

**Collins & Aikman Company**

**v.**

**Town of Farmington**

**Docket No.: 22331-05PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2005 assessment of \$6,575,890 (land \$689,750; building \$5,886,140) on Map R31/Lot 034, consisting of several industrial buildings on a 123 acre lot (the “Property”). (The Taxpayer also owns, but did not appeal, six other lots and the parties stipulated the assessments on those lots were not in dispute.) For the reasons stated below, the appeal for abatement on the Property is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was 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 assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) a broker's opinion of value ("BOV") dated November 22, 2005, prepared for the Taxpayer by the firm of CB Richard Ellis (and submitted with the Prehearing Statement), recommended an "asking" price of \$4.9 million for the Property;
- (2) because of significant groundwater contamination from prior manufacturing activities, the Property is worth only \$2,353,485 (the \$4.9 million asking price minus \$2,546,515, an estimated remediation cost) and the assessment should be abated to this value adjusted by the agreed upon level of assessment; and
- (3) in the alternative, the board should use the \$6.4 million estimate of market value presented by the Town's expert (Jonathan Frank of F & M Appraisal Group, Inc.) to abate the assessment.

The Town argued the assessment was proper because:

- (1) the Taxpayer failed to present credible market value evidence to support an abatement beyond the amount already granted by the Town;
- (2) the BOV is not an appraisal and is not a valid estimate of the value of the Property because, among other things, it contains cost per square foot and building size estimates which would lead to a conclusion that the Property is proportionally assessed ( $\$23.41$  per square foot times 327,954 square feet = \$7,677,403);
- (3) there is no substantiation for the \$4.9 million asking price in the BOV and the Taxpayer failed to comply with the board's rules (see Tax 201.33(f)) by not submitting the assessment-record cards for the comparables used;
- (4) as argued in the Town's Hearing Memorandum, New Hampshire case law [Appeal of Great Lakes Container Corp., 126 N.H. 167 (1985)], case authority from two other jurisdictions and

policy arguments support the conclusion that the cost to cure the contamination is a business cost, temporary in nature, and therefore should not reduce the Property's value for assessment purposes;

(5) in actuality, the Town made appropriate adjustments to the assessment of the Property for contamination and followed the recommendation of a representative of the department of revenue administration (see Exhibits 10 and 11 to the Town's Prehearing Statement) by amortizing over a 30-year period the cost to cure estimate provided by the Taxpayer, resulting in about an 11% reduction in the land value; and

(6) if the Town's assessment is not sustained, then, in the alternative, the \$6.4 million "reconciled" estimate of the Town's appraiser, Jonathan Frank (the "F & M Appraisal" contained in Municipality Exhibit No. A), is the best evidence of the market value of the Property.

At the hearing, the parties stipulated the level of assessment in the Town for tax year 2005 was 93.8%, as measured by the median ratio computed by the department of revenue administration ("DRA").

### **Board's Rulings**

#### **A. Procedural Rulings**

Before turning to the substance of the appeal, the board will summarize the issues raised in two procedural motions made at the hearing and its rulings on those motions. The motions were the result of comments and concerns by an attorney for the State of New Hampshire (Peter Roth, Assistant Attorney General) to the board after the Taxpayer had completed its presentation at the hearing.

Attorney Roth informed the board the Property is now part of a bankruptcy proceeding in which, sometime in October, 2007, the state became the beneficiary of a 'custodial trust' holding

title to the Property. Attorney Roth stated he represents the trustee in the bankruptcy (Ed Moran) and the State is now the beneficial owner of the Property. He contended the State therefore has an interest in the outcome of the tax year 2005 abatement appeal insofar as it affected the tax liability for tax year 2007 when the State became the beneficial owner of the Property. Attorney Roth acknowledged, however, the State did not file a tax year 2007 abatement request with the Town, although it clearly had the right to do so. See RSA 76:16.

After some discussion of these facts both on and off the record, the Taxpayer's representative made a motion to continue the hearing to another date in order to allow him to prepare and call either Attorney Roth or another State representative as a witness to testify, presumably as to the bankruptcy proceedings and the value of the Property in 2007. (This representative did not, however, express a need to question Attorney Roth at the hearing then in process, but only to seek a further delay to allow for more preparation.)

Attorney Roth, on behalf of the State, made a separate motion to allow him to "cross-examine" any of the Town's witnesses that might be called. He stated he wished to do so because of his concern the Property was overassessed in tax year 2007.

In response, the Town objected to both of the motions. Upon review, the board denied each motion for the following reasons.

First, under the applicable abatement statutes, each tax year is subject to a separate appeal and the only appeal now before the board pertains to tax year 2005. While it is true that RSA 76:17-c acts as a "bridge" insofar as an abatement granted in one year can apply to subsequent years unless certain changes occur (such as a good faith reappraisal or a general reassessment), this does not relieve any person aggrieved by a subsequent assessment of the obligation to file a timely abatement request and a timely appeal for that tax year in order to

protect against overassessment in that future year. In brief, nothing in the tax statutes authorize the board, in this tax year 2005 appeal, to consider whether the Property was proportionally assessed in 2007 after it was acquired by another. Thus, the board finds the Taxpayer's stated interest in a continuance of the hearing to develop questions to ask the State's representative (either Attorney Roth or someone else) regarding the 2007 bankruptcy proceedings is not relevant to whether the Property was proportionately assessed in tax year 2005.

Second, as the Town noted, the Taxpayer did not meet any of the recognized grounds for a continuance of the hearing. See Tax 201.26(g) (such motions only granted in "extraordinary circumstances"; examples of such extraordinary circumstances, not met here, include illness or injury, a conflicting hearing or the unavailability of material evidence despite a party's "due diligence"). The Taxpayer's representative clearly knew of the subsequent bankruptcy of his client and the fact the State had acquired an interest in the Property by October, 2007 through the bankruptcy proceedings. Yet, this representative finished his presentation of why the Taxpayer was entitled to an abatement in tax years 2005 without reference to these facts and only made the motion for a continuance after Attorney Roth, on behalf of the State, made his comments to the board. The Taxpayer's representative had plenty of time since the hearing notice of April 7, 2008 to file any appropriate motion, including a motion to continue if he believed the bankruptcy proceeding and the State's acquisition of an interest had a bearing on the 2005 appeal. Further, the Taxpayer's Prehearing Statement contained no mention of the bankruptcy proceeding or that any State witness or representative would participate in the hearing. In these circumstances, the board found the Taxpayer had no grounds to a continuance of the hearing and any continuance would prejudice the Town, who was ready to proceed, based on extensive preparation by its attorney and the attendance of several of its officials, including the town administrator.

Third, the State did not petition the board to intervene in this tax year 2005 tax abatement appeal. (Under RSA 541-A:32, I(a), the statutory deadline for such a petition was at least three days before the hearing.) Attorney Roth admitted the State had actual knowledge of the pending appeal at least several months prior to the hearing date, but stated the State never received “formal notice” of the appeal. There is no statutory or other basis, however, for concluding a subsequent legal or beneficial owner of property that is subject to a prior year tax appeal is entitled to any such notice. (See RSA 76:16-a, II: “[T]he board of tax and land appeals shall, not less than 30 days prior to the date of hearing..., give notice of the time and place of such hearing to the applicant and to the town or city in writing.” (Emphasis added.))

If the State had filed a timely petition to intervene, and if that petition had been granted, one of the privileges of an intervenor might be to cross-examine witnesses. See RSA 541-A:32, III(b). Absent actual intervention, however, the board could find no basis for granting the State’s motion to cross-examine the Town’s witnesses at the hearing.

In addition to requesting intervention, the State could also have consulted with the Taxpayer’s representative prior to the hearing and helped him prepare any available evidence, including either direct or cross-examination of Town witnesses, to establish whether the Property was proportionally assessed in tax year 2005 (the only substantive question properly before the board), but the State did not avail itself of either of these opportunities.

Finally, the board is aware of case authority negating the State’s ‘due process’ claims based on its status as a subsequent owner of the Property potentially affected by the tax year 2005 assessment. In Appeal of Shane Brady, 145 N.H. 308 (2000), for example, a subsequent purchaser claimed entitlement to appeal a prior year assessment even though neither he nor his predecessor in interest had complied with the mandatory inventory filing requirements. The

subsequent owner argued this failure should be excused because he did not own the property at the time the completed inventory form should have been filed and that dismissal of the appeal was a violation of his “right to equal protection.” Id. at 312. The supreme court rejected this constitutional argument because the tax statute could distinguish “between taxpayers with filed inventory forms and those without filed inventory forms” and no invalid “discrimination” (violation of equal protection) occurred, even if the subsequent owner arguably had no opportunity to file a timely inventory form. Id.

Similarly here, the board finds the State’s due process rights have not been violated by the failure to get official notice of the tax year 2005 appeal filed by the Taxpayer, the prior owner of the Property. Presumably the State could have filed an RSA 76:16 abatement request for tax year 2007 as a “person aggrieved” to preserve its appeal rights, but did not do so. Cf. Paras v. City of Portsmouth, 115 N.H. 63, 67 (1975) (a taxpayer is bound by its attorney’s inaction or omission of filing a tax appeal within the statutory timeframe); accord, Arlington Am. Sample Book Co. v. Board of Taxation, 116 N.H. 575, 576 (1976) (even party’s “intention” to pursue tax appeal not sufficient where attorney was instructed to file and prepare paperwork, but failed to do so in a timely manner).

#### B. Substantive Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving the assessment on the Property was disproportional and that it is entitled to further abatement. The appeal is therefore denied for the reasons explained below.

Assessments must be based on market value. RSA 75:1. In order to obtain an abatement, the Taxpayer has the obligation to present credible evidence of the market value of the Property as of the assessment date. See, e.g., Public Serv. Co. v. Town of Ashland, 117 N.H. 635, 637

(1977), where the taxpayer failed to present certain evidence (replacement cost less depreciation) and “[l]argely because of this failure, the board [of taxation] found itself unable to determine market value (and thus unable to determine the propriety of an abatement).” In affirming the denial of an abatement, the supreme court held:

The taxpayer has the burden of proof and it is the taxpayer’s responsibility to satisfy the board as to the disproportionality of the tax burden imposed by the selectmen. “The burden is on the company to satisfy [the trier of fact] by a preponderance of the evidence that it was paying more than its proportionate share of the taxes... and thus entitled to an abatement.” New England Power Co. v. Littleton, 114 N.H. [594,] at 599 [1974].

Public Serv. Co., 117 N.H. at 640.

The Taxpayer in this appeal had an experienced and knowledgeable representative, Carl P. Pharr of Ennes & Associates, Inc., a national firm of “Property Tax Consultants & Appraisers” headquartered in Illinois, as denoted in the letter of transmittal accompanying the Taxpayer’s Prehearing Statement. As also reflected in that pleading, however, Mr. Pharr chose to present no witnesses at the hearing and relied entirely on (i) the BOV, (ii) several discursive ‘remediation cost and work plan’ documents, and (iii) a cost spreadsheet prepared by an unidentified person, all given to him by the Taxpayer.

Upon questioning at the hearing, Mr. Pharr demonstrated a surprising lack of knowledge and inability to explain the content and substance of these submitted documents. He was uncertain, for example, as to whether the dollar estimate for the cost of remediation had been stated as a present value or a value in future dollars.

Instead, Mr. Pharr relied entirely on the conclusion in the BOV regarding the opinion of one broker regarding what the “asking price” for sale of the Property ought to be (\$4.9 million) and what one estimate of the costs of remediation might be over a 30-year period (\$2,546,515). (The documents also give a lower 10-year remediation cost that he did not rely on or explain.)

Mr. Pharr further acknowledged this was his first visit to New Hampshire, he had not inspected the Property at any time and did not have any additional information regarding these estimates.

Turning to the BOV, it is not an appraisal and cannot, even under the most generous of interpretations, be considered a reliable estimate of the market value of the Property without further supporting documentation or testimony. Instead, the BOV was apparently prepared for another ostensible purpose: to give the Taxpayer a recommendation of what the “asking price” for the Property ought to be, if it were to be listed (presumably with the brokerage company preparing the BOV) and offered for sale. It is not clear whether the Taxpayer obtained other estimates of what the “asking” price should be, if the Property was sold, or used the BOV in any other way. Thus, the board is unable to place any reliance on the BOV estimate, even as a upper bound of the market value of the Property as of the assessment date.

Significantly, the Taxpayer chose not to call as a witness the person who prepared the BOV (Margaret O’Brien) or anyone else who might have direct knowledge regarding its contents or the circumstances pertaining to its creation. The title page indicates it is a “Drive-By BOV Only,” indicating it was prepared without a physical inspection of the Property. More importantly, there is no evidence before the board that the Property was actually marketed at any price by the Taxpayer, either by the firm that prepared the BOV or anyone else. Nor is there any evidence the Taxpayer received one or more offers to purchase the Property in the relevant timeframe.

As the Town noted at the hearing, there is inadequate and somewhat contradictory information contained in the BOV itself. For example, the BOV computes an average sale price of \$12.67 per square foot for four industrial properties and an average listed sales price of \$23.41 per square foot for four other properties; if the latter is applied, then the indicated sales price

(327,954 square feet times \$23.41 = \$7,677,403) is above the equalized assessed value of the Property, an indication no abatement is warranted.

In addition, Tax 201.33(f) required the submission of each comparable's assessment-record cards to the board, but, as the Town observed, the Taxpayer failed to do so for any of the comparables referenced in the BOV. This failure makes it even more difficult for the board to give the BOV any evidentiary weight.

Finally, the BOV mentions as one of five "challenges" to marketing the Property: "Possible environmental issues – tax cards make reference to contamination." Yet, the BOV makes no analysis of how this factor might impact the Property or the estimated quantitative effect, if any, on the Property's market value or even the asking price. For example, is this a "challenge" that could be overcome (discounted or given no monetary value) because of other desirable attributes of the Property? No information is provided in the BOV or any other evidence presented.

If the Taxpayer had presented reliable market evidence to challenge the Town's assessment, the board could then have proceeded, as it has in some other appeals, to make findings regarding the value of the Property "as clean" (without contamination) and then apply to this estimate the effect, if any, of the alleged contamination on market value. See, e.g., A & C Realty Trust v. Town of Londonderry, BTLA Docket No. 15753-94PT (March 18, 1997); and Dana L. Haselton v. Town of Derry, BTLA Docket No. 14962-93PT (December 20, 1996).

In cases such as these, where the taxpayer has provided more reliable evidence of market value and the effects of contamination on that value, the board has noted and applied the factors identified in various publications for properly assessing contaminated properties, including the Standard on the Valuation of Properties Affected by Environmental Contamination published by

the International Association of Assessing Officers. (This “IAAO Standard” was issued most recently in July, 2001, revising and replacing the prior standard published in 1992.)

The board notes this general approach because it disagrees with the Town’s blanket statement, contained in its Hearing Memorandum (at p. 8), that “remediation costs [of contamination] are not grounds for abatement.” Such a conclusion is contrary to the IAAO Standard, which the board took judicial notice of without objection from either party. Section 4.2 of this standard, for example, states “The cost to cure a particular problem must be determined” even though this cost “may overstate or understate the effect on value.” In other words, and contrary to the respective arguments of each party, remediation costs can and should be considered but do not necessarily result in a dollar-for-dollar reduction in the assessment under appeal.

The Town’s Hearing Memorandum emphasizes Appeal of Great Lakes Container Corp., 126 N.H. 167 (1985), but its facts and holding are readily distinguishable and not at odds with the approach to valuation of contaminated property embodied in the IAAO Standard and followed by the board in other cases. In Great Lakes, the board upheld the denial of an abatement appeal where the taxpayer argued the prior owner had contaminated the site and denied having any liability for the cost of cleanup in the ensuing federal environmental litigation; although contending the property had “zero” market value, the taxpayer conceded the site would be cleaned up and have a “sale value in the future” and this was “a factor in its decision to seek an abatement rather than to forfeit the land to the town.” Id. at 168.

On these facts, the board rejected the appraiser’s report and “reasoned the prospect of future benefit gave the property some sale value” as of the assessment date and the supreme court found “no error” in the board’s rejection of the appraiser’s zero market value conclusion.

Id. Moreover, the assessed value under appeal (\$224,150) was substantially less than the purchase price (\$399,200.48) and substantially less than the price at which the taxpayer offered it for sale (\$350,000) after the federal environmental litigation had begun. Id.

In Great Lakes, the liability for the cost of cleanup could have fallen on the prior owner or another party, leading the supreme court to note, in dicta, that nothing prevented the taxpayer from selling the land with transfer of title deferred until after the cleanup occurred, “thus freeing the buyer from any possible liability due to the contamination.” Id. The board does not read this sentence from Great Lakes to mean remediation costs for contamination cannot affect the market value of the Property because of the theoretical possibility of a deferred transfer of title (until after cleanup occurs). In other words, the board finds, contrary to the arguments in the Town’s Hearing Memorandum (pp. 8-9), the sale value of a property can be affected by contamination and the cost of remediation in appropriate cases where there is such evidence of an effect on market value.

The board will not discuss at length the limited case authority from two other states (New Jersey and Ohio) cited in the Town’s Hearing Memorandum (on pages 10 – 12) that contain language suggesting contamination costs be ignored for assessment purposes and that tax relief for such properties be denied on policy grounds (to discourage polluters). Suffice it to say the New Jersey Supreme Court disagreed and reversed the New Jersey lower court decision that an abatement could be denied on such grounds. See Inmar Assoc. v. Borough of Carlstadt, 112 N.J. 593, 610 (1988), reversing in part and affirming in part 214 N.J. Super. 256 (Super. Ct., App. Div. 1986) [attached as Exhibits 14 and 13, respectively, submitted with the Town’s Prehearing Statement]; cf. Vogelsang v. CECOS Internatl. Inc., 85 Ohio App. 3d 339 (1993).

Notwithstanding their omission from the Town's Hearing Memorandum, ample case authorities from other jurisdictions recognize an assessment can be abated to take proven contamination that affects market value into account. See, e.g., *Reliable Electronic Finishing Co. v. Board of Assessors of Canton*, 410 Mass. 381, 382 (1991) (“the law . . . obliges [the board of assessors] to recognize the effects of proven environmental damage”); *Boekeloo v. Board of Review of City of Clinton*, 529 N.W.2d 275, 278 (Iowa 1995) (“[i]n the typical case, environmental contamination will have some adverse effect on the value of the contaminated property”); *Mola Development Corp. v. Orange County Assessment Appeals Board No. 2*, 80 Cal. App. 4th 309 (2000) (“the assessed valuation is the price at which a willing buyer and a willing seller would consummate an open market sale of the property considering the polluted condition of the property”); and *E.I. DuPont de Nemours & Co. v. Douglas County Board of Equalization*, 75 P.3d 1129, 1132 (Colo. 2003) (referencing *Inmar*, but “conclud[ing] that the deduction of costs to cure required by government remediation order represents the better approach to determine the actual value of a parcel . . .” for assessment purposes).

As summarized in this IAAO Standard (in Section 8), the assessment of contaminated property should first consider the value “unencumbered” (without contamination) and then consider the costs of remediation because “some adjustment to value is likely and should be considered.” The board has generally followed this approach in other tax appeals involving contamination questions. See, e.g., *Haselton* (cited above, where the evidence supported a 15% downward adjustment to the value because of contamination); and *A & C Realty Trust* (cited above, where the board found, because no credible evidence had been submitted, that no contamination adjustment to the “as clean” value was warranted), citing *Paras v. City of*

Portsmouth, 115 N.H. at 67-68 (all relevant factors must be looked at to arrive at a proportional assessment).

In this appeal, the board finds the Taxpayer failed to present any reliable evidence of the market value of the Property as of the assessment date, either unencumbered by the contamination or credibly adjusted for the effects of the contamination. In these circumstances, and given the Taxpayer's burden of proof (discussed above), the board need not attempt to substitute its own judgment for that of the Town or place exclusive reliance on the "reconciled" estimate of value (\$6,400,000) arrived at in the F & M Appraisal (Municipality Exhibit No. A), prepared in response to the appeal, for several reasons. This indication is much lower than the estimate of value arrived at using the cost approach (\$7,920,000), which fully supports the Town's assessment. The board also notes some questions raised in this appraisal, including the "Special Assumptions" made in preparing it on page 12 (such as an assumption regarding the Property's condition three years before the appraiser inspected it (in July, 2008), an assumption the parcel is "free and clear of any on-site contamination" and the availability of only "limited building plans" for the appraiser's review). In brief, the board finds the reconciled estimate stated in this appraisal should not override the indicated market value of the Property reflected in the Town's assessment.

The board is further guided by the fact the Town attempted to take the contamination estimate provided by the Taxpayer into account and contacted a DRA representative for guidance before granting a partial abatement for this factor. The Town incorporated the DRA representative's suggestion that the total estimated cost be "amortized" over thirty (30) years. (See Exhibit 10, submitted with the Town's Prehearing Statement.) Although this approach may be flawed and subject to question, it did result in the Town reducing the land value by about

11 % to take contamination into account. The Town's building assessments also reflect relatively high rates of physical depreciation and obsolescence (reducing the principal building by 79%, for example), which also can be viewed as a means of adjusting the assessment to reflect the possible effect of contamination. In light of the Town's good faith effort in seeking guidance to account for the potential impact of contamination on the market value of the Property, and in the absence of adequate evidence by the Taxpayer that would support a higher adjustment for this factor, the board finds no basis for granting a further abatement for tax year 2005.

For all of these reasons, the board finds the Taxpayer failed to prove the Town's assessment is disproportionate. The appeal is therefore denied.

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(g). 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.

The “Requests” received from the Town 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, “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 Report.

#### **Town of Farmington’s Proposed Findings of Fact and Rulings of Law**

1. This tax abatement proceeding concerns property owned by the Collins & Aikman Company, located in the Town of Farmington, Parcel R31-034, containing approximately 348,507 square feet in a manufacturing and office building, warehouse building, and storage garage, on approximately 123 acres of land.

**Granted.**

2. The tax year under appeal is 2005, with a valuation date of April 1, 2005.

**Granted.**

3. The taxpayer seeks: 1) an abatement of an assessed value that is allegedly greater than that supported by market data; and 2) a lump-sum abatement for the present value of the total of all outstanding remediation costs that are estimated to occur in an undefined schedule over the next 30 years.

**Granted.**

4. It is well settled in New Hampshire that a taxpayer is “entitled to an abatement” only when the appraised value of the property “is disproportionately higher in relation to [its true] value than is the case as to other property in general” such that the taxpayer “bears more than his share of the tax burden.” Ainsworth v. Claremont, 106 N.H. 85, 88 (1964) (quoting Brock v. Farmington, 98 N.H. 275, 279 (1953)).

**Granted.**

5. The taxpayer has the burden to prove, by a preponderance of evidence, that the assessed value of its property was disproportionately higher in relation to its true value than was the case with other properties in general in the town. Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985).

**Granted.**

6. The taxpayer can “meet [its] burden [of establishing disproportionate taxation] only if it first present[s] sufficient evidence to establish the true value of the land with reasonable certainty.” Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985).

**Granted.**

7. The taxpayer submitted a Broker’s Opinion of Value that states it should not be considered an appraisal, the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice have not been incorporated, the information contained within has not been verified, and there are no guarantees, warranties or representations as to the accuracy of the information.

**Granted.**

8. A taxpayer’s prehearing submission shall contain assessment record cards for each comparable property intended to be submitted either separately at hearing or in an appraisal. Tax 201.20 (c)(5).

**Granted.**

9. The taxpayer’s prehearing submission did not contain assessment record cards for any of the comparable properties listed within the taxpayer’s Broker’s Opinion of Value.

**Granted.**

10. The taxpayer’s Broker’s Opinion of Value fails to substantiate its assumptions, and fails to make any adjustments for the distinguishing characteristics of the comparable properties upon which it relies.

**Granted.**

11. A Broker’s Opinion of Value, unsupported by calculations, an explanation of the methodology, and other traditional elements contained within an appraisal, will be given little weight. See Trustees of Philips Exeter Academy v. Exeter, 92 N.H. 473, 477 (1943).

**Neither granted nor denied.**

12. The Town submitted an appraisal that conforms to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal

Foundation and is a valuation of the property for real estate tax appeal purposes. The analysis and conclusions are based upon field research, personal inspection of the property, interviews with market participants, and publicly available data collected by the appraisers.

**Granted.**

13. The Town's appraisal's overall valuation of the property as \$6,400,000 as of April 1, 2005, based on a valuation of \$7,920,000 under the cost approach, \$6,240,000 under the income approach, and \$6,270,000 under the sales comparison approach, is reasonable.

**Neither granted nor denied.**

14. Even if the Town assessed the property as much as "20% higher than true fair market value," the taxpayer would nevertheless suffer no disproportionate taxation burden if the same high assessment was "reached with respect to all other appraisals in the town." Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189 (1982); see e.g. Bemis Bros. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954).

**Neither granted nor denied.**

15. In 2004, the Town completed a town-wide revaluation for assessment purposes, setting the market value at \$7,314,600.

**Granted.**

16. In 2005, the taxpayer filed an abatement application for the 2004 tax year, arguing solely that the assessed value was excessive based on sales of comparable property in the region.

**Granted.**

17. The Town analyzed the two comparable properties provided by the taxpayer and reduced the assessed value of the property to \$6,661,140.

**Granted.**

18. In 2006, the taxpayer filed an abatement application for the 2005 tax year, arguing again that the assessed value was excessive based on sales of comparable property in the region, and for the first time, that it should receive a lump-sum abatement for the present value of the total of all outstanding remediation costs that are estimated to occur over the next 30 years.

**Granted.**

19. The Town granted a partial abatement to \$6,575,890, in effect amortizing the outstanding remediation costs over a 30-year period.

**Granted.**

20. The taxpayer has failed to carry its burden of establishing disproportionate taxation.

**Granted.**

21. The property is contaminated because of the actions of a predecessor in interest to Collins & Aikman. The groundwater became contaminated as a result of an overflow spill of tetrachloroethylene, leakage from underground pipelines that connected solvent storage tanks to a manufacturing plant, and suspected above-ground spillage of paints and solvents. Subsurface gradients caused the contamination to spread to an adjacent property on which the Town had a municipal well, thereby contaminating the drinking water.

**Granted.**

22. The Town and the predecessor in interest to Collins & Aikman entered into a Settlement Agreement wherein the predecessor agreed to various terms, including the obligation to perform an adequate and effective source control remedy, as approved or modified by the State of New Hampshire.

**Granted.**

23. The New Hampshire Department of Environmental Services (“DES”) thereafter negotiated an agreement with a subsequent predecessor in interest to Collins & Aikman – formalized in Groundwater Management Permit GWP-198705014-F-002 and issued on May 5, 1995. Among other items, the permit requires containment, extraction, and treatment of the contaminated groundwater. On August 30, 2002, DES reissued the permit for a period of five years. DES noted that the ultimate objective of the remedial actions was to achieve compliance with ambient groundwater quality standards adopted by DES within ten years (2005) from the commencement of remedial actions in July 1995.

**Granted.**

24. Under New Hampshire case law, a tax abatement is properly denied for contaminated property. Appeal of Great Lakes Container Corp., 126 N.H. at 170; see Inmar Assoc. v. Borough of Carlstadt, 214 N.J. Super. 256, 258, 268 (1986) (citing favorably to the persuasiveness of Appeal of Great Lakes Container Corp. in stating that “a commercial taxpayer is not entitled to a reduction in the assessed value based upon the cost required to make the property environmentally safe” and that “[t]he property must be assessed as if it were free of

hazardous contamination”); Inmar Assoc. v. Borough of Carlstadt, 112 N.J. 593, 601-02 (1988) (stating that deferral of property maintenance, such as costs to cure contamination, is a strict cost accounting practice of the business that does not alter market value); see Vogelgesang v. CECOS International, Inc., 85 Ohio App. 3d 339, 349 (1993) (stating that a “deduction for cleanup costs may reflect the effect these costs had on [the taxpayer’s] profitability, but it fails to demonstrate their effect on the facility’s property value”).

**Neither granted nor denied.**

25. Consistent with New Hampshire case law, Collins & Aikman should not be granted an abatement for the present value of their total outstanding, projected remediation costs.

**Granted.**

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Carl P. Pharr, Ennes & Associates, Inc., 3275 N. Arlington Heights Road - Suite 410, Arlington Heights, IL 60004, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Farmington, 356 Main Street, Farmington, NH 03835; Ross A. McLeod, Esq. and Ralph F. Holmes, Esq., McLane, Graf, Raulerson & Middleton, PA, 900 Elm Street, PO Box 326, Manchester, NH 03105, counsel for the Town; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, contracted assessing firm for the Town.

Date: 9/9/08

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Anne M. Stelmach, Clerk