

Bow Highlands, LLC

v.

Town of Bow

Docket Nos.: 23411-07PT/24084-08PT/25110-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2007, 2008 and 2009 assessments of:

MAP/LOT	2007 ASSESSMENT	2008 ASSESSMENT	2009 ASSESSMENT
44/2/134/U01	\$49,500 (LAND ONLY)	\$96,000 (LAND/FND.)	\$96,000 (LAND/FND.)
44/2/134/U02	\$49,500 (LAND ONLY)	\$96,000 (LAND/FND.)	\$96,000 (LAND/FND.)
44/2/134/U03	\$49,500 (LAND ONLY)	\$96,000 (LAND/FND.)	\$96,000 (LAND/FND.)
44/2/134/U04	\$49,500 (LAND ONLY)	\$96,000 (LAND/FND.)	\$96,000 (LAND/FND.)
44/2/134/U05	\$49,500 (LAND ONLY)	\$96,000 (LAND/FND.)	\$96,000 (LAND/FND.)
44/2/134/U06	\$49,500 (LAND ONLY)	\$96,000 (LAND/FND.)	\$96,000 (LAND/FND.)
44/2/134/U07	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U08	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U09	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U10	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U11	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U12	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U13	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U14	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U15	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U16	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U17	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U18	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U19	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U20	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U21	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)

44/2/134/U22	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U23	\$49,500 (LAND ONLY)	\$259,700	\$235,200
44/2/134/U24	\$49,500 (LAND ONLY)	\$231,100	\$223,300
44/2/134/U25	\$49,500 (LAND ONLY)	\$202,900	\$216,400
44/2/134/U26	\$49,500 (LAND ONLY)	NOT APPEALED	NOT APPEALED
44/2/134/U27	\$49,500 (LAND ONLY)	\$202,900	\$188,200
44/2/134/U28	\$49,500 (LAND ONLY)	NOT APPEALED	NOT APPEALED
44/2/134/U29	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U30	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U31	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U32	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U33	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U34	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U35	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U36	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U37	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U38	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U39	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U40	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U41	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
44/2/134/U42	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)	\$49,500 (LAND ONLY)
TOTAL	\$2,079,000	\$2,957,600	\$2,924,100

The appealed properties consist of 42 approved condominium sites off Bow Bog Road with the access road (Dicandra Drive) and other infrastructure partially completed in 2007, further completed in 2008 and 2009 to allow six units (only four appealed) to have been partially or completely constructed on the west side of Dicandra Drive and six slab foundations constructed on six sites on the east side of Dicandra Drive (the “Properties”). For the reasons stated below, the appeals for abatement are granted.

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 Properties' assessments were higher than the general level of assessment in the municipality.

Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

- (1) the Properties were difficult and expensive to develop due to the length of Dicandra Drive (2000 feet to the cul-de-sac), the amount of fill and the culvert necessary to span the wetlands and the blasting of ledge to level the building sites for the 42 townhouse units;
- (2) as of April 1, 2007, the blasting of the building sites and moving the blasted material for the base of Dicandra Drive were still on-going;
- (3) the best method to value the 42 approved but vacant sites is by the development procedure as employed in the "Crafts 2007 Appraisal" (Taxpayer Exhibit No. 1, Tab 1); the Crafts 2007 Appraisal estimated the Properties' market value at \$1,170,000, which when allocated amongst the 42 sites and when the stipulated 0.994 ratio is applied, results in an assessment of \$27,690 per site (Taxpayer Exhibit No. 1, Tab 8-A);
- (4) as of April 1, 2008, the base coat of paving was in place on Dicandra Drive, six condominium units were partially or completely built with one sold in December 2007 (Unit #26) and six slab foundations constructed;
- (5) the "Crafts 2008 Appraisal" (Taxpayer Exhibit No. 1, Tab 2) estimated, by the development procedure, a total 2008 market value of \$1,760,000 as shown in Taxpayer Exhibit No. 1, Tab 8-b (at hearing, Mr. Donald E. Watson of Crafts Appraisal Associates, Ltd. testified the 2008 value estimate omitted a value for Unit #28 which, as of April 1, 2008, was owned by the Taxpayer and not sold until July 2008; consequently, the Crafts 2008 Appraisal estimate of \$1,760,000 should be increased by approximately \$160,000 for the value of Unit #28 resulting in a total market value for 2008 of approximately \$1,920,000);

(6) as of April 1, 2009 Unit #28 had been sold, further interior work had occurred on two of the remaining four constructed units but little additional construction had occurred;

(7) the market value of the Properties as of April 1, 2009 is best estimated at \$1,640,000 by the “Crafts 2009 Appraisal” (Taxpayer Exhibit No. 1, Tab 3) and results in the assessed values as shown in Taxpayer Exhibit No. 1, Tab 8-c of \$1,564,560; and

(8) the April 2010 sale of 14 vacant sites and the six foundations and sites to “CATCH” (Concord Area Trust for Community Housing) was not an arm’s-length transaction as it involved unique financing and is in excess of what a prospective purchaser with conventional financing would have paid for the units.

The Town argued the assessments were proper because:

(1) as of April 1, 2007, the development was further along than the \$330,000 estimate asserted by the Taxpayer based on the engineering reports filed periodically by Vollmer Associates, the engineering firm hired by the Town to monitor the project;

(2) the total assessed value for the undeveloped sites in 2007 is supported by the Town’s market value of \$2,091,600 estimated by the direct sales comparison approach contained in Municipality Exhibit A; (the Town conceded that no weight should be given to its discounted cash flow (“DCF”) analysis in Municipality Exhibit A and relied solely upon its direct sales comparison approach);

(3) as of April 1, 2008, six units had been built with one sold and six foundations had been constructed; the constructed units were assessed as residential condominiums utilizing a completed site value of \$90,000 and replacement cost less depreciation estimate for the buildings;

(4) the assessments of the built units were based upon the sale prices of Units #26 and #28 and not the purchase and sale agreement of another unit that subsequently did not close;

(5) the 2009 market value of the 36 vacant sites, six foundations and four built units was \$2,887,195 as estimated and summarized at #3 “Addendum” of the Town’s exhibit list;

(6) the Town’s 2009 market value estimate utilized a sales comparison approach for the 36 vacant sites giving 70% weight to the April 2010 CATCH sale;

(7) the six foundations were estimated to contribute an additional \$36,000 (\$6,000 each) and the four partially completed or completed units were assessed on a replacement cost less depreciation basis; and

(8) the CATCH sale should be considered an arm’s-length transaction based on the testimony of Mr. Reid, Director of Real Estate and Asset Management of CATCH, that the price paid was reflective of market value at the time of the transaction.

The parties stipulated to the following median ratios as being reasonable indications of the level of assessments for the three years under appeal: 2007: 0.994; 2008: 1.01; and 2009: 0.954.

At the end of the hearing, the parties’ attorneys asked for and received additional time to submit requested findings of fact and rulings of law. The board has responded to the specific requests for findings of fact and rulings of law made by each party in Addendum A to this Decision.

Board Rulings

These appeals present the difficult challenge of estimating the market value of a townhouse condominium project that was progressing in development over the three appeal years while the market for such housing projects and units was declining, especially in the later

two appeal years. The challenge is exacerbated by the five year reassessment cycle the Town is employing to be compliant with RSA 75:8-a. During a stable or appreciating market, setting the value, as the Town did here, for the vacant sites in year one (2007) and letting them remain at that level until each unit is completed, would be a reasonable, and indeed, a common methodology to employ. However, the board finds, as it will detail later, the market for such approved sites and units was declining during the three years faster than the decline in market value town-wide as indicated by the stipulated ratios, and thus a separate market value determination for each year is necessary to produce proportional assessments. See RSA 75:8.

Therefore, as Mr. Raymond, the Taxpayer's attorney, noted in both his opening and closing statements, a pivotal issue in these appeals is what valuation approach and method best values both the vacant approved sites and the partially or fully completed units. The Taxpayer asserts the entire project should be valued as one economic unit and then allocated between the vacant and improved sites/units while the Town asserts the vacant sites should be valued as a separate economic unit from the individual units that are nearly or fully completed and available for purchase by individuals.

The board finds the highest and best use determination of the different components of the project as of each assessment date strongly influences which valuation method will produce a market value estimate that leads to a proportionate assessment. (All property must be valued at its highest and best use and at its "full and true value." 590 Realty Co., Ltd v. City of Keene, 122 N.H. 284 (1982)). The board finds the highest and best use of the Properties results in two economic units: 1) vacant sites: in 2007, 42 vacant sites and in 2008 and 2009, 36 vacant sites (including the six with slab foundations) that should be valued as an approved partially completed condominium project; and 2) built units: in 2008 and 2009, the four remaining (two

have been sold) complete/nearly complete units should be valued at their highest and best use as individual dwellings.

Given the condominium form of development, it is difficult to perceive the vacant sites being sold separately. Rather, as the subsequent CATCH sale indicates, the development of the vacant sites needs to be done in a coordinated fashion different than individual lots in a traditional residential subdivision. Also, the market participants for approved but unfinished units are developers/builders that anticipate realizing a profit from the completion and marketing of the units. The valuation method most appropriate for this portion of the project is the development method¹ as it most accurately reflects the investment incurred to date and the hard and soft costs yet remaining to take the individual condominium sites to their ultimate retail residential use. This value for the partially completed infrastructure and the vacant sites can then be allocated on a per site basis to be compliant with RSA 674:37-a.²

¹ An accepted methodology to estimate the value of property that has subdivision potential (be it traditional subdivision or condominium) or has been approved and only partially developed is the “development method” or “subdivision development analysis.” This technique estimates the current market value of a property by determining the final retail value of the lots or units based on comparable sales and then deducting outstanding expenses and carrying costs to approximate the value a prospective purchaser would likely pay for the property. See Appeal of Sawmill Brook Dev. Co., 129 N.H. 410 (1987) and City of Manchester v. Town of Auburn, 125 N.H. 147, 157 (1984). Further, The Appraisal of Real Estate, Appraisal Institute 344 (12th ed. 2001) indicates such a subdivision development analysis is appropriate “when subdivision and development represent the highest and best use of the land and when sales data on finished lots [units] is available. The number and size of the finished lots [units], their likely sale prices, the length of the development and marketing periods, and the absorption rate are estimated. Gross income and expenses are projected when they are expected to occur. The resulting net sales' proceeds are then discounted back to arrive at an indication of land value.”

² 674:37-a Effect of Subdivision on Tax Assessment and Collection. – The collection of taxes with respect to land being subdivided shall be governed by the following provisions:

I. If approval of a subdivision plat has been granted on or before April 1 of a particular tax year, giving the owner a legal right to sell or transfer the lots, parcels or other divisions of land depicted on the plat without further approval or action by the municipality, then such lots or parcels shall for that tax year be assessed and appraised as separate estates pursuant to RSA 75:9, whether or not any such sale or transfer has actually occurred, and shall continue to be so assessed unless and until subdivision approval is revoked under RSA 676:4-a, or the parcels are merged pursuant to RSA 674:39-a.

2007

For 2007, the board finds both the sales comparison approach and the development method are reasonable approaches to estimate the market value of the Properties. The Town asserted the development of the site had progressed further based on the engineering reports of Vollmer Associates than the \$330,000 estimate testified to by Mr. Tighe, the Taxpayer's principal owner. However, because those engineering reports were not submitted by the Town, the board is unable to conclude that the stage of development was any further than that testified to by Mr. Tighe. Consequently, the board will base its 2007 estimate of market value on the assumption the project had the access road roughed in and the building sites blasted to accommodate construction but that significant water, sewer and further site and road work remained to be installed in future years. Lacking any definitive evidence to the contrary, the board relies on the Taxpayer's estimate that \$330,000 of such work had been done out of the total estimated infrastructure cost of \$1,680,000 to \$1,700,000 (see Crafts' 2007 Appraisal at p. 38 and Crafts' 2008 Appraisal at p. 29 presumably based on Mr. Watson's estimate received from the owner). Apparently, also as part of the approval of the project, the Taxpayer had to do off-site improvements to Bow Bog Road which as of April 1, 2007 had occurred in the amount of \$170,000. While such improvements were not identified as to their nature, they are presumably necessary to accommodate the project. No adjustments are made for these off-site costs by the board in either its 2007 sales comparison approach or in the development method for all three years as these off-site costs presumably result in the Taxpayer's project having similar public access as the comparables utilized.

The board has reviewed the 2007 sales comparison approach in the Crafts' 2007 Appraisal and the one employed by the Town in its 2007 summary appraisal report. While the

background information of the comparable sales is brief in both reports and thus difficult for the board to determine their inherent comparability, the board finds both valuations need to be adjusted to more accurately reflect the market value of the infrastructure in place at the Taxpayer's project.

In the Crafts' 2007 Appraisal at p. 29, the Taxpayer's in place infrastructure was accounted for by only a 10% adjustment (\$90,000 to \$120,000) while at least \$330,000 of work had occurred. The board finds this understates the contributory value of the infrastructure notwithstanding recognizing that cost does not always equal value. Here, because the location and type of development had been identified, approved and largely engineered and the market was still relatively positive as of April 1, 2007, it is difficult to conclude the work done as of that time did not materially advance the value of the project. The seller would likely expect to receive and a prospective purchaser would likely be willing to pay a significant portion of the investment to date. Consequently, the board has revised the infrastructure adjustment to a positive 25% which results in an approximate correlated value per site of \$37,500. Multiplying the estimated value per site of \$37,500 times the 42 sites produces a value indication of \$1,575,000.

In the Town's summary appraisal report, it is difficult to determine exactly the level of utilities and infrastructure of the comparables as it is difficult to have a clear understanding of the Town's belief of the stage of the Properties' infrastructure as of April 1, 2007. The sales grid description (p. 23 of Municipality Exhibit A) conflicts with the description on p. 21 relative to the stage of completion of the comparables' roads, sites and utilities. Given the length of Dicandra Drive and the difficult terrain (ledge and culverting of wetlands, etc.) the Taxpayer's project had to deal with, the board concludes (although not without some uncertainty) the

comparables had more “construction ready” sites at the time of their sales than the Properties did on April 1, 2007. Thus, an adjustment of a similar magnitude of 25% is appropriate and lowers the value of the Town’s comparables on a price per approved site to approximately \$37,500. The board certainly recognizes its assumptions are estimates due to the lack of sufficient specificity as to the Town’s comparables and readiness of their development. Nonetheless, the board believes the \$50,000 value arrived at by the Town is in excess of the collective market value of the land, the approvals and the infrastructure work that was still in its infancy as of April 1, 2007. Thus, by a modification of both parties’ sales comparison approaches, the board concludes a 2007 market value estimate of \$1,575,000.

The development method is a generally accepted technique to estimate the present value of a subdivision or a condominium project that has been approved but not fully completed. Nonetheless, the board recognizes that it entails numerous assumptions and inputs that are difficult to definitively derive or quantify from the market and relies on informed and experienced judgment that is intended to mirror the assumptions that any knowledgeable owner might make. The value estimate by such method may warrant a larger tolerance or range than an estimate derived from any of the three approaches to value (cost, sales and income) when they utilize sufficient, reliable and quantifiable market data. Consequently, the board, in ultimately determining the proportional assessed value of the Properties, will not use the market value indication derived from the development method as a definitive or absolute answer but rather as a general indication (and for 2007, in conjunction with the sales approach estimate) as to how to adjust the Town’s assessments to be reasonably proportional.

The board has performed development method value estimates for the vacant sites for all three years on spreadsheets attached in Addendum B. The spreadsheets note many of the board's assumptions that are drawn from the testimony of all the witnesses and the various submitted appraisals; however, the general format is modeled on the DCF analyses contained in the three Crafts Appraisals. In addition to the assumptions noted on the respective spreadsheets, the following additional assumptions/factors were employed:

- the additional road and utility expenses are assumed to be constructed in years 1 and 2 to approximate and mirror the retrospective history of the construction;
- the expense of building the units are done in groups of six as the townhouse condominiums consist of six units per building;
- the "contingency" and "miscellaneous" expenses have been combined and reduced to 2%; the two categories appear to be redundant and their combined expense of 6% appears excessive based on the board's experience;
- the sales' commission was dropped from six to five percent to be in line with the Crafts' Appraisal subsequent year assumptions and the fact that any broker marketing these would likely be willing to take a concession for having the bulk number of units to market;
- the professional fees are dropped to \$1,000 reflective of the assumption made in the 2008 Crafts Appraisal; and
- a "developer's (entrepreneur) profit" has been deducted as a distinct expense item and the discount rate reduced by a similar amount (the Crafts Appraisals had included the developer's profit with the tax loaded discount rate); separating the developers profit from the discount rate allows distinct assumptions to be made for each factors for each year.

The board's 2007 DCF indicates an equalized market value (i.e., assessed value) of \$1,333,000. Correlating this value indication with that of the sales approach estimate of \$1,575,000, the board concludes the Town's completed condominium site value of \$90,000, instead of being reduced by 45% as done by the Town to arrive at the allocated appealed assessments of \$49,500, should be reduced by 60%. This produces a total assessed value of

\$1,512,000 that is within the range of value indicated by the sales approach and the development method and results in an allocated assessed value per vacant site for 2007 of \$36,000.

2008 & 2009

As of April 1, 2008, substantial additional investment had occurred so that the access road had its base layer of pavement to the developed sites and all but one septic system was installed. The 2008 Crafts Appraisal at p. 7 estimates all but approximately \$360,000 of the total \$1,680,000 infrastructure had been installed. Also, as of that time, six units had been built (with one sold) and six foundations on the east side of Dicandra Drive had been constructed. Given this relatively advanced state of the infrastructure and the initiation of the construction of the units, the board finds the sales comparison approach is difficult to perform because of the lack of comparable sales of similar projects in such an advanced stage of development. For the reasons that are enumerated in a later section, the board also finds the 2010 CATCH sale was not reflective of market value. Therefore, for that reason and the fact that few other sales were at such a stage of development, the board is unable to place any weight on the Town's 2009 sales comparison analysis.

Consequently, the remaining development method provides the best basis for estimating the market value of the vacant 36 sites for both 2008 and 2009. As is the case with the board's 2007 development method, many of the board's assumptions are noted on the spreadsheet at Addendum B. Nonetheless, in summary, the board largely utilized the Crafts Appraisals' estimated retail value of completed units for 2008 and 2009. The absorption rates are generally similar to those assumed in the Crafts Appraisals, with the significant exception that in year one of both the 2008 and 2009 DCF analyses, the board assumes no sales of new condominiums would occur from the 36 vacant sites being valued. The board assumes the already built and

unsold four units that are still in inventory would be those most likely to be sold from the project and any new units built on the vacant 36 sites would not be sold until the second year of each DCF analysis. The board has also apportioned the remaining \$350,000 of site improvements (finishing the road, the final septic system and landscaping) evenly through the three remaining years after year one of each DCF. For 2008, the board has reduced the estimated developer's profit to 8% and increased the loaded discount rate to 14%, both recognizing the eroding market for such projects. Continuing with that logic, the board, for 2009, has further reduced the developer's profit expectation to 5% but kept the loaded discounted rate at 14%.

The resulting 2008 market value, when equalized by the 2008 median ratio of 1.01, provides an indicated assessed value of \$1,159,000 (rounded) or approximately \$32,200 per vacant site. Reducing the Town's \$90,000 completed site value to 36% ($\$90,000 \times 0.36$) approximates this per site value at \$32,400 or in total \$1,166,400 ($36 \times \$32,400$). To that number is added \$36,000 for the estimated contributory value of the six foundations/slabs or a total for the vacant sites of \$1,202,400.

Similarly, the 2009 indicated market value, when equalized by the 0.954 median ratio, arrives at an indicated assessed value of \$1,033,000 or approximately \$28,700 per unit. Again, reducing the Town's \$90,000 assessed value for completed site by 32% ($\$90,000 \times 0.32$) results in an indicated assessed value per site of \$28,800 or for the 36 sites of \$1,036,800. The six slab foundations at \$36,000 increases the total value attributable to the 36 sites in 2009 to \$1,072,800.

Value of Four Complete/Partially Complete Units for 2008 & 2009

As noted earlier, once a unit is essentially complete, the purchaser of it is not likely to be another developer/builder because there is little remaining profit to be realized. Rather, its use and enjoyment is for habitation and the sales of completed units reflect that transitioned highest

and best use. Thus, the sales approach is the best approach to value the four improved units.

The board finds the two sales within the project (#26, a middle unit, sold for \$214,900 in December 2007; and #28, an end unit with a partially finished basement, sold for \$228,000 in July 2008) are reasonable market benchmarks for valuing the four units. A review and comparison of the 2008 and 2009 assessment-record cards of the four units indicate the 2009 building assessments had slightly reduced base rates compared to the 2008 building assessments. While no testimony was presented on why that is the case, it appears the 2008 assessments for the completed units exceeded the market value indicated by the two sales and the 2009 building base rates were reduced to be more in line with those sales. Thus, we find the 2009 assessments are reasonable estimates of the 2008 market value and should be used as the proper assessments for 2008 (with adjustments for Unit #25 for being 80% complete in 2008 versus 100% complete in 2009). Utilizing the Town's assessments for calculating the abatements of the completed units, rather than the Crafts Appraisals "average" retail market value of a completed unit, accounts for the differences in market value due to the location of units (end versus middle), any basement finish and any unfinished components.

For 2009, however, the board finds sufficient evidence was submitted into the record (reduced listing prices, one unit under agreement that did not close and general market decline and reduced availability of financing) to conclude the market value of the remaining four units was less than they were in 2008. Besides the general market decline, Mr. Tighe testified that prospective purchasers were deterred by the small size of the units and their lack of garages. The Crafts Appraisals also indicated a declining market value for an average unit from \$225,000 in 2007 to \$190,000 in 2009. Consequently, the board finds the \$90,000 developed site value used by the Town in the assessment-record cards should be reduced to \$50,000, thus lowering the

2009 assessments of the four completed units by \$40,000 from the 2008 assessments. (See summary assessments at pp. 17 and 18).

2010 CATCH Sale

For the following reasons, the board finds the CATCH sale was not reflective of market value and thus, is given no weight by the board in estimating the market value of the Properties.

First, based on the testimony of Mr. Reid as to the itemization of hard and soft costs for improvements of the project to date (Taxpayer Exhibit No. 1, Tab 11), it is clear such tally became the basis for the sale price stated in the purchase and sale agreement (Tab 12). When the market for such developments are in balance or are appreciating, such itemization of to date expenses may be relevant as a component of a cost approach estimate of value for such a development. However, when costs clearly exceed their contributory value when the market is declining, as it was in 2008 and 2009, such a tally of to date expenses is not a reliable measure of market value. Further, Mr. Reid testified that it was accepted practice under the unique financing available to CATCH for low income housing to account for and include all hard and soft costs attributable to the purchase of the land/site and the construction costs of the infrastructure and housing units whether they relate to the 20 units purchased here or if it had acquired a vacant parcel for development. This accounting, however, does not equate to an indication of general market value. As evidenced by the Taxpayer's inability to sell more than the two units it did, the ability to sell such condominium units at a price to cover the hard and soft costs no longer existed in 2010.

Second, CATCH's financing of the 20 units acquired was a combination of low income housing tax credits and home funds from the New Hampshire Housing Finance Authority. These funding sources are atypical for conventional development and further support the conclusion the

transaction was not at market value. One of the elements of a “market value” transaction is that it not be affected by “special or creative financing”.³

Third, Mr. Tighe testified the Taxpayer was in default of its loan with its lender, and, thus, the Taxpayer was under considerable pressure to liquidate some or all of the Properties to meet its financial loan obligations with the bank. Such duress also does not meet the requirement of an arm’s-length transaction to be between two individuals who are not unduly motivated to buy or sell property. Id.

Fourth, the purchase and sale agreement included a grant of a right of first refusal to CATCH for the development of the remaining unbuilt condominium units and a development agreement for sharing of costs for the balance of various infrastructure components. These two additional elements of the purchase and sale agreement also lessen the arm’s-length nature and thus the weight to be given to the sale price.

Last, Mr. Tighe also testified the effect of CATCH owning and developing nearly half of the units was negative as to both the value and the availability of financing for the balance of the units. This negative affect on the market value of the balance of the units, while offsetting to some extent of the factors inflating the sale price, is one additional factor to conclude the CATCH transaction was not a market based sale.

³ A standard definition of what constitutes market value, formulated by The Appraisal Institute in The Appraisal of Real Estate 23 (12th ed. 2001) is as follows:

“The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.” (Emphasis added.)

The following summarizes the board’s findings as to the proper assessed values for the three appealed years.

MAP/LOT	2007 ASSESSMENT	2008 ASSESSMENT	2009 ASSESSMENT
44/2/134/U01	\$36,000 (LAND ONLY)	\$38,400 (LAND/FND.)	\$34,800 (LAND/FND.)
44/2/134/U02	\$36,000 (LAND ONLY)	\$38,400 (LAND/FND.)	\$34,800 (LAND/FND.)
44/2/134/U03	\$36,000 (LAND ONLY)	\$38,400 (LAND/FND.)	\$34,800 (LAND/FND.)
44/2/134/U04	\$36,000 (LAND ONLY)	\$38,400 (LAND/FND.)	\$34,800 (LAND/FND.)
44/2/134/U05	\$36,000 (LAND ONLY)	\$38,400 (LAND/FND.)	\$34,800 (LAND/FND.)
44/2/134/U06	\$36,000 (LAND ONLY)	\$38,400 (LAND/FND.)	\$34,800 (LAND/FND.)
44/2/134/U07	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U08	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U09	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U10	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U11	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U12	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U13	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U14	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U15	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U16	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U17	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U18	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U19	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U20	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U21	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U22	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U23	\$36,000 (LAND ONLY)	\$235,200	\$195,200
44/2/134/U24	\$36,000 (LAND ONLY)	\$223,300	\$183,300
44/2/134/U25	\$36,000 (LAND ONLY)	\$192,100	\$176,400
44/2/134/U26	\$36,000 (LAND ONLY)	NOT APPEALED	NOT APPEALED
44/2/134/U27	\$36,000 (LAND ONLY)	\$188,200	\$148,200
44/2/134/U28	\$36,000 (LAND ONLY)	NOT APPEALED	NOT APPEALED
44/2/134/U29	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U30	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U31	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U32	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U33	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U34	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U35	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U36	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U37	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U38	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U39	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)

44/2/134/U40	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U41	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
44/2/134/U42	\$36,000 (LAND ONLY)	\$32,400 (LAND ONLY)	\$28,800 (LAND ONLY)
TOTAL	\$1,512,000	\$2,041,200	\$1,775,900

If the taxes have been paid, the amount paid on the value in excess of those summarized above 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 2009 assessment for subsequent years. RSA 76:17-c, I and II.

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).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

ADDENDUM A

The “Requests” received from the parties 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 Decision.

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

2007

1. To show that an abatement is justified, the taxpayer must prove by a preponderance of the evidence that its property is assessed at a higher percentage of fair market value than the percentage at which properties are generally assessed in the town. Appeal of Town of Sunapee, 126 NH 214, 217 (1985).

Granted.

2. Taxable value is the market value or the price the property will bring in a fair market, after reasonable efforts have been made to find a purchaser who will give highest price for it, Public Service Company of New Hampshire v. Town of Seabrook, 126 NH 740, 742 (1985) (Brackets and quotations are omitted).

Granted.

3. Bow Highlands, LLC, owns property in Bow, New Hampshire, approved for the construction of forty-two townhouse condominiums, of approximately 1,008 square feet each, plus walkout basements, and eighty-four associated parking spaces, on the north side of Bow Bog Road.

Granted.

4. The Town assessed a Land Use Change Tax on the property as of March 15, 2007 of \$126,000 on a full value, as determined by the Town, of \$1,260,000.

Neither granted nor denied.

5. As of April 1, 2007, for real estate taxes, the Town assessed the units at \$49,500 each, for a total assessed value for the project, for 42 units, of \$2,079,000.

Granted.

6. The highest and best use of the property is its approved use as a forty-two unit townhouse condominium project.

Granted.

7. As of April 1, 2007, the project had received all necessary permits, and Bow Highlands had constructed approximately \$330,000 of improvements, including the access road and related infrastructure, but no buildings. The project was assessed as individual units at an assessed value of \$49,500 per unit.

Neither granted nor denied.

8. The equalization ratio for the Town of Bow in 2007 was .994.

Granted.

9. The units were not age restricted, but were intended to provide affordable housing.

Granted.

10. The market for condominium units leveled off in 2005 and slowed down through 2006 and 2007, and the market continued to drop thereafter.

Denied.

11. The comparable sales, as adjusted, used by the taxpayer's appraiser, Donald Watson of Crafts Appraisal Associates, were appropriate as they showed sales of land approved for condominium developments in July and August 2007, and a condominium project in Bow sold in 2004, with appropriate adjustments for the different nature of the projects and for timing of sales.

Neither granted nor denied.

12. For a project of this nature, with substantially incomplete units, but with some infrastructure installed, a more accurate indication of value is provided by the development procedures method, which develops a value estimate using a cash flow analysis, and requires establishing a retail value for the individual units, the expense related to the development and sales of the units, the absorption rate of the units, to which an appropriate discount rate is applied to derive the present value.

Neither granted nor denied.

13. For purposes of the development procedure, the following factors are reasonable:
- a. Marketing cost based on six percent of gross sales;
 - b. Costs of remaining infrastructure of approximately \$1,350,000.00;
 - c. Total building costs of \$95,125.00 per unit, based upon a firm contract in place with the builder;
 - d. Contingency costs of four percent;
 - e. Estimated professional fees of \$1,500.00 per unit;
 - f. Impact fees based upon the Town of Bow impact fee of \$2,250.00 per unit;
 - g. Real estate transfer tax fees based on 1.5% of the purchase price;
 - h. Current Use Tax of \$126,000.00, based upon the assessment agreed to by the Town and the taxpayer;
 - i. Miscellaneous costs of two percent of gross sales; and
 - j. Developer's profit and discount rate of twenty percent, to which a tax factor of 2.09 is added, resulting in a discount rate of twenty-two percent.

Neither granted nor denied.

14. Use of a tax factor as an adjustment to the developer's profit and discount rate is a more appropriate method of adjusting for taxes in a tax abatement proceeding than showing the tax payments as an expense of development.

Granted.

15. As of April 1, 2007, an absorption rate of one unit in year one, eight in year two, fifteen in year three, and eighteen in year four, was a reasonable estimate of projected sales of completed units at that time, although only two units have sold since that date.

Denied.

16. As of April 1, 2007, the property had a market value of \$1,170,000.00, and each unit had a market value of \$27,857.00.

Denied.

17. Using the equalization ratio of .994 employed by the Town, the units had an indicated assessment at \$27,690.00, and the project as a whole had an indicated assessment of \$1,162,980.

Denied.

18. The Town's sales comparison approach relied only on three reported sales, of which two were sales of portions of the same project in Peterborough, New Hampshire, in two succeeding years, at the same sale price, and the project in Bow was not properly adjusted for differences from the subject project.

Neither granted nor denied.

19. The Town's discounted cash flow analysis use of an absorption rate of one sale per month was unreasonably high and is not supported by sales of condominium units in 2007.

Neither granted nor denied.

20. The Town's discounted cash flow analysis failed to adjust the net operating income by the discount factor, resulting in a substantial over statement of the net present value of the project.

Neither granted nor denied.

21. When corrected for the math error, the Town's discounted cash flow showed a net present value of \$1,221,688, or \$29,088 per unit, which supports the Taxpayer's appraisal

Neither granted nor denied.

22. The taxpayer has met its burden of proof that the assessed value is disproportionately higher in relation to its true value than other property in the town, and the taxpayer is entitled to an abatement for the 2007 real estate taxes.

Granted.

2008

1. To show that an abatement is justified, the taxpayer must prove by a preponderance of the evidence that its property is assessed at a higher percentage of fair market value than the percentage at which properties are generally assessed in the town. Appeal of Town of Sunapee, 126 NH 214, 217 (1985).

Granted.

2. Taxable value is the market value or the price the property will bring in a fair market, after reasonable efforts have been made to find a purchaser who will give the highest price for it, Public Service Company of New Hampshire v. Town of Seabrook, 126 NH 740, 742 (1985) (Brackets and quotations are omitted).

Granted.

3. Bow Highlands, LLC, owns property in Bow, New Hampshire approved for the construction of forty-two townhouse condominiums, each containing 1,008 square feet, with walk-out basements, and eighty-four associated parking spaces, on the north side of Bog Road.

Neither granted nor denied.

4. The highest and best use of the property was its approved use as a forty-two unit townhouse condominium project.

Neither granted nor denied.

5. As of April 1, 2008, one six unit townhouse building was substantially completed, of which two units were sold or under contract, two units were substantially complete, and two units were in the drywall stage. Additionally, foundations for one six unit building were constructed, but no other improvements were made to those units, and the remaining thirty units were unbuilt.

Granted.

6. In 2008, the Town assessed the un-built units at \$49,500, the units with foundations only at \$96,000, and the four completed units at \$259,700, 231,100, 202,900, and 202,900.

Granted.

7. The Town of Bow used an equalization ratio for 2008 of 1.01.

Granted.

8. The sales comparison approach is not appropriate for a project of this stage of construction.

Neither granted nor denied.

9. Instead, the best method to establish market value for a project of this nature is the development procedure, which develops a value estimate using a cash flow analysis, and requires establishing a retail value for the individual units, the expense related to the development and sales of the units, the absorption rate of the units, to which an appropriate discount rate is applied to derive the present value.

Neither granted nor denied.

10. A projected starting retail sale price of the completed units of \$200,000.00 is reasonable, based upon comparable sales and listings of units in this project.

Granted.

11. The following factors are reasonable for use in the development procedure, as of April 1, 2008:

- a. Marketing costs of six percent of gross sales;
- b. Additional infrastructure costs of \$360,000.00;
- c. Average cost to complete the two incomplete units of \$12,500.00, \$95,000.00 to complete the six units for which foundations were installed, and \$106,000.00 to complete the unbuilt units.
- d. Four percent improvement costs as a contingency;
- e. \$10,000.00 per unit for professional fees;
- f. \$2,250.00 per unit for impact fees, based the Town of Bow's current assessment;
- g. Real estate transfer taxes at the statutory rate of \$15.00 per thousand, paid half by buyer and half by seller;
- h. Two percent of gross sales for miscellaneous expenses;
- i. Developers profit and discount rate of twenty-two percent, to which is added the tax factor of 2.24%, resulting in a discount rate of 24%.

Neither granted nor denied.

12. Use of a tax factor as an adjustment to the developer's profit and discount rate is a more appropriate method of adjusting for taxes in a tax abatement proceeding than showing the tax payments as an expense of development.

Granted.

13. Based upon the real estate market as of April 1, 2008, the absorption of four units in the first following year, eight units in the next following year, and fourteen units in each of the two successive years is reasonable, although, in fact, only one sale has occurred since April 1, 2008.

Denied.

14. The market value of the project as of April 1, 2008, was \$1,760,000.00.

Denied.

15. The unbuilt units had a market value of \$29,000.00 each, the six units with foundations had a value of \$51,000.00 each, and the completed units had a calculated average value of \$146,000.00 each, using the discounted cash flow method to calculate the share of the total project value assigned to the completed units.

Denied.

16. Applying the Town's equalization ratio of 1.01 to those values, the proper assessed values of the unbuilt units was \$29,290.00, of the six units with foundations, \$51,510.00, and the completed units, \$147,460.00.

Denied.

17. The completed units, if valued at their projected beginning sale price of \$200,000, would have an indicated assessed value of \$202,000.

Denied.

18. The Town's 2008 appraisal was not admitted into evidence

Granted.

19. The taxpayer has met its burden of proof that the assessment on the property is disproportionately higher in relation to its true value than other property in the town, and the taxpayer is entitled to an abatement for the 2008 real estate taxes.

Granted.

2009

1. To show that an abatement is justified, the taxpayer must prove by a preponderance of the evidence that its property is assessed at a higher percentage of fair market value than the percentage at which properties are generally assessed in the town. Appeal of Town of Sunapee, 126 NH 214, 217 (1985).

Granted.

2. Taxable value is the market value or the price the property will bring in a fair market, after reasonable efforts have been made to find a purchaser who will give the highest price for it, Public Service Company of New Hampshire v. Town of Seabrook, 126 NH 740, 742 (1985) (Brackets and quotations are omitted).

Granted.

3. Bow Highlands, LLC, owns property in Bow, New Hampshire approved for the construction of forty-two townhouse condominiums, each containing 1,008 square feet, with walk-out basements, and eighty-four associated parking spaces, on the north side of Bog Road.

Neither granted nor denied.

4. The highest and best use of the property was its approved use as a forty-two unit townhouse condominium project.

Neither granted nor denied.

5. As of April 1, 2009, one six unit townhouse building was built, of which two units were sold, two units were substantially complete, and two units required approximately \$10,000 for completion. Additionally, foundations for one six unit building were constructed, but no other improvements were made to those units, and the remaining thirty units were unbuilt.

Granted.

6. In 2009, the Town assessed the unbuilt units at \$49,500, the units with foundations only at \$96,000, and the four completed but unsold units at \$235,200, 223,300, 216,400, and 188,200.

Granted.

7. The Town of Bow used an equalization ratio for 2009 of .954.

Granted.

8. The sales comparison approach is not appropriate for a project at this stage of construction.

Neither granted nor denied.

9. Instead, the best method to establish market value for a project of this nature is the development procedure, which develops a value estimate using a cash flow analysis, and requires establishing a retail value for the individual units, the expense related to the development and sales of the units, the absorption rate of the units, to which an appropriate discount rate is applied to derive the present value.

Neither granted nor denied.

10. A projected starting retail sale price of the completed units of \$190,000.00 is reasonable, based upon comparable sales and listings of units in this project.

Neither granted nor denied.

11. The following factors are reasonable for use in the development procedure, as of April 1, 2009:

- a. Marketing costs of five percent of gross sales;
- b. Additional infrastructure costs of \$360,000.00;
- c. Average cost to complete the two incomplete units of \$10,000.00, \$98,000.00 to complete each of the six units for which foundations were installed, and \$106,000.00 to complete the unbuilt units.
- d. Three percent improvement costs as a contingency;
- e. \$1,000.00 per unit for professional fees;
- f. \$2,250.00 per unit for impact fees, based the Town of Bow's current assessment;
- g. Real estate transfer taxes at the statutory rate of \$15.00 per thousand, paid half by buyer and half by seller;
- h. One percent of gross sales for miscellaneous expenses;
- i. Developers profit and discount rate of twenty percent, to which is added the tax factor of 2.25%, resulting in a discount rate rounded to 22%.

Neither granted nor denied.

12. Use of a tax factor as an adjustment to the developer's profit and discount rate is a more appropriate method of adjusting for taxes in a tax abatement proceeding than showing the tax payments as an expense of development.

Granted.

13. Based upon the real estate market as of April 1, 2009, the absorption of four units in the first following year, eight units in the next following year, twelve units in the third year and sixteen in the fourth year is reasonable, although, in fact, no sales have occurred since April 1, 2008.

Denied.

14. The sale of twenty unbuilt units to CATCH in April, 2010, was not a market driven transaction, was accomplished with special financing, and cannot be considered as a measure of the market value of the units or the project.

Granted.

15. As a result of selling twenty units to CATCH for low income housing, the Taxpayer reduced the value of its remaining units, changing their highest and best use to rental housing.

Neither granted nor denied.

16. The market value of the project as of April 1, 2009, was \$1,640,000.00.

Denied.

17. The unbuilt units had a market value of \$25,147.00 each, the six units with foundations had a value of \$46,000.00 each, and the completed units had a calculated average value of \$140,000.00 each, using the discounted cash flow method to calculate the share of the total project value assigned to the completed units.

Denied.

18. Applying the Town's equalization ratio of .954 to those values, the proper assessed values of the unbuilt units was \$23,990.00, of the six units with foundations, \$43,884.00, and the completed units, \$133,560.00.

Denied.

19. The completed units, if valued at their projected beginning sale price, would have an indicated assessed value of \$181,260.

Neither granted nor denied.

20. The taxpayer has met its burden of proof that the assessment on the property was disproportionately higher in relation to its true value than other property in the town, and the taxpayer is entitled to an abatement for the 2009 real estate taxes.

Granted.

TOWN OF BOW'S REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW

2007, 2008 and 2009

1. As of April 1, 2007, substantial work to the infrastructure of the Bow Highlands condominium project was complete and there were forty-two (42) Town approved condominium unit sites accessible by rough roadway.

Granted.

2. One improved (finished) condominium unit sold in December 2007 for \$214,900.00.

Granted.

3. As of April 1, 2008, there were thirty (30) undeveloped units, six (6) units with slab foundations and five (5) improved units at Bow Highlands.

Neither granted nor denied.

4. One improved unit sold in August 2008 for \$228,000.00.

Granted.

5. As of April 1, 2009, there were thirty (30) undeveloped units, six (6) units with slab foundations and four (4) improved units at Bow Highlands.

Neither granted nor denied.

6. On June 25, 2009, Concord Area Trust for Community Housing d/b/a CATCH Neighborhood Housing (CATCH) and the Taxpayer Petitioner entered into a Purchase and Sales Agreement for fourteen (14) undeveloped units and the six (6) units with slab foundations at Bow Highlands for a total purchase price of \$1,190,610.00.

Granted.

7. The sales price articulated in the June 25, 2009 CATCH purchase and sales agreement is a valid indicator of market value at the time the parties executed the purchase and sales agreement.

Denied.

8. On April 2, 2010, CATCH Neighborhood Housing (through its entity Bow Vista Limited Partnership) purchased the fourteen (14) undeveloped units and the six (6) units with slab foundations for \$1,190,610.00.

Granted.

9. The sale to CATCH is a valid indicator of market value at the time the sale occurred.

Denied.

10. The April 1, 2007 Assessment of \$2,079,000.00 of the property was reasonable and based on market value.

Denied.

11. The April 1, 2008 Assessment of \$2,957,600.00 of the property was reasonable and based on market value.

Denied.

12. The April 1, 2009 Assessment of \$2,924,100.00 of the property was reasonable and based on market value.

Denied.

13. The highest sale prices paid for vacant land for future development of condominium complexes are for land parcels that have plans and approvals in place and infrastructure such as roadways, water, sewer and utilities.

Neither granted nor denied.

14. The most accurate and appropriate method to determine Market Value of the property in this case is the Direct Sales Comparison method.

Neither granted nor denied.

15. In addition to the CATCH sale, earlier and contemporaneous sales occurred with similar per-unit indications, such as the 2006 and 2007 Southfield Village in Peterborough sales contained in the Town Appraiser's 2007 and 2009 reports (comparables #2 and #3).

Neither granted nor denied.

16. The 2010 foreclosure sale of 20 units at Southfield Village in Peterborough (petitioners Exhibit 1, Tab 13) is not a valid comparable or indicator of market value.

Granted.

17. Adequate comparable properties, specifically, vacant land with approvals were available for the April 1, 2007, April 1, 2008 and April 1, 2009 valuation dates.

Neither granted nor denied.

18. The Taxpayer's Appraiser did not review direct sales comparisons of comparable units for the undeveloped units when arriving at Market Value as of April 1, 2008 or April 1, 2009.

Neither granted nor denied.

19. The Taxpayer's Appraiser did not visit the property between December 2006 and September 2008.

Granted.

20. The Taxpayer has failed to meet his burden of proof that an abatement is justified in this case.

Denied.

Rulings of Law:

21. The Taxpayer's burden is "showing, by a preponderance of the evidence, the assessment was disproportionately higher or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes." RSA 76:16-a; Tax 201.27 (f); Tax 203.09 (a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994).

Granted.

22. The fact finder's task is to decide whether an "appraisal method [is] appropriate". Rye Beach Country Club v. Town of Rye, 143 N.H. 122, 127 (1998).

Neither granted nor denied.

23. The trier of fact may "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 omitted).

Granted.

24. “Where it is demonstrated that the sale was an arm’s length transaction between knowledgeable parties, of course, the sale price is one of the “best indicators of the property’s value.” Arthur Mitchell, et al. v. Town of Newton, 2010 WL 1525203 (N.H.Bd.Tax.Land.App.) quoting Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

Granted.

25. “The value at which taxable property is to be appraised is the market value or the price which the property would bring in a fair market after reasonable efforts have been made to find the purchaser who will give the highest price for it.” Public Service Company of New Hampshire v. New Hampton, 101 N.H. 142 (1957), citation omitted.

Granted.

ADDENDUM B

Tax Year 2007						
		2007	2008	2009	2010	TOTAL
INCOME:						
# of Sales		3	9	15	15	42
Sale Price Per Unit		\$220,000	\$220,000	\$220,000	\$220,000	
Gross Sales Revenue:		\$660,000	\$1,980,000	\$3,300,000	\$3,300,000	\$9,240,000
EXPENSES:						
Sales Commission	5%	\$33,000	\$99,000	\$165,000	\$165,000	\$462,000
Building Costs	\$95,125	\$570,750	\$570,750	\$1,712,250	\$1,141,500	\$3,995,250
Infrastructure		\$1,000,000	\$250,000	\$50,000	\$50,000	\$1,350,000
Contingency & Miscellaneous	2%	\$13,200	\$16,415	\$35,245	\$23,830	\$88,690
Impact Fees	\$2,250	\$6,750	\$20,250	\$33,750	\$33,750	\$94,500
Transfer Taxes	0.75%	\$4,950	\$14,850	\$24,750	\$24,750	\$69,300
Current Use		\$ -	\$ -	\$ -	\$ -	\$ -
Professional Fees	\$1,000	\$3,000	\$9,000	\$15,000	\$15,000	\$42,000
Developer's Profit	10%	\$66,000	\$198,000	\$330,000	\$330,000	\$924,000
Total Expenses:		\$1,697,650	\$1,178,265	\$2,365,995	\$1,783,830	\$5,990,440
NET REVENUE:		(\$1,037,650)	\$801,735	\$934,005	\$1,516,170	\$3,249,560
Discount Rate:						12.00%
NET PRESENT VALUE:						\$1,341,025
Eq. Ratio 0.994:						\$1,332,979
Rounded:						\$1,333,000

Tax Year 2008						
		2008	2009	2010	2011	TOTAL
INCOME:						
# of Sales		-	8	14	14	36
Sale Price Per Unit		\$200,000	\$200,000	\$200,000	\$200,000	
Gross Sales Revenue:		\$ -	\$1,600,000	\$2,800,000	\$2,800,000	\$7,200,000
EXPENSES:						
Sales Commission	5%	\$ -	\$80,000	\$140,000	\$140,000	\$360,000
Building Costs		\$ -	\$1,224,000	\$1,272,000	\$1,272,000	\$3,768,000
Infrastructure		\$50,000	\$100,000	\$100,000	\$100,000	\$350,000
Contingency & Miscellaneous	2%	\$ -	\$32,000	\$56,000	\$56,000	\$144,000
Impact Fees	\$2,250	\$ -	\$18,000	\$31,500	\$31,500	\$81,000
Transfer Taxes	0.75%	\$ -	\$12,000	\$21,000	\$21,000	\$54,000
Current Use		\$ -	\$ -	\$ -	\$ -	\$0
Professional Fees	\$1,000	\$ -	\$8,000	\$14,000	\$14,000	\$36,000
Developer's Profit	8%	\$ -	\$128,000	\$224,000	\$224,000	\$576,000
Total Expenses:		\$50,000	\$1,602,000	\$1,858,500	\$1,858,500	\$4,703,000
NET REVENUE:		(\$50,000)	(\$2,000)	\$941,500	\$941,500	\$2,497,000
Discount Rate:						14%
NET PRESENT VALUE:						\$1,147,531
Eq. Ratio 1.01:						\$1,159,006
Rounded:						\$1,159,000

Tax Year 2009						
		2009	2010	2011	2012	TOTAL
INCOME:						
# of Sales		-	8	14	14	36
Sale Price Per Unit		\$190,000	\$190,000	\$190,000	\$190,000	
Gross Sales Revenue:			\$1,520,000	\$2,660,000	\$2,660,000	\$6,840,000
EXPENSES:						
Sales Commission	5%	\$ -	\$76,000	\$133,000	\$133,000	\$342,000
Building Costs		\$ -	\$1,224,000	\$1,272,000	\$1,272,000	\$3,768,000
Infrastructure		\$50,000	\$100,000	\$100,000	\$100,000	\$350,000
Contingency & Miscellaneous	2%	\$ -	\$30,400	\$53,200	\$53,200	\$136,800
Impact Fees	\$2,250	\$ -	\$18,000	\$31,500	\$31,500	\$81,000
Transfer Taxes	0.75%	\$ -	\$11,400	\$19,950	\$19,950	\$51,300
Current Use		\$ -	\$ -	\$ -	\$ -	\$ -
Professional Fees	\$1,000	\$ -	\$8,000	\$14,000	\$14,000	\$36,000
Developer's Profit	5%	\$ -	\$76,000	\$133,000	\$133,000	\$342,000
Total Expenses:						
NET REVENUE:		(\$50,000)	(\$23,800)	\$903,350	\$903,350	\$2,162,200
Discount Rate:						14%
NET PRESENT VALUE:						\$1,082,418
Eq. Ratio 0.954:						\$1,032,627
Rounded:						\$1,033,000

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: James F. Raymond, Esq., Upton & Hatfield LLP, PO Box 1090, 10 Centre Street, Concord, NH 03302-1090, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Bow, 10 Grandview Rd., Bow, NH 03304; Paul T. Fitzgerald, Esq., Wescott, Dyer, Fitzgerald & Nichols, 28 Bowman Street, Laconia, NH 03247, counsel for the Town; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: January 12, 2011

Anne M. Stelmach, Clerk

Bow Highlands, LLC

v.

Town of Bow

Docket Nos.: 23411-07PT/24084-08PT/25110-09PT

ORDER

The board has reviewed the “Town’s” February 11, 2011 “Motion for Reconsideration” (the “Motion”). In accordance with RSA 541:5 and Tax 201.37(d), the board issues this suspension Order until it rules on the Motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that copies of the foregoing Order have been mailed this date, postage prepaid, to: James F. Raymond, Esq., Upton & Hatfield LLP, PO Box 1090, 10 Centre Street, Concord, NH 03302-1090, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Bow, 10 Grandview Rd., Bow, NH 03304; Paul T. Fitzgerald, Esq., Wescott, Dyer, Fitzgerald & Nichols, 28 Bowman Street, Laconia, NH 03247, counsel for the Town; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Bow Highlands, LLC v. Town of Bow
Docket Nos.: 23411-07PT/24084-08PT/25110-09PT
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Dated: February 17, 2011

Anne M. Stelmach, Clerk

Bow Highlands, LLC

v.

Town of Bow

Docket Nos.: 23411-07PT/24084-08PT/25110-09PT

ORDER

This “Order” responds to the “Town’s” February 11, 2011 Motion for Rehearing (“Motion”) and the “Taxpayer’s” February 17, 2011 “Objection.” The Motion is denied for the following reasons.

Tax 201.37(e) provides the basis for granting rehearing requests.

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. Rehearing motions shall not be granted for harmless error, meaning errors that, if corrected, would not challenge the board's ultimate decision.

The Motion requests that the board:

a) “[r]econsider its decision to disregard the CATCH sale as a comparable sale for 2009 valuations...”;

b) “[r]econsider its decision to leave the Southfield Village sales as comparables out of its valuations for 2007, 2008 and 2009...”; and

c) “[c]larify its calculations used when arriving at the values contained on pages 17 and 18 of its Decision.”

The board has reviewed the Motion and the Objection and finds the board’s January 12, 2011 “Decision” made adequate findings relative to the 2010 CATCH sale and the board’s lack of reliance on the Town’s comparable sales approach (see in particular p. 12 and pp. 15-16 of Decision). The Town’s arguments in the Motion are essentially a restatement of its arguments at the merit hearing and neither the selective excerpts from the transcript of the hearing nor the Motion’s arguments establish “the board overlooked or misapprehended the facts or the law....”

Similarly, the board reviewed the Taxpayer’s request for clarification of the Decision’s calculation of assessed values on page 17 and we conclude the findings on pages 14-15 provide sufficient detail of the factors considered in arriving at the Decision’s value conclusions. “The board’s explanations in support of its factual findings [must] satisf[y] 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; see also RSA 541-A:20” Appeal of City of Nashua, 138 N.H. 261, 265 (1994).

The board’s 36 page Decision contains extensive discussion of the evidence submitted by the parties and, from that evidence, the board developed the several discounted cash flow development approach calculations in the attached Addenda. While the board understands the Town must file its Motion to preserve the right of appeal, nothing in the Motion leads the board to conclude a rehearing or reconsideration of the Decision is warranted.

Any appeal by the Town 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).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: James F. Raymond, Esq., Upton & Hatfield LLP, PO Box 1090, 10 Centre Street, Concord, NH 03302-1090, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Bow, 10 Grandview Rd., Bow, NH 03304; Paul T. Fitzgerald, Esq., Wescott, Dyer, Fitzgerald & Nichols, 28 Bowman Street, Laconia, NH 03247, counsel for the Town; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: March 4, 2011

Anne M. Stelmach, Clerk