

KGI Gorham, LLC

v.

Town of Gorham

Docket Nos.: 23628-07PT/24616-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2007 and 2008 assessments of \$5,742,400 (land \$884,000; building \$4,858,400) on Map U11/Lot 1, a shopping mall on 9.7 acres (the “Property”). 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 Property’s 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 Property, a multi-tenant shopping center known as “Mountain Valley Plaza,” was purchased by the Taxpayer in September, 2005 for \$2,650,000;

(2) a major tenant, Wal-Mart, who occupied 60,000 square feet, vacated the Property in May, 2007 and stopped paying rent as of October 31, 2007;

(3) the Taxpayer began reconfiguring the part of the Property formerly occupied by Wal-Mart for three new tenants in 2008 and completed this reconfiguration in 2009;

(4) the North Country area, where the Property is located, is undergoing great economic challenges and significant job losses adversely affecting the market value of the Property;

(5) the best evidence of the market value of the Property is the “Freneau Appraisal” prepared by Marsha M. Campaniello, a certified general appraiser (see Taxpayer Exhibit No. 2, with an “Errata Sheet” marked Taxpayer Exhibit No. 3);

(6) the Freneau Appraisal uses the sales and income approaches to arrive at reconciled market value estimates of \$2,600,000 for each tax year, after deduction of the actual cost (\$1,911,660) of reconfiguring the Property after the loss of Wal-Mart as a tenant (see Taxpayer Exhibit No. 2, pp. 20 and 46);

(7) in contrast, the Town’s appraisal was prepared by the same individual who by contract with the Town performed a revaluation in 2007 and now concludes the market value is exactly the same as the assessed value of the Property (\$5,742,400); and

(8) a substantial abatement in each year is warranted based on the market value estimates in the Freneau Appraisal adjusted by the agreed-upon levels of assessment in the Town.

The Town argued the assessments were proper because:

(1) the Town did a revaluation in 2007;

(2) there is limited land available for large commercial development in the North Country and only one other comparable commercial strip (in Littleton), enhancing the market value of the Property, because shoppers know of the concentration of services available on each strip;

(3) the Property is a “transitional” property in an economy that is in transition to one that is service-based (rather than dependent on lumber and paper mills);

(4) the development of the new “super” Wal-Mart and the new building constructed for a furniture company along this strip is evidence of market potential for commercial development in the Town and the new Wal-Mart also increases the “draw” of shoppers to the Property;

(5) the Property has some excess developable land (with the site capable of supporting 170,000 square feet of building, allowing for additional pad sites for restaurants, banks, kiosks, gas stations and other service businesses) which the Fremeau Appraisal did not account for;

(6) the “self-contained appraisal report” prepared in March, 2010 by a certified New Hampshire appraiser supervisor, George E. Sansoucy, P.E., LLC (the “Sansoucy Submission”), who personally inspected the Property, includes a reconfiguration cost estimate of \$1,000,000 for 2008 (see Municipality Exhibit A, p. 35) and estimates the reconciled market value of the Property, using the cost, sales and income approaches, to be \$5,742,000 in tax years 2007 and 2008;

(6) the Taxpayer’s appraiser (Ms. Campaniello, who prepared the Fremeau Appraisal and testified) has no written documentation for her higher reconfiguration cost estimate of \$1,911,660, but instead relied entirely on oral communications with one Taxpayer employee and there is no evidence these costs were actually incurred by the Taxpayer;

(7) in addition, Ms. Campaniello knew of, but did not review, the actual signed Purchase and Sale Agreement dated November 15, 2007 (Taxpayer Exhibit No. 4) which indicates the Taxpayer and a buyer agreed on a price of \$3,447,000 for the Property, after deduction of \$128,000 for the cost of asbestos removal;

(8) the properties used in the Taxpayer's sales approach are from other geographic areas in the state that are not truly comparable to the commercial strip where the Property is located;

(9) another appraisal of the Property (Municipality Exhibit B, the "NECR Appraisal," at p. 7) concluded the Property, as of September 25, 2008, had an "as is" market value of \$5,460,000 and an "as stabilized" market value of \$6,150,000 and this appraisal further states (at p. 51) the Town's current assessment "appears reasonable"; and

(10) the Taxpayer failed to meet its burden of proving disproportionality.

The parties agreed the levels of assessment in the Town were 100.6% in tax year 2007 and 105.2% in tax year 2008, the median ratios computed by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be: 2007 - \$3,521,000; 2008 - \$3,682,000. These assessments are based on a market value finding of \$3,500,000 (rounded) for both years under appeal and application of the 2007 and 2008 median ratios stipulated to by the parties.

The Property is well located on Main Street (on Route 16, also known as the Berlin-Gorham Road). While the parties agree this is a good location for a shopping center, they disagree sharply on the market value of the Property. As noted above, the Taxpayer estimates the market value of the Property to be \$2,600,000 in each tax year, while the Town's assessor estimates the value to be \$5,742,000, more than twice as much.

The board's task is to make relevant findings to determine what are proportional assessments and whether abatements should be granted based on the market value evidence presented and the level of assessment, keeping in mind the Taxpayer's burden of proof. In

making market value findings, the board considers and weighs all of the evidence, including the respective appraisals submitted for the Taxpayer and the Town, applying the board's "experience, technical competence and specialized knowledge" to this evidence. See RSA 71-B:1; and former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it"). Further, in making findings where there is conflicting evidence, the board must determine for itself the weight to be given each piece of evidence because "judgment is the touchstone." See, e.g., Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

While ever mindful of the Taxpayer's burden, the board finds both the Fremeau Appraisal and the Sansoucy Submission contain sufficient deficiencies (which the board will discuss in some detail) such that their value conclusions are not reliable estimates of market value. The board also places little weight on the value conclusion of New England Commercial Realty Advisors, Inc. in the NECR Appraisal for reasons it will also detail. Remaining as the best indicator of market value is the signed Purchase and Sale Agreement ("Agreement") entered into by the Taxpayer with a knowledgeable competitor (The Highland Development Group, Ltd. "Highland Development") on November 15, 2007. This buyer agreed to pay \$3,447,000 for the Property, with a closing to occur by March 15, 2008 (within 120 days of the signed Agreement; see Sections 3, 4 and 6.1 of the Agreement) and the purchase price reflected an adjustment of \$128,000 from an earlier agreed upon purchase price of \$3,575,000.

In contrast to all the other valuation evidence, the board concludes the Agreement for approximately \$3,500,000, while not a consummated sale, provides a good indication of the Property's market value during its transitional years while it was being reconfigured and repositioned in the market after Wal-Mart left as the anchor tenant. The agreed upon purchase price of \$3,575,000 (see Agreement, Section 6.5) was reduced to \$3,447,000 after Highland Development performed due diligence and determined some asbestos remediation needed to occur. As testified to by Mr. Harnan, the Taxpayer's director of leasing and marketing, Highland Development was unwilling to close on the Property in accordance with the terms of the Agreement and requested either a further reduction of \$400,000 in the sale price or an extension of sixty (60) days to close on the Property to lock in potential tenants. According to Mr. Harnan, the Taxpayer chose to retain the Property, rather than providing either an extension of time or a reduction in price, and pursue the redevelopment of the Property itself, as has occurred. This interplay of two knowledgeable real estate owners provides insight as to what market value, in their minds, was the "tipping point" of value for the Property during this transition when there existed a number of uncertainties. This estimate of value is also probative because neither the Taxpayer nor Highland Development had, at that time, any absolute knowledge of what the reconfiguration costs would be. As evident in the retrospectively prepared Fremeau Appraisal, the Sansoucy Submission and the NECR Appraisal, there existed significantly divergent estimates of the reconfiguration costs. At the time of the Agreement, however, both Highland Development and the Taxpayer likely had estimates of the timing and cost of reconfiguring the Property but such costs were not absolutely known and thus the tipping value of approximately \$3,500,000 is the best indication of market value as one can derive from the facts presented.

The Town asserted the Property had further development potential through expansion of the existing building or development of a “pad” for some stand-alone use. Again, the parties to the Agreement certainly were knowledgeable as to any physical or economic feasibility¹ of further development potential and would factor whether such potential was reasonably probable into their decisions as to how to proceed or not under the Agreement.

Turning next to the Fremeau Appraisal, the board was unable to place any weight on its value conclusion for a number of reasons. First, the value conclusion of \$2,600,000 as of April 1 is \$50,000 less than the Taxpayer’s purchase price of the Property in September, 2005 for \$2,650,000. Both the testimony of Ms. Campaniello and her appraisal, the Fremeau Appraisal, indicate the Property was purchased in 2005 with the full knowledge that Wal-Mart would be vacating the Property in the short term for a “super” Wal-Mart to be built. (See also Taxpayer Request No. 4.) It is difficult to believe the Property would be worth essentially the same or slightly less given the passage of time and the plans, approvals and tenant negotiations that had fully or partially occurred between the Taxpayer’s purchase in 2005 and the assessment dates under appeal.

Second, the Fremeau Appraisal estimated a land value of \$2,000,000 in its highest and best use analysis for the Property as if vacant (see Fremeau Appraisal, pp. 20-22). While the board recognizes significant reconfiguration costs needed to occur to lease up the vacated Wal-Mart space, the board finds the residual \$600,000 value attributable to the remaining improvements of buildings and site improvements is questionable and not consistent with customary land and building value ratios.

¹ The highest and best use of a property must be: 1) physically possible; 2) legally permissible; 3) financially feasible; and 4) maximally productive. Appraisal Institute, The Appraisal of Real Estate at 307-308 (12th ed. 2001).

Third, both the Fremeau Appraisal sales and income approaches arrived at market values, after reconfiguration, of approximately \$4,300,000 - \$4,500,000 which were reduced by the “actual costs to reconfigure” of \$1,911,660 (see Fremeau Appraisal at p. 20). As already noted in the board’s discussion of the Agreement, this retrospective deduction for “actual costs” is questionable given both the lack of supporting documentation, the wide variation of estimates and evidence of those costs and the lack of definitive and accurate allocation of capital costs attributable to the reconfiguration. The Fremeau Appraisal’s estimate is based on actual costs provided by the Taxpayer’s CEO, Mr. Anthony DeLuca, to Ms. Campaniello during a telephone interview. No documentation or support was provided to her or to the board in the Fremeau Appraisal. The Sansoucy Submission was based on the total aggregate reconfiguration/fit-up costs of \$648,000 listed on the Town’s building permits (Municipality Exhibit A – Tab E) with an increase to a total of \$1,000,000 based on Mr. Sansoucy’s judgment. Further, the NECR Appraisal at page 48 estimated reconfiguration costs (“stabilization costs”) at \$690,000. However, conflicting evidence was presented in the Addenda to the NECR Appraisal in a spreadsheet entitled “Mountain Valley Plaza Capital Improvements” which showed over \$4,000,000 worth of hard and soft costs incurred by the Taxpayer subsequent to its 2005 purchase of \$2,650,000. Given these divergent and inconsistent retrospective estimates as to what deduction is appropriate from a stabilized estimate of market value back to a pre-reconfiguration value, the board gives little weight to the \$1,911,660 deduction in the Fremeau Appraisal.

Fourth, the Fremeau Appraisal at page 3 briefly describes the existence of the Agreement but Ms. Campaniello’s testimony revealed she had not fully investigated the details of the Agreement and why it ultimately was not consummated. Given Mr. Harnan’s testimony, the

board finds the Fremeau Appraisal's estimate of \$2,600,000 is contrary to the relatively compelling market value indication contained in the Agreement and the decisions made by the parties to the Agreement.

Turning next to the Sansoucy Submission, and again mindful of the Taxpayer's burden, the board finds the Sansoucy Submission contained appraisal inconsistencies so that little weight can be given to its value conclusions. First, as a general comment, the board is concerned Mr. Sansoucy was both the contractor assessor who performed the 2007 reassessment and placed the value under appeal on the Property and is the same individual who performed a purportedly independent appraisal report defending that assessment and in that appraisal utilized the reassessment's modeling as the cost approach to value. Consequently, the Sansoucy Submission's conclusion of value is circular back to the Town's assessed value of \$5,742,400 because while it performs all three approaches to value, the cost approach is principally relied upon.

Second, the Sansoucy Submission utilizes the Wal-Mart assemblage and purchase of several lots for \$4,750,000 in one instance to support the land value of the cost approach and in a second instant to estimate a land and building value by the sales approach. In reality the Wal-Mart assemblage and purchase was for the sole purpose of building a super Wal-Mart and resulted in a tear down of all existing improvements. The Wal-Mart purchase price did not reflect any value attributable to improvements but solely Wal-Mart's desire to acquire the location. The board disagrees with Mr. Sansoucy's assertion that the existing buildings had value because the primary property owner of the assemblage, "Top Furniture," rebuilt an approximately \$2,000,000 manufacturing facility at another nearby location and thus the existing buildings should be considered in analyzing the sale. The board finds either Wal-Mart paid the

entire price for the location or overpaid for the real estate by approximately \$2,000,000 to essentially induce and compensate Top Furniture for the inconvenience to move and relocate. However, the board need not, in this case, make a conclusive finding as to the value attributable to the real estate in the Wal-Mart assemblage to conclude Mr. Sansoucy did not appropriately analyze or utilize the sale in either the cost or sales approach.

Third, the Sansoucy Submission estimated a 2007 and 2008 market value employing the discounted cash flow method (“DCF”) over a period of twenty (20) years. In the 2007 DCF calculation, no reconfiguration cost was deducted while \$1,000,000 was deducted in the 2008 DCF calculation. As the board has noted, it was common knowledge at that time that Wal-Mart was in the short term vacating the Property. Thus it would have been appropriate to account for the reconfiguration expenses necessary to result in a stabilized income from the Property in 2007 also. The board understands the DCF method is at times employed for commercial properties that have not reached a stabilized lease-up, however carrying the DCF calculations out for twenty (20) years and including a number of the appreciation and other factors for that term results in a value conclusion of questionable reliability.

Fourth, Mr. Sansoucy was dismissive of any consideration given to the Taxpayer’s purchase of the Property in September, 2005 as it occurred too distant in time to be relevant to the two years under appeal (2007 and 2008). We disagree. The fact a property has sold within less than two years of one of the assessment dates is a factor that any appraiser should at least consider and be knowledgeable of the details of the transaction to determine how much weight should be given to a bona fide sale.

In brief, the Sansoucy Submission did little to strengthen the initial presumption of correctness normally ascribed to the assessed value because the Sansoucy Submission is largely circular in its conclusion and inconsistent in its analysis.

The board is also unable to give much weight to the value conclusion of the NECR Appraisal for several reasons. First, the preparer of the appraisal was not present at hearing to provide testimony relative to assumptions and adjustments made. Second, the appraisal was done for “collateral analysis” and/or “portfolio management” for Citizens Bank relative to the Property. Third, it is evident the appraisal is of the leased-fee interest of the Property and not the fee simple interest.² (See the transmittal letter in the NECR Appraisal and the Engagement Letter and “Existing Tenants Exclusive/Prohibited Uses” document in the Addenda.)

In conclusion, the board finds the Taxpayer carried its burden, but not due to the Fremeau Appraisal, but rather because of the Agreement and the testimony of Mr. Harnan relative to the Agreement. The board concludes the Agreement indicated a market value of approximately \$3,500,000 and such value is reasonable given all the uncertainties pertaining to the reconfiguration of the Property that existed during each tax year.

If the taxes have been paid, the amount paid on the value in excess of \$3,521,000 for tax year 2007 and \$3,682,000 for tax year 2008 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

² In appraising property for tax purposes, the fee simple interest is valued. See RSA 72:6; and RSA 21:21 (all real estate is taxed; real estate includes all lands, improvements and “all rights thereto and interest therein”).

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).

Attached as Addendum A hereto are the board's responses to the requests for findings of facts and rulings of law submitted by the parties.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., 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 proposed findings and rulings, “neither granted nor denied” generally means one of the following.

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

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

Description of Subject Property

1. The property under appeal is Mountain Valley Plaza, a multi-tenant strip shopping center on Route 16 in Gorham, New Hampshire (Town’s Tax Map U11, Lot 1) (the “Property”).

Granted.

2. The Property is located in the North Country of New Hampshire, a region that as of the assessment dates under appeal, was undergoing economic changes, with the closure of pulp and paper mills, which had once been the economic mainstay of the region, with resulting job losses and population decline and a transition, still underway to a more service-based economy.

Granted.

Market Transactions Regarding the Property

3. The Taxpayer, a subsidiary of the Koffler Group, which develops, owns and manages commercial real estate, purchased the Property in an arms-length transaction on August 24, 2005 for \$2,650,000

Granted.

4. The Taxpayer was aware at the time of purchase that Wal-Mart, a long time tenant, occupying some 60,000 SF, would be moving out within a few years to occupy a Wal-Mart Super-Center it was building on Route 16 which did occur in 2007.

Granted.

5. The Taxpayer's initial plans to locate a Lowe's and an Applebees Restaurant on a pad on the site, in conjunction with an adjacent parcel on which it then had an option, failed to come to fruition as Lowes concluded that the area's demographics were not suitable for its business plans.

Granted.

6. In late 2007, the Taxpayer entered into a Purchase and Sales Agreement to sell the Property to another real estate development entity, the Highland Development Group, Ltd. { "Highland"). The initial purchase price of \$3,575,000 was reduced to \$3,447,000 to account for the presence of asbestos at the Property. See Purchase and Sales Agreement, Taxpayer Exhibit (" Ex.") . 4, Sections 1 and 6.5

Granted.

7. Following a due diligence period, permitted by the Purchase and Sales Agreement Section 3.4(Ex. 4), the purchaser requested a further \$400,000 reduction in the purchase price, bringing the proposed purchase price down to approximately \$3,000,000. The Taxpayer declined to sell the Property at that price because given the investment it had already made in the Property, its profit margin would not have been deemed acceptable

Neither granted nor denied.

Reconfiguration of the Property

8. The Taxpayer proceeded to reconfigure the Property by converting the former Wal-Mart space into three retail units, for a total of 8 rather than 6 retail units, resulting in Gross Leasable Area of about 94,352 SF+/- . Campaniello Appraisal, Ex. 2, p.23

Granted.

9. As part of the negotiations with two tenants, Peebles and Dollar Tree, the Taxpayer also agreed to pay for certain tenant fit up costs.

Granted.

10. The total costs of the reconfiguration of the Property was \$1,911,660, as reported to the Taxpayer's expert, Marsha M. Campaniello by Anthony DeLuca, the Taxpayer's Chief Operating Officer. Ex. 2, p.20

Neither granted nor denied.

11. The depth of the former Wal-Mart space (approximately 200 SF +/-) resulted in about 6000 SF of unleaseable space at the rear of two of the reconfigured units, showing evidence of functional obsolescence. See Ex. 2, p. 2

Neither granted nor denied.

Valuation of the Property

12. The Taxpayer's appraiser, Marsha M. Campaniello, used accepted appraisal methodology and relied on relevant marketplace data to develop her opinions of value as of April 1, 2007 and April 1,2008.

Neither granted nor denied.

13. Ms Campaniello's valuation analysis took into account the final lease arrangements reached with the tenants for the reconfigured units which following an investigation , she properly concluded constituted market rents.

Neither granted nor denied.

14. It is necessary and appropriate to account for the reconfiguration costs in reaching final value estimates for this Property as of April 1, 2007 and April 1, 2008 as the gross income is based on the market rent achievable from the reconfigured shopping center , which could not be achieved absent this investment.

Neither granted nor denied.

15. Ms. Campaniello's value conclusions, which take into account the actual final lease terms for the reconfigured space as market rent and the final costs of the reconfiguration, provide the best indication of market value as of April 1, 2007 and April 1, 2008.

Denied.

16. The Municipality's appraiser, George E. Sansoucy's, failure to investigate the sale of the property in 2005 and the Purchase and sales negotiations in 2007 which occurred within three years of the date of valuation of his report violated the Uniform Standards of Professional Appraisal Practice {"USPAP"} Standards Rule 1-5.

Granted.

17. There is no support for the Municipality's appraiser's characterization of this strip shopping center as "special purpose property" as that term is defined in the appraisal field. See THE APPRAISAL OF REAL ESTATE, 12th Ed., p.25

Granted.

18. The Municipality's appraiser George E. Sansoucy's analysis of value under the Cost Approach is flawed because he relied on an unsupported estimate of 90 year physical life for this "vintage 1979s" shopping center, did not support his estimate of physical depreciation and failed to account in any way for the functional and economic obsolescence associated with the Property. See Sansoucy Appraisal, Ex. A, p.5

Neither granted nor denied.

19. The Municipality's appraiser's analysis under the Sales Comparison approach, which relied on the sales of two car dealerships and certain sales to Wal-Mart which Wal-Mart acquired to raze the buildings and construct its Super Center is not reliable because he did not identify and use appropriate comparable properties and make supportable adjustments to those properties to arrive at an indication of value, as required by established appraisal methodology.

Neither granted nor denied.

20. Municipality's appraiser's estimate of value under the Income Approach is not reliable as his Discounted Cash Flow analysis was based on unreliable or unsupported assumptions, including:

- a) a 20 year holding period which was not reasonable given the marketplace uncertainties surrounding the regional and local economy and typical investor expectations for a property of this type which would not have contemplated a holding period longer than 10 years;

- b) Reliance on KGI leases as market leases for 20 years although the undisputed evidence showed that except for Save-a Lot, long term tenant, whose leased ended in 2009, the longest lease term was for 10 years and the remaining lease terms were shorter;
- c) Annual increases in rental rates and Percentage Rental Income which were inconsistent with actual experience, See Ex. 2, pp. 25-27;
- d) An estimate of \$1,000,000 for reconfiguration, which is not consistent with actual costs of the Taxpayer, and was apparently based on the estimated cost to convert the retail unit occupied by the Peebles store of \$648,660.31 (Ex. A, building plans provided in Appendix D) and an unsupported additional \$350,000 estimate made by Mr. Sansoucy.

Granted.

21. Discounted Cash flow estimates are useful only if reasonable assumptions and adjustments are applied to the resulting going-concern value. *North Country Environmental Services, inc. v Town of Bethlehem*, 2007 N.H. Tax LEXIS 24, at *29 (2007); *see also, Salzburg Square, LLC v Town of Amherst*, 2006 N.H. Tax LEXIS 81, at *5 (2006) [DCF estimates “overly optimistic”]; *Willow Realty Trust v Town of Plaistow*, 1997 N.H. Tax LEXIS 102, at *8 (1997) [Discounted cash flow analysis not appropriate given the uncertainties surrounding the property]; THE APPRAISAL OF REAL ESTATE, 12th Ed., p.570

Granted.

22. Neither the Taxpayer’s appraiser nor the Town’s appraiser attributed any value to the potential to place a restaurant pad on the Property given the lack of market interest in such a utilization as of the pertinent assessment dates.

Neither granted nor denied.

23. No weight should be given to the appraisal done by New England Commercial Realty Advisers, Inc for Citizens Bank regarding Mountain Valley Plaza, proffered by the Town, because the author of the report was not made available by the Town to explain his analysis and the report’s conclusions are inconsistent with the market rents for this Property and other marketplace data discussed in Ms. Campaniello’s report.

Neither granted nor denied.

24. The Municipality’s estimate of value is a substantial outlier from all other indications of value, including the purchase of the Property in 2005, the Purchase and Sales negotiations in 2007, and Ms. Campaniello’s valuation analysis, assuming a stabilized reconfigured shopping center, which further undermines its probative value.

Neither granted nor denied.

Conclusion

25. The Taxpayer has met its burden of demonstrating that its assessments of \$5,742,400 are excessive and disproportional and is entitled to abatements based on Ms. Campaniello's conclusions of fair market value for 2007 and 2008, adjusted by the stipulated median ratios for Gorham as found by the Department of Revenue Administration, as shown below:

Tax Year	Fair Market Value	Ratio	Assessed Value
2007	\$ 2, 600,000	100.6%	\$ 2,615,600
2008	\$ 2,600,000	105.2%	\$ 2,735,200

Denied.

TOWN'S FINDINGS OF FACT AND RULINGS OF LAW

1. The property is an improved shopping center located on a 9.7 acre of land on Route 16 in Gorham, New Hampshire (the "Property").

Granted.

2. The Property is located on the premiere side of Route 16 and is considered one of the best stand-alone parcels on Route 16.

Neither granted nor denied.

3. The Town assessed the Property for 2007 at \$5,742,400. and \$5,742,400. for 2008.

Granted.

4. The Town undertook and produced a self-contained appraisal report of the property by George Sansoucy.

Neither granted nor denied.

5. The Town's appraisal used a cost approach, market sales approach and an income approach using a discounted cash flow analysis to reach a reconciled market value of \$5,742,400.

Neither granted nor denied.

6. The methods used in the Town's report to appraise the property in 2007 and 2008 are acceptable methods of valuing property for ad-valorem taxes in New Hampshire.

Neither granted nor denied.

7. Applying the equalization ratio for 2007 to the fair market value of the property reflects that property should have been assessed a value of \$5,776,854 for the tax year 2007 and applying the equalization ratio to the fair market value for 2008 reflects an assessed value of \$6,041,004.

Denied.

8. In 2008, an appraisal was prepared by New England Commercial Realty Advisors reflecting a fair market value of the property as of September 25, 2008 of \$5,460,000 using the income capitalization approach and a stabilized market value as of March, 2009 of \$6,150,000.

Granted.

9. The New England Commercial Realty appraisal is check of the reasonableness of the Town's conclusion as to market value and its assessment values.

Denied.

10. The evidence reflects that the Town properly assessed the property for \$5,742,400 for 2007 and 2008.

Denied.

11. The Taxpayer's appraisal estimated the land value of the property to be \$2,000,000 leaving a residual value for the fair market value of the building of \$600,000.00.

Granted.

12. A reasonable buyer would not invest \$1,911,600 into a building with a value of \$600,000.00.

Neither granted nor denied.

13. The Taxpayer's appraisal incorrectly deducted \$1,911,600 for costs to reconfigure where the evidence tended to show that the cost was between \$600,000 and \$690,000.

Neither granted nor denied.

14. The Taxpayer's appraisal incorrectly deducted \$ 1,911,600 for costs to reconfigure as of April 1, 2007 where the evidence shows that the costs were not incurred until the summer of 2008.

Neither granted nor denied.

15. The Taxpayer's appraisal incorrectly deducted the cost to reconfigure the property twice (2007 and 2008) where the cost was only incurred once.

Neither granted nor denied.

16. The Town may abate any tax assessed by them for "good cause shown." RSA 76:16.

Granted.

17. The Taxpayer has the burden of proof and must show disproportionality with respect to other property in the Town by a preponderance of the evidence. Appeal of City of Nashua, 138 N.H. 261, 265 (1994); Appeal of Andrews, 136 N.H. 61, 64 (1992).

Granted.

18. The Taxpayer failed to carry its burden that it was disproportionately assessed.

Denied.

19. As evidenced by the Town's appraisal and the appraisal of New England Commercial Realty Advisors, the Town properly assessed the taxpayer's property.

Denied.

20. The Taxpayer's appeal for an abatement should be denied.

Denied.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Margaret H. Nelson, Esq., Sulloway & Hollis, P.L.L.C. , PO Box 1256, Concord, NH 03302, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, NH 03581; Steven A. Clark, Esq., Boutin & Altieri, P.L.L.C., PO Box 1107, Londonderry, NH 03053, counsel for the Town; and George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584, Contracted Assessing Firm.

Date: 7/8/10

Anne M. Stelmach, Clerk

KGI Gorham, LLC

v.

Town of Gorham

Docket Nos.: 23628-07PT/24616-08PT

DECISION

The board has reviewed the “Town’s” August 9, 2010 “Motion for Rehearing” (“Motion”) and the “Taxpayer’s” August 13, 2010 “Objection” to the Motion. In accordance with RSA 541:5 and Tax 201.37(d), the board issues this suspension Order because of vacation and other schedule conflicts until it rules on the Motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

Certification

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Date: August 17, 2010

Melanie J. Ekstrom, Deputy Clerk