

**Nashua Corporation**

**v.**

**Town of Merrimack**

**Docket Nos.: 7786-89 and 12074-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1991 assessments of \$33,320,100 (land, \$9,408,000; buildings, \$23,912,100) on the "Property," which consists of 56.52-acres located on Daniel Webster Highway and improved with two principal industrial structures: a computer-products facility of approximately 106,000 square feet and a graphic-products facility of approximately 440,000 square feet. Additional improvements consist of a solvent-storage building, a waste-water treatment plant, various yard improvements (paving, lighting, tanks, etc.), a railroad spur and underground utilities. For the reasons stated in this decision, the appeals for abatement are granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

General Discussion.

The hearings took place over two days; extensive evidence and documents were submitted by the parties. The board also took a view of the Property. This case has taken extensive deliberation and research by the board, and the decision was delayed pending the opinion from the New Hampshire Supreme Court in the Appeal of the City of Nashua, 138 N.H. 261 (1994) (see board's January 7, 1994 letter to parties). The board's decision will attempt to be as succinct as possible, yet meet the requirement of adequate findings of fact. The board has thoroughly reviewed the appraisals and associated documents. The board will not comment or rule on every conflicting issue raised in the parties' arguments. However, the board will make findings as to the important issues that will lead to the proper valuation conclusion, and the board will give its reasoning as to its various findings. The board's decision will be similar to reading a map; it will not describe all the roads not taken but will describe only those that were taken.

Parties Arguments.

The details of the Taxpayer's arguments are contained in the various exhibits submitted at the hearing. In summary, based on an appraisal performed by J. N. Walls and Associates, the Taxpayer argued the Property had a 1989 market value of \$20,575,000. The Taxpayer further argued the Property's value

had not changed at any rate different than all other property in Town, and therefore, any finding for the 1989 appeal would also be applicable for tax years 1990-1993.

Page 3  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

The Town relied on its mass-appraisal cost approach, which indicated an assessment of \$33,320,100 supported by an income-approach estimate of \$36,927,700.

#### Issues.

The following issues were raised during the hearing or by post-hearing motions and must be addressed to decide this case:

1) Does the board have jurisdiction over tax year 1990, pursuant to RSA 76:16-a (Supp. 1991), even though the Taxpayer did not file a 1990 appeal?

2) Should the Taxpayer's appeal be dismissed because the Taxpayer did not carry its burden of proof concerning the general level of assessment within the Town?;

3) What is the most appropriate approach to value?; and

4) What is a reasonable market value conclusion?

#### Board's Findings & Rulings.

In summary, the board finds the cost approach is the most appropriate valuation approach and results in a proper assessment for 1989 and 1991 of \$27,805,084 (land, \$4,578,100; buildings, \$23,226,984).

#### Issue #1: 1990 Tax Year Status.

The board concludes it has jurisdiction over the 1990 tax year even though the Taxpayer did not file a 1990 appeal, and that pursuant to RSA 76:16-a I (Supp. 1991, enacted Laws 1991, 386:4), the board finds RSA 76:16-a I (Supp. 1991) retrospectively applies to the Taxpayer's 1990 tax year because the Taxpayer had a 1989 appeal pending as of the effective date of RSA 76:16-a I

Page 4  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

(Supp. 1991). This issue has been extensively discussed in an order dated November 3, 1993, entitled Cheney East Corporation, et al. v. Town of Newmarket, Docket No. 10016-90, et al. (the Cheney Order). The board incorporates the Cheney Order, attached in Addendum A, in this decision and in particular references Section V, B, pages 6-10. The parties should be aware the Cheney Order has been appealed and accepted by the New Hampshire Supreme Court, Docket No. 94-128.

Issue #2: General Level of Assessment.

Many of the arguments presented by both parties were concerning this second issue. Specifically, the Town moved to dismiss the appeals because the Town asserted the Taxpayer had not carried its burden concerning the general level of assessment. We disagree and deny the dismissal motion. This issue was specifically addressed in Appeal of City of Nashua, 138 N.H. at 266-67, where the court stated:

We hold that in tax abatement cases before the board, a municipality must

disclose its preferred equalization ratio. Where . . . the city does not offer an alternative to the department's ratios for the relevant tax years, the plaintiffs offering of the department's ratios shall satisfy their burden to prove the general level of assessment.

In this case, the Town offered no preferred equalization ratio and in fact, refused to stipulate to either the department of revenue administration's (DRA's) ratio or to the ratio determined by the revaluation company at the conclusion of the 1989 reassessment. The board finds the Town presented no evidence to dispute the DRA's ratio study other than to claim, without any market substantiation or

Page 5  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

analysis, that due to the board of tax and land appeals granting numerous abatements, the DRA's ratio no longer reflected the Town's general level of assessment.

The board finds the Town's 1989 level of assessment to be 100% based on the following evidence:

- 1) the DRA's 1989 ratio study indicated a 100% ratio;
- 2) the ratio study performed by the Town's reassessment company indicated a 100% ratio;
- 3) the Taxpayer's own ratio study supported the DRA's study and ratio and the Town's appraisal company's study and ratio; and
- 4) the reassessment company's intent and goal, as stated in its contract,

was to have the 1989 assessments approximate market value.

The board finds the Town's assertion - - that the numerous abatements ordered by this board indicated the Town was in excess of 100% - - is unsubstantiated. The board has reviewed both the DRA's study and the reassessment company's study and finds that they primarily reflect sales of residential properties due to the lack of transfers for commercial property. The majority of the Town's 1989 appeals heard and abated by the board related to commercial and industrial properties, which were not reflected in those studies.

The parties agreed at the hearing that the board need only make findings of market value and general level of assessment for 1989 alone, and not for 1991, because neither party was claiming the Property's value had changed at any rate different than Town-wide values as a whole.

Page 6  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

Based on the above, the Town's dismissal motion is denied, and the board will use the DRA's ratio.

Issue #3: Appropriate Approach to Value.

There are three approaches to value: 1) the cost approach; 2) the comparable-sales (market) approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate 71 (10th Ed. 1991); International Association of Assessing Officials, Property Assessment Valuation 38 (1977).

While there are three approaches to value, not all three approaches are

of equal importance in every situation. The Appraisal of Real Estate at 72; Property Assessment Valuation at 38. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence, Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

Given the evidence in this appeal, we find the cost approach is the most appropriate approach to value the Property has for the following reasons.

1) The Property consists of many special-purpose improvements (e.g., clean-air rooms, anti-vibration adaptations, extra thick concrete floors, above and below ground chemical-storage tanks and pipes, waste-water treatment plant, etc.). While these improvements are not so extensive so as to classify the Property as a "special-purchase property," they do contribute to the finding that the highest and best use of the Property is as currently used. See Ford Motor Company v. Town of Edison, 604 A.2d 508 (N.J. 1992).

Page 7  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

2) The concept of "fair market value encompasses use of the property with a special purpose for which it is constructed and is being employed . . ." 590 Realty Co., Ltd. v. City of Keene, 122 N.H. 284, 287 (1982); Amoskeag - Lawrence Mills v. State, 101 N.H. 392, 399 (1958).

3) Due to the unique improvements and the large size of the two main buildings, the cost approach more accurately reflects market value than the

sales approach because: a) the adjustments necessary in a comparable-sales approach would be of such magnitude that the value indication would be of questionable reliability; b) the buildings' large size and their specialized improvements limit the market for this type of property to such an extent that it would be unlikely that any prospective purchaser would pay for the value of those features as the Property is currently used unless the prospective purchaser intended to use the Property as presently used; and c) while value in exchange rather than value in use is the normal criterion for assessing property, a property containing unique features and improvements that are intrinsically connected to the highest and best use of the property should be assessed by attributing value to those special features. See 590 Realty Company Ltd. v. City of Keene, 122 N.H. 284, 287 (1982).

4) The income approach is not generally applicable to this type of property due to its size, unique features, and single-owner occupancy. Moreover, few buildings of this size are leased, and thus there is a lack of reliable market data concerning rents, vacancies and expenses. It is also the board's experience that what few large properties are leased are as a result of

innovative corporate Page 8  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

financing arrangements such as a sale-lease-back agreement and are not necessarily reflective of market value.

#### Issue #4 Market Value.

In performing the cost approach there are generally three general areas that have to be addressed:

A) land value (which is normally determined through market approach by reviewing comparable-land sales);

B) replacement cost new (RCN) of the improvements; and

C) appropriate depreciation to be applied to RCN.

A. Land Value.

The board places little weight on the Town's land assessment for the following reasons. The Town testified the land assessment was derived by calculating a primary and secondary building site based on a building-footprint- to-land ratio. This technique may have some relation to market value for smaller and more typical industrial properties, but in this case, it appears to overstate the value. The Town determined a primary-site assessment for 25 acres and a secondary-site assessment for 25 acres with 6 acres of marshland and 3 acres of residual land. First, the total acreage was incorrect; the parcel size is 56.52 acres, not 59 acres. Second, the Town's determination does not relate to the actual land use. The vast majority of the land was improved or used as an area in support of the development in general, e.g., the terraced slopes and the recreational field. There was no discernable distinction between a primary or secondary site or any marshland. The resulting value of \$159,458 per-acre

Page 9  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

exceeded all market indicators with the one exception supplied in the Taxpayer's appraisal.

The board finds the sales data supplied by J. N. Walls & Associates

appraisal to be credible and, by and large, the adjustments to be reasonable. However, the board finds that the \$65,000 per-acre correlation value must be increased by 25% to account for the significant and extraordinary site work that had occurred to the Property to enable it to be developed as it has been. The site, before development, sloped below grade from Daniel Webster Highway. Consequently, to provide sites for the present improvements, significant terracing and grading had to be done to the Property before normal excavation site work for the current improvements could commence. Most replacement-cost estimates for buildings include normal site work and excavation for the building construction. However, when a site needs significant modifications before any construction begins, that cost is not normally reflected in the building square-foot price. Therefore, to account for the relative value of the Property's land as improved relative to the sales that were unimproved parcels, an additional factor needs to be applied. The board relied on both its experience and knowledge and reviewed the general site development cost estimates contained in Marshall Valuation Service in arriving at the 25% adjustment factor. Applying this adjustment to the \$65,000 per-acre figure produces an estimated land value per acre of \$81,000 (rounded) and results in reasonable estimate of land value of \$4,578,100 (rounded) (\$81,000 per acre x 56.52 acres).

B. Replacement Cost New.

The board reviewed in great depth the RCN estimates by both parties and attempted to compare the various improvements on the Property to see where the parties differed. While the main buildings are easily compared, some of the yard improvements and supporting utilities are contained in different portions of the parties' respective replacement-cost estimates. To facilitate comparison, a grid of the parties' RCNs, depreciations and depreciated value was prepared and is contained in Addendum B. This comparison of the parties RCN figures indicated a significant variance on the graphic-products facility, solvent-storage building and the waste-water treatment plant. As a result, the board performed its own cost estimates based on both parties' physical descriptions and dimensions of the properties and the board's view of the properties. The board's cost estimates are set forth in Addendum B and summarized on the cost-approach grid in Addendum B. Due to the uniqueness of many of the yard improvements and supporting utilities, the board was unable, based on the parties information, to do their own cost approach for these specific items.

The board finds the RCNs for both parties, especially as they pertain to the graphic-products facility, solvent-storage building and waste-water treatment plant, to be inconsistent enough so that neither one of them is given any greater weight. Therefore, the board finds its replacement-cost estimates, which were derived from the 1989 edition of the Marshall Valuation Service, provide the best indication of RCN. Specifically, the board finds the Taxpayer's cost estimate for the graphic-products facility to be significantly

estimate using the Marshall Valuation Service manual. Conversely, the board finds the Town's replacement-cost estimate was based on an older, and unknown, schedule used during the reassessment. The Town testified a 2.1 factor was applied to the schedule to equate the figures to 1989 cost estimates. However, the board finds the resulting RCN figures, in this case, exceeded reasonable cost estimates. This conclusion is supported by the fact that the Town applied a 33%

depreciation to the RCN to arrive at what it concluded was a reasonable replacement cost new less depreciation (RCNLD). Such depreciation, the board finds, is excessive based on both the testimony and view of the Property, and its application is an indication the Town's RCN figures were excessive to begin with.

### C. Depreciation.

The board's depreciation estimates are also listed on the cost grid in Addendum B. Based on testimony, including the appraisals by both parties and the board's view of the Property, the board finds 15% physical depreciation is warranted for the buildings. The two main buildings were constructed within the past sixteen years with several of the supporting structures and improvements being constructed or replaced within the past five years. The Property has been well maintained with repairs and replacements made as needed.

Both parties agreed the Property was generally quite functional for its current use, except the graphic-products facility had a superadequacy of warehousing area. That space has never been fully occupied by the Taxpayer, but some areas have been at times leased to others. The computer-products facility appeared to be very functional, having been outfitted with various

clean-room features and anti-

Page 12

Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

vibration fixtures for its specialized manufacturing purposes. Consequently, the board finds no functional depreciation is warranted for the computer-products facility, but finds that 10% functional depreciation for the graphic-products facility is warranted due to its excess size.

Further, the board finds functional depreciation of 25% is warranted for the special purpose solvent-storage building and the waste-water treatment plant.

These two buildings alone could be categorized as "special-purpose buildings" and the 25% functional depreciation is intended to recognize their limited and unique uses.

As mentioned earlier, the yard improvements and supporting utilities were of such specialized nature the board was unable to form its own cost estimates based on the information in the record. However, in reviewing both parties' estimates of those features, the board finds the Taxpayer's calculation to be more detailed and exact. Therefore, the board adopts the Taxpayer's total RCNLD of \$900,374 for those features.

Summary.

The board finds the proper assessment is summarized as follows:

Land	\$ 4,578,100
Buildings	\$22,326,610
Yard improvements and utilities	<u>\$ 900,374</u>

Total

\$27,805,084

Page 13

Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

Parties' Requests for Findings of Fact and Rulings of Law

The board responds to the parties' requests of law as follows. If there is any conflict between the findings in the decision and the board's response to the parties' request, the findings in the decision take precedence.

Taxpayers Request for Findings of Fact and Rulings of Law

1. Granted.
2. Granted.
3. Neither Granted nor Denied.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Neither Granted nor Denied.
10. Neither Granted nor Denied.
11. Granted.
12. Neither Granted nor Denied.
13. Granted.
14. Denied.
15. Denied.
16. Granted.
17. Denied.
18. Granted.
19. Denied.
20. Granted.
21. Granted.
22. Granted.
23. Granted.
24. Denied.
25. Denied.

Town's Request for Findings of Fact and Rulings of Law

1. A. Granted.  
B. Denied.  
C. Denied.  
D. Neither Granted nor Denied.  
E. Denied.  
F. Denied.
2. Granted.
3. Granted.

Page 14

Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

4. Granted.
5. Granted.
6. Neither Granted nor Denied.
7. Granted.
8. Neither Granted nor Denied.
9. Neither Granted nor Denied.
10. Granted.
11. Granted.
12. Granted.
13. Granted.
14. Denied.
15. Denied.
16. Neither Granted nor Denied.
17. Granted.
18. Granted.
19. Neither Granted nor Denied.  
See Appeal of City of Nashua, 138 N.H. 261 (1994)
20. Granted.
21. Granted.
22. Neither Granted nor Denied.
23. Denied.

If the taxes have been paid, the amount paid on the value in excess of \$27,805,084 for tax years 1989 and 1991 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1990, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for

subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons

Page 15

Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Member

---

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this

date, postage prepaid, to James E. Morris, Esq., counsel for Nashua Corporation, the Taxpayer; and Jay L. Hodes, Esq., counsel for the Town of Merrimack.

Dated: August 4, 1994

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

0009

**Nashua Corporation**

**v.**

**Town of Merrimack**

**Docket No.: 7786-89**

**ORDER**

This order responds to the "Town's" continuance motion, which is denied.

The board denies the motion for the following reasons:

- 1) two other attorneys from Attorney Hodes' office have appeared and represented the Town at the recent hearings, including Attorney Kelly who is an experienced litigator;
- 2) this appeal has been pending for almost three years and the Town certainly has had sufficient time to hire an expert witness;
- 3) the company that performed the revaluation for the Town will be represented at the hearing;
- 4) the board granted a continuance by order dated December 23, 1992, and in that request for continuance the Town stated it would be ready to proceed in three months; and
- 5) the Taxpayer objected to the continuance.

Page 2

Nashua Corporation v. Town of Merrimack

Docket No.: 7786-89

The board has decided not to schedule a prehearing conference, but we hope the parties will exchange all exhibits, including appraisals, before the hearing, allowing adequate time for review of such documents.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

George Twigg, III, Chairman

---

Paul B. Franklin, Member

---

Ignatius MacLellan, Esq., Member

---

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to James E. Morris, Esq., Agent for Nashua Corporation, Taxpayer; and Jay L. Hodes, Esq., Agent for the Town of Merrimack.

Dated:

Valerie B. Lanigan, Clerk

0005

**Nashua Corporation**

**v.**

**Town of Merrimack**

**Docket Nos.: 7786-89 and 12074-91PT**

**ORDER**

This order relates to the "Town's" dismissal motion, which was made at the close of the "Taxpayer's" case. For the reasons stated below, the dismissal motion is denied.

Two other issues have been raised: 1) the Taxpayer's motion concerning the 1990 tax year; and 2) the Taxpayer's argument concerning the consolidation of the 1991 appeal. The board will address this first issue in the final decision. The board rules the second issue is now moot because the board will review all of the evidence and issue a full decision. Furthermore, the board rules the Taxpayer agreed to consolidate the 1991 appeal, and the Taxpayer cannot withdraw that consent simply because of an adverse ruling. The remainder of this order will address the dismissal motion in a summary manner since many of the issues raised by the motion and argued in the memoranda will be addressed in the final decision.

In deciding the dismissal motion, the board has decided to view the

evidence most favorably to the Taxpayer. See Renovest Co. v. Hodges Development Corporation, 135 N.H. 72, 75 (1991). The board has decided not to

weigh the Page 2  
Nashua Corporation v. Town of Merrimack  
Docket No.: 7786-89

evidence at this time. Thus, the board's denial of the dismissal motion does not mean the board will ultimately find in favor of the Taxpayer on the issues raised by the dismissal motion.

In abatement appeals, there are two main issues: 1) the value of the appealed property as compared to the assessment; and 2) the general level of assessment in the municipality. Both inquiries are part of the ultimate question of whether the taxpayer was disproportionately assessed. The dismissal motion focused on the second element, i.e., did the Taxpayer show the general level of assessment. The following evidence was introduced concerning the general level of assessments and its cumulative effect is sufficient to have the evidence weighed and a decision rendered based on the evidence.

**Factors/Evidence Relating to General Level of Assessment**

- 1989 was the revaluation year and the goal was and the contract required that the assessments equal market value
- the statement of and study by the revaluation company indicating a 100% ratio
- a statement by and letter from the assessor concerning the 100% ratio
- the DRA ratio study
- the Taxpayer's ratio study
- the Town's admissions, stipulations (and possible collateral estoppel) concerning the 100% ratio

Based on the above cumulative evidence, the board finds the Taxpayer has established a prima facie case, and the board will review and weigh the

evidence in reaching a final decision.

Page 3  
Nashua Corporation v. Town of Merrimack  
Docket No.: 7786-89

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Member

---

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to James E. Morris, Esq., Agent for Nashua Corporation, Taxpayer; and Jay L. Hodes, Esq., Agent for the Town of Merrimack.

Dated:

Valerie B. Lanigan, Clerk

0005

**Nashua Corporation**

**v.**

**Town of Merrimack**

**Docket Nos.: 7786-89 and 12074-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1991 assessments of \$33,320,100 (land, \$9,408,000; buildings, \$23,912,100) on the "Property," which consists of 56.52-acres located on Daniel Webster Highway and improved with two principal industrial structures: a computer-products facility of approximately 106,000 square feet and a graphic-products facility of approximately 440,000 square feet. Additional improvements consist of a solvent-storage building, a waste-water treatment plant, various yard improvements (paving, lighting, tanks, etc.), a railroad spur and underground utilities. For the reasons stated in this decision, the appeals for abatement are granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

General Discussion.

The hearings took place over two days; extensive evidence and documents were submitted by the parties. The board also took a view of the Property. This case has taken extensive deliberation and research by the board, and the decision was delayed pending the opinion from the New Hampshire Supreme Court in the Appeal of the City of Nashua, 138 N.H. 261 (1994) (see board's January 7, 1994 letter to parties). The board's decision will attempt to be as succinct as possible, yet meet the requirement of adequate findings of fact. The board has thoroughly reviewed the appraisals and associated documents. The board will not comment or rule on every conflicting issue raised in the parties' arguments. However, the board will make findings as to the important issues that will lead to the proper valuation conclusion, and the board will give its reasoning as to its various findings. The board's decision will be similar to reading a map; it will not describe all the roads not taken but will describe only those that were taken.

Parties Arguments.

The details of the Taxpayer's arguments are contained in the various exhibits submitted at the hearing. In summary, based on an appraisal performed by J. N. Walls and Associates, the Taxpayer argued the Property had a 1989 market value of \$20,575,000. The Taxpayer further argued the Property's value

had not changed at any rate different than all other property in Town, and therefore, any finding for the 1989 appeal would also be applicable for tax years 1990-1993.

Page 3  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

The Town relied on its mass-appraisal cost approach, which indicated an assessment of \$33,320,100 supported by an income-approach estimate of \$36,927,700.

#### Issues.

The following issues were raised during the hearing or by post-hearing motions and must be addressed to decide this case:

1) Does the board have jurisdiction over tax year 1990, pursuant to RSA 76:16-a (Supp. 1991), even though the Taxpayer did not file a 1990 appeal?

2) Should the Taxpayer's appeal be dismissed because the Taxpayer did not carry its burden of proof concerning the general level of assessment within the Town?;

3) What is the most appropriate approach to value?; and

4) What is a reasonable market value conclusion?

#### Board's Findings & Rulings.

In summary, the board finds the cost approach is the most appropriate valuation approach and results in a proper assessment for 1989 and 1991 of \$27,805,084 (land, \$4,578,100; buildings, \$23,226,984).

#### Issue #1: 1990 Tax Year Status.

The board concludes it has jurisdiction over the 1990 tax year even though the Taxpayer did not file a 1990 appeal, and that pursuant to RSA 76:16-a I (Supp. 1991, enacted Laws 1991, 386:4), the board finds RSA 76:16-a I (Supp. 1991) retrospectively applies to the Taxpayer's 1990 tax year because the Taxpayer had a 1989 appeal pending as of the effective date of RSA 76:16-a I

Page 4  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

(Supp. 1991). This issue has been extensively discussed in an order dated November 3, 1993, entitled Cheney East Corporation, et al. v. Town of Newmarket, Docket No. 10016-90, et al. (the Cheney Order). The board incorporates the Cheney Order, attached in Addendum A, in this decision and in particular references Section V, B, pages 6-10. The parties should be aware the Cheney Order has been appealed and accepted by the New Hampshire Supreme Court, Docket No. 94-128.

#### Issue #2: General Level of Assessment.

Many of the arguments presented by both parties were concerning this second issue. Specifically, the Town moved to dismiss the appeals because the Town asserted the Taxpayer had not carried its burden concerning the general level of assessment. We disagree and deny the dismissal motion. This issue was specifically addressed in Appeal of City of Nashua, 138 N.H. at 266-67, where the court stated:

We hold that in tax abatement cases before the board, a municipality must

disclose its preferred equalization ratio. Where . . . the city does not offer an alternative to the department's ratios for the relevant tax years, the plaintiffs offering of the department's ratios shall satisfy their burden to prove the general level of assessment.

In this case, the Town offered no preferred equalization ratio and in fact, refused to stipulate to either the department of revenue administration's (DRA's) ratio or to the ratio determined by the revaluation company at the conclusion of the 1989 reassessment. The board finds the Town presented no evidence to dispute the DRA's ratio study other than to claim, without any market substantiation or

Page 5  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

analysis, that due to the board of tax and land appeals granting numerous abatements, the DRA's ratio no longer reflected the Town's general level of assessment.

The board finds the Town's 1989 level of assessment to be 100% based on the following evidence:

- 1) the DRA's 1989 ratio study indicated a 100% ratio;
- 2) the ratio study performed by the Town's reassessment company indicated a 100% ratio;
- 3) the Taxpayer's own ratio study supported the DRA's study and ratio and the Town's appraisal company's study and ratio; and
- 4) the reassessment company's intent and goal, as stated in its contract,

was to have the 1989 assessments approximate market value.

The board finds the Town's assertion - - that the numerous abatements ordered by this board indicated the Town was in excess of 100% - - is unsubstantiated. The board has reviewed both the DRA's study and the reassessment company's study and finds that they primarily reflect sales of residential properties due to the lack of transfers for commercial property. The majority of the Town's 1989 appeals heard and abated by the board related to commercial and industrial properties, which were not reflected in those studies.

The parties agreed at the hearing that the board need only make findings of market value and general level of assessment for 1989 alone, and not for 1991, because neither party was claiming the Property's value had changed at any rate different than Town-wide values as a whole.

Page 6  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

Based on the above, the Town's dismissal motion is denied, and the board will use the DRA's ratio.

Issue #3: Appropriate Approach to Value.

There are three approaches to value: 1) the cost approach; 2) the comparable-sales (market) approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate 71 (10th Ed. 1991); International Association of Assessing Officials, Property Assessment Valuation 38 (1977).

While there are three approaches to value, not all three approaches are

of equal importance in every situation. The Appraisal of Real Estate at 72; Property Assessment Valuation at 38. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence, Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

Given the evidence in this appeal, we find the cost approach is the most appropriate approach to value the Property has for the following reasons.

1) The Property consists of many special-purpose improvements (e.g., clean-air rooms, anti-vibration adaptations, extra thick concrete floors, above and below ground chemical-storage tanks and pipes, waste-water treatment plant, etc.). While these improvements are not so extensive so as to classify the Property as a "special-purchase property," they do contribute to the finding that the highest and best use of the Property is as currently used. See Ford Motor Company v. Town of Edison, 604 A.2d 508 (N.J. 1992).

Page 7  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

2) The concept of "fair market value encompasses use of the property with a special purpose for which it is constructed and is being employed . . ." 590 Realty Co., Ltd. v. City of Keene, 122 N.H. 284, 287 (1982); Amoskeag - Lawrence Mills v. State, 101 N.H. 392, 399 (1958).

3) Due to the unique improvements and the large size of the two main buildings, the cost approach more accurately reflects market value than the

sales approach because: a) the adjustments necessary in a comparable-sales approach would be of such magnitude that the value indication would be of questionable reliability; b) the buildings' large size and their specialized improvements limit the market for this type of property to such an extent that it would be unlikely that any prospective purchaser would pay for the value of those features as the Property is currently used unless the prospective purchaser intended to use the Property as presently used; and c) while value in exchange rather than value in use is the normal criterion for assessing property, a property containing unique features and improvements that are intrinsically connected to the highest and best use of the property should be assessed by attributing value to those special features. See 590 Realty Company Ltd. v. City of Keene, 122 N.H. 284, 287 (1982).

4) The income approach is not generally applicable to this type of property due to its size, unique features, and single-owner occupancy. Moreover, few buildings of this size are leased, and thus there is a lack of reliable market data concerning rents, vacancies and expenses. It is also the board's experience that what few large properties are leased are as a result of

innovative corporate Page 8  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

financing arrangements such as a sale-lease-back agreement and are not necessarily reflective of market value.

#### Issue #4 Market Value.

In performing the cost approach there are generally three general areas that have to be addressed:

A) land value (which is normally determined through market approach by reviewing comparable-land sales);

B) replacement cost new (RCN) of the improvements; and

C) appropriate depreciation to be applied to RCN.

A. Land Value.

The board places little weight on the Town's land assessment for the following reasons. The Town testified the land assessment was derived by calculating a primary and secondary building site based on a building-footprint- to-land ratio. This technique may have some relation to market value for smaller and more typical industrial properties, but in this case, it appears to overstate the value. The Town determined a primary-site assessment for 25 acres and a secondary-site assessment for 25 acres with 6 acres of marshland and 3 acres of residual land. First, the total acreage was incorrect; the parcel size is 56.52 acres, not 59 acres. Second, the Town's determination does not relate to the actual land use. The vast majority of the land was improved or used as an area in support of the development in general, e.g., the terraced slopes and the recreational field. There was no discernable distinction between a primary or secondary site or any marshland. The resulting value of \$159,458 per-acre

Page 9  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

exceeded all market indicators with the one exception supplied in the Taxpayer's appraisal.

The board finds the sales data supplied by J. N. Walls & Associates

appraisal to be credible and, by and large, the adjustments to be reasonable. However, the board finds that the \$65,000 per-acre correlation value must be increased by 25% to account for the significant and extraordinary site work that had occurred to the Property to enable it to be developed as it has been. The site, before development, sloped below grade from Daniel Webster Highway. Consequently, to provide sites for the present improvements, significant terracing and grading had to be done to the Property before normal excavation site work for the current improvements could commence. Most replacement-cost estimates for buildings include normal site work and excavation for the building construction. However, when a site needs significant modifications before any construction begins, that cost is not normally reflected in the building square-foot price. Therefore, to account for the relative value of the Property's land as improved relative to the sales that were unimproved parcels, an additional factor needs to be applied. The board relied on both its experience and knowledge and reviewed the general site development cost estimates contained in Marshall Valuation Service in arriving at the 25% adjustment factor. Applying this adjustment to the \$65,000 per-acre figure produces an estimated land value per acre of \$81,000 (rounded) and results in reasonable estimate of land value of \$4,578,100 (rounded) (\$81,000 per acre x 56.52 acres).

B. Replacement Cost New.

The board reviewed in great depth the RCN estimates by both parties and attempted to compare the various improvements on the Property to see where the parties differed. While the main buildings are easily compared, some of the yard improvements and supporting utilities are contained in different portions of the parties' respective replacement-cost estimates. To facilitate comparison, a grid of the parties' RCNs, depreciations and depreciated value was prepared and is contained in Addendum B. This comparison of the parties RCN figures indicated a significant variance on the graphic-products facility, solvent-storage building and the waste-water treatment plant. As a result, the board performed its own cost estimates based on both parties' physical descriptions and dimensions of the properties and the board's view of the properties. The board's cost estimates are set forth in Addendum B and summarized on the cost-approach grid in Addendum B. Due to the uniqueness of many of the yard improvements and supporting utilities, the board was unable, based on the parties information, to do their own cost approach for these specific items.

The board finds the RCNs for both parties, especially as they pertain to the graphic-products facility, solvent-storage building and waste-water treatment plant, to be inconsistent enough so that neither one of them is given any greater weight. Therefore, the board finds its replacement-cost estimates, which were derived from the 1989 edition of the Marshall Valuation Service, provide the best indication of RCN. Specifically, the board finds the Taxpayer's cost estimate for the graphic-products facility to be significantly

estimate using the Marshall Valuation Service manual. Conversely, the board finds the Town's replacement-cost estimate was based on an older, and unknown, schedule used during the reassessment. The Town testified a 2.1 factor was applied to the schedule to equate the figures to 1989 cost estimates. However, the board finds the resulting RCN figures, in this case, exceeded reasonable cost estimates. This conclusion is supported by the fact that the Town applied a 33%

depreciation to the RCN to arrive at what it concluded was a reasonable replacement cost new less depreciation (RCNLD). Such depreciation, the board finds, is excessive based on both the testimony and view of the Property, and its application is an indication the Town's RCN figures were excessive to begin with.

### C. Depreciation.

The board's depreciation estimates are also listed on the cost grid in Addendum B. Based on testimony, including the appraisals by both parties and the board's view of the Property, the board finds 15% physical depreciation is warranted for the buildings. The two main buildings were constructed within the past sixteen years with several of the supporting structures and improvements being constructed or replaced within the past five years. The Property has been well maintained with repairs and replacements made as needed.

Both parties agreed the Property was generally quite functional for its current use, except the graphic-products facility had a superadequacy of warehousing area. That space has never been fully occupied by the Taxpayer, but some areas have been at times leased to others. The computer-products facility appeared to be very functional, having been outfitted with various

clean-room features and anti-

Page 12

Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

vibration fixtures for its specialized manufacturing purposes. Consequently, the board finds no functional depreciation is warranted for the computer-products facility, but finds that 10% functional depreciation for the graphic-products facility is warranted due to its excess size.

Further, the board finds functional depreciation of 25% is warranted for the special purpose solvent-storage building and the waste-water treatment plant.

These two buildings alone could be categorized as "special-purpose buildings" and the 25% functional depreciation is intended to recognize their limited and unique uses.

As mentioned earlier, the yard improvements and supporting utilities were of such specialized nature the board was unable to form its own cost estimates based on the information in the record. However, in reviewing both parties' estimates of those features, the board finds the Taxpayer's calculation to be more detailed and exact. Therefore, the board adopts the Taxpayer's total RCNLD of \$900,374 for those features.

Summary.

The board finds the proper assessment is summarized as follows:

Land	\$ 4,578,100
Buildings	\$22,326,610
Yard improvements and utilities	<u>\$ 900,374</u>

Total

\$27,805,084

Page 13

Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

Parties' Requests for Findings of Fact and Rulings of Law

The board responds to the parties' requests of law as follows. If there is any conflict between the findings in the decision and the board's response to the parties' request, the findings in the decision take precedence.

Taxpayers Request for Findings of Fact and Rulings of Law

1. Granted.
2. Granted.
3. Neither Granted nor Denied.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Neither Granted nor Denied.
10. Neither Granted nor Denied.
11. Granted.
12. Neither Granted nor Denied.
13. Granted.
14. Denied.
15. Denied.
16. Granted.
17. Denied.
18. Granted.
19. Denied.
20. Granted.
21. Granted.
22. Granted.
23. Granted.
24. Denied.
25. Denied.

Town's Request for Findings of Fact and Rulings of Law

1. A. Granted.  
B. Denied.  
C. Denied.  
D. Neither Granted nor Denied.  
E. Denied.  
F. Denied.
2. Granted.
3. Granted.

Page 14

Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

4. Granted.
5. Granted.
6. Neither Granted nor Denied.
7. Granted.
8. Neither Granted nor Denied.
9. Neither Granted nor Denied.
10. Granted.
11. Granted.
12. Granted.
13. Granted.
14. Denied.
15. Denied.
16. Neither Granted nor Denied.
17. Granted.
18. Granted.
19. Neither Granted nor Denied.  
See Appeal of City of Nashua, 138 N.H. 261 (1994)
20. Granted.
21. Granted.
22. Neither Granted nor Denied.
23. Denied.

If the taxes have been paid, the amount paid on the value in excess of \$27,805,084 for tax years 1989 and 1991 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1990, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for

subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons

Page 15  
Nashua Corporation v. Town of Merrimack  
Docket Nos. 7786-89 and 12074-91PT

supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Member

---

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this

date, postage prepaid, to James E. Morris, Esq., counsel for Nashua Corporation, the Taxpayer; and Jay L. Hodes, Esq., counsel for the Town of Merrimack.

Dated: August 4, 1994

---

Valerie B. Lanigan, Clerk

0009