

**FPG STIP Claremont LLC**

**v.**

**City of Claremont**

**Docket Nos.: 23780-07PT/24265-08PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2007 abated assessment of \$4,306,600 (land \$369,000; building \$3,937,600) and 2008 assessment of \$2,730,400 (land \$633,100; building \$2,097,300) on Map 163/Lot 8, an industrial building on 29.5 acres of land at 272 River Road (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 economic climate for industrial properties was “stable, but declining” in these tax years and market demand was moving from single user to multiple, smaller occupants of industrial buildings;

(2) the Property was acquired by the Taxpayer in a ‘portfolio purchase’ of multiple properties in May, 2006 from a Merrill Lynch subsidiary at an allocated price of \$7,105,133 which was not reflective of its value, and neither was sale/leaseback transaction for \$5 million in March, 2005 because of the “financing” motivations underlying it;

(3) an appraisal prepared by Wesley G. Reeks, MAI, dated October 27, 2009 (the “Reeks Appraisal,” Taxpayer Exhibit No. 1) estimated the market value of the Property was \$1.3 million as of April 1, 2007 and \$1.28 million as of April 1, 2008;

(4) the large building on the Property was constructed in 1961 by “Tambrands” and is a 2-story building, with 123,328 square feet of manufacturing space on the first floor, with the second floor configured with 10,640 square feet of office space and 55,356 square feet of “effective” manufacturing space (because it has lower ceiling height);

(5) the highest and best use is an investor owned property demised into smaller spaces for multiple tenants (see Reeks Appraisal, pp. 43-44 and Reeks Appraisal, Addenda Exhibit C “Building Plan”);

(6) Mr. Reeks performed a full inspection of the Property and used the sales comparison and income approaches to develop reconciled estimates which are the best evidence of the market value of the Property of each assessment date;

(7) in comparison, the City's appraiser (Andrew LeMay) did not do an interior inspection of the building and he agreed the second story height is lower than the first floor and there is a preference for one-story industrial buildings in the market;

(8) while Mr. LeMay relied primarily on the sales comparison approach, one was of the Property (in the 2005 sale/leaseback transaction) and the other two were single story buildings, but Mr. LeMay made no adjustments for these factors; and

(9) based on Mr. Reeks' estimates, the Property is entitled to a substantial abatement in each tax year.

The City argued the assessments, as already abated, were proper because:

(1) a PA-34 form for the \$5 million purchase transaction in May, 2005 signed under penalty of perjury by the buyer (Municipality Exhibit A) states \$5 million was the "fair market value" of the Property and that \$894,034 was paid to the "tenant for improvements" on the Property;

(2) other documentation (Municipality Exhibit B) indicates a block grant was obtained from the Community Development Finance Authority to fund improvements when the Property was purchased from Tambrands in 2003 for \$1,280,000 and these improvements increased total project costs to \$2,305,000;

(3) a PA-34 form for the \$7.1 million purchase transaction in May, 2006 signed under penalty of perjury by the buyer (Municipality Exhibit C) states this was the "fair market value" of the Property;

(4) Customized Structures, Inc. ("CSI"), the occupant of the building, used the entire second floor for its operations, as well as the first floor and the Reeks Appraisal (at p. 31) states the Property "is readily marketable in its current configuration and condition," which supports the conclusion that the Property was 100% useable;

- (5) the City abated the original tax year 2007 assessment by \$1,658,500 as shown in Municipality Exhibit D;
- (6) the City adjusted the assessment downward for tax year 2008 to reflect the fact the building was vacant, as shown in Municipality Exhibit E;
- (7) an appraisal prepared by Andrew G. LeMay, SRPA (Senior Real Property Appraiser), dated November 2, 2009 (see the “LeMay Appraisal,” Municipality Exhibit F, and the “Errata” sheets, Municipality Exhibit G) estimated the market value of the Property was \$4.8 million as of April 1, 2007;
- (8) in his appraisal, Mr. LeMay put more weight on the sales comparison approach and less weight on the income approach than Mr. Reeks; and
- (9) Mr. LeMay’s market value estimate of \$4,700,000 (as adjusted at the hearing) for tax year 2007 is the best evidence of the value of the Property and he found no changes that would warrant a change in value in 2008.

The parties agreed the levels of assessment in the City were 82.8% for tax year 2007 and 85.4% for tax year 2008, the median ratios computed by the department of revenue administration. The board has responded to the specific requests for findings of fact and conclusions of law made by each party in Addendum A to this Decision.

### **Board’s Rulings**

Based on the evidence, the board finds the proper assessments on the Property to be \$1,449,000 for tax year 2007 and \$1,494,500 for tax year 2008, based on a market value finding of \$1.75 million in each tax year adjusted by the levels of assessment (82.8% and 85.4%) in each year. The appeals are therefore granted for the reasons discussed below.

At the hearing, the City filed a Motion to Dismiss the tax year 2007 appeal on the ground that another entity, CSI, occupied the Property and was “liable for payment” of the tax “by virtue of its obligations” under a lease which the Taxpayer assumed as the successor lessor when it acquired the Property; CSI, on January 8, 2008, filed for Chapter 7 bankruptcy” protection. See Motion to Dismiss, ¶¶ 5-8 and Exhibit A thereto (the “Lease” at Section 5.2); see also the City’s October 29, 2009 “Motion to Continue” denied by the board on other grounds. The City further alleged it has not been notified “of any partial stay . . . regarding CSI’s property tax obligations to the City for the 2007 tax year.” Motion to Dismiss, ¶8.

The board denied the motion because these facts, as well as the pending CSI bankruptcy proceeding, do not mean the Taxpayer (FPG STIP Claremont LLC) is not a “person aggrieved” under RSA 76:16 and RSA 76:16-a. The Taxpayer was the owner of the Property, notwithstanding CSI’s leasehold interest in 2007, and in fact paid the taxes for 2007. The board finds these facts are sufficient to give the Taxpayer standing to pursue the tax year 2007 appeal.

The board then heard testimony and considered the evidence presented regarding the proportionality of the assessments for both tax years. Both parties submitted appraisals which differed substantially in their conclusions regarding the market value of the Property. The Taxpayer relied on the Reeks Appraisal, modified slightly by Mr. Reeks’ testimony at the hearing, to contend the Property had a market value of no more \$1.4 million while the City relied on the LeMay Appraisal, to contend the Property had a market value of \$4.7 million.

In making market value findings, the board considers and weighs all of the evidence, including the respective appraisals of each party, 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., State of New Hampshire v. Frederick, BTLA Docket No. 23317-07ED (December 3, 2008); cf. 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).

The board considered both the Reeks Appraisal submitted by the Taxpayer and the LeMay Appraisal submitted by the Town. Both appraisers used the sales comparison approach and the income approach. Mr. Reeks placed equal weight on each approach and Mr. LeMay, placed more weight on the sales comparison approach.

The board finds, for a property of this type at this location, the sales comparison approach gives a more reliable estimate of value and placed the most weight on the use of this approach in the Reeks Appraisal (but with the modifications discussed below). Use of the income approach premised upon conversion of the building to multi-tenant space requires significant deductions from the income stream of the space as renovated to account for the capital investment necessary for the conversion. The board finds this anticipated cost item is too difficult to estimate with any certainty for the income approach, in this instance, to be a reliable indicator of market value. Thus the board placed no weight on the Reeks Appraisal income approach conclusion.<sup>1</sup>

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<sup>1</sup> While there are three approaches to value, not all three approaches are of equal import in every situation. Id. at 50; International Association of Assessing Officers, Property Appraisal and Assessment Administration, Ch. 4, p. 108 (1990). In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal reviewing the valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

Further, the board could place no weight on Mr. LeMay's comparable sales for the following reasons. All three comparables utilized by him reflected different or more valuable rights than embodied in the Property. For example, the first is a sale/leaseback of the Property itself in 2005 and would reflect, at best, a leased fee value rather than the fee simple interest (leaving aside all the financial considerations that may also have made this transaction unreliable as a market value indication). Mr. Reeks' testimony regarding the business and financial benefits of the sale/leaseback to both parties (including providing a source of financing and taking the asset and associated liability off the seller's books) persuaded the board that the transaction did not constitute an arms-length sale of a fee simple interest after proper market exposure.<sup>2</sup> Mr. LeMay's other two sales (501 Hall Street, Bow, N.H. and 462 River Road, Claremont, N.H.) were of one property in a significantly superior location (Bow) and another one (River Road, Claremont) which was newer and smaller in size and non-comparable to three other Claremont sales he did not use (which sold for substantially less per square foot).

Mr. LeMay was aware of these other sales, as they were included in an "industrial sales data" summary in his report, but did not explain why they were omitted as comparables.

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<sup>2</sup> A standard definition of what constitutes market value, formulated by The Appraisal Institute in The Appraisal of Real Estate (12th ed.), is as follows:

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

See also Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253, 255 (1994) (when utilizing sales as the basis for estimating market value, a number of factors must be considered in determining whether sales are indicative of market value, "including whether the sale was an arm's length transaction, whether additional incentives were offered, whether unusual duress existed against either the buyer or seller, and whether some relationship existed between the buyer and seller that would influence the sale price.")

The board used the sales comparison grid in the Reeks Appraisal as a starting point, but made several needed adjustments. First, the board finds the square footage estimate used by Mr. Reeks in his calculations (178,684) was too low. Mr. Reeks admitted he failed to include the second floor office space of 10,640 square feet in his estimate. He also applied a 50% deduction to the second floor industrial space, but the board finds this adjustment is excessive because the second floor has greater functional utility than ascribed by Mr. Reeks in light of its at-grade truck access (on the east side of the building) with loading docks. The board finds his 50% adjustment was largely drawn from his comparable #3 (427 Washington Street, Claremont, N.H.) which is also a two-story industrial building which did not have direct second story access. The work performed by the prior tenant (CSI) on the Property in 2004 to make the second story accessible largely mitigates the diminished utility compared to 427 Washington Street. The remaining functional issue of story height was considered by the board, but was not given as much weight as Mr. Reeks because the second floor has significant load-bearing capabilities and the story height may not be as important to a non-heavy industrial user. The property is also being marketed as having higher second story heights (13.5 to 16.25 feet) than testified to by Mr. Reeks.<sup>3</sup> Consequently, the board determined a 25% adjustment (rather than 50%) was reasonable for the second floor industrial space. These adjustments result in a total effective square footage to be utilized in the sales approach of 217,002. This resulted in the board modifying (increasing) Mr. Reeks “building area” adjustment for the comparables in his grid.

The board made additional adjustments to Mr. Reeks’ sales approach. First, based on the site plan contained in the Reeks Appraisal and a comparison of the land to building ratios in his grid, the board concludes the Property has additional land available for development (either for expansion or some other permitted uses) in the northern portion of the 29.5 acre site. Second,

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<sup>3</sup> The broker is Hart Corporation and its website lists various features of the Property, including these story heights. See <http://www.hartcorp.com/Property-Detail/NH000270>.

Mr. Reeks failed to recognize in his grid the value of a 2,106 square foot maintenance building, which had an equalized value of approximately \$60,000. The board believes this is a property right which would be considered by a prospective purchaser and this equalized value is not an unreasonable estimate of its likely contributory value. Third, the board noted that, with the exception of comparable # 4 (in Randolph, Vermont), the comparables, unlike the Property, did not have direct rail access. The board finds this is a value enhancing feature that the market would recognize for most users likely to occupy the Property.

The board arrived at a market value estimate of \$1.75 million by making these adjustments (which resulted in a per square foot indicated value of \$7.75) and adding in the value of the maintenance building. (In other words,  $217,002 \times \$7.75 + \$60,000$  approximates the \$1.75 million estimate of value.) The board finds, like the two appraisers, that values did not change appreciably between tax year 2007 and 2008. Consequently, applying the 82.8% and 85.4% levels of assessment in these two tax years, the abated assessed values of the Property are: \$1,449,000 for tax year 2007; and \$1,494,500 for tax year 2008.

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

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on

the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

### **Addendum A**

The parties' requests for findings of fact and rulings of law are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. With respect to the proposed findings and rulings, "neither granted nor denied" generally means one of the following.

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

### **Taxpayer's Requests for Findings of Fact and Rulings of Law**

#### **Description of Subject Property**

1. The property under appeal is a 2-story industrial building of 244,680 SF on 29.5 acres located at 272 River Road, Claremont, New Hampshire (City's Tax Map 163/8) (the "Property").

#### **Granted.**

2. The first floor has 123,328 SF of manufacturing space with clear heights of 14-16 feet while the second floor has 110,112 SF of manufacturing space with clear heights of 10-11 feet.

#### **Neither granted nor denied.**

3. A ramp does allow access to an overhead door in a corner of the second floor. However, the clear ceiling height in the location of the bay door is only about 10 feet high.

#### **Neither granted nor denied.**

4. The property is currently vacant and has been listed with Hart Corporation, an international industrial real estate brokerage company for sale or lease since 2008.

**Granted.**

5. The broker's marketing plan assumes that multi-tenant use is the most probable use for this property and that to accomplish a multi-tenant use, as well as to make some other needed repairs and upgrades, would cost in the range of \$10-20 per square foot.

**Granted.**

#### **Effective Square Footage of the Property**

6. Given the location of the ramp and the overhead door to the second floor space, the second floor manufacturing space could only realistically be used by one tenant, thus impacting on the planned conversion to multi-tenant use.

**Denied.**

7. Second floor manufacturing space typically has less utility and commands a lower price than first floor manufacturing space.

**Granted.**

8. A sale of 472 Washington Street, Claremont, NH, relied on by Mr. Reeks, provides specific market place support for his adjustment with respect to the second floor manufacturing space. See Improved Sales Adjustment Chart, Reeks Appraisal, p. 55, Sale 3. That 150,000 square foot property sold for \$685,000. Unadjusted, that sale would have indicated a value of some \$4.57 per SF which is well below the range of the other sales which were from \$6.96 to 8.93 per SF. However, once the second floor space is discounted at 50%, resulting in an effective square footage of 112,500 SF, the indicated sales price becomes \$6.09, far closer to the range of the other sales.

**Neither granted nor denied.**

9. The City's expert, Andrew Lemay, never inspected the interior of the Property.

**Granted.**

10. Mr. Lemay acknowledged that the second floor of the Property could not be used for most modern manufacturing purposes.

**Neither granted nor denied.**

11. Mr. Lemay's failure to make any adjustment for the lack of utility for the second floor manufacturing space is unreasonable.

**Granted.**

12. Given the physical characteristics of the Property's second floor, the lesser desirability of second floor manufacturing space, and the specific support provided by the 472 Washington Street sale, Mr. Reeks' 50% adjustment of the second floor space, resulting in an effective square footage of 189,324 SF is reasonable.

**Denied.**

### **Adjustments for Costs of Conversion to Multi-Tenant Space**

13. Available market data from the 2007-2008 time period supports the conclusion that conversion to a multi-tenant space is the most probable use of the Property.

**Granted.**

14. Mr. Lemay himself has conceded that the industrial marketplace in the Claremont area for has shifted from large, single owner or tenant users to smaller users. See Lemay Appraisal, Municipality Exhibit F, p. 3 (hereafter, "Ex. F").

**Granted.**

15. Mr. Lemay's failure to adjust in any way for the cost of conversion results in an overstatement of value.

**Granted.**

16. Mr. Reeks' use of the \$10.00 per SF, the low end of Hart Corporation's range to convert the Property to multi-tenant space, was reasonable.

**Neither granted nor denied.**

### **Sales Comparison Approach**

17. Mr. Reeks' conclusions under the Sales Comparison Approach were based on sales from the relevant market area, close in time to the assessment dates, and consistent with general market data, presented by the City itself that showed that sales prices for manufacturing spaces in Claremont during the relevant time period were well below \$10.00 SF. See Reeks Appraisal, Taxpayer Exhibit 1, pp. 45-55; "Summary of Larger Size Industrial Building Sales In New Hampshire: 2000-2006", prepared by Joseph Freneau, MAI submitted in Ex. F, PART IV, pp. 19-24; See also. Table. "**Industrial unit values: 2000-2006**", Ex. F, p. 13.

**Neither granted nor denied.**

18. Mr. Lemay's reliance on the sale- leaseback of the Property in 2005 is not reasonable because in valuing property for real estate tax purposes, the standard is fee simple interest, not leased fee interest. As the BTLA has noted:

[I]n valuing a property for tax purposes, it is fee simple interest in the property that is valued, regardless of how a property's interest may have been fragmented through leases or other legal devices.

*Merrimack River Mills, L.L.C. v. City of Manchester*, 2004 N.H. Tax LEXIS 32 (2004); *see also*, *241 Pine Street Ass's, L.P. v. City of Manchester*, 2004 N.H. Tax LEXIS 29 (2004); *Mountain Valley Ass's v. Town of Conway*, 1997 N.H. Tax LEXIS 227 (1997).

**Granted.**

19. Mr. Lemay's reliance on a PA 34 form apparently submitted to the Department of Revenue Administration by the parties to the 2005 transaction is not reasonable, given the fact that the transaction was indisputably a sale lease-back, the Property was not offered for sale or exposed to the marketplace, and the sale price was not consistent with any reported sales prices for similar facilities in the Claremont marketplace. *See, Greenland Glass Factory, L.L.C. v. Town of Greenland*, 2006 N.H. Tax LEXIS 5 (2006) (A PA 34 form "is merely an opinion by the buyer, but is not necessarily probative of market value. It is, of course, common knowledge that some buyers pay more than market value for property and others pay less.").

**Granted.**

20. Mr. Lemay's adjustment of the sales price to account for the above market aspects of the lease, could not make the 2005 transaction a reliable indicator of fair market value of the fee simple interest of the Property as the essence of the transaction remained a sale leaseback arrangement, the Property was not exposed to the marketplace and the sales price was inconsistent with other sales of industrial property in the Claremont region.

**Granted.**

21. The other sales relied on by Mr. Lemay in his Sales Comparison Approach were unreliable indicators of fair market value of this Property as one was a single level industrial building in Bow, NH, a far superior market, and the other was the sale of a much smaller industrial building in Claremont that took place in 2003, 4 years before the assessment date of April 1, 2007.

**Granted.**

**Income Capitalization Approach**

22. Mr. Reeks’ analysis under the Income Capitalization Approach, based on a study of industrial market rental rates in the Claremont region and a reasonable estimate of the expenses associated with the Property, assuming the multi-tenant conversion had taken place, resulted in a reasonable indication of value under this approach.

**Denied.**

23. Mr. Lemay’s Income Capitalization analysis does not provide a reliable indication of the fair market value of the Property because of the 5 rental rates he presented, 3 were rental rates in Merrimack, NH, a very different industrial market, he could not demonstrate that any of the rentals were NNN rates, which was the purported basis of his analysis, and his expense estimates assumed a single tenant use which was not the most probable use of the Property.

**Granted.**

24. The City, which failed to produce any appraisal of value as of April 1, 2008 , could not justify either its 2007 or 2008 assessments by reliance on a 2009 sale which occurred well after the relevant assessment dates and which concerned a special use property apparently used for steel fabrication, substantially dissimilar to the Property.

**Neither granted nor denied.**

**Conclusion**

25. The Taxpayer has met its burden of demonstrating that its assessments are excessive and disproportional and is entitled to abatements based on Mr. Reeks’ conclusions of fair market value for 2007 and 2008, as revised during his oral testimony for tax year 2007, adjusted by the stipulated median ratios for Claremont as found by the Department of Revenue Administration, as shown below:

Tax Year	Fair Market Value	Ratio	Assessed Value
2007	\$1,350,000	82.8%	\$1,117,800
2008	\$1,280,000	85.4%	\$1,093,120

**Denied.**

**CITY’S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW**

1. On or about March 8, 2005, Customized Structures, Inc. (hereinafter “CSI”) entered into a lease for premises located at 272 River Road, Claremont (Parcel 163-8) (hereinafter the “subject property”) under which CSI was responsible for payment of all personal and real property taxes assessed on the subject property by the City.

**Granted.**

2. CSI occupied Parcel 163-8 throughout 2007 until approximately December 21, 2007, resulting in CSI being the taxpayer of record under its lease with the property owner for purposes of RSA 73:10 for all personal and real property taxes assessed by the City for the 2007 tax year.

**Denied.**

3. On or about June 18, 2008, then Chief Assessor Edward C. Tinker, CNHA, in response to Petitioner's application, as property owner, granted an abatement of the 2007 property taxes on Parcel 163-8, reducing the 2007 assessed value of the parcel from \$5,965,100 to \$4,306,600, resulting in an abatement of \$54,565.65 in taxes for the 2007 tax year.

**Granted.**

4. The subject parcel has, since its construction, been utilized as a single purpose manufacturing facility and is located in the City's Industrial 2 zoning district, which permits only industrial uses. Non-industrial uses in this zoning district exist because they pre-date the current zoning ordinance or have been granted a variance by the City's zoning board of adjustment.

**Neither granted nor denied.**

5. The buildings located on the subject property are appropriate for industrial use, including manufacturing and related functions such as administration, storage, shipping and receiving, and are appropriate for either an owner-user or an investor-lessor.

**Granted.**

6. The subject property is in a good location for its intended use as evidenced by the surrounding land uses, is properly zoned for its intended use, is well maintained for its age, has little functional obsolescence and has good highway and rail access.

**Neither granted nor denied.**

7. CSI invested at least \$894,934 in improvements to the subject property in 2005, including updates necessary for code compliance and to make the second level fully accessible to both goods and vehicles.

**Granted.**

8. The market for general purpose, single use industrial facilities in Claremont is relatively stable, as evidenced by the purchase on November 6, 2009 of nearby property, identified in the City's records as Parcel 175-5, by CANAM Steel Corporation for the manufacture of structural steel beams and bridge components, with an indicated per square foot sale cost of \$10.71.

**Neither granted nor denied.**

9. Petitioner's assertion in its Report of Value that the highest and best use of subject property is as a subdivided, leased facility or as a manufacturing facility with a deficient second floor is speculative and not supported by sales of comparable properties existing in the City's industrial zoning districts.

**Neither granted nor denied.**

10. The sales comparison approach provides a more reliable indicator of value, especially because the market data presented indicates there was a surplus of vacant industrial buildings available for purchase or lease and that properties are more likely to be marketed based on sales comparisons (on a price per square foot basis) than an income approach. *See NH Ball Bearings, Inc. v. City of Laconia*, Docket Nos.: 23243-06PT/23808-07PT (March 25, 2009)

**Granted.**

11. The size of the building (244,680 square feet) makes it more likely to be owner-occupied rather than leased and it is difficult to find comparable properties of this size that are purchased by investors based on the projected income stream resulting from leasing such properties to users. *See NH Ball Bearings, Inc. v. City of Laconia*, Docket Nos.: 23243-06PT/23808-07PT (March 25, 2009)

**Neither granted nor denied.**

12. Petitioner has not considered past, present or future earnings under the CSI lease in its determination of fair market value for the 2007 tax year. (*Berthiaume v. Nashua*, 118 N.H. 646 (1978)).

**Neither granted nor denied.**

13. Petitioner has not made any showing that rents under the CSI lease were not fair market rents for the subject property as of April 1, 2007. (*Demoulas v. Town of Salem*, 116 N.H. 775 (1976))

**Neither granted nor denied.**

14. In estimating market value for purposes of taxation, no single method of valuation is controlling in all cases, and all relevant factors to property value should be considered. (*Demoulas v. Town of Salem*, 116 N.H. 775 (1976))

**Granted.**

15. The indicated market value for the subject property as of April 1, 2007 is \$4,700,000.

**Denied.**

16. Pursuant to RSA 76:17-c, the indicated market value of Parcel 163-8 as of April 1, 2008 is also \$4,700,000.

**Denied.**

17. Because the market value of Parcel 163-8 as of April 1, 2007 and April 1, 2008 is higher than the values shown in the City's records for those tax years and because the City may not assess taxes retrospectively, no further abatement is to be given for either the 2007 or 2008 tax year.

**Denied.**

18. Petitioner has not shown by a preponderance of the evidence that its property, wherever located in the City of Claremont, was disproportionately taxed for either the 2007 or 2008 tax year.

**Denied.**

19. Taxes assessed on Petitioner's property, wherever located in the City of Claremont for the 2007 and 2008 tax years, are valid, proportionate and have been properly assessed in accord with state law.

**Denied.**

20. Petitioner's appeal for abatement of taxes assessed on the subject property by the City for the 2007 tax year is denied.

**Denied.**

21. Petitioner's appeal for abatement of taxes assessed on the subject property by the City for the 2008 tax year is 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; and Jane F. Taylor, JD, City Solicitor, 58 Opera House Square, Claremont, NH 03743, counsel for the City.

Date: January 19, 2010

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Anne M. Stelmach, Clerk