

Thermo-Fisher Scientific, Inc.

v.

Town of Hampton

Docket Nos.: 22992-06PT/23519-07PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 and 2007 assessments of \$8,544,500 (land \$1,629,000; building \$6,915,500) on Map 104/Lot 1, an office building on 26.17 acres (the “Property”). For the reasons stated below, the appeals for abatement are denied.

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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) although legal title was held by a subsidiary, the Taxpayer paid the taxes on the Property and has standing to maintain this abatement action as a “person aggrieved,” within the meaning of

RSA 76:16-a, because of the supreme court's decision reversing a ruling by the board dismissing these appeals and remanding them for a hearing on the merits (see Appeal of Thermo-Fisher Scientific, Inc., 160 N.H. 670 (2010));

(2) the Property was built in 1974 as a corporate headquarters facility and was so occupied for the tax years under appeal;

(3) as a result of a corporate merger (with "Thermo Electron, Inc.," consummated in December, 2006), however, a decision was made to discontinue the use of the Property as a corporate headquarters facility and consolidate operations in Waltham, Massachusetts and the Property was eventually prepared for sale;

(4) Louis C. Manias of Capital Appraisal Associates, Inc., a certified general appraiser, prepared an appraisal dated January 11, 2011 (the "Manias Appraisal," Tab 4 of Taxpayer Exhibit No. 2), making a retrospective estimate of the market value of the Property to be \$6,800,000 in both tax years 2006 and 2007;

(5) the highest and best use of the Property, identified by Mr. Manias, is as a "multiple tenant professional office building" and considerable renovation costs will have to be incurred, including installation of a sprinkler system, to accomplish this use;

(6) because of extensive common area, which includes recreation and cafeteria areas and a garage, only about 40,000 square feet of the building will be rentable for multi-tenant offices; and

(7) the assessments should be abated (based on Mr. Manias' \$6,800,000 market value estimate adjusted by the level of assessment in each year).

The Town argued the assessments were proper because:

- (1) the PA-34 filed for the June, 2006 transfer (from one corporate subsidiary to another) states the sale price was \$11,242,763, with an affirmation, under penalty of perjury, that the selling price was “the fair market value of the [P]roperty” (see Taxpayer Exhibit No. 2, Tab 2);
- (2) the highest and best use of the Property in both tax years is consistent with its actual use as a single tenant office (corporate headquarters) facility;
- (3) the Taxpayer’s appraiser, Mr. Manias, did not visit the Property until July, 2010 and his retrospective estimate of value, using the comparable sales approach, is considerably lower than estimates of value prepared by other expert appraisers for the Taxpayer, as reflected in Municipality Exhibit B, and his highest and best use assumption (multi-tenant professional office building) was not the actual use (corporate headquarters) or the highest and best use of the Property in the tax years under appeal;
- (4) John M. Crafts of Crafts Appraisal Associates, Ltd., an MAI appraiser, prepared an appraisal (the “Crafts Appraisal,” Municipality Exhibit D) and estimated the market value of the Property was \$11,565,000 in both tax years 2006 and 2007 based on its highest and best use; and
- (5) the Taxpayer failed to meet its burden of proving disproportionality.

The parties agreed the level of assessment was 75% in tax year 2006 and 78% in tax year 2007, as set forth in the Stipulation of Facts (see Taxpayer Exhibit No. 1 at ¶¶ 12 and 16) filed with the board at the hearing. They further stipulated one other property owned by the Taxpayer, referred to as “Drakeside,” was proportionally assessed in these tax years. The board has responded to the specific requests for findings of fact and rulings of law submitted by each party at the close of the hearing in the Addendum to this Decision.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving the Property was disproportionately assessed in tax years 2006 and 2007. The appeals are therefore denied for the reasons stated below.

1. Description of the Property

The Property has an excellent location in a corporate office park on 26.17 acres of land adjacent to, and with extensive frontage on, Interstate 95, giving the Property convenient access to Massachusetts to the south and Maine to the north. The Property is also quite close to Route 101, a major east-west corridor connecting Manchester with the seacoast, where the Property is situated. One of the Taxpayer's marketing brochures emphasizes the benefits of this location, stating the Property has "exceptional access to Boston, Portsmouth and Portland." (Municipality Exhibit A, p. 2.)

This same brochure describes the Property "as a premier corporate headquarters" in "the 160-acre Liberty Lane Office Park" with "such prominent corporate neighbors as Wheelabrator Technologies and Unital." (*Id.*) Among the many described features of the Property listed on page 3 of this brochure are: 90 private offices; "Land for potential expansion or development"; "Cafeteria and executive dining areas with full-service kitchen"; "Private executive parking garages, climate controlled wine room and on-site greenhouse"; "Men's and women's fitness facilities with locker rooms, showers, saunas, and squash court"; and "Meticulously landscaped wooded grounds with ponds, footbridges, walking and jogging trails." Occupants of the corporate office park also benefit from an on-site "helipad" (helicopter takeoff and landing place).

The parties agree the Property is improved with a 96,389 square foot building. (See Taxpayer Request No. 1 and Town Request No. 6.) Although the building was originally constructed in 1974, it is “extremely well maintained” and underwent a “major renovation in 2004.” (Crafts Appraisal, p. 47.) The Town noted at the hearing the Taxpayer, prior to its corporate merger and relocation, invested over \$3.2 million in the Property (between 2003 and 2006), as reflected in building permits issued and shown on the assessment-record card. (See Taxpayer Exhibit No. 2, Tab 1).

2. The Parties’ Differing Market Value Estimates

As both parties well recognize, assessments must be based on market value and the focus of a tax abatement appeal is proportionality, which requires the board to decide whether the Property was assessed higher in relation to its market value than the level generally prevailing in the municipality. See, e.g., RSA 75:1; Appeal of Andrews, 136 N.H. 61, 64 (1992); and Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985).

They also recognize the burden of proof rests with the Taxpayer on this central issue. In Public Serv. Co. v. Town of Ashland, 117 N.H. 635, 637 and 640 (1977), the supreme court affirmed the denial of an abatement and noted:

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].

As the supreme court has further recognized, in an abatement proceeding the valuation of property is a question of fact for the trial court to resolve, after considering all the relevant evidence before it, and the question includes deciding whether a party’s “appraisal method was appropriate.” See Rye Beach Country Club v. Town of Rye, 143 N.H. 122, 127 (1998), citing

City of Manchester v. Town of Auburn, 125 N.H. 147, 154 (1984) and other authorities. As further recognized, “[t]here are multiple approaches to the valuation of property” and “no rigid formula which can be used to arrive at full and true value for property tax assessment”; “nor is specific weight required to be allocated to any of the several approaches”; and the trial judge can “accept or reject such portions of the evidence presented as he f[inds] proper, including that of the expert witnesses.” Crown Paper Co. v. City of Berlin, 142 N.H. 563, 570 (1997) (citations, quotations and brackets omitted).

There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality’s general level of assessment, represents a reasonable measure of one’s tax burden. Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). (See also Taxpayer Request No. 10.)

In making market value findings, the board considers and weighs all of the evidence, including the respective appraisals of each party, applying the board’s “experience, technical competence and specialized knowledge” to this evidence. See RSA 71-B:1; and former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it”). Further, where there is conflicting evidence, the board must determine for itself the weight to be given each piece of evidence because “judgment is the touchstone.” See, e.g., State of New Hampshire v. Frederick, BTLA Docket No. 23317-07ED (December 3, 2008); cf. Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

While the parties agree on how to gauge proportionality in each tax year (market value adjusted by the level of assessment), they disagree sharply in their respective estimates of market value. The Taxpayer, relying on the Manias Appraisal, contends the Property had a market value of \$6,800,000 in tax years 2007 and 2008, far below its equalized values, rounded, of \$11.4 million and \$11 million, respectively, calculated as follows:

Tax year:	2006	2007
Assessed value	\$8,544,500	\$8,544,500
Level of Assessment	75%	78%
Equalized value	\$11,392,666.67	\$10,954,487.18
Equalized value (rounded)	\$11,400,000	\$11,000,000

The Town, relying on the Crafts Appraisal, concluded the Property had a market value of \$11,565,000 in each tax year, above the equalized value of the assessments.

3. The Board's Findings

The board has reviewed the appraisals and other evidence presented and finds the Crafts Appraisal provides the more credible and well-supported estimate of the market value of the Property in each tax year. Mr. Crafts, the Town's expert witness, and a knowledgeable and experienced MAI appraiser, properly identified the Property's highest and best use and found better comparables on which to estimate its value. Mr. Crafts concluded the highest and best use of the Property was as a "single-tenanted office building" which was its exclusive use as of the assessment dates for the tax years under appeal. (Crafts Appraisal, p. 51.) He relied on four comparables in his sales comparison approach which had the same highest and best use as the Property.

Mr. Manias, the Taxpayer's expert witness, a certified general appraiser, did not perform an inspection of the Property until July 13, 2010, more than three years after the 2007 assessment

date and more than four years after the 2006 assessment date. He relied heavily on an appraisal he completed for the 2008 tax year in developing his market value estimates for 2006 and 2007 and based his conclusions regarding highest and best use primarily on discussions with a property manager who is working for the subsequent owner; these discussions occurred after the Property was acquired for a different anticipated use. The board finds little analysis in the Manias Appraisal regarding the important concept of highest and best use and his assertion that this is “the existing use as a multiple tenant professional office building” is not supported by the evidence presented for the tax years under appeal (2006 and 2007).

Further, the board finds the sales comparison approach provides the most reliable method of estimating the value of the Property in its highest and best use as a single tenant office building and therefore placed no weight on the income approach. (Mr. Crafts presented both a sales approach and an income approach and Mr. Manias used both approaches in his 2008 appraisal, but estimated values for 2006 and 2007 using only the sales approach.) Based on this finding that the sales approach is reliable, the differences of opinion between Mr. Crafts and Mr. Manias regarding the rental rate and the rentable area of the building in using the income approach become moot.

Of the four comparable sales discussed in the Crafts Appraisal, comparables 2 and 4 were the most similar to the Property. Comparable 2 contained a 103,544 square foot building on 55.17 acres with a helicopter landing pad and employee recreation facilities which sold in June, 2006 for \$12,500,000 and Comparable 4 is a 120,143 square foot building on 15.07 acres which sold in January, 2007 for \$13,563,000. (Crafts Appraisal, pp. 61-62.) When Mr. Crafts correlated his four sales with the square footage of each building, he found the latter explained almost all of the variation in sale prices and no other “qualitative or quantitative adjustments”

were warranted. (Id., pp. 63 and 65.) He therefore estimated the Property, in its highest and best use as a single tenant office building, had a value of \$11,565,000 or \$120 per square foot. (Id., p. 64.)

In contrast, Mr. Manias chose five less valid comparables (along with one, Comparable B-4, also used by Mr. Crafts), employed a flawed highest and best use assumption and made a number of questionable adjustments to arrive at his much lower market value estimates. These adjustments had the effect of dropping Mr. Manias' calculated estimates substantially from the unadjusted range of \$102 to \$132 per square foot, roughly in line with the Crafts Appraisal, to \$75 per square foot due to total adjustments ranging from minus 30% to minus 46%. Upon review of these very large adjustments, the board finds little basis for the conclusion in the Manias Appraisal that three of the six comparables are in "superior" locations and that the other three locations are "similar" to the Property. In addition, and because Mr. Manias' highest and best use assumption (multi-tenant office building) is incorrect, the board finds his "appeal" adjustments are misplaced. Mr. Manias testified he made the "appeal" adjustments to take into account an estimated \$2,000,000 in infrastructure (sprinkler system, utilities, etc.) and interior renovation costs to convert the Property to a multi-tenant use. In particular, the board finds he placed undue weight on the lack of a sprinkler system (and his \$530,000 estimate to install such a system) since the evidence was not persuasive that such infrastructure improvements, while beneficial, would be necessary in the Property's highest and best use.

In addition, the board finds the lack of this improvement is offset by other superior amenities of the Property recognized by the Taxpayer's own representatives. The existence of these amenities, along with the overall condition and use of the Property in tax years 2006 and 2007, may have caused earlier experts retained by the Taxpayer (such as Grubb & Ellis/

Coldstream Real Estate Advisors) to assert the Property had a much higher market value (\$11,350,000; see Municipality Exhibit B), quite close to the estimate in the Crafts Appraisal that supports the Town's assessments.

The parties disagreed on how much weight, if any, should be given to the "PA 34" form contained in Taxpayer Exhibit No. 2, Tab 2. (See, e.g., Town Request Nos.: 12 - 14 and Taxpayer Request No. 11.) This form contains a statement signed under penalty of perjury by one of the Taxpayer's officers (Michael Michaud) that the sale price of the Property in June, 2006 (in a transfer between two Taxpayer subsidiaries) was \$11,242,763 and this was considered to be the "fair market value of the property," with no "special circumstances" influencing this price. Mr. Michaud explained no appraisal was performed to support this price and it was computed simply by equalizing the assessment on the Property and in order to minimize the "risks" to the Taxpayer if the transaction was subsequently audited regarding proper payment of the transfer tax on real property, a tax prescribed in RSA ch. 78-B. (The assessment of \$8,544,500 divided by this stated price equals 76% and the tax year 2005 median ratio, available by the time of this sale, was 76.3%.)

The Town cited RSA 74:18, which requires the filing of this form with the department of revenue administration ("DRA") to "properly equalize the value of property" and subjects anyone making a willful false statement to a criminal penalty. In addition, RSA 78-B:10 requires the filing of a "declaration of consideration" (Form CD-57) with the DRA, signed by both the purchaser and seller under penalty of perjury, stating the price and calculating the transfer tax due and further provides this statement "shall be prima facie evidence of the price or consideration paid for the real estate."¹ The board agrees with the Town the statutory penalties

¹ See also Atturio v. Town of Thornton, BTLA Docket No. 21276-04PT/22204-05PT, et al. (October 12, 2007):

for false statements regarding market value are serious and that the price stated by the Taxpayer in its filings with the DRA provide some corroboration for the Town's own estimate of market value and casts doubt on the Taxpayer's much lower estimate. The board gave this evidence only the weight it deserves and bases its market value findings primarily on the other evidence presented, particularly the Crafts Appraisal.

For all of these reasons, the board finds the Taxpayer failed to meet its burden of proving disproportionality for tax year 2006 and 2007. The appeals are therefore denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

At some point, for the proper and efficient administration of property tax assessment, assessors and other public officials, including the department of revenue administration in its responsibility for equalizing values throughout the state (RSA 21-J:3 XII; RSA 21-J:9-a and RSA 74:18), must be able to rely upon the stated consideration prices, indicated by the transfer tax stamps and addressed by the PA-34 form. To allow taxpayers to develop a scheme in which they have full control as to the allocation of the total consideration price, makes the assessor's job unwieldy and subject to undocumented and unverifiable deductions.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Addendum A

The parties' requests for findings of fact and rulings of law 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 proposed findings and rulings, "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 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.

The Taxpayer complied with the board's rules, see Tax 201.36(c), prescribing a total of 25 requests (unless leave for more requests is granted prior to the hearing), but the Town submitted a total of 39 requests (without such leave). Consequently, the board will only respond to the first 25 of the Town's requests.

Taxpayer's Requests

1. 1 Liberty Lane East, Hampton, N.H. [subject property], consists of an approximately is 96,389 square foot building, sitting on 26.17 acres of land. There is an additional detached garage workshop of 2,688 square feet. Thermo Fisher Appraisal of Aug. 19, 2010 at pg. 19, 24-25.

Granted.

2. The main building has 5800 square feet of attic storage space, 27,905 square feet on the upper floor, 38,240 square feet on the main floor, and 24,444 square feet on the lower floor. Id. at pg. 24.

Granted.

3. The main building was used as a single occupant corporate headquarters until 2007. Id. at pg. 25.

Granted.

4. Modifying the main building so it could serve multiple tenants, which would be its maximal productive use, would cost between \$1 million and \$2 million. Id. at pg. 20, 25, 36.

Neither granted nor denied.

5. As of April 1, 2006, the property was owned by Fisher Scientific Company, LLC [hereinafter Fisher LLC]. Id. at pg. 7.

Granted.

6. On or about June 30, 2006, the property was transferred from Fisher LLC to Liberty Lane Real Estate Holding Company, LLC [hereinafter Liberty LLC]. Id.

Granted.

7. For tax year 2006, the Town of Hampton [hereinafter Town] assessed the subject property at \$8,544,500, with an equalized value of \$11,392,667 (75% equalization ratio).

Granted.

8. For tax year 2007, the Town assessed the subject property at \$8,544,500, with an equalized value of \$10,954,487 (78% equalization ratio).

Granted.

9. Thermo Fisher sought abatements for both tax years on the basis that the assessed value of the property exceeds the market value.

Granted.

10. “The plaintiff may show that its property is being taxed disproportionately by establishing the fair market value of the property for the tax years in question, comparing it to the assessed value, and establishing by agreement or otherwise the equalization ratio used in the assessment of property in the taxing district during the disputed years.” Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 701 (1979).

Granted.

11. The fact that the subject property was transferred in August of 2006, and a PA-34 was filed listing the sale price as \$11 million, is not evidence of the fair market value of the property because it was an inter company corporate transfer versus an arms' length transaction, no money was exchanged, and Thermo Fisher determined it was cheaper to pay the transfer taxes on \$11 million, being the Town's equalized value, versus revaluing the property. See Peter Louglin, *New Hampshire Pract. – Municipal Taxation and Road Law*, § 28.08 - § 28.10 (2003)

Neither granted nor denied.

12. The Board finds the Town's income value is incorrect in that it assumes the structure has 90,589 of rentable interior square feet². Town Appraisal of Oct. 27, 2008 at 83.

Neither granted nor denied.

13. The subject property only has 52,890 square feet of rentable area (39,848 on the main and upper floor, 7242 on the lower level and 5800 in the attic) because the remaining spaces, such as the kitchen, dining room, and halls, would be considered common area. Thermo Fisher Appraisal of Aug. 19, 2010 at pg. 30-32.

Neither granted nor denied.

14. The Town's appraised value does not take into account the difference in value on the rentable areas and assigns a \$15/square foot for all rentable area. Town Appraisal of Oct. 27, 2008 at 83.

Neither granted nor denied.

15. The Board finds only the main and upper floors would command such a rental price, see Thermo Fisher Appraisal of Jan. 11, 2011 at pg. 4, while the lower floor would not.

Neither granted nor denied.

16. As a result of the Town's appraiser to take these facts into consideration, the Town's appraiser' net operating income is approximately \$500,000 more than the number reached by Thermo Fisher's appraiser.

Neither granted nor denied.

17. The Town's comparable properties are all single tenant occupied buildings. Town Appraisal of Oct. 27, 2008 at pg. 61.

Granted.

² It appears the Town's appraiser excluded the attic space as rentable space.

18. Given the real estate market in 2006-2007, the design of the property and the property's location, the Board finds the subject property would most likely be used for multi tenant versus single tenant use. See Loughlin, New Hampshire Pract. – Municipal Taxation & Road Law, at § 28.07 (“the court may consider the highest and most profitable use for which the property is adapted and needed or likely to be used in the near future).

Denied.

19. Because the property is not configured for multi-tenant use, any purchaser would need to take this into consideration, thus resulting a downward deviation of the cost per square foot is appropriate. See Thermo Fisher Appraisal of Aug. 19, 2010 at pg. 37; see also Loughlin, New Hampshire Pract. – Municipal Taxation & Road Law, at § 28.07

Neither granted nor denied.

20. The Town's comparable properties are not adjusted in the cost per square foot of its comparable sales to reflect the differences in the sizes, ages of the buildings, locations or marketing times. See Town Appraisal of Oct. 27, 2008 at 66.

Granted.

21. The Board finds the fair market value of the property for tax years 2006 and 2007 is \$6,500,000, which is the reconciled value calculated by Thermo Fisher's appraiser.

Denied.

22. Based upon the equalization rates, the appropriate assessed value for the property in 2006 was \$4,875,000, and for 2007 was \$5,070,000.

Denied.

23. For 2006, the property was over assessed by \$3,679,500, resulting in a tax overpayment of \$71,050.88 (165,187.13 in assessed taxes - \$94,136.25 representing correct assessment based upon assessed value of \$4,875,000).

Denied.

24. For 2007, the property was over assessed by \$3,484,500, resulting in a tax overpayment of \$68,844.29 (\$169,128.89 in assessed taxes - \$100,284.60 representing correct assessment based upon assessed value of \$5,070,000)

Denied.

25. The Town shall refund the sum of \$139,895.17, plus interest of 6% to Thermo Fisher.

Denied.

Town's Requests

1. The Board adopts the parties' Stipulation of Facts as part of its Decision.

Granted.

2. The Town's expert appraiser, John M. Crafts, MAI, indicates in his report dated October 27, 2008 (hereinafter Craft's Report) that as of April 1, 2006 and April 1, 2007 the property involved had a fair market value of \$11,565.00.

Granted, noting the inadvertent typographical error regarding value (\$11,565,000).

3. When multiplied by the equalization rate of 75% for 2006, this fair market value of \$11,565,000 would result in an assessed value of \$8,673,750.00, which is higher than the Town's assessed value for 2006 of \$8,544,500.00.

Granted.

4. When multiplied by the equalization rate of 78% for 2007, this fair market value of \$11,565,000 would result in an assessed value of 9,020,700, which is higher than the Town's assessed value of \$8,544,500.

Granted.

5. Mr. Craft's appraisal is based upon the highest and best use of the property being an owner occupied corporate headquarters, which is exactly how it was being used on April 1, 2006 and April 1, 2007.

Granted.

6. Under his sales comparison approach, Mr. Crafts' appraisal is based upon there being 96,389 square feet of building office area (Crafts' Report at pages 45 and 64).

Granted.

7. Mr. Crafts in his sales analysis included 4 other properties, all of which were corporate headquarters and were sold in 2005, 2006 or 2007.

Granted.

8. In accordance with the results of his regression analysis, and other factors, Mr. Crafts determined that these 4 comparable sales should not be adjusted in determining the fair market value of the subject property. See pages 63-66 of Crafts Report.

Granted.

9. The unadjusted sales prices of the comparables, utilized in the Crafts Report came in at \$123.68 (Comp. 1), \$120.72 (Comp. 2), \$ 122.89 (Comp. 3) and \$112.89 (Comp. 4) per square foot.

Granted, noting the inadvertent typographical error regarding the price per square foot of \$122.83 (for Comparable 3).

10. Mr. Crafts utilized a \$120 per square foot value in determining fair market value under his sales comparison approach of \$11,565,000. See page 64 of Crafts Report.

Granted.

11. Utilizing a capitalization rate of 8.5% for both 2006 and 2007, Mr. Crafts derived a value under the income approach value of \$12,015,000. See page 86 of Crafts Report.

Neither granted nor denied.

12. When the property was deeded from Fisher Scientific Company, LLC to Liberty Lane Real Estate Holding Company, LLC by deed dated June 30, 2006, Michael Michaud, the Director of Tax Compliance for Thermo-Fisher Scientific, stated under oath on DRA Form PA-34 signed on September 6, 2006 that the sales price was \$11,242,763.

Granted.

13. Mr. Michaud further represented to the DRA in this form PA-34 (question 1) that there were “no” special circumstances in the transfer which suggested that the full price of the property was either more or less than the fair market value.

Granted.

14. Mr. Michaud further represented to the DRA in this form PA-34 (question 5) that “yes,” he considered the selling price to be the fair market value of the property.

Granted.

15. When Thermo Fisher first listed the property for sale on September 16, 2008, it listed the property for \$13,500,000.

Neither granted nor denied.

16. Mr. Crafts inspected the property for the first time on September 18, 2008.

Granted.

17. When it marketed the property for sale in 2008, Thermo-Fisher's tax representative said that the property was a premier corporate headquarters in excellent condition.

Granted.

18. Thermo Fisher's expert appraiser, Louis C. Manias, did not inspect the property until July 13, 2010. (Report dated August 29, 2010 at page 6).

Granted, noting the inadvertent typographical error regarding the August 19, 2010 date.

19. When Thermo-Fisher's counsel provided its appraisals of its property back on March 12, 2009 to the Town's Attorney, no appraisal by Mr. Manias was included.

Neither granted nor denied.

20. Thermo-Fisher's packet of appraisals included an income approach analysis that valued the property at \$11,400,000, which compares favorably to Mr. Crafts' opinion of \$11,565,000.

Granted.

21. The report of Mr. Manias for the 2006 and 2007 tax years was not generated until January 11, 2011.

Granted.

22. Mr. Manias' January 11, 2011 summary appraisal report specifically incorporated his earlier appraisal dated August 19, 2010 for the tax year 2008 as an "integral part of this document."

Granted.

23. Mr. Manias used the same 6 comparable sales for his tax years 2006 and 2007 Report that he used in his 2008 tax year report.

Granted.

24. Three of Mr. Manias' comparable sales were from 2008 or 2009.

Granted.

25. Mr. Manias' appraisal for 2006 and 2007 is based on the highest and best use being "for the existing use as a multiple tenant professional office building" (August 19, 2010 at p. 20), despite the fact that Thermo Fisher was not using the building in this fashion back in 2006 and 2007.

Granted.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Andrew J. Piela, Esq., Hamblett & Kerrigan, P.A., 146 Main Street, Nashua, NH 03060, counsel for the Taxpayer; and Mark S. Gearreald, Esq., Hampton Town Office, 100 Winnacunnet Road, Hampton, NH 03842, counsel for the Town.

Date: March 1, 2011

Anne M. Stelmach, Clerk