont  
Docket No.: 28830-17EX  
Page 7 of 7

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.<sup>1</sup>) 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

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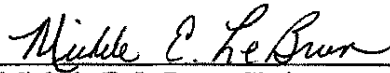
<sup>1</sup> In this appeal, the Town does not claim the \$80,000 in financial assistance provided by the Veterans Administration for major improvements to specially adapt the homestead was insubstantial; the board need not decide what hypothetical lesser amount (such as “\$10,000 for a relatively modest 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.<sup>2</sup> 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

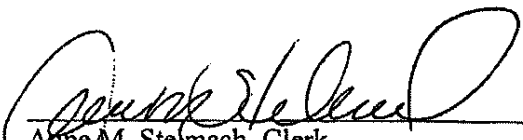
  
Albert F. Shamash, Member

  
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. Stekmach, Clerk

<sup>2</sup> 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.