

**Lockheed Sanders, Inc.**

**v.**

**Town of Hudson**

**Docket Nos.: 15346-94PT and 17233-96PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 and 1996 assessments of \$31,331,700 (land \$4,771,600; buildings \$26,560,100) on a 171-acre lot with two research and development (R&D)/manufacturing buildings (the Property). The Taxpayer also owned, but did not appeal, another property in the Town with a \$36,000 assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) an appraisal (Thompson appraisal) estimated the market value as of April 1996 to be \$18,500,000;
- (2) the most reliable indicator of value of this Property is the comparable sales approach;
- (3) based on the appraisal and the Town's 1996 equalization ratio of 112%, the proper assessment for 1996 should be \$20,720,000; and

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(4) the asbestos/concrete composite siding ("edgerock") and the multiple heat-pump units make the buildings less desirable than other more conventional buildings.

The Town argued the assessment was proper because:

- (1) an appraisal (Traub appraisal) estimated the market value as of April 1996 to be \$29,900,000; and
- (2) the Thompson appraisal has too many inconsistencies with an earlier 1991 Thompson appraisal of the Property to be credible.

Following the June 9, 1998 hearing, the board viewed the Property including the site and the interior of both buildings.

#### Stipulations of Parties

The parties stipulated that evidence would be limited to the fair market value of the Property as of April 1, 1996. The board's finding of the 1996 market value would be adjusted by the 1996 ratio (112%) to arrive at the 1996 assessment and the 1996 assessment would be applied to 1995 and 1994.

#### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$27,440,000 based on a market value finding of \$24,500,000 and the Town's 1996

equalization ratio of 112%.

The hearing took place over three days and voluminous evidence and documents were submitted. The board has thoroughly reviewed all the appraisals and associated documents. The board will not comment or rule on every conflicting issue raised by the parties; however, the decision will "include specific, although not excessively detailed, basic findings in support of the ultimate conclusion[s] ..." Appeal of Portsmouth Trust Co., 120 N.H. 753, 759 (1980). The board's decision will be similar to reading a road map; it will not describe all the roads not taken, only those that are.

Dissimilar to the board's ruling in Hi Tension Realty Corp./Lockheed Sanders, Inc. v. Town of Hudson, Docket Nos. 9305-90PT, 11546-91PT and 14375-93PT, the board finds the Taxpayer submitted adequate evidence (Thompson

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Appraisal) to raise a serious question as to whether the Property was properly assessed. Upon further analysis of the entire body of evidence, including the Town's Traub appraisal and the board's view of the Property, the board has concluded the Property is disproportionately assessed and an abatement is warranted. However, initially, the board must express concern at the \$11,400,000 difference in the value conclusions of two qualified appraisers. While the Property has some unique issues related to it, the highest and best use of the Property as R&D and manufacturing with some expansion potential was assumed by both appraisers. They also agreed that the sales approach to value was the most applicable although the Town placed more weight on the income and cost approaches as support for the sales approach than did the Taxpayer. So why such a great difference in value? Some might argue cliental deference.

The board is unable to reach such a conclusion. Both appraisers have significant education, experience and reputation. Both certified that their appraisals were prepared in conformance with the requirements of the Uniform Standards of Professional Appraisal Practice and that there was no bias or value deference to the cause of their clients. While inconsistent or inappropriate assumptions and methodologies were argued by both parties, the board is unable to attribute such actions to deliberate bias by either appraiser. Consequently, the board gives no credence to the Town's argument that Mr. Thompson's appraisal was biased and will focus this decision on the most credible evidence submitted from all sources.

### **Issues**

As with any appraisal process there are generally three areas that must be addressed in this case: 1) what are the property rights being valued (this usually takes the form of a description of the physical characteristics of the Property and a determination of its highest and best use); 2) what approaches to value are most appropriate; and 3) what is the correlated market value conclusion based on the chosen approaches to value.

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### **Property Description and Highest and Best Use Determination**

The land consists of a 171.1-acre parcel in New Hampshire with additional acreage in Massachusetts. The parcel fronts 900 feet on River Road and the interior is accessed by an approximately 3,000 foot, two-lane, paved road. The two existing buildings and associated parking areas are laid out on the northwesterly side of the Public Service of New Hampshire (PSNH) transmission line right of way which diagonally bisects the Property. On the

view, the board noted the lot was nicely landscaped in a campus setting style and that a significant area was available for either expansion or future development. The improvements consist primarily of two large R&D buildings built in 1983. One building known as PTP-1 consists of a two-story R&D building with a total square footage of 304,168 square feet. The second building known as PTP-2 consists of a two-story building with the first floor being primarily open manufacturing areas with some office and petitioned areas while the second floor is similar to the R&D space in PTP-1. The square footage of PTP-2 is 254,080 square feet. The total area of the two buildings is 558,248 square feet. The board has relied on this square footage derived from the Traub appraisal in all of its approaches to value. While the Thompson appraisal contained slightly different square footage, the differences were insignificant. Further, the board has adopted the Traub square footage because: 1) it is the more conservative of the two square footages; and 2) the Traub appraisal contained a dimensional sketch of each building supporting the square foot calculation.

Based on the testimony, review of both appraisals and the view, there are three issues relative to the physical property that impact on many of the board's decisions and the various approaches to value it has analyzed.

First, the board finds the improvements not to be of the good to excellent quality as described in the Traub appraisal nor of just the average quality described in the Thompson appraisal. As will be described in more

detail in the cost approach, the board finds the Property is of above average construction but in several ways not of as good a quality as argued by the

Town. (For example, both in the appraisal and on the view, remarks were made as to the finish of the executive office area. On the view the board did not see that the finish was substantially any different than that of the other office areas. While pleasant and very functional, it was not of excellent quality. Indeed the furnishings, wall coverings and pictures, etc., in the executive area were more elaborate than the other office areas; however, those are personal property and the board's observations were that the actual office improvements were not substantially better than above average.)

Second, the board finds the heating and cooling of the buildings with a total of 448 zoned heating pumps would be a factor the market would consider.

The testimony and the view indicate that the systems require constant rotational maintenance and to some extent had become obsolete due to parts being unavailable. While in the overall scheme of the buildings, the heat pumps may not be a large item, it is still a factor that the board has determined needs to be recognized and adjustments made in the various approaches to value.

Third, the exterior "edgerock" panels which contain asbestos add additional environmental and work safety concerns that would need to be addressed during any exterior maintenance or expansion of the buildings. Again, while not an overriding factor, it is one that, everything else being equal, the board believes the market would consider and, thus, adjustments have been made in the several approaches to value.

The board has determined the highest and best use of the Property to be as developed with the two R&D and light manufacturing buildings. Further, the board finds there is significant land area for expansion and/or further development of additional R&D/industrial or office uses. Both the view and the market evidence submitted indicates there is reasonable current demand and

usage for the Property as it was originally configured. While  
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these buildings have the potential of being leased to other large users, the board concludes, based on the Property's history and the market evidence of other similar properties, the Property would likely continue to be owner occupied.

### **Approaches to Value**

There are three approaches to value: 1) the cost approach; 2) the comparable sales approach; and 3) the income approach. The Appraisal of Real Estate at 71 (10th Ed. 1991).

While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate at 72; Property Appraisal and Assessment Administration at 108. 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).

The Thompson and Traub appraisals employed the three approaches to value. We agree that consideration of all three approaches is warranted for this Property, and the board's subsequent analysis will be broken down by those three approaches. However, the board has in its correlation of values placed the least weight on the income approach and equal weight on the cost and sales approaches. As the board noted in its highest and best use determination, the Property does have the potential for being leased to other large users. However, we find it is more likely for both buildings to be

owner occupied due to their size and large open configuration. However, because the Property is improved with two separate buildings and as indicated by the phased sale of the two Digital properties at Continental Boulevard in Merrimack, New Hampshire, there is the possibility of leasing one building or a portion of it while occupying the balance of the space. Thus, the income approach is given some weight.

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We agree with the parties that the sales approach is a reliable method to estimate the Property's value. Both the Thompson and Traub appraisals indicate there was significant market activity for properties of similar usage from which to derive indications of value.

The board agrees with the Town's argument that the cost approach also has merit in estimating the Property's value. "The principle of substitution is basic to the cost approach. This principle affirms that no prudent buyer would pay more for a property than the cost to acquire a similar site and construct improvements of equivalent desirability and utility without undue delay." Appraisal Institute, The Appraisal of Real Estate, 11th ed., 1996. The Town argued that in the 1995-1996 time frame the supply of existing R&D/manufacturing properties was diminishing to the extent that there were sales occurring of raw land being purchased for the purpose of constructing new facilities. Both the Thompson and Traub appraisals contain several land sales on which similar buildings were subsequently constructed. Thus, this evidence of substitute property being constructed warrants consideration of the cost approach. Further facilitating the use of the cost approach is the fact the buildings are relatively new (1983), have been well maintained, and thus, have relatively little depreciation.

### Cost Approach

The cost approach always entails two separate calculations: 1) an estimate of the land value by the sales approach; and 2) an estimate of the improvement's depreciated replacement cost.

The board finds the land has a market value of \$3,750,000 (rounded) based on an estimate of \$22,000 per acre for the 171.1 acres.

Generally, the board gave more weight to the land value conclusions contained in the Traub appraisal than in the Thompson appraisal for the following reasons. 1) The Traub appraisal's 11 land sales and listings provide a good picture of what was occurring in the southern New Hampshire market for relatively large tracts of land available for 100,000 plus square

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foot R&D and industrial building development. 2) While the board is not entirely convinced that parcel size at some point is not a market consideration, the sales of larger lots (approximately 20 acres and larger) do not support the size adjustments contained in the Thompson appraisal. The board is not convinced that the Thompson appraisal parcel size adjustment may not be influenced by other factors such as location and potential use. The size adjustment was estimated by doing a paired sales analysis of three smaller industrial/office parcels with a larger parcel purchased for construction of a Wal-Mart distribution center in Raymond. The Raymond parcel, while perhaps good for distribution purposes, is not as desirable for R&D/industrial uses. The other three sales are closer to major interstate transportation, similarly used properties and an established work force. 3) The Property has existing internal access by a two-lane paved road and on-

site municipal water and sewer. Several of the sales, in both the Traub and Thompson appraisals, did not have such features on site at the time of the sales. Consequently, adjustments, such as those in the Traub appraisal, to the sales price to account for the cost of providing good internal access and utilities is warranted to result in an indicated price per acre comparable to the Property.

The board placed most weight on the Traub appraisal's larger acreage sales and little weight on the two different asking prices of the property on Lowell Road in Hudson. It is clear that the smaller acreage sales contained in the Traub report are not comparable without significant size adjustments. Probably the best sale, which both Thompson and Traub used, was the sale of 65.05 acres at 45 Executive Drive in Hudson for \$1,500,000. This sale occurred in the year under appeal, was in the same town and, while not exactly the same size as the subject, is a large tract of land capable of supporting large multiple improvements. This parcel was subsequently subdivided into several industrial lots which comprise some of the smaller sales in the Traub appraisal. While there is disagreement between the parties as to the

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comparability of the Property with this sale based on access to utilities, the board finds any adjustment relative to differences in utilities could be totally or partially offset by the existence of the large PSNH transmission line right of way on the Property. Thus, with significant weight on the 45 Executive Drive sale and some consideration for the size of the Property, the board concludes \$22,000 per acre is a reasonable estimate of the parcel's value.

Building Value

A summary of the board's findings of the building's depreciated cost are contained in the attached calculator cost forms of Marshall Valuation Service contained in Addendum A. The depreciated value of the two buildings are: PTP-1 \$12,606,061 and PTP-2 \$8,600,027.

The board will briefly outline the significant variations from the parties' cost calculations.

First, based on the board's view of the Property, it concludes the building's class is more equivalent to a class C masonry type of construction than to a class S steel construction. A review of the Marshall Valuation Service's class S type building indicates that class S is generally of lower quality construction than that seen on the view. There is no question that the construction class of this Property is somewhat unique. However, the board has concluded that the market would view this equivalent to a class C property.

The board finds the quality of the building to be average plus. The base square foot price is derived by an average of Marshall Valuation Service class C average and good quality R&D and manufacturing categories. As already stated, the board made this conclusion based on its view of the Property in comparison to the comparables submitted and the appraisals' descriptions of the Property compared to the Marshall Valuation quality level descriptions.

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Adjustments in the heating and cooling have been made for the heat pumps and for the fact that the Property is located in an extreme climate versus a moderate climate.

The height and size adjustments and current cost and local multipliers are drawn directly from the Traub and Thompson appraisals which were generally in agreement as to these adjustments.

Lump sum adjustments are detailed on the rear portion of the calculator cost form and, as indicated in the parenthesis, are figures adopted from either the Thompson or Traub appraisals. The board, in reviewing Marshall Valuation and the Property's description in the appraisals and reconciling them with what was seen on the view, chose the lump sum value that was the most appropriate after that review. The most significant element in the lump sum calculation is the Traub appraisal estimate of \$900,000 for the 3,000 foot internal road. The board agrees with the Town that this is a value that the Thompson appraisal did not recognize but that the market certainly would. The internal road as it was laid out provides excellent access to both the developed portion of the Property and the area available for future development. For a market value estimate not to include some contributory value for this road is to ignore a significant factor of the Property. The board did not find that an adjustment for site improvements such as grading, landscaping, clearing, etc. needed to be added in addition to those that are contained within the Marshall Valuation base prices. On the view, the board observed that the Property was generally level with well-drained soils having been improved on a former agricultural site. Thus, the board did not observe any abnormal site improvements associated with the buildings that are not already contained in the Marshall Valuation base prices.

The board's physical depreciation of 15% is not a straight-line, age-life factor, but rather an observed depreciation based on the board's view of the Property and consideration of its age and good condition.

The board finds a 5% functional depreciation necessary to recognize the obsolescence of the multiple heat pumps and the existence of the asbestos in the exterior "edgerock" panels. On the view, the board observed the heat pumps undergoing a continual maintenance and rebuilding program. Testimony indicated that many of the replacement parts for the heat pumps are no longer being made, and thus, have to be fabricated by the Taxpayer. The board finds any prospective purchaser would certainly take into account this unique ongoing maintenance requirement compared to other buildings with more conventional heating systems. Further, the board was shown on the view that any disturbance with the exterior wall of the building required special environmental precautions due to the asbestos within the "edgerock" panel. Any drilling or cutting of the panel would make the asbestos friable, and thus, a hazard to the workers. Again, while this is not an overriding issue in the valuation of the Property, the board concludes it is a factor that needs to be recognized as part of the 5% functional depreciation adjustment.

The board finds a 5% economic depreciation is warranted based on several indications. First, the board did an analysis similar to that contained in the Traub appraisal on page 158 comparing the price per square foot derived in the sales approach minus an estimated site value with the price per square foot estimated by the cost approach with only physical and functional depreciation deducted. This analysis indicated a difference of slightly greater than 3%. Further, the board finds that a number of the parties' sales of improved R&D and manufacturing properties involved extensive renovations following the sales. These renovations are some indication that there existed some functional and economic depreciation in the existing buildings and that

the excess supply of improved properties was not yet quite at market balance on April 1, 1996.

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In summary, the cost approach valuation is:

Land	\$ 3,750,000
PTP-1 building	\$12,606,061
PTP-2 building	<u>\$ 8,600,027</u>
Total	\$24,956,088 (rounded to \$25,000,000)

#### **Sales Approach**

First, both the Thompson and Traub appraisals contained the two Digital sales at Continental Boulevard in Merrimack (buildings MK1 and MK2). The properties were sold by Digital Equipment Corporation to FMR Merrimack Limited (Fidelity) with MK2 closing in December of 1995 and MK1 transferring in November of 1996. While these properties are similar in many ways with the appealed Property, the board has been unable to give much weight to these sales because of the unresolved conflicting testimony surrounding these sales, the significant alterations that took place after the sales and the prerequisite of the separation of utilities before the first purchase of MK2.

Mr. Thompson and Mr. Traub received conflicting verification from the parties involved with the sales as to whether the two transactions were related or not. The board was unable to resolve this, and thus, the analyses in the Traub and Thompson appraisals as either separate transactions or related transactions are given no weight.

The Thompson appraisal relied on six sales, two of which are the MK1 and MK2 sales. Two of the remaining four sales received significant adjustments for being transfers of leased fee interests versus fee simple interest. The board reviewed Mr. Thompson's comparison analysis of fee simple and leased fee sales and was unable to agree that such an adjustment was warranted. The board concludes that other factors such as whether the buildings were either multi-tenant or single tenant may have impacted on the resulting sales price rather than just the fact that the property sold with an existing tenant or not. As a consequence, the board was unable to place much weight on the conclusions of the indicated values of the remaining Thompson sales.

The board finds the sales contained in the Traub appraisal, with the exception of the two MK sales (comparable #6 and comparable #10), are

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reasonable comparables from which the indicated value after adjustments can be derived. The board has revised the adjustments of the remaining Traub comparable sales as shown on the chart on page 14. The board's revised analysis does two things. One, it revises the percentage adjustments to the sales from a chain multiplication to an additive adjustment. Adding the percentage adjustments results in each adjustment being applied equally to the time adjusted sales price. Second, it reduces the construction quality adjustment for each comparable by 10% to reflect both the lower construction quality and the issues related to the heat pumps and the "edgerock" exterior.

The board has concluded that an adjustment for building size is not warranted. The Property's total square footage is approximately 550,000 which is larger than the square footages of the comparables which range from 116,408 square feet to 461,395 square feet. Initially, the board had concerns, based

on a review of both appraisals, that the Traub appraisal did not contain any adjustment for building size. However, the board compared on a cost basis the square foot price of buildings the size of the comparables to that of the subject and found that there was a relatively negligible (3% to 4%) difference in replacement cost due to size. This generally supports the Traub appraisal's conclusion of no size adjustment for buildings of this size.

The revised analysis has a median of \$42.47 per square foot and an average of \$42.38 per square foot. The board finds a correlated price per square foot of \$42.40 is appropriate which applied to the Property's square footage of 558,248 square feet provides an indicated value of \$23,669,715 (rounded to \$23,750,000).

**REVISED TRAUB APPRAISAL 1996 COMPARABLE SALES ANALYSIS**

Comparables <sup>1</sup>	Comp. #1	Comp. #2	Comp. #3	Comp. #4	Comp. #5	Comp. #7	Comp. #8	Comp. #9	Comp. #11
Sale \$ psf	64.47	31.12	48.32	78.57	54.90	28.84	47.68	30.56	42.41
Time Adj.	0	10% 34.23	12% 54.12	6% 83.28	5% 57.65	10% 31.72	28% 61.03	17% 35.76	2% 43.26
Financial Concessions	0	0	0	0	0	0	0	0	0
Renovations	0	+5,000,000 61.29	0	0	0	+1,600,000 45.47	0	0	0
Municipality Adj.	- 5%	- 5%	- 5%	-15%	-10%	0	-20%	+ 5%	0
Lot Size/ L to B Ratio	0	0	0	0	0	- 5%	0	0	0
Const. Quality <sup>2</sup>	-20%	-10%	-10%	-20%	-10%	0	-10%	0	0
Condition/ Age	0	-10%	0	-10%	0	0	+10%	+10%	0
Finish	- 8%	- 8%	- 8%	- 4%	- 8%	0	- 8%	0	0
Total Adj.	-33%	-33%	-23%	-49%	-28%	- 5%	-28%	+15%	0
Indicated \$ psf	x .67 43.19	x .67 41.06	x .77 41.67	x .51 42.47	x .72 41.51	x .95 43.20	x .72 43.94	x1.15 41.12	0 43.26

<sup>1</sup> As already ruled on by the board, the board was unable to give any weight to the two Digital sales (comparable sales number 6 and number 10).

<sup>2</sup> As already discussed in the board's general findings, the construction quality adjustment has been decreased for all comparables by 10% for the general quality of buildings, the heat pumps, and the exterior "edgerock" panels.

**Income Approach**

As stated earlier, the board gives the least weight to this approach to value. Nonetheless, the board has estimated the Property's value by the income approach as summarized below:

Gross Potential Income		
R&D Space	430,422 sf	
Rental Rate	<u>x 5.25</u>	
	\$ 2,259,715	
Manufacturing Space	127,820 sf	
Rental Rate	<u>x 4.25</u>	
	<u>\$ 543,235</u>	
Total Gross Potential Income	\$ 2,802,950 (weighted average	
	rate \$5.02/sf)	
Vacancy (10%)	<u>x .90</u>	
Effective Gross Income	\$ 2,522,655	
Expenses (est. 15% of EGI)	<u>x .85</u>	
Net Operating Income	\$ 2,144,257	
Capitalization Rate (9%)	<u>÷ .09</u>	
Indicated Market Value	\$23,825,077	
Excess Land	<u>\$ 1,750,000</u>	
Total Market Value	\$25,575,077 (\$25,500,000 rounded)	

**Market Rents**

The Thompson appraisal estimated a market rent of \$4.75 NNN for the R&D area and a market rent of \$3.25 NNN for the manufacturing area. These rates were derived from five rental comparables. No specific adjustments were made to the rental comparables. However, a discussion of the comparables' attributes relative to the Property led to the choice of the rental rates. The Traub appraisal derived a blended rate (a rate that included a minus 8% adjustment for the manufacturing space) of \$5.75 per square foot after making

specific adjustments for time, location, space quality, physical condition and the 8% manufacturing space adjustment.

In attempting to reconcile the divergent market rent estimates, the board applied a time adjustment to the Thompson rents. This adjustment alone resulted in an indicated rate of approximately \$5.00 per square foot for buildings largely of R&D use and a rate of \$4.00 for buildings with some manufacturing space. The board, however, was unable to make further adjustments for location, quality, condition, etc. because of the lack of

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specific knowledge about the comparables. Consequently, the board considers the results of the adjusted Thompson rents but does not find them conclusive.

The board did a revision to the Traub rental comparables similar to that done in the Traub sales approach. Adjustments were made to reduce the space quality by 10% and the overall adjustments were calculated on an additive basis. The resulting indicated rents range from a low of \$4.71 per square foot to a high of \$6.33 per square foot with an average of \$5.25 per square foot and a median of \$5.18 per square foot.

Giving more weight to the revised indicated rents per square foot in the Traub appraisal, but also, to some extent, considering the revised Thompson rental rates, the board concludes that a rate for the R&D space of \$5.25 per square foot and \$4.25 for the manufacturing space is reasonable.

The board clearly understands that deriving a market rent for property of this nature is subject to debate. However, the board has also reviewed its estimated rental rates with the unadjusted rates of the rental comparables in both the Traub and Thompson appraisals and find they are reasonable given the

Property's good location, campus setting, above average construction and the issues of the heat pumps and "edgerock" panels.

#### Vacancy

The board finds the Thompson appraisal's estimate of 20% vacancy to be unreasonable based on the survey information and rental data contained in the Traub appraisal. Again, because of the Property's size and general owner/occupant type of use it is difficult to predict with any accuracy what a reasonable vacancy rate would be. However, the board finds a 10% rate (one year in ten) would be a reasonable period of time for either a change in tenancy or rehabilitation work to accommodate a new tenant.

#### Expenses

The Thompson appraisal expenses equated to approximately 18% of its effective gross income. The Traub appraisal expenses were estimated at approximately 13% of its effective gross income. From these estimates, the

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board concludes a 15% rate for expenses of the effective gross income is reasonable. The board notes the Thompson expense percentage is higher, to some extent, based on his assumption of a 20% vacancy which increases his vacancy cost expense. The board's estimated 10% vacancy rate consequently reduces that expense. The other expenses in the two appraisals for management, replacement for reserves, and brokerage fees are essentially identical calculated on an effective gross income basis.

#### Capitalization Rate

The Thompson appraisal estimated an overall capitalization rate of .088, while the Traub appraisal estimated an overall capitalization rate of .093.

Both rates are not unreasonable, are within one half of one percent of each other and are adequately documented. Consequently, the board has given equal weight to both rates and rounded its conclusion to .09.

#### Excess Land

As found in the cost approach, the board estimated the overall value of the total 171.1 acres at \$3,750,000 based on an estimate of \$22,000 per acre.

Neither party submitted a definitive site plan to indicate what acreage was actually encumbered in the existing improvements, and thus, captured by the income approach calculation and what land would be available for future expansion or development. The board, based on its view and the relatively simplistic site plan submitted, concludes that approximately half of the acreage remains for development. This estimate is inclusive of most of the PSNH right of way line. Consequently, the board has made an approximate allocation of \$2,000,000 to the improved site and allocated the balance of \$1,750,000 to the undeveloped land. This allocation considers: 1) the risk associated with developing the undeveloped portion; and 2) the effect of the PSNH transmission line right of way on the placement of certain future improvements. The resulting difference per acre for the developed site versus the undeveloped site is approximately \$3,000 (\$23,391 for the developed site versus \$20,468 for the undeveloped area). This

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differential seems reasonable based on the appraisals, the board's view, and as noted, the risk and powerline issues involved in the undeveloped portion.

#### Correlation of Values

The three approaches to value indicated the following estimates of value:

cost approach	\$25,000,000 (rounded)
sales approach	\$23,750,000 (rounded)
income approach	\$25,500,000 (rounded).

The board correlates these indications to a final estimate of value of \$24,500,000 by giving equal weight to the cost and sales approaches and less weight to the income approach.

As stated at the beginning of this decision, the board intended to pick the best evidence from the mass of evidence presented. That is what this decision attempts to do. Further, the final value conclusion of \$24,500,000 when compared to the raw sales data submitted by both the Thompson and Traub appraisals reasonably fits the range of sales if proper consideration is given to the Property's attributes relative to those of the comparables sales.

#### **Town's Findings of Fact and Rulings of Law**

In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the request was irrelevant; or
- e. the request is specifically addressed in the decision.
- f. All requests comparing Thompson's earlier testimony with his current

appraisal and testimony were neither granted nor denied because the board has

found that Thompson's testimony and evidence to be generally credible, notwithstanding some inconsistencies and assumptions as addressed in the decision.

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

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Lockheed Sanders, Inc. v. Town of Hudson

Docket Nos.: 15346-94PT and 17233-96PT

### **Refund**

If the taxes have been paid, the amount paid on the value in excess of \$27,440,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1996 and 1997. 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. Further, as stipulated to by the parties, the assessment of \$27,440,000 shall apply to both the 1994 and 1995 tax years.

### **Rehearing**

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are

limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

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Lockheed Sanders, Inc. v. Town of Hudson  
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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph M. Kerrigan, Esq., Counsel for Lockheed Sanders, Inc., Taxpayer; John J. Ratigan, Esq., counsel for the Town; and Chairman, Selectmen of Hudson.

Date: November 10, 1998

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Valerie B. Lanigan, Clerk

ADDENDUM A

Lockheed Sanders, Inc.

v.

Town of Hudson

Docket Nos.: 15346-94PT and 17233-96PT

ORDER

This order responds to the "Town's" December 2, 1998 Motion for Reconsideration and Clarification (Motion). The Motion raises three general issues:

- 1) the sales approach calculation in the board's November 10, 1998 decision (Decision) did not include a value for the excess land;
- 2) if the sales approach value estimate is revised, the board's economic depreciation in the cost approach needs to be recalculated; and
- 3) the excess land should be valued at \$2,550,000.

In response to the Motion, the board amends the Decision relative to the first two issues, as follows: (Deletions in brackets; additions bolded).

Page 2, paragraph 5

Based on the evidence, the board finds the proper assessment to be **\$28,280,000** [\$27,440,000] based on a market value finding of **\$25,250,000** [\$24,500,000] and the Town's 1996 equalization ratio of 112%.

Page 11, paragraph 2

The board finds a 5% economic depreciation is warranted based on several indications. First, the board did an analysis similar to that contained in the Traub appraisal on page 158 comparing the price per square foot derived in the sales approach minus an estimated site value with the price per square foot estimated by the cost approach with only physical and functional depreciation deducted.

This analysis indicated a difference of **approximately 2.5%** [slightly greater than 3%]. **Second** [Further], the board finds that a number of the parties' sales of improved R&D and manufacturing properties involved extensive renovations following

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Lockheed Sanders, Inc. v. Town of Hudson

Docket Nos.: 15346-94PT and 17233-96PT

the sales. These renovations are some indication that there existed some functional and economic depreciation in the existing buildings and that the excess supply of improved properties was not yet quite at market balance on April 1, 1996. **Third, the Traub appraisal estimated an economic depreciation of 4% was warranted.**

Page 13, paragraph 3

The revised analysis has a median of \$42.47 per square foot and an average of \$42.38 per square foot. The board finds a correlated price per square foot of \$42.40 is appropriate which applied to the Property's square footage of 558,248 square feet provides an indicated value of \$23,669,715 (rounded to \$23,750,000) **for the improvements and the developed area of the parcel. It is not clear from the sales analysis grid on pages 119 - 121 of the Traub appraisal as to the exact basis of the lot size/land-to-building ratio adjustments. However, the several -5% adjustments that were made and the text and footnotes on page 122 indicate the analysis was done comparing the sales to only the developed portion of the Property. Thus, the board's value of \$1,750,000 for the excess land (page 17) needs to be added to result in the total value by the sales approach of \$25,500,000 (\$23,750,000 + \$1,750,000).**

Page 18, paragraph 2

### **Correlation of Values**

The three approaches to value indicated the following estimates of value:

cost approach	\$25,000,000 (rounded)
sales approach	<b>\$25,500,000</b> [\$23,750,000] (rounded)
income approach	\$25,500,000 (rounded).

The board correlates these indications to a final estimate of value of **\$25,250,000** [\$24,500,000] by giving equal weight to the cost and sales approaches and less weight to the income approach.

As stated at the beginning of this decision, the board intended to pick the best evidence from the mass of evidence presented. That is what this decision attempts to do. Further, the final value conclusion of **\$25,250,000** [\$24,500,000] when compared to the raw sales data submitted by both the Thompson and Traub appraisals reasonably fits the range of sales if proper consideration is given to the Property's attributes relative to those of the comparables sales.

Page 20, Paragraph 1

**Refund**

If the taxes have been paid, the amount paid on the value in excess of **\$28,280,000** [\$27,440,000] shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1996 and 1997. Until the Town undergoes a general reassessment, the

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Lockheed Sanders, Inc. v. Town of Hudson  
Docket Nos.: 15346-94PT and 17233-96PT

Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I. Further, as stipulated to by the parties, the assessment of **\$28,280,000** [\$27,440,000] shall apply to both the 1994 and 1995 tax years.

The board declines to amend the Decision for the Motion's third issue because the board's findings relative to the \$1,750,000 value for the excess land is adequately contained in its decision and the Town did not raise any error or misconstrued fact in its Motion to warrant any change.

Because this order is more favorable to the Town and was as a result of a motion for reconsideration pursuant to RSA 541:3, the Town need not file a subsequent motion for rehearing with the board if it intends to appeal to the supreme court. If the Town wishes to appeal the board's order to the supreme court, it must be done within 30 days from the date of this order. RSA 541:6.

Because this order is less favorable to the "Taxpayer," if the Taxpayer wishes to appeal this order, it must file a motion for rehearing with the board pursuant to RSA 541:3 within 30 days of the clerk's date. Any appeal by the Taxpayer to the supreme court could only occur subsequent to the resolution of the Taxpayer's motion for rehearing. Appeal of White Mountains Education Association, 125 N.H. 771, 775 (1984).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph M. Kerrigan, Esq., Counsel for Lockheed Sanders, Inc., Taxpayer; John J. Ratigan, Esq., counsel for the Town; and Chairman, Selectmen of Hudson.

Date: December 24, 1998

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Valerie B. Lanigan, Clerk

0006

Lockheed Sanders Inc.

v.

Town of Hudson

Docket Nos.: 15346-94PT and 17233-96PT

ORDER

This order confirms the board's verbal ruling during the May 14, 1998 telephone conference with the parties of the Town's May 7, 1998 Motion to Compel Further Answers to Interrogatories and Production of Documents (Motion). The board grants the Motion and orders the Taxpayer to provide the Town with a copy of the 1998 lease prior to the May 22, 1998 hearing. Such information is reasonably calculated to lead to the discovery of admissible evidence and thus discoverable.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Page 2

Lockheed Sanders Inc. v. Hudson

Docket Nos.: 15346-94 PT and 17233-96PT

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Joseph M. Kerrigan, Esq., Counsel for the Taxpayer; John J. Ratigan, Esq., Counsel for the Town; and Chairman, Board of Assessors for the Town of Hudson.

Date: May 15, 1998

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Valerie B. Lanigan, Clerk

0006

Lockheed Sanders Inc.

v.

Town of Hudson

Docket No.: 17233-96PT

ORDER

This order relates to two issues:

- 1) the "Town's" response when asked by the board, "Did the Taxpayer File and abatement application with you?" The Town responded, "No, the Taxpayer's Representative did."; and,
- 2) the Taxpayer's failure to include a copy of the "comparative assessment analysis" referred to under the section, Reasons for Appeal, on their original appeal document filed with this board on August 29, 1997.

Regarding the first issue, the Taxpayer must sign the municipal abatement application, pursuant to TAX 203.02(d). Since the Taxpayer's counsel instead of the Taxpayer signed the abatement application, the board, on its own motion, declares the Taxpayer in default. See TAX 201.04 (if defective, the taxpayer shall have opportunity to cure before the case is dismissed).

Regarding the second issue, the board declares the Taxpayer in default for filing an incomplete appeal document with the board, pursuant to TAX

203.03(f).

The Taxpayer shall within ten (10) days from the date of this order:

- 1) cure the defaults by:
  - a) providing a corrected copy of the abatement application to the Municipality signed by the Taxpayer; and,
  - b) filing with the board a copy of the "comparative assessment analysis" referred to in the original appeal document under the section entitled "reasons for appeal"; and
- 2) move to strike these defaults.

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Docket No.: 17233-96PT

Lockheed Sanders Inc. v. Hudson

IF THE TAXPAYER FAILS TO TIMELY CURE THE DEFAULTS OR FAILS TO MOVE TO STRIKE, THE APPEAL SHALL BE MARKED:

Taxpayer finally defaulted for failure to comply with board's default order; Taxpayer may not take further action on this appeal, and the board will not make any further ruling on this appeal. See TAX 201.19; TAX 201.04, .05, .06; Superior Court Rule 35.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Joseph M. Kerrigan, Esq., Counsel for the Taxpayer; John J. Ratigan, Esq., Counsel for the Town; and Chairman, Board of Assessors for the Town of Hudson.

Dated: January 17, 1998

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Valerie B. Lanigan, Clerk