

Preferred First Realty Holdings, LLC

v.

Town of Bow

Docket Nos.: 23413-07PT/24083-08PT/25156-09PT

DECISION

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

MAP/LOT	2007 ASSESSMENT	2008 ASSESSMENT	2009 ASSESSMENT
28/3/43-B/U01A	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U01B	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U02A	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U02B	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U04	\$125,000 (CONDO)	NOT APPEALED	NOT APPEALED
28/3/43-B/U05	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U06	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U07	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U08	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U09	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U10B	\$356,800 (LAND \$125,000; BUILDING \$231,800)	\$356,800 (LAND \$125,000; BUILDING \$231,800)	NOT APPEALED
28/3/43-B/U16B	\$386,200 (LAND \$125,000; BUILDING \$261,200)	\$374,400 (LAND \$125,000; BUILDING \$249,400)	\$366,900 (LAND \$125,000; BUILDING \$241,900)
28/3/43-B/U17A	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U17B	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U18	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U19	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U20	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)

28/3/43-B/U21A	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U21B	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U22A	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U22B	\$125,000 (CONDO)	\$125,000 (CONDO)	\$125,000 (CONDO)
28/3/43-B/U24	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U25	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U26	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U27	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U28A	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U28B	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U29	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U30	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U31	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U32	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U33	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
28/3/43-B/U34	\$81,300 (CONDO)	\$81,300 (CONDO)	\$81,300 (CONDO)
TOTAL	\$4,093,600	\$3,956,800	\$3,592,500

At the hearing, the Taxpayer stated it was no longer contesting the assessments for 28/3/43-B/U10B and 28/3/43-B/U16B and the parties stipulated those units were reasonably assessed; thus, the testimony and decision focus on the remaining 31 (2007) and 30 (2008 and 2009) approved but not built condominium sites (collectively the “Appealed 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 Appealed 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 “Certificate of Registration” of the “Stone Sled Farm Condominium” issued by the Consumer Protection and Antitrust Bureau of the Department of Justice in 2005 prohibits the sale of the undeveloped sites separately and requires the condominium unit be “substantially complete” before any closing can occur;
- 2) the Certificate of Registration restriction results in there being only one “estate” that can be valued and assessed as opposed to the Town’s separate assessment of each site;
- 3) after selling six completed units in late 2005 and 2006, sales dropped significantly in subsequent years due to the general market decline;
- 4) after the original owner, Stone Sled Farm, LLC, was unable to meet its financial obligations due to the decline in unit sales, Preferred First Realty Holdings, LLC acquired title from Stone Sled Farm, LLC and First Horizon Bank for the remaining sites/units in 2010 for \$333,333 and nearly \$300,000 of property taxes in arrears;
- 5) a Summary Appraisal Report prepared by Ernest Toumpas for each of the three appeal years (“Toumpas Appraisal”) utilized the sales comparison approach and a discounted cash flow (“DCF”) analysis “to value the entire subject property to a single purchaser.” Id. at 29;
- 6) the Toumpas Appraisal estimated the market value of the Appealed Properties at:
2007 - \$2,080,000; 2008 - \$1,690,000; and 2009 - \$1,180,000; and
- 7) the assessments should be abated based on the Toumpas Appraisal market value findings equalized by the median ratio for each year.

The Town argued the assessments were proper because:

- 1) the site values were derived from sales of completed units in the Stone Sled Farm development by the extraction process (land residual); the extraction process estimates the value of the site to the ultimate end user, the purchaser of a finished condominium unit;
- 2) the Stone Sled Lane site values were initially assessed at \$150,000 during the 2007 reassessment performed by Cross Country Associates but were subsequently reduced to \$125,000; the Lewis Lane site values were estimated at \$81,300 due to the unfinished nature of Lewis Lane during the appeal years;
- 3) the assessments were premised upon each site being a separate “estate” with the ability to be sold separately; the Town was unaware of the Certificate of Registration until it was presented as evidence at the hearing;
- 4) the DCF analyses performed in the Toumpas Appraisal are “intellectual exercises” that contain many assumptions and the DCF method is rarely the basis for determination of the sale price for a development such as the Taxpayer’s;
- 5) the absorption rate and, thus, the 15 year sell-out/build-out estimate, particularly for 2009, is unrealistic and ignores historic real estate cycles; and
- 6) the Toumpas Appraisal does not contain a full highest and best use analysis.

The parties stipulated the levels of assessment were reasonably estimated by the following median ratios determined by the department of revenue administration:

2007 – 99.4 %; 2008 – 101.0%; and 2009 – 95.4%.

Board’s Rulings

Based on the evidence, the board finds the proper assessments to be:

2007 - \$2,287,300; 2008 - \$1,982,600; and 2009 - \$1,665,100.

The threshold question in these appeals is whether the Appealed Properties should be valued as separate estates pursuant to RSA 75:9 and RSA 674:37-a or whether the Certificate of Registration so restricts the sale of the condominium units to only after they are substantially complete that the 31/30 approved condominium sites should be valued as one estate.

The pertinent sections of the referenced statutes, RSA 75:9 and RSA 674:37-a, I, are as follows:

75:9 Separate Tracts. – Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory. In determining whether or not contiguous tracts are separate estates, the selectmen or assessors shall give due regard to whether the tracts can legally be transferred separately under the provisions of the subdivision laws including RSA 676:18, RSA 674:37-a, and RSA 674:39-a.

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.

On July 15, 2005, the Taxpayer's predecessor in title had recorded at the Merrimack County Registry of Deeds the Certificate of Registration which identified the units approved for sale. The Certificate of Registration also contained the following condition. "In the event that the town or municipality wherein the condominium is located does not require a certificate of occupancy or other similar approval prior to closing, this certificate is issued subject to the

condition that no closing be held with respect to any condominium unit until such unit has been substantially completed.” (emphasis added).

The condition in the Certificate of Registration restricts the sale of units until a unit is “substantially completed” unless the condominium is located in a municipality that requires “a certificate of occupancy or other similar approval prior to closing.” The board’s review of both the applicable zoning statutes and the Town of Bow’s on-line zoning regulations indicates that while the Town of Bow requires a certificate of occupancy be issued before a dwelling can be used or occupied, the Town’s zoning and certificate of occupancy do not preclude the sale of an incomplete dwelling or condominium unit. Consequently, because Bow has a certificate of occupancy process that limits use and occupancy but not the sale (“closing”) of a unit, the board finds the Certificate of Registration condition controls and restricts the sale of the condominium units only after they are “substantially completed.” This restriction limits the sale of the Appealed Properties during the appeal years to be sold as one estate if not “substantially complete.”

Because of the existence of the restriction in the Certificate of Registration, the board finds the provisions of RSA 674:37-a are not applicable in this instance. RSA 674:37-a requires that if a subdivision plan has been approved (see RSA 672:14, I which defines “[s]ubdivision” to include a “condominium conveyance”) so that the owner has the legal right to convey a lot or unit without further approval by the municipality, such units or lots shall be assessed separately. While it is true there was no evidence presented of the necessity for any further municipal approval or action before a unit can be conveyed, the Certificate of Registration condition precludes the separate transmissibility of a unit until it is substantially complete. Consequently, the specific provisions of RSA 674:37-a are not applicable here but the general provisions of

RSA 75:9 are and the appealed sites do not become separate legal estates until substantially complete units have been constructed on them.

Said another way and more simply, if the Certificate of Registration restriction did not exist, the separate estate provisions of RSA 674:37-a would apply. But, because the restriction does exist, it trumps the specific provisions of RSA 674:37-a and the separate estate analysis reverts to the general separate estate statute of RSA 75:9. (The board must read the language at issue in the context of the entire statute and the overall statutory scheme. Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992); Great Lakes Aircraft Co. v. City of Claremont, 135 N.H. 270, 277 (1992).)

As the board mentioned at hearing, it has reviewed its decision in Bearfoot Creek, LLC v. Town of Bartlett, Docket Nos. 22045-05PT/23090-06PT (December 1, 2008). In Bearfoot Creek, the properties on appeal were 21/18 condominium sites adjacent to a ski resort that had received full approval for sale by the Town. Evidence in Bearfoot Creek was that a number of the approved (but unimproved) sites had sold to individuals who then had a condominium unit built on the sites. In Bearfoot Creek, the board found the sites were separate estates pursuant to RSA 674:37-a and should be assessed at their distinct “retail value” and not on any “wholesale” or aggregate estate value. The board finds the facts in Bearfoot Creek and those on appeal here are very distinct in that the Appealed Properties do not have the ability to be sold as separate sites due to the existence of the restriction in the Certificate of Registration.

Having found that legally the 31/30 sites must be valued as one estate, the board finds the “development method”¹ provides the best technique for estimating the value of the approved sites with “stubbed-in utilities” at “curbside” and the incomplete status of Lewis Lane. Both parties’ appraisers estimated contributory site values from the market, both from land only lot sales and by the extraction method from the sale of completed units in the Stone Sled Farm development. The board finds estimating the aggregate market value of the sites can be done utilizing the contributory site value analyzed by the development method DCF technique as opposed to analyzing the sale of completed units. While analyzing the sales of completed units may be more intellectually in concert with the board’s ruling that the sites cannot be transferred separately, it does not provide any greater accuracy because the expense to construct the units is a net sum deduction from the higher completed unit sale prices.

The board certainly recognizes the development method DCFs involve a number of assumptions that are taken out over a period of time and those assumptions are not always quantifiable and thus involve judgment. This has often, and many times appropriately, been cited as the shortcoming or “mischief” of this method. However, it is an accepted technique that attempts to reflect the financial inputs and returns of a relatively long term development and to discount those future net earnings to a current present worth. Mindful of the pitfalls and

¹ As the board noted recently in Bow Highlands, LLC v. Town of Bow, Docket Nos. 23411-07PT, et. al (January 12, 2011), “[a]n 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.’”

criticism of this approach, the board nonetheless finds this “intellectual exercise” is the best process to estimate the Appealed Properties for each of the three years. The board finds the general framework laid out in the Toumpas Appraisal DCFs is reasonable but as the board’s DCFs at the end of the Decision (pp. 24-26) reflect, and as the following summary findings detail, the board has revised a number of the main factors of the DCF.

2007

Both the Toumpas Appraisal’s and the Corcoran Appraisal’s lot value and extracted site value were similar for 2007 with the Toumpas Appraisal estimate being \$140,000 and the Corcoran Appraisal estimate being \$148,000. The Corcoran Appraisal estimate is an average of six sales of units in the Stone Sled Development from which a pro-forma unit cost is subtracted to estimate a residual site value. Five of the six residual site values range from approximately \$122,000 to \$142,000; the sixth sale at 42 Stone Sled Lane had a significantly higher residual site value of \$214,000. A review of the assessment-record card for that property indicates it is a “stand alone” unit with some basement finish and, thus, the “pro forma” unit cost may not have adequately deducted for its contributory value. Placing less weight on the 42 Stone Sled Lane sale results in the site residual value being very similar to the Toumpas Appraisal estimate of \$140,000 and, thus, the board has utilized that estimate for the first four years of the 2007 DCF and increased the sale price in years five through eight at 3% per year. The board finds it is reasonable that an investor in the Appealed Properties in 2007 would expect some market appreciation during the estimated eight year absorption period.

For 2007, the board finds the estimated sale/absorption rate of four units per year is reasonably documented in the Toumpas Appraisal. This absorption rate results in a remaining

holding period of eight years which from the April 1, 2007 market perception was, if anything, conservative given the six sales that had occurred at the Stone Sled complex in 2006.

The board reviewed the Toumpas Appraisal's expenses, including the remaining \$125,000 Lewis Lane completion costs, and finds them reasonable and in keeping with the board's experience. Specifically, the developer's profit of 10% reflects the 2007 market perception that the continued sale and profitability of such a residential development was likely.

In reviewing the Toumpas Appraisal's discount rate documentation and discussion at pp. 34-35, the board finds the 16% yield rate assumed in the band of investment calculation is too high for the relatively healthy real estate market in 2007 and relative to the fact that the sites were all approved with all utilities developed and installed to curb side and the only remaining infrastructure to be completed was the finishing of Lewis Lane construction for a quantifiable cost. In brief, other than marketing costs and holding time (other than the obvious construction costs of the units themselves), few uncertainties in the development process remain. Consequently, the board has reduced the yield rate estimate of 12% and modified the discount rate (before loading with the effective tax rate) to 8.5%.

2008

The board's choice of key factors in the 2008 DCF are mindful of the fact the assessment date is April 1 and much of the market deterioration was not clearly evident until after that assessment date. However, the board finds the reduction in number of sales at the Stone Sled complex in 2007 to three units within the context of the changes that were occurring in the general real estate market would cause any investor to make more conservative assumptions in the completion and liquidation of the project. The board has continued to utilize a \$140,000 sale price as it is supported by the residential lot sales in the Town of Bow in 2007 and early 2008.

The board is unable to place any conclusive weight on the \$158,000 average extracted site value of the Corcoran Appraisal of the three units that sold in 2007 because it is derived from only three sales which have a relatively large range of indicated site value of \$131,000 to \$192,000. The board does, however, give some weight to these extracted site values to support its finding that as of April 1, 2008 there was no definitive market indication that the contributory values of the sites had dropped.

Noting the reduced absorption rate at the complex itself and the generally lengthening “days on market” of residential property, the board agrees that an absorption rate of three per year (for the remaining 30 sites) is reasonable. Also, the board has not increased the site value in later years reflecting the more cautious market perspective of April 1, 2008.

The level of marketing expenses remain the same with the exception of a reduction in the developer’s profit to 8% to reflect the potential lower return on entrepreneurial effort. (The board notes the Toumpas Appraisal appears to have inadvertently in 2008 doubled the “legal and accounting” costs from \$1,000 per unit to \$2,000 and calculated the developer’s profit at only 5% of effective gross income despite discussion and description of a 10% developer’s profit.)

To reflect the slightly higher risk and thus an expectation of a higher yield rate, the board has increased the 2008 discount rate (before loading with the effective tax rate) to 9.1% based upon a slightly higher yield rate of 14%.

2009

The board has reduced the lot value by 10% to \$125,000 based upon a comparison of the median sale price of Bow lots in the Toumpas Appraisal from 2008 to 2009. See pp. 30, 41, 46 of Toumpas Appraisal. The board finds this reduction is also generally reflective of the real estate market in the Concord region at that time. The board has retained a three-unit absorption

rate rather than two units employed in the 2009 Toumpas Appraisal DCF. The two sales per year absorption rate results in a 15 year holding period for the Appealed Properties which seems excessive and speculative. While the 2009 market was declining compared to the 2007 market, assuming such a depressed market would continue for another 15 years, is very questionable given the historical cycling of value in the real estate market. Further, most financial analyses utilizing a DCF or direct capitalization of income producing property typically have holding periods closer to 10 years. Expenses are assumed to remain at the same level with the exception of a further reduction in developer's profit to 5%.

The discount rate is increased to 10% to reflect the higher risk inherent in purchasing the Appealed Properties and is based largely on a 16% yield rate assumption in a band of investment calculation similar to that performed in the Toumpas Appraisal at p. 35.

In summary, the board finds the indicated market values and assessed values are as follows:

TAX YEAR	MARKET VALUE	MEDIAN RATIO	ASSESSED VALUE (ROUNDED)
2007	\$2,301,142	99.4%	\$2,287,300
2008	\$1,962,970	101.0%	\$1,982,600
2009	\$1,745,407	95.4%	\$1,665,100

If the taxes have been paid, the amount paid on the value in excess of the 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 properties pursuant to RSA 75:8, the Town shall use the ordered assessments 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

ADDENDUM A

The “Requests” received from the Town are replicated below, in the form submitted and without any typographical corrections or other changes. The board’s responses are in bold face. With respect to the Requests, “neither granted nor denied” generally means one of the following:

- a. the Request contained multiple requests for which a consistent response could not be given;
- b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the Request was irrelevant; or
- e. the Request is specifically addressed in the Decision.

PREFERRED FIRST REALTY HOLDINGS, LLC **REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW**

Paragraphs 1 through 17 apply to the 2007, 2008 and 2009 appeals.

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.

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.

2. Preferred First Realty Holdings, LLC, owns the subject condominium sites in Bow, New Hampshire, approved for the construction of forty-two condominiums known as Stone Sled Farm Condominium.

Neither Granted nor Denied.

3. Stone Sled Farm Condominium is located on 55.23 +/- acres in Bow New Hampshire on the northerly side of Woodhill Hooksett Road.

Granted.

4. Approximately 28 +/- acres of Stone Sled Farm Condominium is encumbered by a conservation easement granted to the Town of Bow.

Granted.

5. Stone Sled Farm Condominium is a 42 unit condominium that is a 55 and older age restricted condominium.

Granted.

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

Granted.

7. The New Hampshire Attorney General required that the developer only sell completed condominium units to consumers.

Granted.

8. The New Hampshire Attorney General's requirement that the developer only sell completed condominium units to consumers does not ride with the property as the approval is specific to the developer.

Granted.

9. The developer of Stone Sled Farm Condominium cannot sell vacant sites to consumers as a result of the Attorney General's requirement.

Granted.

10. Obtaining approvals from the New Hampshire Attorney General to sell completed units to consumers is an extensive and time consuming process.

Neither Granted nor Denied.

11. The Extraction Method of appraising is not appropriate when a developer cannot sell incomplete units or a group of incomplete units to another developer.

Neither Granted nor Denied.

12. The appropriate method of appraising the subject properties is by the Sales Comparison Approach while using the Discounted Cash Flow Analysis.

Granted.

13. Given the likelihood of holding the vacant sites for an extended period of time the Discounted Cash Flow Analysis should be used to determine the value of the vacant sites.

Granted.

14. For all relevant times, the infrastructure in Stone Sled Farm Condominium remained substantially the same.

Granted.

15. The vacant sites off Stone Sled Lane have access to nearly complete infrastructure.

Granted.

16. The vacant sites off Lewis Lane are on an incomplete road.

Granted.

Paragraphs 18 through 28 are applicable specific to the 2007 appeal.

17. The Town of Bow used an equalization ratio for 2007 of .994.

Granted.

18. 19 vacant sites on Stone Sled Lane are subject to the 2007 abatement appeal.

Granted.

19. The Town of Bow assessed the Stone Sled Lane vacant sites in 2007 for \$150,000.00 per vacant site.

Denied.

20. Given the assessed value and the equalization ratio, in 2007 the Town of Bow concludes the Stone Sled Lane vacant sites have a fair market value of \$150,905.43 each.

Denied.

21. The fair market value of the Stone Sled Lane properties in 2007 was \$82,000.00 per vacant site.

Denied.

22. The Stone Sled Lane vacant sites should be assessed at \$81,508.00 each.

Denied.

23. 12 vacant sites on Lewis Lane are subject to the 2007 abatement appeal.

Granted.

24. The Town of Bow assessed the Lewis Lane vacant sites in 2007 for \$97,500.00 per vacant site.

Neither Granted nor Denied.

25. Given the assessed value and the equalization ratio, the Town of Bow concludes the Lewis Lane vacant sites have a fair market value of \$98,088.53 each.

Neither Granted nor Denied.

26. The fair market value of the Lewis Lane vacant sites in 2007 was \$45,000.00 per vacant site.

Denied.

27. The Lewis Lane vacant sites should be assessed at \$44,730.00 each.

Denied.

Paragraphs 29 through 39 are applicable specific to the 2008 appeal.

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

Granted.

29. 18 vacant sites on Stone Sled Lane are subject to the 2008 abatement appeal.

Granted.

30. The Town of Bow assessed the Stone Sled Lane vacant sites in 2008 for \$125,000.00 per vacant site.

Granted.

31. Given the assessed value and the equalization ratio, in 2008 the Town of Bow concludes the Stone Sled Lane vacant sites have a fair market value of \$123,762.38 each.

Granted.

32. The fair market value of the Stone Sled Lane properties in 2008 was \$72,000.00 per vacant site.

Denied.

33. The Stone Sled Lane vacant sites should be assessed at \$72,720.00 each.

Denied.

34. 12 vacant sites on Lewis Lane are subject to the 2008 abatement appeal.

Granted.

35. The Town of Bow assessed the Lewis Lane vacant sites in 2008 for \$81,300.00 per site.

Granted.

36. Given the assessed value and the equalization ratio, the Town of Bow concludes the Lewis Lane vacate sites have a fair market value of \$80,495.05 each.

Neither Granted nor Denied.

37. The fair market value of the Lewis Lane properties in 2008 was \$34,000.00 per vacant Site.

Denied.

38. The Lewis Lane vacant sites should be assessed at \$34,340.00 each.

Denied

Paragraphs 40 through 50 are applicable specific to the 2009 appeal.

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

Granted.

40. 18 vacant sites on Stone Sled Lane are subject to the 2009 abatement appeal.

Granted.

41. The Town of Bow assessed the Stone Sled Lane vacant sites in 2009 for \$125,000.00 per vacant site.

Granted.

42. Given the assessed value and the equalization ratio, in 2009 the Town of Bow concludes the Stone Sled Lane vacant sites have a fair market value of \$131,037.25 each.

Granted.

43. The fair market value of the Stone Sled Lane vacant sites in 2009 was \$55,000.00 per vacant site.

Denied.

44. The Stone Sled Lane vacant sites should be assessed at \$52,470.00 each.

Denied.

45. 12 vacant sites on Lewis Lane are subject to the 2009 abatement appeal.

Granted.

46. The Town of Bow assessed the Lewis Lane vacant sites in 2009 for \$81,300.00 per site.

Granted.

47. Given the assessed value and the equalization ratio, in 2009 the Town of Bow concludes the Lewis Lane vacant sites have a fair market value of \$85,220.13 each.

Granted.

48. The fair market value of the Lewis Lane vacant sites in 2009 was \$18,000.00 per vacant site.

Denied.

49. The Lewis Lane vacant sites should be assessed at \$17,172.00 each.

Denied.

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

1. As of April 1, 2007, of the forty-two (42) unit approved condominium complex there were: nine (9) completed units (seven (7) already sold to individual owners and two (2) owned by Stone Sled Farm, LLC), three (3) additional units in various stages of completion with no building value, and thirty (30) additional approved condominium sites all accessible via roadway, eighteen (18) of which were utility ready.

Neither Granted nor Denied.

2. The subject property was sold to Stone Sled Farm, LLC in December 2004 for \$990,000 with fifty-nine acres (59) and a farmhouse.

Granted.

3. The highest and best use of the subject site, as vacant, is for development of condominiums or single-family homes.

Granted.

4. The project sold to current owner for \$333,333 in June 2010, but was not on the open market.

Neither Granted nor Denied.

5. The complexes, which were age restricted to 55+, were all built in phases and allowed the potential homebuyer to finish the interior to their individual tastes.

Granted.

6. The April 1, 2007 Assessment of \$3,981,600.00 of the property was reasonable and based on market value.

Denied.

7. The April 1, 2008 Assessment of \$3,981,600.00 of the property was reasonable and based on market value.

Denied.

8. The April 1, 2009 Assessment of \$3,981,600.00 of the property was reasonable and based on market value.

Denied.

9. The Taxpayer's appraiser testified that his review was limited in scope.

Neither Granted nor Denied.

10. The Taxpayer's appraiser testified that there were no flaws in the Town's calculations.

Neither Granted nor Denied.

11. The Taxpayer's appraiser did not conduct an in depth analysis of the highest and best use.

Granted, but immaterial as both appraisers determined similar highest and best use as continued residential development.

12. The Taxpayer acknowledged that the 2007, 2008 and 2009 assessments of the two (2) approved sites (units 2 and 13) appealed in this case was fair and reasonable.

Granted.

13. Nowhere in the Taxpayer's case did he or his expert challenge the methodology as performed and factors utilized or the Town's calculations.

Denied.

14. The Taxpayer's appraiser testified that the extraction method is an acceptable method for projects such as Stone Sled in its current state of completion.

Neither Granted nor Denied.

15. The Town used the extraction method and based the assessments on 2,200 square foot units without special amenities.

Granted.

16. The most accurate and appropriate method to determine market value of the property in this case is the extraction method (Town Report, testimony of Corcoran and Gordon). .

Denied.

17. The discounted cash flow method is an unstable model for determining current market value because it requires the prediction of specific variables relating to market behavior in the future (Testimony of Corcoran).

Neither Granted nor Denied.

18. The discounted cash flow method is typically used for financing purposes and is not adaptable for mass appraisal purposes (Testimony of Corcoran).

Neither Granted nor Denied.

19. The Attorney General's restriction does not prevent the Town from assessing lots individually and is not a bar to the transferability of the subject units (Testimony of Corcoran).

Denied.

Rulings of Law:

20. 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.

21. 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).

Granted.

22. 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.

23. The burden of proof is on the taxpayer to demonstrate that assessment values assigned by the Town results in disproportionate and illegal taxation.

Granted.

24. Taken in its totality, the taxpayer's case did not meet the requisite level of proof that the Town's assessment for the years in question was disproportionate or in any other way improper or illegal.

Denied.

Market Value Estimate as of April 1, 2007										
		2007	2008	2009	2010	2011	2012	2013	2014	TOTAL
SALES:										
# of Lot Sales		4	4	4	4	3	4	4	4	31
Average Sale Price/Lot	3%	\$140,000	\$140,000	\$140,000	\$140,000	\$144,200	\$148,526	\$152,982	\$157,571	
GROSS SALES REVENUE:		\$560,000	\$560,000	\$560,000	\$560,000	\$432,600	\$594,104	\$611,927	\$630,285	\$4,508,916
EXPENSES:										
Fixed:										
Road Construction		\$ -	\$ -	\$ -	\$ -	\$ 125,000	\$ -	\$ -	\$ -	\$125,000
Real Estate Taxes		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Variable:										
Real Estate Commissions	5%	\$28,000	\$ 28,000	\$ 28,000	\$ 28,000	\$ 21,630	\$ 29,705	\$ 30,596	\$ 31,514	\$225,446
Miscellaneous Expenses	3%	\$16,800	\$ 16,800	\$ 16,800	\$ 16,800	\$ 12,978	\$ 17,823	\$ 18,358	\$ 18,909	\$135,267
Legal & Accounting	\$1,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 3,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 31,000
Developer's Profit	10%	\$56,000	\$ 56,000	\$ 56,000	\$ 56,000	\$ 43,260	\$ 59,410	\$ 61,193	\$ 63,028	\$450,892
TOTAL EXPENSES		\$104,800	\$104,800	\$104,800	\$104,800	\$205,868	\$110,939	\$114,147	\$117,451	\$967,605
										-
NET REVENUE:		\$455,200	\$455,200	\$455,200	\$455,200	\$226,732	\$483,165	\$497,780	\$512,834	\$ 3,541,311
DISCOUNT RATE:										10.59%
NET PRESENT VALUE:										\$2,301,142
2007 EQUALIZATION RATE:										99.4%
2007 EQUALIZED VALUE:										\$2,287,335

Market Value Estimate as of April 1, 2008												
		2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	TOTAL
SALES:												
# of Lot Sales		3	3	3	3	3	3	3	3	3	3	30
Average Sale Price/Lot		\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	
GROSS SALES REVENUE:		\$420,000	\$4,200,000									
EXPENSES:												
Fixed:												
Road Construction		\$ -	\$ -	\$ -	\$ -	\$ -	\$125,000	\$ -	\$ -	\$ -	\$ -	\$ 125,000
Real Estate Taxes		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Variable:												
Real Estate Commissions	5%	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 210,000
Miscellaneous Expenses	3%	\$ 12,600	\$ 12,600	\$ 12,600	\$ 12,600	\$ 12,600	\$ 12,600	\$ 12,600	\$ 12,600	\$ 12,600	\$ 12,600	\$ 126,000
Legal & Accounting	\$ 1,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 30,000
Developer's Profit	8%	\$ 33,600	\$ 33,600	\$ 33,600	\$ 33,600	\$ 33,600	\$ 33,600	\$ 33,600	\$ 33,600	\$ 33,600	\$ 33,600	\$ 336,000
TOTAL EXPENSES:		\$ 70,200	\$195,200	\$ 70,200	\$ 70,200	\$ 70,200	\$ 70,200	\$ 827,000				
NET REVENUE:		\$349,800	\$349,800	\$349,800	\$349,800	\$349,800	\$224,800	\$349,800	\$349,800	\$349,800	\$349,800	\$3,373,000
DISCOUNT RATE:												11.37%
NET PRESENT VALUE:												\$1,962,970
2008 EQUALIZATION RATE:												101%
2008 EQUALIZED VALUE:												\$1,982,600

Market Value Estimate as of April 1, 2009												
		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	TOTAL
SALES:												
# of Lot Sales		3	3	3	3	3	3	3	3	3	3	30
Average Sale Price/Lot		\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	
GROSS SALES REVENUE:		\$375,000	\$3,750,000									
EXPENSES:												
Fixed:												
Road Construction		\$ -	\$ -	\$ -	\$ -	\$ -	\$125,000	\$ -	\$ -	\$ -	\$ -	\$125,000
Real Estate Taxes		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Variable:												
Real Estate Commissions	5%	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 187,500
Miscellaneous Expenses	3%	\$ 11,250	\$ 11,250	\$ 11,250	\$ 11,250	\$ 11,250	\$ 11,250	\$ 11,250	\$ 11,250	\$ 11,250	\$ 11,250	\$ 112,500
Legal & Accounting	\$1,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 31,000
Developer's Profit	5%	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 187,500
TOTAL EXPENSES:		\$ 51,750	\$51,750	\$ 51,750	\$ 51,750	\$ 51,750	\$176,750	\$ 51,750	\$ 51,750	\$51,750	\$ 51,750	\$642,500
NET REVENUE:		\$323,250	\$323,250	\$323,250	\$323,250	\$323,250	\$198,250	\$323,250	\$323,250	\$323,250	\$323,250	\$3,107,500
DISCOUNT RATE:												12.25%
NET PRESENT VALUE:												\$1,745,407
2009 EQUALIZATION RATE:												95.4%
2009 EQUALIZED VALUE:												\$1,665,118

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Timothy Sheedy, Esq., Tarbell Professional Assoc., 45 Centre Street, Concord, NH 03301, 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: July 15, 2011

Anne M. Stelmach, Clerk