HLF Corporation
Docket Nos.: 23490-07PT/24618-08PT

Bow Junction Associates
Docket Nos.: 23491-07PT/24362-08PT

HLF ATS LLC
Docket Nos.: 23492-07PT/24366-08PT
v.

Town of Bow

DECISION

The above captioned appeals were consolidated for hearing on February 16, 2010. The "Taxpayers" are related legal entities of three Grappone auto dealerships located at "Bow Junction," the intersection of Interstate 89, 93 and Rte 3A. The "Properties" and assessments appealed by the Taxpayers are summarized below.

HLF Corporation -- Docket Nos.: 23490-07PT/24618-08PT -- Map 16/Lot 1/57:

2007 and 2008 assessments of $4,103,300 (land $1,126,800; building $2,976,500), an automobile sales and service facility on 9.25 acres known as Grappone Honda Auto Dealership ("Honda Dealership").

Bow Junction Associates -- Docket Nos.: 23491-07PT/24362-08PT -- Map 16/Lot 1/83:

2007 and 2008 assessments of $5,213,300 (land $972,600; building $4,240,700), an automobile sales and service facility on 7.60 acres known as Grappone Toyota Auto Dealership ("Toyota Dealership").

HLF ATS LLC. -- Docket Nos.: 23492-07PT/24366-08PT -- Map 16/Lot 1/51:

2007 and 2008 assessments of $7,244,500 (land $981,800; building $6,262,700) an automobile sales and service facility on 10.40 acres known as the Grappone Ford Auto Dealership ("Ford Dealership").

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried its burden with respect to the Ford Dealership appeal and failed to carry its burden with respect to the Honda Dealership and the Toyota Dealership.

The Taxpayers argued the assessments were excessive because:

(1) a Summary of Oral Appraisal Report (Taxpayer Exhibit No. 1) prepared by Barry J. Cunningham ("Cunningham Report") estimated market values as of April 1, 2008 to be: $3,525,000 for the Honda Dealership; $4,000,000 for the Toyota Dealership; and $4,665,000 for the Ford Dealership;

(2) Mr. Cunningham testified the market was stable from 2007 and 2008 and his values would be the same as of April 1, 2007;

(3) the corrosive nature of the on-site water and the lack of public water supply availability limits the ultimate use and marketability of the Properties; the Ford Dealership and Toyota Dealership do not have sprinkler systems; however, the Honda Dealership does have a water filtration and pressurized water system;

(4) the sales analyzed in the Town's Municipality Exhibit A were not adjusted for franchise value and personal property transferred with each sale; further, the Town's sale at 142 Manchester Street, Concord, New Hampshire, was between related parties and thus was not an arm's-length transaction;

(5) the 2006 transfer price between two Grappone family entities of the Ford Dealership for $4,500,000 is indicative of market value;

(6) the multiple sales buildings on the Ford Dealership are not fully utilized especially after the Honda franchise moved to its new location across Rte 3A in 2006; and

(7) the Toyota Dealership buildings suffer from some functional obsolescence due to their "chopped up" layout resulting from several renovations and their encroachments into the current zoning setbacks.

The Town argued the assessments were proper because:

(1) a summary appraisal report (Municipality Exhibit A) prepared by Wil Corcoran of Corcoran Consulting Associates, Inc. ("Corcoran Report") estimated market values as of April 1, 2007 to be: $4,693,400 for the Honda Dealership; $6,102,300 for the Toyota Dealership; and $7,236,500 for the Ford Dealership;

(2) as of April 1, 2007 and April 1, 2008, multiple buildings on the Ford Dealership were being fully used for auto sales and service functions;

(3) the highest and best of the Properties are as auto sales and service and thus the lack of public water supply is not a significant factor;

(4) regardless of whether the Properties are owned by related entities or not, auto dealerships customarily locate in close proximity to each other providing synergy and enhanced value; the Bow Junction area which has been dubbed Grappone Auto Junction is a reflection of such synergy which positively affects the value of the Properties;

(5) the Cunningham Appraisal failed to recognize and adjust for the land size of the comparables; visibility and exposure afforded by road frontage and exterior auto display are important features for auto dealership uses and thus the size of parcels is an important factor that must be considered;

(6) the 2006 transfer of the Ford Dealership between Grappone entities was not an arm's-length transaction because it was not exposed to the market, it was the result of contentious litigation and only one of the two appraisals on which the value was purportedly based is available; and

(7) the Honda Dealership cost nearly $4,000,000 to develop in 2003 and the Taxpayers 21.43 implied accrued depreciation in the cost approach is excessive for a new state of the art auto sales and service building built according to Honda requirements.

The parties stipulated that the department of revenue administration's 2007 and 2008 median ratios of 99.4% and 101.0% were reasonable indications of the Town's levels of assessment.

As provided by RSA 71-B:14 (See also Appeal of Sokolow, 137 N.H. 642 (1993)), the board's review appraiser, Theresa M. Walker, reviewed the assessment-record cards, reviewed the parties' briefs and filed a report with the board on May 28, 2010 ("Walker Report"). A copy of the report was sent to the parties on May 28, 2010 and the parties had twenty (20) days in

which to file any comments, which both parties did. The Walker Report concluded the proper assessments should be:

Ford Dealership: 2007 - $5,367,600; 2008 - $5,454,000

Honda Dealership: 2007 - $3,548,600; 2008 - $3,605,700

Toyota Dealership: 2007 - $5,695,600; 2008 - $5,787,300

Board's Rulings

The totality of evidence submitted by the parties and the Walker Report was substantial and, as is frequently the case, conflicting. Even with the substantial market data of automobile dealership sales in New Hampshire submitted during the time period relevant to the two years under appeal, the board surmises there remains many nuances to this specialized market that are still not addressed. However, it is clear from the evidence submitted that two factors, and a related third factor, are critical for a property to have its highest and best use be an automobile dealership: 1) the property must be readily accessible to a large population; and 2) the property must have high visibility (adequate acreage and frontage) of the property for the display and storage of inventory. The third factor that enhances the highest and best use as an automobile dealership is the property's proximity to other properly zoned land to accommodate the congregation of other dealers and create market synergy as a "destination" location of multiple automobile dealers.

The Properties under appeal contain all three factors. First, the general location is at the major intersection of I-93 and I-89 with the terminus of I-89 essentially being an exit ramp to the Properties. This location allows excellent access from three directions, west, north and south, providing for a large marketing radius. The Properties are highly visible from portions of I-93 and I-89 providing advertising to the high traffic levels of both interstates. Once on Rte 3A, all

the lots have sufficient usable acres and good road frontage to meet the display/inventory needs of an automobile dealership. The board notes, however, the Ford Dealership property had four buildings that, as of 2007 and 2008, accommodated three different franchises (Ford, Hyundai and Mazda) and did not have enough space for all the parking needs of display, service, and customer and employee parking. This limitation and the franchise requirements resulted in the construction of the Honda Dealership on its own parcel across Rte 3A from the Ford Dealership in 2003. This expansion and the existence of five related dealerships creates the market synergy that is evident in other areas of New Hampshire such as Manchester, Lebanon, Gorham and Stratham and reinforces the highest and best use of the Properties.

The board considered these attributes of the Properties when reviewing and weighing the evidence.[1] In doing so, the board finds the best evidence of market value is contained in the Walker Report. However, based on the balance of the evidence, including the parties' responses to the Walker Report, the board has modified some of the Walker Report's premises and adjustments. Before discussing the Walker Report modifications, the board will first address the Cunningham Report and Corcoran Report.

The board was unable to place much weight on the Cunningham Report for several reasons.

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[1] To determine whether an abatement is warranted, the board considers and weighs the market value evidence presented, utilizing its "experience, technical competence and specialized knowledge." See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it.") Further, in making its findings where there is conflicting evidence, the board must determine for itself the credibility of the witnesses and the weight to be given the testimony of each because "judgment is the touchstone." See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

First, the Cunningham Report contained only the most minimal (one page) description of the three properties being valued, the "critical factors" considered and a statement of highest and best use without any analysis. The adjustments in the three sales comparison grids are generally without explanation or market derivation or support. The testimony of Mr. Cunningham provided the only insight into his market value estimates but was without any further documentation or analysis.

Second, the Cunningham Report uses the July 2006 transaction of the Ford Dealership in the sales comparison grids for estimating the value for the Ford Dealership and the Toyota Dealership. Based on the testimony of Mr. Lord and the sale documents contained and discussed in the Walker Report, the board finds this sale does not meet the criteria of being an arm's-length transaction for the following reasons: 1) the sale was between family members; 2) the consideration price was the result of negotiations from two appraisals; and 3) the property was never marketed to the general public. (The board has discretion to evaluate and determine the credibility of the sale price as being indicative of market value or not. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).)

Third, the Cunningham Report made significant adjustments to three of the sales utilized for personal property/inventory and franchise/goodwill being non-reality components of the recorded sale price. Mr. Cunningham testified he made these adjustments based on information received from a party of the three transactions. However, no supporting documentation such as purchase and sales agreements, assigned franchise agreements, itemization of personal property, etc. was submitted. While it is potentially plausible that the overall sales prices of automobile dealerships could include non-realty considerations, without supporting evidence, the board is unable to accept the adjustments made to those three sales in the Cunningham Report.

Moreover, all the publically available documents available to the board to review (deeds via on-line registry, Real Data Teledex sales summary sheets, department of revenue administration PA-34 forms) reveal no notation of allocation between realty and non-realty items for all the nearly 40 automobile dealership sales included in the Walker Report (which includes all the sales used in both the Cunningham Report and the Corcoran Report). It is difficult for the board to accept that non-realty adjustments of the magnitude applied in the Cunningham Report ($535,000 to $750,000), if indeed they are accurate, would not be accounted for by the sophisticated market participants of automobile dealerships when the declaration of the consideration price is signed for assessing the real estate transfer tax. See RSA 78-B:10; also CHAPTER Rev 800, particularly Rev 809.04 (Form CD-57, Real Estate Transfer Tax Declaration of Consideration). With the current total transfer tax rate of 1.50%, the transfer tax relative to the Cunningham Report adjustments amounts to $8,025 to $11,250.

Fourth, as the Walker Report mentions at p. 28 in the cost approach estimates, the Cunningham Report contains no independent estimate of the land value, relying instead on the land value component of the Town's assessment. Given that all three lots are of significant size with extensive frontage and exposure and are all in a generally good location (intersection of I-93 and I-89), the value of the land is a substantial part of the overall value and warrants more market investigation and analysis than simply relying on the assessed value.

The board was also unable to place much weight on the Corcoran Appraisal for several reasons.

First, the Corcoran Appraisal performed three separate sales comparison valuations which relied heavily upon two sales: the January 2006 sale of 33 Auto Center Road in Manchester, NH for $7,500,000; and the December 2004 sale of 142 Manchester Street in

Concord, NH for $4,100,000. In weighting the six sales utilized in each sales comparison analysis, the Corcoran Appraisal placed 85% weight on these two sales in valuing the Ford Dealership, 60% in valuing the Honda Dealership and 85% in valuing the Toyota Dealership. However, the board is unable to give much, if any, weight to those two sales in valuing the Properties. The 33 Auto Center Road sale is the fourth highest automobile dealership sale of the more than 40 automobile dealerships identified and summarized in the Walker Report. Two of the three higher sales appear to be truly anomalies given their location or small size of building (the August 2007 Gorham sale for $307.82 per square foot and the January 2004 Plaistow sale with a very small building for $389.32 per square foot). Further evidence the 33 Auto Center Road sale may be excessive is the analysis performed on page 52 of the Corcoran Report which develops a land to building ratio for 19 automobile dealership sales and divides the sale price by that ratio. The graph at the bottom of page 52 indicates there is a correlated relationship between the sale price divided by land to building ratio and the overall size of the lot. However, as the graph depicts, the 33 Auto Center Road sale has a sale price/land to building ratio that is more than twice the level of all the other 18 automobile dealership sales. Consequently, the 33 Auto Center Road is at the high end of all the automobile dealership sales and raises a question as to whether its Manchester location influenced its sale price or whether non-realty items (i.e., personalty, franchise agreement) may have been part of the transaction price. Regardless, without further investigation of the sale, the rights transferred and the parties' motivations, the weight ascribed in the Corcoran Appraisal is questionable.

At hearing, the Taxpayers submitted evidence that the grantor and grantee of the 142 Manchester Street sale were related parties. The grantee, Big Step, LLC, has its sole manager/member (See LLC certificate of formation, Taxpayer Exhibit No. 2) being Eileen M.

Sleeper who is one of the two grantors (Katherine Sleeper and Eileen Sleeper). Mr. Corcoran conceded that he was unaware of this connection and would have investigated the arm's-length nature of the sale further before including it in his appraisal.

Second, several adjustments contained in the Corcoran Appraisal such as "rentable area," "showroom area," and "building condition" and "age" generated substantial adjustments without any extensive discussion as to the basis or market derivation of the rate applied. The board recognizes the difficulty in providing the supporting analysis for such adjustments, as observed in the Corcoran June 15, 2010 response to the Walker Report ("Corcoran Response"); nonetheless, the magnitude of these adjustments and, at times, the difficulty in understanding the interplay of similar adjustments ("rentable area," "showroom area," and "mezzanine/storage") reduces the reliability of the value conclusion.

On balance, the board finds the most comprehensive review of automobile dealership sales is contained in the Walker Report and the value conclusions of the Report, with some modifications, provide the best basis for estimating the market values of the Properties.

Honda Dealership

The Honda Dealership, of the three Properties, is the newest and most functional relative to current automobile dealership standards for both showroom and service space totaling 23,810 square feet. In addition, the building is fully sprinklered for fire protection and contains a reverse osmosis/carbon filter water treatment equipment to make the well water potable. The Property was improved in 2004 at a cost of approximately $4,000,000. While the site contains extensive wetlands and required specific accommodations during construction, the 9.25 acres has nearly 1,300 feet of frontage that provides extensive automobile display potential. Overall, the Honda Dealership is the most functional of the three Properties, has improved square footage

that is more of the norm or average for automobile dealerships throughout the state (See Walker Report at pp. 6-7) and has excellent highway exposure due to its extensive frontage. The Walker Report estimated a value of $150 per square foot as opposed to the assessments' indicated value of $172.33 per square foot. Comparing the Property to not only those utilized in the Walker Report's sales analysis but also to the entirety of sales on pages 6 and 7, and mindful of the Honda Dealership's location and positive attributes noted above, the board concludes the assessment is reasonable and proportional to sales of good quality automobile dealerships. In reaching this conclusion, the board is not placing extensive weight on the 2004 construction cost, recognizing the site's wetlands and certain building features (water treatment) may have resulted in construction costs which a different site may not have incurred. However, on the other hand, the fact the Taxpayer did incur those costs and developed the difficult site is an indication of the excellent location and highway visibility the Property afforded and further is an indication of the synergy of having multiple dealerships in the same general location. Also, the board finds both the Cunningham Appraisal and the Corcoran Appraisal recognized some market appreciation up to 2007 while the Walker Report found while the commercial market was generally appreciating during that time period, "no adjustments for time were deemed necessary" based on the limited automobile dealership resales and Ms. Walker's experience and judgment. Consequently, while the evidence is inconclusive as to any appreciation from the time the Honda Dealership was constructed in 2004, both parties' appraisers concluded some did occur and thus market appreciation is a potential factor to weigh in determining whether the assessed value is proportionate. In brief, considering all the evidence submitted, the Taxpayer did not carry its burden (either through evidence submitted on their own or through the Walker Report) in showing the Honda Dealership assessment was disproportionate.

Toyota Dealership

The board finds the best evidence submitted of the market value of the Toyota Dealership is contained in the Walker Report sales analysis which estimates the market value on a per foot basis at $100. The board is mindful of the functional obsolescence of the differing floor levels and layout argued at hearing and reemphasized in the Taxpayer's June 15, 2010 response (Taxpayer's Response) to the Walker Report. While the Walker Report made no specific adjustment for the functional obsolescence, noting that the Property has operated for a number of years effectively as an automobile dealership, the $100 per square foot estimate of value is a function of the choice of the comparables and the various adjustments made in the sales analysis. Comparing the $100 per square foot value conclusion to the nearly 40 automobile dealership sales contained at pages 6 and 7 of the Walker Report, indicates that value conclusion is in the lower 25 percentile of all the sales noted. Consequently, the $100 per square foot value conclusion inherently reflects some dysfunctionality as a result of the choice of the comparables and the adjustments, especially when contrasted with the $150 per square foot value conclusion for the newer and more state of the art Honda Dealership. The board finds to further reduce either the effective square footage of the building or the per square foot price (as generally asserted in the Taxpayer Response) would result in a value conclusion that is contrary to the Toyota Dealership's good location, good highway exposure and routinely maintained and improved building. (Mr. Alan Lord, Facilities Manager, testified that Toyota franchise requirements will likely cause the Taxpayer to commit $4.5 to $5.5 million in improvements to the Property by 2011 in addition to the $1.5 million invested to the public areas in 2003.) The Walker Report market value estimate of $5,730,000 is approximately $500,000 higher than the assessed value of $5,213,300 and thus the assessed value potentially recognizes further

functional obsolescence than the Walker Report market value conclusion. Consequently, the board concludes the Taxpayer failed to carry its burden in showing the Toyota Dealership assessment is disproportionate.

Ford Dealership

Again, the board finds the best evidence of market value of the Ford Dealership was contained in the Walker Report sales analysis which arrived at the same market value as the Toyota Dealership of $100 per square foot. However, in calculating the effective building area, the Walker Report reduced three of the four buildings by 25% to 50% for their size resulting in an overall effective area of 54,000 square feet compared to the gross square footage of 66,639 square feet. Thus, in addition to the physical and functional obsolescence reflected in the $100 per square foot estimate, the Walker Report's effective square footage further reduces the overall Ford Dealership an additional 19% (54,000 square feet divided by 66,639 square feet) for functional obsolescence due to the smaller size of the three additional buildings (Walker report at p. 11). The board finds this additional adjustment to be excessive for several reasons. First, as the Town's Response noted, as of the assessment dates, three of the four buildings were used as franchised operational automobile dealership buildings and the fourth was used as a used car sales/office building. Second, while three of the four buildings were in the 9,000 to 13,000 square foot range, the board finds those size buildings are not uncommon for smaller franchise dealerships as shown by the array of automobile dealership sales on pp. 6 and 7 of the Walker Report. Third, while the parking areas may be less than ideal for multiple dealership franchises, as noted earlier in the board's general findings on pages 5 and 6, the board, on its own, took a view of the Property and noted the Ford Dealership Property had significant parking and frontage exposure that does not warrant the additional 19% functional obsolescence contained in the

Walker Report. To apply that additional 19% functional obsolescence would result in an indicated price per square foot of $81.00 and place the value conclusion in the lowest 12% of the 40 automobile dealership sales contained in the Walker Report.

Consequently, the board has estimated the effective square footage to be approximately 62,000 square feet by reducing only the fourth building by a 50% factor resulting in an additional approximately 7% overall functional obsolescence. Applying the $100 per square foot estimate results in a market value estimate of $6,200,000. Applying the stipulated median ratios would result in abated assessments of $6,162,800 for tax year 2007 and $6,262,000 for tax year 2008.

In summary, the board's rulings for the three appeals are:

HLF Corporation -- Docket Nos.: 23490-07PT/24618-08PT -- Map 16/Lot 1/57 (Honda Dealership): Taxpayer failed to carry its burden; no abatements warranted.

Bow Junction Associates -- Docket Nos.: 23491-07PT/24362-08PT -- Map 16/Lot 1/83 (Toyota Dealership): Taxpayer failed to carry its burden; no abatements warranted.

HLF ATS LLC. -- Docket Nos.: 23492-07PT/24366-08PT -- Map 16/Lot 1/51 (Ford Dealership): Taxpayer carried its burden and assessments are abated to $6,162,800 for tax year 2007 and $6,262,000 for tax year 2008.

If the taxes have been paid on the Ford Dealership, the amount paid on the value in excess of those found 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 assessments for subsequent years. RSA 76:17-c, I and II.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this

decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jason M. Craven, Esq., Craven Law Firm, 740 Chestnut Street, Manchester, NH 03104, counsel for the Taxpayers; Lauren J. Elliott, Joseph C. Sansone Co., 363 Great Road - Suite 210, Bedford, MA 01730, representative for the Taxpayers; Chairman, Board of Selectmen, Town of Bow, 10 Grandview Rd., Bow, NH 03304; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: 9/16/10

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Anne M. Stelmach, Clerk