

**Danielson Realty Trust**

**v.**

**Town of Milford**

**Docket No.: 23075-06PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$4,784,900 (land \$784,000; buildings \$4,000,900) on Map 48/Lot 36, consisting of a large (approximately 97,000 square feet) enclosed sports and recreation facility (the “Hampshire Dome”) on a parcel of approximately 37 acres (the “Property”). (The Taxpayer also owns, but is not appealing, a 0.72 acre vacant lot, Map 48/Lot 53, assessed at \$8,700 and the parties do not dispute the proportionality of the assessment on Lot 53.) For the reasons stated below, the appeal for abatement on the Property is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Town relied on a newspaper article erroneously reporting “the cost to construct the Hampshire Dome” was over \$5 million;
- (2) no “structure” is required to keep the dome covering (made of manufactured fabric) in place, only pressurized air flow (unlike a circus tent, for example, that requires supporting structures);
- (3) vinyl fabric covers on a recreational facility of this type should not be taxed as real estate because they are personal property, not realty;
- (4) the Town lists the Property as having a total of 45.2 acres, but it actually has only 36.938 acres, with 10.5 acres of “usable” land, approximately five acres of which are “developable”;
- (5) a “summary appraisal” prepared by Jonathan H. Frank, MAI of the F & M Appraisal Group, LLC (the “Frank Appraisal,” Taxpayer Exhibit No. 1), “excluding the dome structure,” estimates the market value of the “Property,” using the cost approach, was \$2,870,000 as of the assessment date (April 1, 2006);
- (6) Mr. Frank investigated the appraisal literature and inspected three comparable dome properties, speaking with their owners and local assessors, before concluding the dome structure was personal property, not taxable real property;
- (7) the Town’s appraisal was prepared by an employee (John Michael Tarello) of the same company (Vision Appraisal) that assessed the Property and his appraisal closely matched the assessment, casting doubt on its credibility;
- (8) the Frank Appraisal is the best evidence of the market value of the Property; and
- (9) the assessment should be substantially abated based upon this market value estimate and the agreed level of assessment in the Town.

The Town argued the assessment was proper because:

- (1) a covering or roof of some sort was a necessary component for an indoor sports facility and the Taxpayer chose a newer, less expensive technology to meet this need when it built the Hampshire Dome;
- (2) all roofs have maintenance issues associated with them;
- (3) inside the dome are rest rooms and other features (such as reception area, computers, vending machines, etc.) which are normally inside a building and protected from the elements;
- (4) the dome is attached to a four to twelve foot concrete wall and foundation and has one main entrance, seven emergency doors attached to the walls and a service entrance (shown in the photographs in Municipality Exhibit A) and the fabric covering was specifically designed to fit these walls and door structures;
- (5) the building including the dome and the associated infrastructure have been engineered to accommodate snow loads and comply with applicable building codes (see Municipality Exhibits B - F);
- (6) the Property is adjacent and has parking connections to the Hampshire Hills Sports and Fitness Club and was perceived by the Taxpayer to have “competitive advantages” because of common ownership and promotional programs (see Municipality Exhibits G and H);
- (7) the dome has multiple uses besides sporting events and was used for a political, fund raising dinner in 2008 (Municipality Exhibit I);
- (8) the Frank Appraisal is not probative of taxable value because it excludes the dome structure from its estimate and is otherwise not reliable as evidence because, for example, its land value is based on a usable acreage approach that was not consistently followed with respect to some of the six comparable sales relied upon in his analysis;

(9) the Town engaged John Michael Tarello, MAI, ASA, of Vision Appraisal, who prepared an appraisal (the “Tarello Appraisal,” Municipality Exhibit J) estimating the market value of the Property as of the assessment date, using the cost approach, as \$4,715,000, including \$1,029,870 for the “Roof Structure,” which he concludes is taxable real estate; and

(10) the Property was proportionally assessed and no abatement is warranted.

The parties agreed the level of assessment in the Town was 98.6%, the median ratio computed by the department of revenue administration. The hearing of this appeal was held over two days (October 22, 2009 and December 4, 2009).

### **Board’s Rulings**

Based on the evidence and after resolving the disputed taxability and valuation issues, the board finds the proper assessment of the Property to be \$4,386,100. The appeal is therefore granted.

#### **A. The Taxability Issue**

The central question raised in this appeal is whether the “fabric cover” (which substitutes for a more conventional roof structure to make the Property an “indoor” sports facility) is taxable real estate or nontaxable personal property. See RSA 72:6 (Real Estate) which states: “All real estate, whether improved or unimproved, shall be taxed except as otherwise provided”; and RSA 72:7 (Buildings, etc.) which states “buildings,” as well as other enumerated structures, “are taxable as real estate.”

There was much testimony from the principal beneficiary of the Taxpayer (a trust), Norman Frederick Holder, Jr., and other witnesses regarding this question. Both parties also submitted detailed memoranda of law and requests for findings of fact and rulings of law. The board has responded to the requests in Addendum A.

In addition to other reasons discussed later in the decision, the board is unable to give any weight to the Frank Appraisal because it assumes the dome structure is personal property and not taxable real estate. The board finds the Frank Appraisal's adoption of the premise that the durable fabric cover<sup>1</sup> which creates a covered (domed) indoor sports arena is personal property and not taxable real estate is predicated upon an incomplete analysis, as well as questionable reliance on assessment practices in two other jurisdictions (Connecticut and Massachusetts), where the question of their taxability has apparently not been litigated.

For example, Mr. Frank in his September 20, 2009 cover letter that is part of the Frank Appraisal (Taxpayer Exhibit No. 1, p. 2), quotes selectively from one page (p. 76) of a 1990 publication. This publication, Property Appraisal and Assessment Administration published by the International Association of Assessing Officers, states: "Personal property is defined by exception: property that is not real is personal." Id. While noting "the salient characteristic of personal property is its movability," this publication goes on to note some items "that were movable and are now permanently attached to the real estate – sinks, bathtubs and the like – are called fixtures and considered part of the real estate." Id. Thus, the discussion in this publication is not conclusive on the issue of whether the fabric cover of the Hampshire Dome is taxable as real estate under New Hampshire law.

The board similarly finds Mr. Frank's own understanding (from discussions with the owner and others that the "dome" can easily be taken down and how other communities have assessed domed structures with visits to three similar facilities in Massachusetts and Connecticut) is not conclusive for resolving the central question of taxability under New

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<sup>1</sup> The fabric cover is made of vinyl-coated polyester that is insulated and fire-resistant with an expected fifteen (15) year life span; the fabric cover is a relatively new roofing technology and was purchased at a cost of \$1,029,870. See Town's Memorandum, p. 3.

Hampshire law, especially when there is no indication whether these anecdotal assessment practices in other communities have been tested in a court of law. In brief, long established statutory and case law in New Hampshire, discussed and analyzed in the Town's Memorandum of Law at pp. 6-14, support the Town's opposite conclusion that the dome is taxable.

Mr. Frank failed to consider, among other things, the holding of the New Hampshire Supreme Court in Appeal of Town of Pelham, 143 N.H. 536, 538-39 (1999), construing RSA 72:7 and applying the "plain and ordinary meaning of a building" (contained in a quoted dictionary definition). In Pelham, a trailer used as a storage shed is "taxable as a building," even if not a fixture, "if by its use: (1) is intended to be more or less permanent, not a temporary structure; (2) is more or less completely enclosed; (3) is used as a dwelling, storehouse, or shelter; and (4) is intended to remain stationary. Cf. RSA 72:7-a (1991)." Id. at 539. The standard dictionary definition of a building quoted by the court in Pelham envisions a structure "covered by a roof and more or less completely enclosed by walls" that serves as a "shelter," presumably from the outdoors. Id. at 538.

Moving beyond this semantic analysis, the board finds the concept of highest and best use supports the taxability of the dome. As the Town correctly notes, RSA 75:1 requires that all real estate be taxed at "its full and true value" and the supreme court has interpreted this phrase to mean property must be valued at its highest and best use. See, e.g., Steele v. Town of Allenstown, 124 N.H. 487, 490 (1984) (highest and best use is "that use that will most likely produce the highest market value, greatest financial return, or the most profit"); and 590 Realty Co. v. City of Keene, 122 N.H. 284, 285 (1982) (special features at a physician's clinic affixed to real estate were to be considered in determining highest and best use). Without the dome

embodied in the fabric cover, an alternative to a more conventional roofing system, the Property's highest and best use as an indoor sports arena simply cannot be achieved.

While the Taxpayer emphasized the fabric cover can be taken down and moved, if and when necessary, the Town notes it has not been moved at all since the time it was specially designed and constructed by the manufacturer for use on the Property, based on its particular size and other specifications. Moreover, as the Town further notes, the evidence presented supports the following findings: the steel cable anchoring system for the fabric cover is sized, designed and affixed to the concrete foundations constructed on the Property to withstand heavy wind and snow loads; the roof system is attached to the specially constructed and reinforced concrete foundations and walls that surround the entire arena; the concrete perimeter walls are integrated with the roof system and were designed to allow for easier removal of snow accumulations away from the building and the fabric roof cover; and the fabric roof cover allows the constructed restrooms, reception, food/snack and children's play areas to remain covered at all times in the same manner as a more traditional roof structure. In addition, there are seven doors built into the concrete foundation walls and specially fitted to the fabric and cable roof structure to allow emergency egress from the arena. There is also a specially constructed front "turnstile" entrance and a service entrance with an 'air lock' system for vehicle deliveries. (See the photographs in Municipality Exhibit A and Municipality Exhibit J, pp. 32-38.) The Town further notes the roof system, supported by a continuous flow of heated air, provides heat (temperature control) as well as shelter from the elements (wind, rain and snow).

The board finds the dome is an integral part of, and adds value to, a permanent indoor sports arena building, distinguishable from a temporary "circus tent," for example. The latter is designed so that it can be placed on many land sites and is assembled and disassembled when the

circus arrives and leaves town, adding no value to the property where it was temporarily placed.

In contrast, the fabric roof cover was specifically designed for the Property and adds value to it by being specifically integrated to the other components added by the Taxpayer to provide the “shelter” aspects of a building discussed in Pelham quoted above (at p. 6).

The board further agrees with the Town’s legal analysis and conclusion that, once assembled on the Property, the “roof components” (the fabric cover, cable system and steel clamps) became fixtures taxable as real estate in a manner analogous to other components of a building. In its Memorandum of Law (p. 4), the Taxpayer disputes this conclusion and argues, instead, the fabric cover is a “removable trade fixture,” and, as such, is personal property, not taxable real estate. The board does not agree, but notes the distinction between a fixture and a trade fixture the Taxpayer attempts to draw upon has been recognized. See State v. 3M Nat’l. Advertising Co., 139 N.H. 360, 365 (1995) (“New Hampshire law distinguishes fixtures, which are real estate, from removable trade fixtures, which are personal property”).

In this regard, the board finds the factors discussed in the Town’s Memorandum of Law (pp. 7 – 9) regarding what constitutes a taxable fixture are well supported in the case law it has cited. Compare N.E. Tel. & Tel. Co. v. City of Franklin, 141 N.H. 449, 453 (1996) (telecommunication equipment not taxable) with Automatic Sprinkler Corp. of America v. Marston, 94 N.H. 375 (1947) (water tank is a taxable fixture); and King Ridge, Inc. v. Town of Sutton, 115 N.H. 294, 299 (1975) (ski lifts taxable as fixtures); cf. Dana v. Burke, 62 N.H. 627, 629 (1883). These factors include whether: movement of the item in question would affect the utility of the underlying land and buildings; the item was interdependent and intimately intertwined with the primary use of the real estate; and the item was necessary to the beneficial

enjoyment of the real estate and became an essential part of it. Consideration of each of these factors supports the conclusion that the fabric roof is a fixture under New Hampshire law.

After the supreme court's decision in N.E. Tel. & Tel. Co., the board itself had occasion to review the applicable factors and concluded a telecommunication tower is taxable as a fixture.

See Saga Communications of NE, Inc. v. Town of Merrimack, BTLA Docket No. 17643-97PT

(July 9, 1999), where the board noted:

While it is conceivable that either tower could be dismantled and removed, the mere fact that they are removable is not controlling as to the determination of being a fixture. Many items commonly considered real estate are movable and frequently are moved. Cf. RSA 21:21 II and 674:31 (Manufactured housing while designed to be movable is considered realty when erected on site and connected to required utilities); Westinghouse Broadcasting, Inc. v. Director, Division of Taxation, 141 N.J. Super. 301 (App. Div. 1976) (the ability for a structure to be disassembled and removed is not controlling because virtually all property can be removed from land without materially damaging the land.)

Accord, Saga Communication of NE, Inc. v. Town of Goffstown, et al., BTLA Docket

Nos. 17649-97PT, 17650-97PT, 17653-97PT and 17651-97PT (July 9, 1999).

Further, the board seriously doubts the Taxpayer's assertion, disputed by the Town, that the dome can be easily removed and stored with relatively minimal cost or effort. There is no evidence the Taxpayer has ever tried to do so or to deflate the dome for any extended period of time for storage or other incidental purposes. Moreover, such an undertaking, if ever attempted, is likely to involve significant amounts of planning and effort, as well as cost, in light of the many interconnected and specially designed and constructed elements of the dome, including the cable support system, anchoring structures and the concrete foundation described above. The Taxpayer's intent is clear in all the literature, both in advertising the features of the dome and in obtaining permits for its use from the Town (see Municipality Exhibits B – F), that the dome was intended to remain up, essentially on a permanent basis, and not be taken down at all except for

extraordinary reasons. Part of this intent is also reflected in the reception area and bathroom of the facility which has to have weather proofing (supplied by the dome) to be able to function for public use in all seasons.

While certainly quite distinct in form and function from the dome at issue in this appeal, demountable, plastic covered greenhouses now have the property tax exemption contained in RSA 72:12-d, enacted by the legislature in 1998. This special legislation reflects the mandate in RSA 72:6 that all real estate is taxable unless otherwise provided. The legislature through specific statute (but also embodying the fixture analysis contained in case law) exempted certain greenhouses that were easily removable, did not effect the utility of the underlying real estate and were not permanently affixed to the underlying real estate.

Here, the dome material, while it can be removed from the foundation, has shown to be intended to be permanent and is certainly key to the full utilization of the underlying real estate (the specialized playing field, bathrooms, reception area, etc.) and would negatively impact its highest and best use significantly if not in place. Cf. Creative Biomolecules, Inc. v. City of Lebanon, BTLA Docket No.16861-96 (April 14, 2000), where the board found “the specialized shelter components such as the interior walls, finishes, electrical fixtures and clean-room features collectively create the interior building environment, comport with the plain and ordinary meaning of ‘building’ and are, thus, taxable as part of the building. RSA 72:7; (also citing Pelham.)” Similarly here, the dome creates the interior building environment that allows for year round indoor sports activities to occur for the building to achieve its highest and best use and thus the dome component is taxable as part of the building.

For all of these reasons, the board rejects the Taxpayer’s central argument that the “fabric dome should be treated as personalty” and, as a result, is not subject to real property tax

assessment. While the Taxpayer mentions the power of the “New Hampshire General Court” to mandate otherwise, until such legislation is considered and passed into law, the board does not have the authority to adopt the Taxpayer’s position, especially in light of the established precedents and analysis discussed above.

#### B. The Valuation Issue

Turning to the value issue, the parties agreed the cost approach is the most reliable of the three approaches to value the Property. The board concurs for several reasons. First, the Property is new, having been constructed in 2005. Second, the Property is a special purpose property due to its unique improvements and specialized use which results in a limited market for the Property.<sup>2</sup> Given the very limited or nonexistent sales or income market data that exists for special purpose properties, the use of the cost approach to estimate market value is appropriate for such properties. Appraisal Institute, The Appraisal of Real Estate 319 (10<sup>th</sup> ed. 1992).

Both the Frank Appraisal and the Tarello Appraisal utilized the cost approach, first estimating the land value and then adding the depreciated replacement cost for the improvements. Each value component is discussed below.

For the land value, both appraisers utilized an approximate usable area for the Property of 10.5 acres. The Frank Appraisal estimated a value per acre at \$50,000 while the Tarello Appraisal estimated \$80,000 per acre. For several reasons, the board finds the Tarello Appraisal value of \$80,000 per usable acre is better documented and market related than the Frank

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<sup>2</sup> The Appraisal Institute, in The Appraisal of Real Estate 25 (12<sup>th</sup> ed. 2001), defines a special purpose property as follows: “A limited market property with a unique physical design, special construction materials or a lay out that restricts its utility to use for which it was built.”

Appraisal estimate. First, the cross-examination of Mr. Frank revealed that he did not consistently estimate the “usable acres” when adjusting for “size” of the comparable sales. Also, the Town submitted in-depth documentation, including photographs, surveys and site plans, for a number of the Frank comparables (see Municipality Exhibits M – Q) that indicated several contained extensive unusable areas (wetlands, slopes, easement areas, etc.). This resulted in a “diluting” of the Frank Appraisal’s indicated value per acre of the comparables which, when applied to the Property’s usable acres of 10.5 (out of a total of approximately 37 acres), understates the market value of the Property’s land. Second, the Frank Appraisal assumed that public sewer was not available at the Property and adjusted comparables accordingly. However, the Town presented compelling evidence that public sewer serviced the Property. (See Municipality Exhibit L.) Third, overall Mr. Tarello had a greater in-depth knowledge of the comparables utilized as to the nature of the land and detailed circumstances of the transactions than Mr. Frank did. In fact, Mr. Frank’s answers to a number of questions during cross examination as to his knowledge of the comparables were evasive and non-responsive. Consequently, the board finds the market value of the site to be \$835,000 based on the Tarello Appraisal.

Turning to the improvements, given their unique nature, both the Frank Appraisal and the Tarello Appraisal relied on the reproduction costs provided to them by the Taxpayer to value the improvements to the site. In particular, Addendum H of the Tarello Appraisal contains detailed documentation of the building and site costs as submitted to the Town by the owner. Those costs

are summarized on page 66 of the Tarello Appraisal as follows.

Roof Structure:	\$1,029,870
Building Cost:	\$1,635,316
Site Work:	\$ 716,439
Arena Surface Costs:	
Field Surface	\$ 276,894
Other Surface	\$ <u>79,497</u>
Total Building Cost	\$3,738,016
Site Improvement Cost:	\$ 143,169
[Paving	
Gravel	
Light Poles	
Labor	
Sprinkler System	
Irrigation System]	
Total Cost:	\$3,881,185

The Taxpayer argued and the Frank Appraisal reflects, however, a significant functional depreciation of 30% for “extraordinary cost items for the site work and foundation.” This functional obsolescence is premised upon the Taxpayer’s assertion that the Property’s site work, due to property specific ledge and drainage issues, was significantly more expensive than the norm and was estimated by comparing the Property’s costs to the cost to construct a comparable complex, the Sports World Facility in East Windsor, Connecticut. See pages 71 and 72 of Frank Appraisal.

The Frank Appraisal assumed the difference in the costs of the two complexes reflected the increased cost of the Property due to the site specific conditions. This calculation is flawed, however, because the Sports World Facility is 70,400 square feet versus the Property being over 97,000 square feet. The differential as calculated by the Frank Appraisal is not a measure of functional obsolescence but rather correlates to the fact the Property is nearly 38% (an additional 27,000 square feet) larger than the Sports World Facility.

Further, the board was not convinced by the testimony of one of the owners, Mr. Holder, that the site had any significantly inordinate additional site costs due to its wetness, etc. For any site to receive the artificial turf, playing fields, building, parking areas and drives, significant site work is necessary, including the removal of unstable soils, grading of the site and the addition of base gravel materials to improve the drainage and accommodate the extensive run off from the impervious surface of the facility and associated parking lots. Thus, the board finds the functional obsolescence for site improvements estimated in the Frank Appraisal is not reliable.

Both Mr. Tarello and the Town's assessor, Ms. Marti Noel, stated that no physical depreciation was warranted due to the improvements being less than one year old as of April 1, 2006. The Town also argued no functional obsolescence was warranted because the facility is a "state of the art" indoor sports arena specifically designed for the New Hampshire climate. The Town also argued no economic obsolescence was warranted because of the positive economic indicators as of April 1, 2006 of low unemployment rates, stabilized real estate prices and increasing population. For those reasons and the fact it was adjacent to and owned by the same individuals as Hampshire Hills Sports and Fitness Club, the Property appeared to be a good fit for the demographics of the Milford Region.

After a review of all the evidence, the board concludes the reproduction cost of the improvements should be depreciated by 2% physical depreciation and 5% functional obsolescence.

While the Property was less than a year old as of April 1, 2006, the board finds a nominal physical depreciation of 2% is appropriate because the dome fabric has only a 15 year life span, significantly shorter than the average life of most buildings (30 – 50 years). The board notes the

2% is also in keeping with the physical depreciation shown on the Property's assessment-record card.

Functional obsolescence is more difficult to quantify accurately. On the one hand, the board finds some merit in the Town's argument that the Property is a "state of the art" indoor arena with the dome specifically designed to fit the foundation and accommodate the playing fields. The higher maintenance costs of the roof, both for keeping it inflated and for snow removal, are to some extent offset by the lower cost of the inflatable dome versus a rigid roof. On the other hand, the board notes the dome, as testified to by Mr. Holder, was originally designed to be 80 feet high with a more convex shape that would shed snow more readily than the actual 66 foot high dome that was built. Mr. Holder testified that even in the first winter the Taxpayer encountered unanticipated and costly snow removal issues that have continued to date.

On balance, while all the difficulties with a "flatter" dome may not have been fully realized as of April 1, 2006, the board concludes the limited experience of the first winter would have led any prospective purchaser to be concerned about the unanticipated on-going winter snow removal costs and pay less than full reproduction cost for the Property. Thus, the board has estimated 5% functional obsolescence should be applied to the total improvement costs. In estimating the amount of functional obsolescence, the board is mindful that the dome that causes the functional obsolescence comprises just over 25% of the total improvement costs.

Consequently, the board in estimating the amount of the functional obsolescence has tempered its estimate to account for this fact. Applying the physical and functional depreciation to the total cost of \$3,881,185 results in a depreciated value of the improvements of \$3,613,383 ( $\$3,881,185 \times .98 \times .95$ ) and adding the estimated land value of \$835,000, results in the total

2006 market value estimate of \$4,448,400 (rounded). The ordered assessment is, therefore, \$4,386,100 by applying the stipulated 2006 median ratio of 98.6%.

If the taxes have been paid, the amount paid on the value in excess of \$4,386,100 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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.

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

### **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.

### **TAXPAYERS' REQUESTS FOR FINDINGS OF FACT**

1. The dome itself is made of a plasticized fabric, a Dacron weave cloth, attached to a foundation and held up by air.

**Granted.**

2. The fabric dome is deflatable in approximately 1-1/2 hours.

**Neither granted nor denied.**

3. The taxpayer's decision to go with a fabric dome instead of a steel building included (1) cost (fabric domes are initially less expensive), (2) flexibility (fabric domes can be removed (for example, in the summer months) and reinstalled, preferential tax treatment (information received by Mr. Holder was that similar domes located throughout New England were treated as personal property).

**Neither granted nor denied.**

4. The original assessment was based on a newspaper article.

**Neither granted nor denied.**

5. The intent of the fabric dome is to be temporary, but up more than not.

**Denied.**

6. All of the facilities (fields, lights, etc.) located under the dome were designed for indoor and outdoor use.

**Denied.**

7. The concrete foundation is not essential to anchoring the fabric dome to the ground.

**Denied.**

8. Although the dome is attached to a concrete foundation, it is not permanently affixed to it.

**Neither granted nor denied.**

#### **Requests for Rulings of Law**

9. The fabric dome itself is not a "building" pursuant to RSA 72:7.

**Neither granted nor denied.**

10. The fabric dome itself is not a "fixture."

**Neither granted nor denied.**

11. The fabric dome is personal property.

**Denied.**

11. The fabric dome is not taxable as real estate.

**Denied.**

### **TOWN'S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW**

1. The parties agree that the indoor sports arena on the subject parcel (hereinafter "Subject Property" or "Dome") was constructed in 2005 and put into operation in January 2006. See Exhibit 1 at p. 24; testimony of Mr. Tarello.

**Granted.**

2. The parties agree that the highest and best use of the Subject Property is its existing use as an indoor sports arena. See Exhibit 1 at p. 53; Exhibit J at p. 39.

**Granted.**

3. The evidence showed that the Taxpayer obtained building code approvals on the basis that the Subject Property would be an indoor sports arena. See Exhibits C, D, E.

**Granted.**

4. The Dome's vinyl-covered fabric material, network of steel cables securing the fabric roof and affixed to concrete walls or foundations, as well as related mechanicals that force air into the Dome (hereinafter "roof components"), were designed to, and function as, a year-round roof for the arena. See Exhibit 1 at pp. 46-48; Exhibit J at pp. 28-30.

**Granted.**

5. Specially-designed air-lock doors built into concrete walls and foundations are inextricably intertwined with the roof components and function as an integrated unit with the roof to create an indoor arena. See Exhibit A (photos of Subject); Exhibit J at p. 34.

**Granted.**

6. The roof components are essential for the real estate to achieve its highest and best use.

**Granted.**

7. Because the Taxpayer's appraisal did not value the roof components for the purpose of the appraisal, its conclusion of value for the Subject Property is inconsistent with its highest and best use.

**Granted.**

8. When a special purpose property has been recently constructed, the cost approach is typically a reliable method of appraising its value.

**Granted.**

9. The Taxpayer's appraisal assumed the Subject Property did not have public sewer service on 4/1/06 when considering comparable land sales, which was inconsistent with the facts about the Subject Property on that date. Compare Exhibit 1 at pp. 25, 62 with Exhibit L, water/sewer bills for property as of 4/1/06.

**Granted.**

10. The Taxpayer's appraiser developed a price per acre of his comparable land sales that relied upon the actual or gross acreage of all such land sales without reference to the existence of easements or topographical features such as wetlands that limited the buildable land area of those sales. Testimony of Ms. Noel; see also Exhibits M-Q in comparison to Exhibit 1 at pp. 57-59.

**Granted.**

11. In the Taxpayer's comparable sales of vacant land, the Taxpayer's appraiser compared gross or actual land area with only the net or buildable acreage of the Subject Property. See Exhibit 1 at p. 5 (subject has 36.938 acres); see also Exhibit 1 at p. 67 (subject is described as having 10.5 acres compared to comparable land sales with gross or actual land area listed); see also testimony of Ms. Noel and Exhibits M-Q.

**Granted.**

12. When the gross or actual land area is used to develop a sales price on a per acre basis, the sales price per acre will be lower than if the net or buildable land area was used, if applicable to the land sale, to develop a sales price on a per acre basis.

**Granted.**

13. The Taxpayer's conclusion of land value as of 4/1/06, as described in its appraisal, is unreliable as evidence.

**Granted.**

14. The Taxpayer's appraisal includes the following statement regarding the improvements that Mr. Frank valued: "Incorporated into the dome is a 8,800 square foot field house building that includes the restroom facilities, office, spectator viewing area, potential pro shop and equipment rental and a registration area on the ground floor. ... Only the portion of the field house which is outside the dome has a roof." See Exhibit 1 at p. 48.

**Granted.**

15. The office, restroom facilities, spectator viewing area, registration and equipment rental area at the Subject Property are all located inside the dome under the roof components and an 8,800 square foot field house building does not exist, either inside or outside of the Dome. See Exhibit A (photos of Subject); Exhibit J at pp. 32-38 (photos of interior and exterior).

**Granted.**

16. The gross building area of the dome building is 97,350 square feet. See Exhibit J at p. 3.

**Neither granted nor denied.**

17. The Town's appraisal relied upon the Taxpayer's actual costs of construction for the improvements at the Subject Property, which costs were incurred only 6-9 months prior to the assessment date of April 1, 2006. See Exhibit J at p. 64-66 and Addendum H (Taxpayer's list of costs for tax purposes).

**Granted.**

18. The Taxpayer testified that construction costs amounted to approximately \$3.9 million, which is consistent with the values established for improvements in the Town's tax card and the Town's appraisal. See testimony of Mr. Holder; see also Exhibit J at p. 65 and Addendum C (tax card of subject).

**Granted.**

19. The principals of the company owning the Dome property, Eastern Olympic Sports LLC, are the same principals of the company that owns the Hampshire Hills Sports and Fitness Club abutting the Subject Property. See Exhibit J at p. 10; see also Exhibits F, G, H; see also testimony of Mr. Holder.

**Granted.**

20. When the Taxpayer constructed the Dome, the Taxpayer anticipated that there would be a positive synergistic effect in the marketing, management and property use of both the Dome and the Hampshire Hills Sports and Fitness Club next door. See Exhibits F, G, H; see also testimony of Mr. Holder.

**Granted.**

21. The Taxpayer chose to use high quality construction materials and create an attractive indoor sports arena that would appeal to customers who were relatively affluent in the area. See Exhibit H; see also testimony of Mr. Holder.

**Granted.**

22. The Taxpayer testified that the vinyl-covered fabric roof was chosen to create the indoor arena because it provided unique benefits of being less expensive to install than more traditional roofs and it lended a lighter, more airy feel to the interior of the building. See testimony of Mr. Holder.

**Granted.**

23. Every type of roof requires maintenance or repairs, and the types of materials that an owner uses for a roof will also determine the type, and frequency, of the maintenance or repairs.

**Granted.**

24. The Taxpayer's choice of installing a less expensive vinyl-covered fabric roof with its benefits also brought a foreseeable functional trade-off including the need to remove snow more frequently than would be the case for traditional roofs.

**Granted.**

25. The Taxpayer did not meet its burden of proof that it suffered from disproportionate taxation and the Town's assessment of \$4,784,900 was reasonable and equitable as of April 1, 2006.

**Denied.**

### **Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Richard D. Sager, Esq., Sager Law, P.L.L.C., PO Box 385, Ossipee, NH 03864, counsel for the Taxpayer; Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the Town; and Chairman, Board of Assessors, Town of Milford, 1 Union Square, Milford, NH 03055.

Date:

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Anne M. Stelmach, Clerk