**The Commons at Windham, Inc.**

**v.**

**Town of Windham**

**Docket Nos.: 22774-06PT/23449-07PT**

**ORDER**

This Order responds to the "Taxpayer's" August 5, 2009 Motion for Rehearing ("Motion") filed by its representative, Mr. Mark Lutter. The board also received and reviewed the "Town's" August 10, 2009 Objection and Request for Extension of Time to Supplement Objection (granted by the board in an Order dated August 19, 2009) and the Town's Supplemental Objection to Motion for Rehearing ("Supplemental Objection") filed on August 12, 2009. The board's August 19, 2009 Suspension Order is hereby dissolved and the Motion is denied for the following reasons.

Tax 201.37(e) provides "rehearing motions shall only be granted for 'good reason,' pursuant to RSA 541:3, and a showing shall be required that the board overlooked or misapprehended the facts or the law and such error affected the board's decision."

As the Supplemental Objection notes, much of the Motion deals with items the board did not necessarily overlook but were decided adversely to the Taxpayer. However, the board offers the following as clarification of several of the points raised in the Motion.

First, Mr. Lutter's assertion that the board utilized the incorrect square footage of 40,106 rather than 39,326 results in a diminimus difference of less than 2% and has no substantive effect

on the board's market value conclusion. Even if the board were to agree Mr. Cowall's square footage of 39,326 was more accurate, which it does not, the 2% value difference is lost in the correlation and rounding of the sales and income approaches as discussed at page 10 of the Decision.

The Motion also asserts the board placed too much weight on the sale of 33 Indian Rock Road and that the sale was in excess of market value due to the purchaser not being experienced in commercial real estate. On pages 4 through 6, the Decision extensively addresses the attributes of the 33 Indian Rock Road property, the Taxpayer's assertion that it was in excess of market value and why it is the best comparable in both the sales and the income approaches to provide an indication of the Property's market value. "The board's explanations in support of its factual findings [must satisfy] the requirement that it 'include specific, although not excessively detailed, basic findings in support of [its] ultimate conclusions.' *Appeal of Portsmouth Trust Co.*, 120 N.H. at 759, 423 A.2d at 607;...." Appeal of City of Nashua**,** 138 N.H. 261, 265 (1994). The Taxpayer presented no evidence at hearing to support the assertion of the sale being in excess of market value other that its contention the buyer was an unknowledgeable manager of commercial property and the sale did not "fit" the other sales data the Cowall Appraisal utilized. The Taxpayer does not acknowledge, as the Decision discusses at pages 5 and 6, that there was competition to purchase the Property and the unsuccessful bidder was a tenant who was familiar with the Property and its operation. While the board appreciates the Motion's observation that it is "inappropriate to rely on a single sale", the board finds the sale of an adjoining similar property is difficult to ignore and give little weight as the Taxpayer asserts the board should. (The board has discretion to evaluate and determine the credibility of the sale price as being indicative of market value or not. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).)

The Motion also states the board did not consider the differing types of square footages between the Property and the comparables including 33 Indian Rock Road. Inherent in the board's weighing of the comparables and the adjustments employed in both the sales comparison approach and income approach is a consideration for the unique square footage of the Property. Even more specifically, the income approach, through separate market rental rate assignment for differing space, inherently weights the fact that the Property has more non-retail first floor space than some of the comparables, including 33 Indian Rock Road.

Last, the Motion raises concern as to the board's reliance on the Town's 2006 sales approach for determining the 2007 market value and requests the board reconsider its denial of costs for at least the 2007 appeal. The board finds no merit in either request as the Decision sufficiently explains the board's market value rulings and the basis for denying the Taxpayer's request for costs. Appeal of City of Nashua, 138 N.H. 261, 265 (1994).

Generally, if the board denies a rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date of the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Windham, PO Box 120, Windham, NH 03087; and Bernard H. Campbell, Esq., Beaumont & Campbell Prof. Assn., 1 Stiles Road - Suite 107, Salem, NH 03079, counsel for the Town.

Date: September 8, 2009

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Anne M. Stelmach, Clerk