Rockywold-Deephaven Camps

v.

Town of Holderness

Docket No.: 20317-03PT/21102-04PT/22042-05PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2003, 2004 and 2005 assessments as listed below[1] of various lodges, camps and miscellaneous buildings on 97.20 acres of land with 8,780 square feet on Squam Lake (the "Property").

2003				
Map/Lot	**Address**	**Land**	**Building**	**Total**
205-001-000	Route 113	$15,200		$15,200
205-003-000	Route 113	$55,200		$55,200
205-010-000	Pinehurst Road	$38,800		$38,800
206-009-000	Corner Route 113 & Pinehurst	$34,400	$117,200	$151,600
206-010-000	Route 113 & Pinehurst	$34,900	$148,100	$183,000

[1] The board has reviewed the assessment-record cards available for the three year appeals and summary of assessments contained in the Taxpayer's prehearing statement and is uncertain as to whether these listed assessments (particularly for 2005) are accurate as to what was actually assessed to the Taxpayer. In the event the assessments listed are in error, the Town should apply the board's rulings to the correct assessment in each year.

218-001-000	Pinehurst Road	$55,500	$1,200	$56,700
218-009-000	Pinehurst Road	$12,289,900	$4,367,900	$16,657,800
218-009-00A	Pinehurst Drive		$1,134,800	$1,134,800
219-009-000	Lower Birch Island	$133,100		$133,100
			Total	$18,426,200

2004				
Map/Lot	**Address**	**Land**	**Building**	**Total**
205-001-000	Route 113	$15,200		$15,200
205-003-000	Route 113	$55,200		$55,200
205-010-000	Pinehurst Road	$38,800		$38,800
206-009-000	Corner Route 113 & Pinehurst	$34,400	$127,500	$161,900
206-010-000	Route 113 & Pinehurst	$34,900	$162,800	$197,700
218-001-000	Pinehurst Road	$55,500	$1,300	$56,800
218-009-000/ 00A	Pinehurst Road	$12,294,400	$6,047,400	$18,341,800
219-009-000	Lower Birch Island	$134,300		$134,300
			Total	$19,00l,700

2005				
Map/Lot	**Address**	**Land**	**Building**	**Total**
205-001-000	Route 113	$15,200		$15,200
205-003-000	Route 113	$55,200		$55,200
205-010-000	Pinehurst Road	$38,800		$38,800
206-009-000	Corner Route 113 & Pinehurst	$34,400	$127,500	$161,900
206-010-000	Route 113 & Pinehurst	$34,900	$162,800	$197,700
218-001-000	Pinehurst Road	$55,500	$1,300	$56,800

218-009-000/ 00A	Pinehurst Road	$12,294,400	$4,816,600	$18,356,300
219-009-000	Lower Birch Island	$134,300		$134,300
			Total	$19,016,200

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessments were higher than the general level of assessment in the municipality. Id. For the reasons that follow, the Taxpayer carried this burden for tax years 2003 and 2005 but failed to prove disproportionality for tax year 2004.

The Taxpayer argued the assessments were excessive because:

(1) a development potential analysis was prepared by Steven J. Smith of Steven J. Smith & Associates, Inc. ("Smith Analysis") a licensed land surveyor, which concluded the Property could be developed into 21 independent lots directly on the waterfront and eight (8) back lots with no water frontage or water access; and

(2) a summary appraisal report prepared by Russell Thibeault of Applied Economic Research ("Thibeault Report" – Taxpayer Exhibit No. 3) estimated a $15,705,000 market value of the Property as of April 2003; an updated valuation ("Thibeault Update") estimated the market values as of April 2003 to be $15,709,000, $17,087,000 as of April 2004, and $18,590,700 as of April 2005.[2]

While the Town had a plan prepared by Stephen M. LaFrance of Horizons Engineering, P.L.L.C. ("Horizons Plan") which estimated the development potential of 44 lots and an

[2] At hearing the Thibeault update market value estimates were further revised for an understatement of taxes in the development method (see Taxpayer Exhibit Nos.: 4 and 5) to: 2003: $14,847,000; 2004: $16,153,500; and 2005: $17,575,000.

appraisal by Wil Corcoran of Corcoran Consulting Associates, Inc. ("Corcoran Appraisal") which predicated its highest and best use on the Horizons Plan, the Town conceded the Property could not be developed to the extent indicated in the Horizons Plan. However, the Town argued the assessments were proper because, based on evidence presented during the hearing, a hypothetical analysis (Municipality Exhibit C) was performed (see corrected analysis - Municipality Exhibit D) utilizing the Smith Analysis, adding two additional waterfront lots, deducting one back lot, deducting $225,000 for a community septic system and changing the absorption rate in the discounted cash flow analysis to result in hypothetical market values of $19,863,300 as of April 1, 2003, $21,799,100 April 1, 2004 and $22,215,000 as of April 1, 2005.

After the conclusion of the hearing on August 7 and August 8, 2007 and during the board's deliberations, the board directed its RSA 71-B:14 review appraisers to perform an independent valuation. Review Appraiser Ms. Theresa M. Walker submitted a summary appraisal report ("Walker Report") on December 14, 2007 estimating the market value of the Property to be: $21,000,000, $24,300,000 and $25,500,000 for April 1, 2003, April 1, 2004 and April 1, 2005 respectively. The Walker Report was premised upon the development of the Property into eight (8) "estate-type" waterfront lots and three (3) non-waterfront lots. After the parties were provided an opportunity to review and respond to the Walker Report, the board granted the Taxpayer's motion to reopen the record and scheduled a hearing on May 9, 2008 for the limited purpose of making Ms. Walker available for inquiry and for the parties to address the issues presented in the Walker Report.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be as follows:

2003 - $17,965,500;

2004 - $20,692,200; and

2005 - $16,673,600.

These assessments are based upon accepting the Walker Report determination that "estate-type" lot subdivision is the highest and best use of the Property but reducing the estimated number of waterfront lots from eight (8) to seven (7). The board's detailed findings and revised development method calculations follow, but first some general findings are in order.

All parties and the Walker Report agree Squam Lake is one of, if not the most, desirable water bodies in New Hampshire. Its history of rustic, low density development that is screened from view from the lake is well recognized in the real estate market, is a positive factor affecting the value of property on Squam Lake and is the continued goal of its residents as evidenced generally by the Holderness land use planning documents (see Holderness Master Plan, Taxpayer Exhibit No. 8) and the efforts of the Squam Lakes Association and the Squam Lakes Conservation Society. The parties also agree the northern portion of Squam Lake is the most desirable area of the lake as it has, on average, larger, more private lots, less boat congestion and good views. Within this northern area of the lake, the Property is one of the largest unsubdivided parcels (97.20 acres of land, 3,680 feet of road frontage on both sides of Pinehurst Road and 8,780 feet of water frontage) with good orientation on the lake (the jagged frontage has western, southern and eastern orientation), good to excellent views and generally deep water frontage. As testified and detailed in the Smith Analysis, the soils are variable with areas of wetlands and shallow soils that would impact its development potential. In short, the Property is a very unique, minimally improved, desirable parcel on one of the most sought after lakes in New Hampshire. With its acreage and extensive water and road frontage, its highest and best use is,

as agreed by both parties and the Walker Report, for residential subdivision within the limitations of its soils and its shoreline configuration.

Four potential residential subdivision scenarios were presented as evidence.

Horizons Plan – Municipality Exhibit B and Taxpayer Exhibit No. 15 – a conceptual layout with a total of 44 lots with 26 lots on Squam Lake and 18 non-waterfront lots; all 44 lots were envisioned to be served by community septic system; 4,550 feet of new roads and common driveways were to be constructed to access primarily the waterfront areas.

Smith Analysis – Taxpayer Exhibit Nos. 1 and 11 – a subdivision concept with a total of 29 lots with 21 lots on Squam Lake and eight (8) non-waterfront lots; 4,000 feet of new roads were estimated to be necessary to access the proposed lots.

LaFrance Testimony Revising the Smith Analysis – LaFrance's revised premise of the Smith Analysis was that some parcels could be served by a community septic system thus allowing a reduction in the lot area by 1/3 under the Holderness subdivision regulations; this premise resulted in several new valuation calculations submitted by the Town in Municipality Exhibits C & D based on adding one (1) or two (2) additional waterfront lots to the Smith Analysis or one (1) additional waterfront lot with the non-waterfront lots having a common access over the second additional waterfront lot.

Walker Report – a conceptual analysis based on the premise of eight (8) estate-type waterfront lots each with an average of 10 acres and 1,000 feet of water frontage and three (3) non-waterfront lots on the north of Pinehurst Road; the Walker Report estimated a new road of approximately 1,200 feet would need to be constructed in the proximity of the current delivery entrance to the Property to access several waterfront lots.

For all the reasons pointed out on the record by both parties, the board places no weight on the Horizons Plan as being a feasible, probable or logical fashion to subdivide property. Most of the lots (see Taxpayer Exhibit No. 15) would not comply with the weighted soil based dimensional lot requirements of the Holderness land use regulations. Further, the intensive development envisioned is contrary to the low density development patterns in the northern end of the lake and contrary to the master plan and other Holderness land use regulations' goals to encourage the preservation of open space. In short, the board finds the plan did not present a potential highest and best use subdivision of the Property and would have had no chance of receiving a favorable review by the Holderness Planning Board.

The board finds the conceptual layout of the Smith Analysis and the various development scenarios presented by the Town based on the Smith Analysis all appear to have the potential for complying with the weighted soil dimensional lot requirements and other provisions of the Holderness land use regulations. However, as noted in the Smith Analysis (Taxpayer Exhibit No. 1 at page 9), a number of the parcels have the minimum amount of water and shore frontage, others "just meet" the weighted soil dimensional lot requirements and others "have marginal areas for sewage disposal and may require off-site easements for such." Thus, the total number of lots appears to be the very maximum potential that could be platted to comply with the land use regulation requirements. Both Mr. Smith and Mr. LaFrance testified, however, the planning review process regularly results in a paring down of the number of lots from the original proposal to address any number of concerns raised under a municipality's police powers or by neighbors so as to increase the potential for general acceptance of the subdivision and planning board approval. Further, the testimony was that the 1/3 reduction in lot size, if either off-site water or septic was provided, is a provision that has not been presented and approved by the

Holderness Planning Board to date and thus it is uncertain as to how it would be interpreted and applied and whether it would be approved. Consequently, strictly from a legally feasible standpoint, the board finds it is very unlikely any of those scenarios would be approved with the total number of lots intact. The scenarios all "push the envelope" of what would be legally and physically possible with the Property and thus none produced a development plan that reflects what would likely be approved.

From a financially feasible perspective, the board also finds these more intensive development concepts may not result in the maximum financial return. These concepts would entail higher development costs in roads and/or common septic facilities, potentially more engineering and legal expenditures through the planning board review process and a longer marketing (absorption) time given the number of lots projected. While in theory such costs could be offset by the increased number of lots available for sale, the slight variation in the number of lots between the Smith Analysis and the Town's several modifications of the Smith Analysis and yet significant value differences of their conclusions indicates the risk involved (size of discount rate) is key to estimating the Property's value. We conclude lessening the upfront costs and shortening the absorption period by the Walker Report "estate-type" subdivision lends itself to lower discount rates than the 15% argued by the Taxpayer and potentially overall a greater net return or value.

Consequently, for a number of reasons which the board will detail, the board concludes the Walker Report's highest and best use assumption of estate-type lots is the most probable and financially feasible basis on which to estimate the market value of the Property. Upfront, the board acknowledges and recognizes that the market data (sales) is limited and indicates a somewhat counter intuitive conclusion that fewer lots may result in a higher financial return.

However, as Mr. Corcoran aptly noted, market concepts and principles are drawn from market activities and trends and while in most instances maximizing the number of subdividable lots in an undeveloped parcel will result in the greatest financial return, he noted, and we agree, the Squam Lake high value market and the limited sales of that market provide some evidence to support Ms. Walker's conclusion.[3] Ms. Walker's array of Squam Lake sales on a per front foot basis on page 9 of the Walker Report show on a front foot basis the value for larger frontages do not "tail off" on a price per front foot as one would perhaps normally expect. Admittedly, the five sales which show this phenomenon have varying attributes including configuration of lot, views, accessibility, acreage, ease of development and length of frontage. However, the board agrees with the Walker Report, given the high desirability of Squam Lake frontage, water frontage is the factor that the Squam Lake market places the most weight on when determining the value and desirability of a parcel. That is not to say that the other attributes are not recognized in the market but rather their differences are secondary to the amount of frontage. The board finds the Walker Report reasonably adjusted for these other attributes in the market and physical adjustments on page 13 including the adjustment for sale for C-4 as perhaps being impacted by being purchased by an abutter. While any professional appraiser can second guess the magnitude of such adjustments, any reasonable judgment based adjustments are likely to result in a similar indicated front foot price of approximately $4,000 per front. (For example, while we recognize the Thibeault Report analysis of "Squam Lake Lakefront Lot Sales" on pages

[3] The ability to subdivide a lot can be a factor affecting its value but it is not the sole factor affecting value. Privacy in certain circumstances and settings is highly valued regardless of the ability to subdivide. The board has observed properties where conservation easements limit or preclude any further subdivision or development of most of a parcel but by that very restriction significantly enhances the value of the unrestricted building site. We find the exclusivity involved in the conceptual subdivision of "estate-type" lots provides a similar enhancement to those fewer sites that potentially offsets any possible restriction of further subdivision.

41 through 45 utilized both large and smaller lots in his front foot analysis, his conclusion was that the average and median front foot prices were $4,300 and $4,400 respectively.)

The Walker Report, instead of developing a specific layout for the eight (8) waterfront lots, assumed that, given the amount of frontage and acreage within the parcel and the detailed soil survey and lot delineations contained in the Smith Analysis, an averaging of the number of acres and frontage per lot (eight (8) lots of 10 acres with an average frontage of 1,000 feet) was an appropriate manner to form the basis of the development method calculation.

We agree with the reasonableness of averaging the lot size and frontage but we disagree with the eight lot conclusion. Both in Mr. Thibeault's January 11, 2008 review of the Walker Report and in his testimony at the May 9, 2008 hearing, Mr. Thibeault noted the configuration of the extensive frontage of the Property (particularly due to Needle Point and Deephaven Point extending into the lake) could preclude a logical subdivision of the waterfront into eight (8) lots with an average of 10 acres and 1,000 feet of frontage. We agree that lacking a definitive plan of the eight (8) lots, this configuration of the lot at the southerly most extremity of the Property could cause difficulty in having eight (8) lots each with 1,000 feet of frontage.

After reviewing the subdivision regulations and the Smith Analysis, the board concludes a seven (7) lot estate-style subdivision is readily feasible, accepting the balance of the Walker Report assumptions including the necessity to construct an access road of approximately 1,200 feet to access several lots in the southeastern portion of the Property. We recognize that even with that reduced number of lots, several lots would have less than 1,000 feet while several lots would have substantially more than 1,000 feet of water frontage, again because Needle Point and Deephaven Point contain a high percentage of the frontage versus a small percentage of the acreage of the Property. We also recognize the seven (7) lots would likely have varying market

values based on their amount of frontage, acreage, and orientation and views but that on average the Walker Report average lot value estimate of $4,000,000 continues to be a reasonable average to be applied to the seven (7) lots.

As noted earlier, such estate-type subdivision increases the likelihood of acceptance by the Town and the Squam Lake conservation organizations and landowners by the lots being in keeping with the open space goals noted earlier. It also minimizes the upfront development costs and reduces the marketing time for selling the lots. We agree with Mr. Corcoran's observation that the scarcity of Squam Lake sales of larger lots is not due to the lack of demand for them but rather due to the lack of supply.

Much testimony and evidence was provided as to what discount rate should be applied to the indicated revenue stream over the absorption period projected in the development method. The board agrees with the Walker Report observation that because high value estate-type lots would attract a narrower market than smaller lots, that would increase the risk slightly. However, as noted earlier, the lower development costs and shorter holding period would reduce the risk. As a consequence, the board finds the Corcoran discount rates are more reflective of the average risk entailed in the developing and marketing of any subdivision of the Property than the higher discount rate of 15% utilized by Mr. Thibeault. Based on the board's experience and knowledge, a 15% discount rate is more appropriate for development schemes that have longer marketing time, greater upfront costs and generally are more speculative and risky such as large vertically integrated residential developments that include recreational facilities such as golf courses and ski areas. While the board recognizes the substantial investment that would be involved in acquiring, subdividing and marketing the Property, we believe there is adequate evidence presented in the sales of Squam Lake properties and indeed in the scarcity of properties

for sale to conclude Mr. Corcoran's lower rates are a more appropriate basis to discount the cash flow.

The parties' experts and the Walker Report all deducted real estate taxes as an expense from the gross sales income of lots. While such methodology alone is not fatal to any of the valuation estimates, any estimate of the taxes to be deducted as an expense is potentially circular in nature because the proper tax assessment is what is at issue on appeal. As is the accepted methodology in direct capitalization income approach, the board, as an alternative, has added the effective tax rate to the estimated discount rate to account for the real estate tax carrying costs during the marketing (absorption) period.

The board agrees that it is a more acceptable practice to apply the entrepreneurial or developer's profit to the gross sales revenue as both the Thibeault Report and the Walker Report did and not the net sales revenue as Mr. Corcoran did. A developer coordinating and executing such a development would expect to receive a return on all the planning, engineering, financing and marketing endeavors necessary to realize the retail sales prices.

The board has also adopted the Walker Report estimate of three (3) non-waterfront lots on the north side of Pinehurst Road and their retail market value in 2003 of $75,000 based on the Thibeault Report.

The board's conclusions are incorporated in the following development method spreadsheets which provide the indicated market values for the three years under appeal.

Rockywold-Deephaven Camps, Inc., Holderness, NH				
Date of Valuation: April 1, 2003				
		2003	**2004**	**TOTAL**
SALES:				
# of Sales - Waterfront Lots		4	3	7
Average Sale Price/Waterfront Lot		$4,000,000	$4,480,000	
Gross Sales - Waterfront Lots		$16,000,000	$13,440,000	$29,440,000
# of Sales - Non-Waterfront Lots		3	0	3
Average Sale Price/Non-Waterfront Lots		$75,000	$0	
Gross Sales: Non-Waterfront Lots		$225,000	$0	$225,000
Gross Sales Revenue:		**$16,225,000**	**$13,440,000**	**$29,665,000**
EXPENSES:				
Development Costs		$725,000	$0	$725,000
Marketing Costs/Sales Commissions	5%	$811,250	$672,000	$1,483,250
Property Taxes		$0	$0	$0
Closing Costs & Miscellaneous Expenses	2%	$324,500	$268,800	$593,300
Developer's Profit	15%	$2,433,750	$2,016,000	$4,449,750
Total Expenses:		**$4,294,500**	**$2,956,800**	**$7,251,300**
NET REVENUE:		**$11,930,500**	**$10,483,200**	**$22,413,700**
Discount Rate:				**14.05%**
NET PRESENT VALUE:				**$18,521,106**
2003 Equalization Ratio:				**97%**
2003 EQUALIZED VALUE:				**$17,965,473**
				$17,965,500 (rounded)

Rockywold-Deephaven Camps, Inc., Holderness, NH				
Date of Valuation: April 1, 2004				
		2004	**2005**	**TOTAL**
SALES:				
# of Sales - Waterfront Lots		4	3	7
Average Sale Price/Waterfront Lot		$4,480,000	$4,928,000	
Gross Sales - Waterfront Lots		$17,920,000	$14,784,000	$32,704,000
# of Sales - Non-Waterfront Lots		3	0	3
Average Sale Price/Non-Waterfront Lots		$84,000	$0	
Gross Sales: Non-Waterfront Lots		$252,000	$0	$252,000
Gross Sales Revenue:		**$18,172,000**	**$14,784,000**	**$32,956,000**
EXPENSES:				
Development Costs		$797,500	$0	$797,500
Marketing Costs/Sales Commissions	5%	$908,600	$739,200	$1,647,800
Property Taxes		$0	$0	$0
Closing Costs & Miscellaneous Expenses	2%	$363,440	$295,680	$659,120
Developer's Profit	15%	$2,725,800	$2,217,600	$4,943,400
Total Expenses:		**$4,795,340**	**$3,252,480**	**$8,047,820**
NET REVENUE:		**$13,376,660**	**$11,531,520**	**$24,908,180**
Discount Rate:				**11.20%**
NET PRESENT VALUE:				**$21,354,147**
2004 Equalization Ratio:				**96.9%**
2004 EQUALIZED VALUE:				**$20,692,169**
				$20,692,200 (rounded)

Rockywold-Deephaven Camps, Inc., Holderness, NH				
Date of Valuation: April 1, 2005				
		2005	**2006**	**TOTAL**
SALES:				
# of Sales - Waterfront Lots		4	3	7
Average Sale Price/Waterfront Lot		$4,928,000	$5,223,680	
Gross Sales - Waterfront Lots		$19,712,000	$15,671,040	$35,383,040
# of Sales - Non-Waterfront Lots		3	0	3
Average Sale Price/Non-Waterfront Lots		$89,040	$0	
Gross Sales: Non-Waterfront Lots		$267,120	$0	$267,120
Gross Sales Revenue:		**$19,979,120**	**$15,671,040**	**$35,650,160**
EXPENSES:				
Development Costs		$877,250	$0	$877,250
Marketing Costs/Sales Commissions	5%	$998,956	$783,552	$1,782,508
Property Taxes		$0	$0	$0
Closing Costs & Miscellaneous Expenses	2%	$399,582	$313,421	$713,003
Developer's Profit	15%	$2,996,868	$2,350,656	5,347,524
Total Expenses:		**$5,272,656**	**$3,447,629**	**$8,720,285**
NET REVENUE:		**$14,706,464**	**$12,223,411**	**$26,929,875**
Discount Rate:				**13.20%**
NET PRESENT VALUE:				**$22,531,920**
2005 Equalization Ratio:				**74.0%**
2005 EQUALIZED VALUE:				**$16,673,621**
				$16,673,600 (rounded)

As is most always the case in attempting to estimate the market value of a unique property, good comparable market data is scarce, be it sales of land or improved properties or

rental rates for commercial properties, and what comparables do exist often require the application of judicious adjustments to estimate a proper value for a unique property. The evidence is certainly no different in this case. However, one sale, C-8, provides a benchmark for the board to test the reasonableness of the various value conclusions submitted as evidence or as estimated by the board itself. C-8 was a sale for $7,500,000 of a 78 acre parcel with 1,200 to 1,300 feet of water frontage that occurred in September 2005.[4] This is the one sale that has somewhat similar acreage to that of the Property and significant frontage. The properties differ in some significant regards however. The Property is superior to C-8 in that it has 8,780 feet of water frontage or nearly seven (7) times the amount of water frontage of C-8. The Property also has 19 acres more than C-8 and because of the extensive water frontage, the total acreage can be incorporated into significantly more waterfront lots than C-8. Said another way, the Property has a better acre to frontage ratio than C-8. The Property, however, is also inferior to C-8 in a couple of aspects. The parties testified generally the soils of C-8 were more conducive to development than the shallow, rocky soils of the Property. Also, the parties agreed the views from C-8 are excellent all along its water frontage while the Property's views varied from average to good to excellent depending on the portion of the Property and its orientation. With those differences noted, however, the board asked itself as a reasonableness check: "Is the Property worth two (2) times the sale price of C-8 (essentially the value argued by the Taxpayer in the revised market value estimate of Taxpayer Exhibit Nos.: 4 and 5) or is it approximately three (3) times the value such as that estimated by the board?" Balancing the superior and inferior attributes of the two

[4] We disagree with the Taxpayer's assertion that because it post dates all three assessment dates under appeal, it should not be considered as probative evidence. Given the lack of sales of Squam Lake property, any transaction that is reasonably proximate in time to the valuation dates can be considered in a retrospective appraisal such as those performed by the Town, the Taxpayer, the board's review appraiser or the board in this decision. As long as reasonable adjustments are made for any market conditions that are different, it is reasonable to consider such a sale especially one only six months later than the valuation date of one of the years under appeal.

properties and acknowledging the market appreciation that was occurring during the 2003 through 2005 time period, we conclude that a value for the Property of a magnitude of three (3) times that of C-8 is reasonable given the greater development capabilities of the Property than that of C-8.

The "Requests" received from the Taxpayer are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. With respect to the Requests, "nether 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 overly broad or narrow so 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.

TAXPAYER'S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

1. The focus of this appeal is on the assessment of two parcels of RDC's property:

Town Parcel ID #	Description	Assessment
218-001-000	9 acres north of Pinehurst Rd	2003 - $56,700 2004 - $56.800 2005 - $56,800
218-009-000 and 218-009-00A9 (the latter is not a separate lot of record but an additional tax card for parcel 218-009-000)	88 acres south of Pinehurst Road with 8780 feet of frontage on Squam Lake	2003 - $17,792,600 2004 - $18,341,800 2005 - $18,356,300

For simplicity sake, these two parcels will be referred to collectively as the "RDC property." RDC and Holderness have stipulated, for the purposes of this consolidated appeal, that Holderness' assessments of the remaining parcels owned by RDC are fair and proportional.

Granted.

<u>Highest and Best Use of RDC Property</u>

2. In determining the "full and true" value of RDC's property under RSA 75:1, which has been defined to mean "market value" (*see Brock v. Farmington*, 98 N.H. 275, 277 (1953), one of the first steps in the analysis is to determine the property's highest and best use. The "highest and best use" has been defined as "[t]he reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value. The Appraisal of Real Estate, 10th Ed. (Chicago, Ill., Appraisal Institute, 1993), p. 274; The Dictionary of Real Estate Appraisal, 2d Ed. 1989, p. 149; *See also*; *Appeal of Sawmill Brook Development Co.*, 129 N.H. 410, 412 (1987) (the highest and best use is "the use which will most likely produce the highest market value, greatest financial return or most profit…", quoting *Steele v. Allenstown*, 124 N.H. 487, 490 (1984)); *Digital Equipment Corp v. Hudson*, 1996 N.H. Tax LEXIS 6 (1996).

Granted.

3. RDC and Holderness agree that the property's current use as a family camp, with rustic cabins, communal dining and recreational facilities, does not represent the property's highest and best use for assessment purposes and also agree that the property is not suitable for a condominium conversion.

Granted.

4. The site plan prepared by RDC's consultant Steven J. Smith, a registered engineer and land planner, which allowed for the creation of 29 lots, including 21 lakefront lots and 8 off-lake lots, complies with the Town of Holderness's Zoning Ordinance and Subdivision Regulations.

Granted.

5. The Smith Plan was intended to maximize the number of waterfront lots in a manner consistent with Holderness's Zoning Ordinance and Subdivision Regulations.

Granted.

6. The Town presented no evidence that the alternative design plan of a clustered residential subdivision under Article V, Special Provisions A, Cluster Residential Development, of the Town's Zoning Ordinance, prepared by the Town's consultant Stephan La France, would be approved by the Holderness Planning Board or constitute a reasonably probable use of the property.

Neither granted nor denied.

7. The Town's attempt to characterize Mr. LaFrance's design plan as a conventional subdivision failed because he admitted that his lots do not comply with the requirements of the Subdivision Regulations. See Section 6.7, Subdivision Regulations.

Neither granted nor denied.

8. The LaFrance plan could not be approved as either a cluster residential development or a standard subdivision.

Neither granted nor denied.

9. Based on an "on the fly" analysis of about 20 minutes, Mr. LaFrance suggested two additional waterfront lots could be added to the Smith plan by adding a community wastewater system to serve Lots 15 – 19, and perhaps Lot 20 on the Smith plan, but did no lot lay out or analysis of exactly which existing lots would be impacted or how much.

Neither granted nor denied.

10. Mr. LaFrance's estimated cost of a community wastewater system to serve six lots was inconsistent with the definition of such a system in Section 4.4 of the Subdivision Regulations which would require a system serving "at least" 15 service connections or a daily average use of 25 individuals.

Neither granted nor denied.

11. Mr. LaFrance's attempt to add two additional waterfront lots is based on an erroneous interpretation of Sections 6.7 D and E of the Holderness Subdivision Regulations which do not permit the density of lakefront lots to be decreased by building a community wastewater system.

Neither granted nor denied.

12. Mr. LaFrance was not able to offer an opinion that it was reasonably probable that the Holderness Planning Board would accept his suggested addition of two additional waterfront lots to the Smith plan.

Neither granted nor denied.

13. The Town's last minute effort to attempt to add two additional waterfront lots to the Smith plan failed because Mr. LaFrance presented no competent, credible evidence to support his suggested revisions to the Smith plan.

Neither granted nor denied.

14. The single lot family subdivision, as set forth in Mr. Smith's design plan is the highest and best use of RDC's property as of April 1, 2003, 2004, and 2005.

Denied.

Valuation and Proportional Assessment

15. The Town's appraiser, Wil Corcoran, acknowledged that his estimates based on Mr. LaFrance's suggested revisions to the Smith plan, set forth in Town's Exhibit C, and revised in Exhibit D, did not constitute an appraisal or an opinion of value but were merely mechanical calculations based on known numbers.

Granted.

16. Mr. Corcoran was not able to determine lot values based on a revised Smith plan because he had not valued the existing Smith lots, he did not know the exact layout of the suggested additional waterfront lots suggested by Mr. LaFrance, and he did not know how the layout of those lots would impact the value of adjacent lots.

Neither granted nor denied.

17. Conclusions of market value of real estate must be supported by competent expert opinion. *See, e.g., In re Harvey*, 153 N.H. 425, 440 (2006) (real estate appraiser's report properly excluded where he could not identify market evidence to support his opinion or legal support for methodology used).

Denied.

18. Mr. Corcoran admitted that there was substantial risk in high end residential developments, such as that proposed for the RDC property.

Denied.

19. Mr. Corcoran's estimated discount rates of 12.5% for 2003, 9.4% for 2004, and 11.70% for 2005 are unreasonably low given the risks associated with high end residential developments.

Neither granted nor denied.

20. The Taxpayer's appraiser, Russell W. Thibeault, has submitted the only appraisal of RDC property in this case which is based on a supportable highest and best use, complies with relevant appraisal standards and determines lot values based on an analysis of comparable sales data to defined lots.

Denied.

21. The Taxpayer's appraiser, Mr. Thibeault, properly applied his developer's profit estimate of 15% to the gross revenues.

Granted.

22. Mr. Thibeault's estimated discount rate of 15% is reasonable.

Denied.

23. Mr. Thibeault's appraisal of the RDC property, as reflected in Taxpayer's Exhibit 3, properly reflects the fair market value of the RDC property as of April 1, 2003, April 1, 2004, and April 1, 2005.

Denied.

24. RDC has met its burden of demonstrating that its assessments as of April 1, 2003, 2004 and 2005 are excessive and disproportional and is entitled to an abatement of taxes, based on Mr. Thibeault's revised market values for the RDC property, as adjusted by the applicable stipulated equalization ratios of 97% for 2003, 96.9 % for 2004 and 74% for 2005 as shown below, along with statutory interest from the date of payment of the tax to the date of repayment under RSA 76:13.

Tax Year	Fair Market Value	Appropriate Assessment	Actual Assessment	Abatement
2003	$15,133,000	$14,679,010	$17,849,300	$ 3,170,290
2004	$16,464,700	$15,954,294	$18,398,600	$ 2,444,306
2005	$17,913,600	$13,256,064	$18,413,100	$ 5,157,036

Denied.

TAXPAYER'S SUPPLEMENTAL REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

1. The appraisal prepared by the BTLA's review appraiser Theresa M. Walker (the "Walker appraisal") is premised upon an "estate lot subdivision", a concept which was not

discussed by either the Taxpayer's appraiser, Russell W. Thibeault, or the Town's assessor, Wil Corcoran, in their appraisals or during their testimony during the first two days of the hearing in this matter.

Granted.

2. There has been no development of an estate lot subdivision on Squam Lake or anywhere in the Lakes Region which would provide pertinent market data to support the premise of the Walker appraisal.

Neither granted nor denied.

3. Subdivisions of larger lakefront parcels on both Squam Lake and Lake Winnipesaukee have not been done on an estate lot basis as developers have recognized that once a reasonable amount of lake frontage has been reached, additional frontage contributes to value but at a diminishing rate per front foot.

Neither granted nor denied.

4. Ms. Walker admits that there were insufficient sales of estate type lots on Squam Lake to perform a "credible Sales Comparison Approach on a price/lot basis". See Walker Appraisal, p. 11.

Granted.

5. The Walker appraisal contains no site plan depicting the layout of the proposed estate lots or the roadways necessary to comply with Town subdivision requirements.

Granted.

6. Due to the physical characteristics of the RDC site, it would not be physically possible to have 8 waterfront lots of about 10 acres with 1000+/- feet of frontage as the Walker appraisal assumes.

Neither granted nor denied.

7. The reduction of the proposed waterfront lots to 6 or 7 lots would have a measurable impact on the valuation estimate of the Walker appraisal which assumes a per lot value of $4,000,000 in 2003, escalating to almost $5,000,000 in 2005.

Granted.

8. The Walker appraisal provides no support for its conclusion that a 1200 foot road would be sufficient to meet the Town's requirements for emergency access.

Neither granted nor denied.

9. The Walker appraisal does not provide the necessary support to demonstrate that its highest and best use conclusion of 8 waterfront lots with 1000+/- feet of lake frontage is either physically or legally possible.

Neither granted nor denied.

10. Of the 5 sales of waterfront property which are the basis of the per front foot price used to set value in the Walker appraisal, four of the sales have significantly less than 1000+/- feet of frontage, with three of them having less than 383 feet of frontage.

Denied.

11. Sale C-4 which had 605 feet of frontage is atypical because it was purchased by an abutter who had atypical motivation and unlike the lots assumed in the Walker appraisal, could have been subdivided into two or possibly three lots.

Granted.

12. Sale C-8 which is the only sale with more than 1000+/- feet of frontage was the sale of a parcel of 78 acres, almost as large as the entire RDC parcel which is the subject of this appeal.

Granted.

13. The size of Sale C-8 makes it inappropriate to use as a comparable to determine the value of the 8 - 10 acre lots assumed in the Walker appraisal.

Denied.

14. Sale C-8 took place in September 2005 and therefore, as a matter of sound appraisal and assessing methodology, should not be considered in determining market value as of April 1, 2003 and April 1, 2004.

Denied.

15. Sale C-8 also could have been further subdivided and thus, is not an appropriate comparable to determine the value of the 8 - 10 acre lots assumed in the Walker appraisal.

Denied.

16. There is inadequate market support for the Walker appraisal's conclusion that the 8 lots with 1000+/- feet of frontage assumed in the appraisal would have a market value of $4,000,000 in 2003 escalating to almost $5,000,000 in 2005.

Denied.

17. The Walker appraisal provides no basis to refute the conclusions of the Thibeault report, as revised, which are based on a well-supported and detailed site plan which all parties agree meet the legal requirements of Holderness's land use regulations.

Denied.

18. The Taxpayer is entitled to the relief requested in its Findings of Fact and Rulings of Law, Paragraph 24.

Denied.

If the taxes have been paid, the amount paid on the value in excess of $17,965,500 for 2003 and $16,673,600 for 2005 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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, <u>not the date this decision is received</u>. 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(f). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Margaret H. Nelson, Sulloway & Hollis, P.L.L.C., PO Box 1256, Concord, NH 03302, Taxpayer Representative; Walter L. Mitchell, Esq., Mitchell & Bates, P.A., 25 Beacon St., East Laconia, NH 03246, Municipality Representative; and Chairman, Board of Selectmen, Town of Holderness, PO Box 203, Holderness, NH 03245.

Date: August 25, 2008

_____
Anne M. Stelmach, Clerk