

State of New Hampshire

v.

Calvin J. Coleman

Docket No. 23375-08ED

and

State of New Hampshire

v.

Baron Trust, LLC, C & P Realty Associates and the Town of Madison

Docket No. 23965-08ED

REPORT OF THE BOARD

These matters arise as a result of RSA 498-A:5 acquisitions of property rights taken for an approved highway layout pursuant to authority conferred on the “Condemnor” by various statutes, including RSA 230:45. Declarations of Taking (“Declarations”) were filed with the board on May 28, 2008 in “Coleman” (Docket No. 23375-08ED) and on November 5, 2008 in “Baron Trust” (Docket No. 23965-08ED).

In Coleman, the property rights are described as a fee taking of 9.12 acres and a permanent slope easement of 112,633 square feet (2.6± acres) from “Parcel 21.” See Exhibit A to the Coleman Declaration.

In Baron Trust, the property rights are described as a fee taking of 5.04 acres, a permanent drainage (10,032 square feet) easement and temporary driveway (4,779 square feet), construction (9,558 square feet) and slope (37,071 square feet) easements from “Parcel 5.” See Exhibit A to the Baron Trust Declaration.¹

Parcels 21 and 5 will collectively be referred to as the “Property.” The Property as a whole consisted of approximately 480 acres before the takings (Parcel 5 with 290 acres and Parcel 21 with 190 acres) and approximately 465 acres after the takings (9.12 acres from Parcel 21 and 5.04 acres from Parcel 5).

RSA 498-A:25 authorizes the board to hear evidence relative to an eminent domain condemnation and determine just compensation for the taking. In this process, the Condemnor has the burden of proving by a preponderance of the evidence the amount offered will justly compensate the Condemnees. See Tax 210.12 and cases cited therein.

The board viewed the Property and began the just compensation hearing at the Conway Town Hall on November 17, 2009. It continued and concluded the hearing at the board’s offices in Concord on November 18 and November 19, 2009. The hearing was consolidated by agreement of counsel because Parcels 21 and 5 are physically close to each other and have common underlying direct or beneficial ownership as well as common legal representation. The Condemnor was represented by Lynmarie C. Cusack, Esq., of the State of New Hampshire Department of Justice and the Condemnees were represented by George F. Burns, Esq. and Roy Tilsley, Esq. of Bernstein Shur.

¹ Three other Declarations were filed by the Condemnor pertaining to other property associated with the Condemnees: “Parcel 6” (Docket No. 22565-07ED); “Parcel 18” (Docket No. 23376-08ED); and “Parcel 349” (Docket No. 22565-08ED); but the board was advised by the parties prior to the hearing that these matters had been settled.

Lynda C. Vetter of Avicore Reporting & Videoconferencing, 25 Lowell Street - #405, Manchester, NH 03101, (888) 212-2072 took the stenographic record of the hearing. Any requests for transcripts should be ordered directly through the reporter. Parties should expect at least four (4) weeks for completion of a requested transcript.

I. Appraisal Evidence Presented

The Condemnor relied on two separate appraisals prepared by David S. Rauseo, MAI, of Rauseo & Associates (Condemnor Exhibit No. 2 for Parcel 5 and Condemnor Exhibit No. 3 for Parcel 21) and a December 7, 2009 Memorandum of Law (the “Condemnor’s Memorandum”).

For Parcel 5, Mr. Rauseo estimated total damages of \$588,000 based on an analysis of five economic units, only two of which were impacted by the taking. The impacted areas were:

Economic Unit #1, which is a 2 ± acre site with a 4,000 square foot retail/light industrial building “which has been razed to make way for the new Route 16 bypass” (Condemnor Exhibit No. 2, p. 43), leaving an effective remainder of 0.5 ± acres (id. at p. 79); and

Economic Unit #2, which consisted of “7± acres of frontage land along Route 16” with an average depth of 200 feet and a taking of 3.54 ± acres (id. at pp. 89 and 90).

Because he concluded the market would discount the price paid for all five economic units due to their present composition in one parcel, Mr. Rauseo applied a 5% “Multiple Property” discount to his total damage estimate for Economic Unit #1 and Economic Unit #2 (\$619,000 x 95% = \$588,000, rounded). Id. at 151.

For Parcel 21, Mr. Rauseo found the highest and best use (for a “[s]tone quarry and sand excavation with surrounding buffer land”) did not change as a result of the takings and estimated total damages of \$794,000. (Condemnor Exhibit No. 3, pp. 1 and 57.) The taking of 9.21 acres in fee (along with 2.6 acres in permanent slope easements) for the Route 16 bypass effectively bisected the parcel, leaving 7 acres in the northern portion and 174.88 acres in the southern

portion. (Id., p. 33 and 34.) Mr. Rauseo used an income approach to value Parcel 21 before and after the taking, employing a geologist expert, Jeffrey P. Cloutier, NHPG, of North American Reserve (see Condemnor Exhibit Nos. 4 and 5), to estimate the quantity and quality of mineral reserves and how they were affected by the taking. The Condemnor describes this methodology as the “Royalty Capitalization” approach. (See Condemnor’s Memorandum, pp. 2-3; and Cloverport Sand & Gravel Co., Inc. v. U.S., 6 Cl. Ct. 178 (1984) (copy attached to Condemnor’s Memorandum; hereinafter “Cloverport”), at p. 196.) Mr. Rauseo also considered the sales comparison approach “as a test of [the] reasonableness” of his estimate. (Condemnor Exhibit No. 3, pp. 67 and 84-86.)

Mr. Rauseo arrived at his estimate of \$794,000 in damages for Parcel 21 in two segments: (1) using Mr. Cloutier’s expertise, Mr. Rauseo concluded the takings did not affect the “stone reserve” component (leaving its value unchanged at \$3,879,000), but did decrease the “sand” reserve component, resulting in an estimated loss of \$771,000 (\$802,000 - \$31,000); and (2) Mr. Rauseo then added \$23,000 damages, rounded, for the underlying value of the land taken (9.12 acres x \$2,000 per acre) and the permanent slope easement (2.6± acres x 90% x \$2,000 per acre). As discussed further below, Mr. Rauseo estimated the cost of a “new access road” to be \$325,000, but included this as part of the \$771,000 component of damages (labeled “severance”) rather than as a separate element of damages from the taking. (Id., pp. 88 and 99-100.)

For their part, the Condemnees relied on three experts: one on business valuation (Nancy J. Fannon, CPA, ASA, MCBA, ABV, of the Fannon Valuation Group); one a consulting mining engineer (James M. Beck, P.E. of J.M. Beck & Associates); and one a real estate appraiser (Robert B. Frahme, MAI, of Gustavson Associates, LLC); and also submitted a December 3, 2009 “Memorandum” (the “Condemnees’ Memorandum”). The “Frahme Appraisal”

(Condemnee Exhibit A-3) incorporated the separate analyses of Ms. Fannon (the “Fannon Report,” Condemnee Exhibit A-1) and Mr. Beck (the “Beck Report,” Condemnee Exhibit A-2) to develop an estimate of damages of \$7,440,000, rounded, “for the partial taking of the quarry.” Mr. Frahme made an alternate estimate of damages (\$5,154,000) if a bridge across Pequawket Brook and Route 113 was constructed (at the Condemnor’s expense) “as a partial cure” to lessen the effects of the takings. (See Condemnee Exhibit A-3, pp. 1-2 and 2-8.) Without the bridge, Mr. Frahme concluded the quarry operations had a before value of \$8,530,455 and an after value of \$1,090,469. (Id. at pp. 9-3 and 9-4.)

Mr. Frahme used an income approach, based on a “DCF [discounted cash flow] Model,” to arrive at these estimates for what he defined as “an operating granite quarry with integrated crushing and washing facilities” within a larger land area.² Mr. Frahme relied on the “Calculation of Net Operating Income” in the Fannon Report and the “Granite Quarrying Operational Impacts and Associated Incremental Costs” in the Beck Report to develop his model of damages. (Id., pp. 8-15 and 8-16.)

In sum, the Condemnees contend they are entitled to total damages of \$8,058,986 “without a bridge” (the partial cure mentioned above) or \$5,772,918 “with a bridge,” which they calculate by using these estimates in the Frahme Appraisal and adding \$619,000 for Economic Units #1 and #2, the “non-mining commercial real estate” in Parcel 5. (See Condemnees’ Memorandum, p. 24). This amount is much higher than the total damages of \$1,382,000 estimated by the Condemnor (\$588,000 for Parcel 5 and \$794,000 for Parcel 21).

² Mr. Frahme described the land involved in these operations as encompassing a total of approximately 530 acres, rounded, based on the land in Parcel 21 and a portion of Parcel 5 as well as other parcels not a part of these takings, but noted a “precise quantification of the acres in the Larger Parcel is not necessary in [his] appraisal.” (See Condemnee Exhibit A-3, pp. 2-3 and 6-6.)

II. Board’s Rulings

For the reasons explained below, the board finds the total just compensation damage for the takings is \$2,500,000, rounded, based on consideration of the following components:

Parcel/Economic Unit/Item	Contributory Before Value	Contributory After Value	Difference
“Larger Parcel” ³ Sand Reserves	\$ 802,000	\$ 319,000	\$ 483,000
“Larger Parcel” Stone Reserves	\$3,878,000	\$2,767,000	\$1,111,000
“Larger Parcel” New Access Road (Cost to Cure)	N/A	N/A	\$ 350,000
Parcel 5: Economic Unit #1	\$ 332,500	\$ 24,700	\$ 307,800
Parcel 5: Economic Unit #2	\$ 395,000	\$ 95,000	\$ 300,000
Total Damage Estimate:			\$2,500,000 ⁴

The board arrived at this final estimate of damages by considering how the market value of the Property was impacted by the loss of sand, gravel and stone reserves (quarried and processed in Parcels 21 and 5) and the cost of a new access road (on Parcel 21), along with the separate impact estimated for Economic Units #1 and #2 (in Parcel 5).

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.”)

³ The board has defined the “Larger Parcel” relative to its findings as all of Parcel 21 and the portion of Parcel 5 that encompasses the processing (crushing, screening and washing) and stock piling of aggregate material and sufficient acreage to buffer the processing operation from the other economic units identified by the parties in Parcel 5 (e.g., concrete batch plant and Route 16 frontage, the “Embroidery Building” and the Ledge Pond frontage.)

⁴ The summation of the damages actually totals \$2,551,800. However, the board has rounded the damages to \$2,500,000 which, in addition to rounding, deducts for any additional permitting costs of the quarrying operation that may be necessary as noted in the Rauseo Appraisal. (Condemnor Exhibit No. 3, pp. 44, and 99.)

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). Having considered the voluminous evidence and arguments presented and its view of the Property, and after applying its judgment, the board makes the findings detailed below.

The board arrived at its damage findings after resolving two key issues in sharp dispute between the parties: first, whether, in applying the income approach, the Condemnor’s “Royalty Capitalization” methodology (hereinafter the “Royalty Method”) is more appropriate and reliable than the Condemnees’ “Capitalization of Net Operating Income” methodology (hereinafter, the “NOI Method”); and second, what land is properly considered in the “Larger Parcel” concept as it relates to the Condemnees’ aggregate excavation and processing operation. Implicated in these disputed issues is the fundamental principle that what is to be valued for eminent domain purposes is damages to the property, not to the business operated on the property or to the owner of the property.

A. Income Approach Methodology

As noted above, the Condemnor used the Royalty Method and the Condemnees used the NOI Method in developing their respective damage estimates. The board need not address the methodology differences in great detail nor delve extensively into the federal and other case law cited by each in support of their respective positions to arrive at its just compensation findings for several reasons.

First, the accepted measure of damages from the takings is the difference in the before and after market values of property taken for eminent domain purposes. See Edgcomb Steel Co. v. State, 100 N.H. 480, 486-87 (1957):

The law has long been settled in this jurisdiction that in eminent domain proceedings the owner of land condemned is entitled to damages for the taking measured by the difference between the value of his land after the taking, and what it would have been worth on the day of the taking if the taking had not occurred. “In the ascertainment of the value of the property invaded, [he] is entitled to have it appraised for the most profitable purpose, or advantageous use, to which it could be put on the day it was taken.” [Citations omitted.] The value to be determined is fair market value, which may properly be defined as “the price which in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy, taking into account all considerations that fairly might be brought forward and reasonably be given substantial weight in such bargaining.” [Citations omitted.] The rule is the same whether an entire tract of land is taken, or it is severed by the taking. “The actual damage caused * * * is not limited to that part which is taken and appropriated to the public use * * * and the injury to the whole tract may much exceed the value of the land actually taken.” [Citations omitted.]

Accord, Dow v. State, 107 N.H. 512, 514-15, 516-17 (1967), where the principle of estimating market value based on highest and best use was applied to land having sand, gravel and loam reserves. In Dow, no recovery was allowed “for loss of income or for the prospective loss of income” but the condemnee land owner was:

[E]ntitled to recover for . . . the difference between the fair market value of the property, if it was sold as a whole, just before the taking, and what he could get for it if he sold what he had left as a whole after the taking;. . . Evidence concerning the volume of gravel sold was evidence of the existence of a market for gravel which bore upon the value of the property for the most advantageous use to which it might be put. [Citing Edgcomb Steel, 100 N.H. at 488.]

Id. at 517.

Second, market value must be estimated from the standpoint of a knowledgeable purchaser, not the less objective value placed on it either by the Condemnor or the Condemnees, sometimes derided as the “‘value to me’ approach.” See Condemnor’s Memorandum, p. 10, citing Cloverport, 6 Cl. Ct. at 196 (“In fixing just compensation, this Court must seek to duplicate, with as much accuracy as possible, the before and after values a knowledgeable purchaser would have assigned to the [Condemnees’] property.”). At points in their arguments, the Condemnees appear to agree with this formulation of the law. Cf. Condemnees’ Memorandum, p. 24 (“the question boils down to what a buyer would offer for the land in the after condition as compared to the before condition”).

In general, the market value of the real property rights taken and not the business value, including goodwill, or the loss or frustration of it, is the compensable property interest in an eminent domain action. See Dow, 107 N.H. at 517; see also 2 Nichols on Eminent Domain § 5.03[6][h], citing Ranlet v. Concord R.R., 62 N.H. 561 (1883) (“Loss of business... [has] been determined to be consequential, and therefore noncompensable. Other damages classified as consequential include: damage to business, loss of or damage to goodwill, future loss of profits....”); and “Uniform Appraisal Standards for Federal Land Acquisitions” (2000) (commonly known as the “Yellow Book”) at Sec. B-15, p. 57 – 58. For these reasons, the board

finds the Royalty Method estimates the market value of the real property rights acquired by the Declarations more accurately than the NOI Method.

The Condemnees' NOI Method, which entails extensive and detailed accounting of all the vertically integrated aspects of its sand and aggregate excavation, processing and marketing business, captures in its estimates of market value substantial non-realty infusions to the business income stream including: 1) vehicles (trucks, loaders, excavators, etc.) and processing equipment (crushers, screeners, conveyors and washing equipment); 2) assembled workforce to operate and maintain the vehicles and equipment; 3) management of the vertically integrated business; 4) marketing of finished materials including any contracts or other less formal business relations; 5) availability of credit and, correspondingly, the return on and of capital investments, including the non-realty items such as vehicles and equipment; 6) insurance costs (liability, worker's compensation, etc.); and 7) permits and regulatory approvals.

There is no question that the Condemnees' vertically integrated aggregate business entails a major real estate component involving the quarry, stone and sand reserves, space for processing and storing aggregates, siltation ponds for spent wash water and buffer land. The board has had experience with a number of other unique businesses (agriculture, golf courses, landfills, hospitality properties, etc.) where the real estate is an important component of the income stream but is augmented significantly by non-realty (both "furniture, fixtures and equipment" ("FF&E") and intangible business goodwill) inputs to the income stream of the overall business or going concern. To arrive at the market value attributable to the real estate (either for RSA ch. 72 property tax or RSA ch. 498-A eminent domain compensation purposes), the income of the non-realty inputs to the net operating income ("NOI") to be capitalized needs to be stripped away from the going concern income. For businesses such as hospitality

properties and golf courses, franchises, management/goodwill and FF&E are customarily deducted either as expenses before the capitalization of the NOI or as depreciated replacement value after capitalization. For businesses such as agriculture or landfills and, as in this case, aggregate excavation, the rental income derived directly from the underlying land provides the best estimate of the realty's contribution to the overall business value because these businesses have significant non-realty inputs as noted above.

The board discussed and ruled on this issue in its May 7, 2007 Decision in North Country Environmental Services, Inc. v. Town of Bethlehem, Docket Nos.: 19709-02PT, 20384-03PT and 21064-04PT (the ("NCES Decision"). In the NCES Decision, the board reached similar conclusions relative to the appropriateness of the Royalty Method and the inappropriateness of the NOI Method in the valuation of a land fill and explained:

The foremost reason the Royalty Method is given the most weight is because the method inherently values, if properly employed, only the taxable realty portion of the income stream and not the non-realty portion (business, equipment, intangible personalty rights, etc.) of the going concern value of a landfill. . . .

In general, the board agrees with the Taxpayer that the Property's landfill gross operating income is significantly affected by the owner's specialized business acumen comprised of such things as the complex management of a vertically integrated business operation, assembled work force, client contracts, client relationships, established relationships with regulatory agencies and non-compete agreements (in short, the specialized business knowledge and relationships which must exist in the highly regulated niche of solid waste management and disposal). Further, another significant portion of the landfill's net operating income is derived from non-realty items, such as the equipment and machinery related to the hauling of waste material, cover material spreading and waste compacting at the landfill. Because such business acumen and equipment-related income will vary depending on the operator and on the type, size and location of landfills, it is difficult to reliably estimate the amount to be deducted from the DCF Method, and thus the board agrees with the Taxpayer that the Royalty Method is the preferred method for estimating the value of the Property's taxable real estate.

NCES Decision at 6.

The following authorities further support the board's conclusion that the NOI Method improperly captures non-realty value:

- “In applying the income capitalization approach, appraisers must take care to consider only the income that the property itself will produce - not income produced from the business enterprise conducted on the property (i.e., the business of mining).” Yellow Book at Sec. D-11, p. 97 (citing Cloverport, 6 Ct. Cl. at 191).
- “[T]he landowner may not by expert testimony capitalize the present or future value of a business enterprise and thereby arrive at fair market value; ...rental value may, however, be capitalized.” Id. at Sec. B-13, p. 55.
- “A going concern is an established and operating business with an indefinite future life.... The market value of such a property (including all of the tangible and intangible assets of the going concern, as if sold in aggregate) is commonly called its *going-concern value*.... Going-concern value includes the incremental value associated with the business concern, which is distinct from the value of the real property. The value of the going-concern includes an intangible enhancement of the value of the operating business enterprise, which is produced by the assemblage of the land, buildings, labor, equipment, and the marketing operation.” Appraisal Institute, The Appraisal of Real Estate (12th ed. 2001), p. 27.
- “The rental value of a commercial site, not the business income of the enterprise occupying it, provides an index of property value.” Joan Youngman, Legal Issues in Property Valuation and Taxation: Cases and Materials (1994: The International Association of Assessing Officers), p. 12.

The Condemnees concede “there is no extensive New Hampshire precedent [for] applying the NOI approach,” but argue for its application based on an “ABA-ALI Course of Study” publication (attached as Appendix 3 to the Memorandum) which discusses “an exception” (articulated in cases from several other jurisdictions) to the rule that the NOI Method improperly values going-concern value when the “income [is] generated from the land, as opposed to income generated from a business conducted on the land.” (Condemnees’

Memorandum, p. 14.) See also 8 Nichols on Eminent Domain §14F.03[3][b].⁵ Neither the Memorandum nor the Nichols treatise provides any further guidance as to when such an exception may be appropriate. Here, however, where the value of the stone (and, to a similar but lesser extent, the sand) in the ground is significantly enhanced by the vertically integrated business components to result in a higher valued finished aggregate product, the board finds the exception articulated by the Condemnees is not applicable. (Conceivably, in other cases where there is no processing of a material, such as stripping and loading of loam, the exception may have some applicability.)

For these reasons, the board finds the Royalty Method employed below inherently avoids any business value and is the appropriate method to estimate the before and after values of the Property.

B. The Larger Parcel

As summarized in footnote #3, the board determines the Larger Parcel to be all of Parcel 21 and the portion of Parcel 5 that encompasses the processing (crushing, screening and washing) and stockpiling of aggregate material and sufficient acreage to buffer the processing operation. Aggregate extraction and its ancillary processing is the highest and best use of Parcel 21 and the processing/stockpiling portion of Parcel 5 and thus the integrated use of those areas of Parcel 21 and Parcel 5 make up the “Larger Parcel.”

⁵ “An often heard complaint of the capitalization method in valuing mineral deposits is that its use violates the rule against compensating a landowner for lost business profit. In this regard, it is a fundamental concept in condemnation law that courts should not look to business profits as an indicator of the value of land for the reason that the success of a business depends so much upon the skill of the operator and the efficiency of the operation. However, in the select area of mineral valuation, some courts recognize an exception to this rule where the profits proceed directly out of the land condemned, thereby contributing to its intrinsic value, as opposed to a business being conducted on the land.”

Based on the board's view, the testimony of Mr. Coleman and the Beck Report (Condemnee Exhibit A-2, p. 27), the board disagrees with the Rauseo Appraisal assumption that Parcel 21 has enough suitable land to accommodate the secondary crushing, washing, stockpiling and marketing of the aggregate material. While certainly having the processing, stockpiling and marketing directly adjacent to and below the quarry would be the ideal and most efficient way to operate the business, the topography (lack of adequate flat area) and lack of a large water supply for washing the material on Parcel 21 precludes the Rauseo Appraisal assumption that Parcel 21 could be alone defined as the Larger Parcel. Consequently, in calculating the before and after values relative to the stone and sand reserves, the board's Larger Parcel encompasses all the acres necessary for the production, reserve, processing and adequate buffer for the aggregate excavation and processing.

The board's Larger Parcel does not include the concrete batch plant as that is not impacted by the taking nor is it an intricately related component of the highest and best use which as we have already noted is the excavation and processing of aggregate material. Consequently, when the board estimates the before and after sand and stone reserve values by the Royalty Method (contained in the discounted cash flow analyses at the end of the Report ("DCF Analyses")), the before and after attributes of the Larger Parcel recognize the less than ideal separation of the quarry on Parcel 21 by Pequawket Pond and Route 113 from the processing/stockpiling on Parcel 5. Thus, the result of a longer hauling distance between the quarry on Parcel 21 and the secondary processing on Parcel 5 due to the takings is a severance damage that must be considered and is not prohibited by the circuitry of travel argument raised by the Condemnor because this increase in hauling distance is inherent and internal to the Larger Parcel.

C. Estimation of Damages

1. The Larger Parcel

As noted above, the board finds the Condemnees are entitled to just compensation damages pertaining to the loss of sand (\$483,000) and stone (\$1,111,000) reserves, which has reduced the value of the land in the Larger Parcel because of the takings. The board's calculations of the before and after values are embodied in the DCF Analyses and the board's cost to cure estimate for construction of a new access or haul road of \$350,000 (discussed in the next section). These DCF Analyses, which generally parallel those contained in the Rauseo Appraisal but with some modifications,⁶ reflect the following general and detailed findings.

First, the board finds the bypass taking significantly impacts the northerly progression of the quarrying on Parcel 21. While the Condemnees had no documented "mining plan," the board's view and the testimony by Mr. Coleman and Mr. Beck indicate a prudent operator of the business would have continued the quarry excavation in a northerly direction because of the lower costs associated with the lesser overburden than in the easterly direction and in the ultimate ability to "daylight" the quarry floor in a northerly or northwesterly direction due to the natural slope of the terrain in that direction. The board agrees with Mr. Coleman's observation that excavating the material with lower associated costs early in the quarry's life is a prudent financial decision because it maximizes the profits early on rather than delaying them potentially

⁶ The board was unable to recreate exactly the value calculation of the Rauseo "Stone Reserves – Before Taking" spreadsheet. It appears as if the Rauseo spreadsheet, while showing a term of 30 years, had a 20 year holding period built into the formulas. Also, there appeared to be a problem, which we could not isolate, with the reversionary calculation. Nonetheless, the board's "Stone Reserves Valuation – Before" is based upon a 30 year holding period and the reversionary value is calculated by capitalizing the thirty-first year NOI by a capitalization rate of 13% and then discounting it by a 12% discount rate. However, the net difference between the Rauseo "Stone Reserves – Before Taking" value of \$3,893,800 and the board's "Stone Reserves Valuation – Before" of \$3,877,711 is nominal.

several decades into the future when no one knows what the market demand for aggregates or regulatory climate and related expenses might be.

Second, the board acknowledges the difficulty in obtaining truly comparable royalty rents for a quarry site such as the Condemnees because: 1) of the relatively few operations where the landowner and the operator are not one and the same; and 2) the unique characteristics of each excavation site. Nonetheless, the Rauseo Appraisal does identify and discuss a number of sand and stone reserves where the underlying land rent is known or can be reasonably calculated. The board did review the Rauseo Appraisal comparable rental properties and finds its correlated rental rates for the before DCF Analyses are reasonable based on the discussion and correlation in the Rauseo Appraisal. Mr. Coleman did testify as to his experience of obtaining aggregates from several sites which he does not own but the board was unable to give much weight to those examples because of the lack of specific information of the market for the product and the cost of extraction of the materials.

Third, the DCF Analyses are the exclusive method used by the board for estimating the before and after values of the Larger Parcel except for the cost to cure item of the new southerly access road in the after situation that the parties agreed needed to be constructed because of the taking severing the existing northerly haul road. (The board's finding as to the \$350,000 value has been addressed in the next section dealing with the compensable damages of the "New Haul Road.") The board finds the \$350,000 estimate for the cost of the new access road is a distinct element of severance damage and is not subsumed in the value difference of the before and after sand and stone reserve estimates. The DCF Analyses and its assumptions are premised upon the existence after the taking of the new, albeit longer, haul road to the south of the quarry.

Fourth, the board disagrees with the Rauseo Appraisal assumption that the takings result in no severance damages to the remainder of the Larger Parcel. The Royalty Method inherently assumes the owner of the land (the landlord) receives rental income for material (sand and stone) excavated by the tenant operator. The landlord's expenses related to this rental income are nominal and the rental rate inherently reflects the market desirability and utility of the stone and sand reserves. The rental rate also inherently reflects a sharing of the risks between the landlord and tenant over the life span of the quarrying operation. Thus, if either the demand for the aggregate material or the cost to extract it changes, the market royalty rent will change to reflect what a knowledgeable operator would be willing to pay for the reserves and what a knowledgeable landowner would be willing to accept for payment for the right to extract those reserves.

Consequently, the board concludes the takings result in a number of negative impacts on the cost to extract the material and process it that need to be reflected in lower royalty rents in the after take scenario for both the stone and sand reserves. Those negative impacts are summarized as follows in general order of importance.

A. After the taking, both the sand and stone reserves on Parcel 21 must be hauled a longer distance to the processing/stockpiling/marketing location on Parcel 5. This longer distance is a result of the new southerly access road being longer than the northerly access road and it connecting with Route 113 further south than the existing haul road. (The parties' legal arguments presented as to the compensability of damages due to the longer distance has been addressed in another section of this Report.) This longer hauling distance is the sole reason the board has reduced the royalty rate for sand reserves in the after taking analysis by 10% (to \$1.00 per ton in year 1 of the DCF Analyses). This factor is also part of the overall 50% reduction of the royalty rate for the stone reserves (in years 1 and 2) and the stabilized 25% reduction (from years 3 on).

B. The taking disrupts the existing overburden dump and necessitates the creation of a new overburden dump and road to access it in the southerly portion of Parcel 21. The board recognizes, just as the new access road, the new overburden dump and associated road would likely be the responsibility of the operator to put in place. This dump and access road could be deducted as a cost to cure similar to the new access road but because it was less quantifiable, the board has included it as part of the reduction of the royalty rent in the after situation primarily in the first two years of the DCF Analyses. The board reduced the royalty rent in years 1 and 2 by an additional 25% (from 25% to 50% or \$.60 to \$.40) to recognize the overburden dump infrastructure would need to be created to allow the excavation to continue. In year 3, the royalty rent returns to the stabilized 25% level (or \$.60, time appreciated to \$.64). This approach is similar to rental concessions that landlords frequently provide to a tenant where the tenant is responsible for significant, tenant-specific “fit-up” costs to make a building suitable for the tenant’s occupation.

C. While the amount of stone reserves in the taking area and the northern non-economic 4.27 acre remainder do not cause the total stone reserves to drop below those necessary for the thirty year estimated life of the quarry (and thus the thirty year DCF Analyses term), those stone reserves were more desirable and less costly to extract because of the lesser overburden as quantified in the Beck Report. In short, the board recognizes that not all stone reserves “were created equal” and it is a factor the board considered when reducing the after taking (stabilized) royalty rent by a total of 25%.

D. The closer proximity of the new bypass road to the quarry will result, for a period of time (seven to eight years as estimated in the Beck Report at Table A-2 “By-Pass Taking -- Modified Mine Plan”), in a modified and more expensive blasting routine.

E. The taking precludes the eventual daylighting of the quarry in a northerly/northwesterly direction and the closer proximity and potential visibility of the quarry to the public traveling on the bypass could potentially increase screening/buffering requirements and public relation efforts.

Fifth, the Condemnees assert a bridge traversing both Route 113 and Pequawket Brook is a necessary cost to cure to mitigate the effect of the after taking hauling distance. The board finds the \$1,750,000 to \$2,000,000 cost for such a bridge is an excessive and unreasonable element to measure the longer hauling distance severance damages. Even if the board were to have agreed with the Condemnees’ NOI Method, the damages mitigated by the installation of

the bridge (Frahme Appraisal difference in damages of \$2,286,000 (\$7,440,000 - \$5,154,000)) is roughly of the same magnitude as the bridge cost (\$1,750,000 to \$2,000,000).

Sixth, the board notes Mr. Rauseo added \$23,000 to his damage estimate for “Damages to Underlying Land Component.” (See Condemnor Exhibit No. 3, p. 100.) The board finds this is not appropriate once the other elements of value (loss of sand and stone) and their impact on the value of the land have already been addressed. Because the board has found the highest and best use of the Larger Parcel is for aggregate excavation and the best means to estimate the value of the Larger Parcel is a DCF of the royalty rents of the “in-ground” minerals, valuing the underlying land is duplicative. See, e.g., Edgcomb Steel, 100 N.H. at 488 (the most advantageous use to which a property might be put must be considered and analyzed to determine just compensation). The “Unit Rule” prohibits the summation of the value of different elements or components of the land for determining just compensation or as a “general real estate appraisal practice.” See Yellow Book, Sec. B-13, p. 54.

In summary, the board finds the Condemnees’ NOI Method improperly captures the value of non-realty items (business value and FF & E) that are non-compensable and the Condemnor’s estimate of damages fails to adequately recognize the full extent of the damages, in particular, severance damages. The board’s calculations, based on the Royalty Method, estimates before and after values of the Properties that inherently capture the part taken and severance damages related solely to the real estate. See Lebanon Housing Authority v. National Bank, 113 N.H. 73, 75-76 (1973); and Daly v. State, 150 N.H. 277, 280 (2003).

2. Compensable Damages Pertaining to the “New Haul Road”

The board has considered the legal arguments presented on what the parties describe as the “Circuitry [sic]⁷ of Travel” (see Condemnor’s Memorandum, pp. 12-14) or “Limitation of Access” (see Condemnees’ Memorandum, pp. 17-20) issue. In brief, the board disagrees with the Condemnor’s arguments against compensation because the case authorities it has cited, including State v. Shanahan, 118 N.H. 525 (1978), are distinguishable and because the board finds the impairment of property rights caused by the bi-section of Parcel 21 is substantial.

Shanahan involved a claim that “unrestricted” access to a 10,000 foot corner lot from two streets was impacted and impaired when the existing paving from the lot to the streets was improved with curbing that restricted vehicle access to two points (each 25-foot wide) on one street and one point (82 feet wide) on the other. Id. at 526. The supreme court disagreed with the condemnee’s contention that “any restriction on the amount of access, no matter how limited, entitles him to compensation for any decline in the value of the property,” id. (italics in original), but went on to decide, as emphasized in the Condemnees’ Memorandum (at p. 19), that:

[T]he difference between a non-compensable exercise of the police power and a compensable exercise of the eminent domain power “is one of degree of harm to the property owner. To be compensable, the damage must be substantial and amount to . . . ‘severe interferences which are tantamount to deprivations of use or enjoyment of property.’” [Citation omitted.] Each case must be examined on its facts.

A finding that alternative means of access are available to a landowner would militate against the conclusion that a restriction of a particular point of his access is a taking. However, the alternative means of access must be reasonable. [Citation omitted.]

⁷ See 7A Nichols on Eminent Domain §12.05[1][b] at pp. 12-49 and 12-50 where the “mere circuitry of travel” issue is discussed.

Also, what might be considered a merely inconvenient or circuitous alternative means of access for one landowner might be an unreasonable alternative for another. See Note, . . . , 26 Syracuse L.Rev. 899, 901 n.19 (1975) (a restriction of access might be “particularly damaging to land with a commercial use which depends on ease and convenient access or an established traffic flow for its continued patronage”). In weighing the private against the public interests, the particular use or uses of the regulated property must be taken into account. . . .

Shanahan, 118 N.H. at 527-28; quoted in Orcutt v. Town of Richmond, 128 N.H. 552, 554 (1986) (property owner not precluded from seeking damages from municipality for discontinuance of road if she could prove resulting “access to her property is not reasonable”); cf., Merit Oil of New Hampshire, Inc. v. State, 123 N.H. 280, 281(1983) (construction of a median strip, preventing eastbound traffic from turning left onto property, was not a compensable taking).

The specific facts of this case establish that much more than “mere circuitry of travel” has resulted from the taking in Parcel 21. The taking at issue in this case did not simply change a point of access from private land to a public roadway or make it more inconvenient to do so, but instead affected the Condemnees’ commercial use of the Property and its value in more substantial and fundamental ways. The effect of the Condemnor’s bypass project is to render unusable a substantial part of a preexisting internal road used to haul excavated material (sand and stone) from the quarry to the northern section of Parcel 21 (and then onto Route 113). This road is private, was in active, daily use by the Condemnees and, as mentioned in Condemnees’ Memorandum (p. 17) “runs through the heart of their operations.” Therefore the “taking . . . affects the parcel itself,” not simply providing an additional means of access to public roads and to other parcels. Id.

Both parties’ experts agreed construction of the New Haul Road on Parcel 21 will be needed to maintain the Condemnees’ operations and are reasonably close in their respective

estimates of the costs of construction -- \$325,000 and \$375,000 by Mr. Rauseo and Mr. Beck, respectively. (Compare Condemnor Exhibit No. 3, pp. 57-62, and Condemnee Exhibit A-2, pp. 45-47.) A potential purchaser would, in all likelihood, conclude the Property had less utility and value at its highest and best use unless an alternative internal road was constructed to allow the quarry to continue in production.

In summary, the board finds an expenditure of \$350,000 for internal road construction is a reasonable method of offsetting part of the damage caused by the taking in Parcel 21 and this estimated cost is a compensable element of damages because of the substantial impact of the taking on the Condemnees' property rights. Further recognition of the severance damage due to the longer hauling distance between the quarry and the secondary processing on Parcel 5 is contained in the reduction of the royalty rent rate in the stone reserves after take scenario.

3. Economic Units # 1 and #2

The board will next address the just compensation damages estimated in the Rauseo Appraisal for Economic Units #1 and #2 in Parcel 5 (Condemnor Exhibit No. 2), which units are not part of the Larger Parcel.

The parties generally agreed as to the methodology and the before and after values employed by Mr. Rauseo, but disagreed whether the 5% "Discount for Multiple Properties" applied to the value estimates was appropriate. Rauseo Appraisal at p. 151. Economic Units #1 and #2 had before values of \$350,000 and \$395,000, respectively, and after values of \$26,000 and \$100,000. By discounting both the before and after values by 5%, the total damages of Economic Units #1 and #2 are also reduced 5% from \$619,000 to \$588,000.

The Condemnees' Memorandum at Appendix 1 notes, however, the Rauseo Appraisal at page 111 has already discounted the before taking sales approach value estimate for the

hypothetical two lots of Economic Unit # 2 by 10% for “multi-lot purchase”, \$5,000 for subdivision and engineering costs and 7% for entrepreneurial profit.

The board finds the 5% discount for multiple properties is a reasonable adjustment to be applied to both the before and after values for Economic Unit #1 and the after value of Economic Unit #2 but not to the before value estimate of Economic Unit #2.

In general, the board finds the 5% discount reflects the fact that, while Economic Units #1 and #2 were valued as if they were separately transferable parcels, they are not legally subdivided tracts as of the date of taking. The 5% discount estimates the survey, subdivision and carrying costs that would be incurred to have both Economic Units become separate estates and then be marketed.

The discounting utilized is really a simplified version of an accepted methodology to estimate the value of property that has subdivision potential but has not been subdivided, known as the “development method” or “subdivision development analysis.” This technique estimates the current market value of an un-subdivided property by determining the final retail value of the lots based on comparable sales and then deducting outstanding expenses and carrying costs to approximate the value a prospective purchaser would likely pay for the property. See, e.g., Appeal of Sawmill Brook Dev. Co., 129 N.H. 410 (1987); and City of Manchester v. Town of Auburn, 125 N.H. 147, 157 (1984). Further, The Appraisal of Real Estate, published by The Appraisal Institute, 12th ed. (2001), p. 344, indicates such a subdivision development analysis is appropriate “when subdivision and development represent the highest and best use of the land and when sales data on finished lots is available. The number and size of the finished lots, their likely sale prices, the length of the development and marketing periods, and the absorption rate

are estimated. Gross income and expenses are projected when they are expected to occur. The resulting net sales proceeds are then discounted back to arrive at an indication of land value.”

However, the Rauseo Appraisal at page 111 deducts significant subdivision related costs (a total of \$86,600) associated with the before valuation scenario assumption of there being the potential for two vacant lots encompassed in the taking area of Economic Unit #2. Based on the limited discussion contained in the Rauseo Appraisal, the board believes these adjustments result in a “before” taking retail value estimate of two stand-alone lots and thus, the further discounting that occurs at page 151 is duplicative. Therefore, the board finds the damages for Economic Units #1 and #2 to be:

Economic Unit #1

Before Taking Value: \$350,000 x .95 (multiple property discount).	\$332,500
After Taking Value: \$26,000 x .95 (multiple property discount).	\$ 24,700
Damages:	\$307,800

Economic Unit #2

Before Taking Value: \$395,000 (includes discount for subdivision).	\$395,000
After Taking Value: \$100,000 x .95 (multiple property discount).	\$95,000
Damages:	\$300,000

4. The Condemnees’ Moving and Relocation Claims

Finally, the board will briefly address an argument pertaining to certain moving and relocation claims in the Condemnees’ Memorandum which they claim are also compensable in these proceedings. The Condemnees acknowledge the existence of federal and state relocation statutes and recognize there are prescribed and established procedures for evaluating their claims for further compensation for these items, but assert it would not be “fair” to require them to “await the outcome of their application for relocation assistance.” *Id.* at p.21. The board disagrees and finds merit in the Condemnor’s argument that those claims are “separate and

distinct” from the just compensation damages the board is authorized to award under RSA ch. 498-A (the Eminent Domain Procedure Act). See Condemnor’s Memorandum, p. 15.

The proceedings at hand are an improper venue since the board has no authority to consider the Condemnees’ claims for moving and relocation damages. Such claims are governed by RSA ch. 124-A (Relocation Assistance and Real Property Acquisition) which references and ties into the federal Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, 42 U.S.C. 4651, and the regulations promulgated thereunder. 49 C.F.R. part 24. See, generally, Appeal of Matthews, 136 N.H. 221, 222 (1992). Compliance with these provisions is mandatory. See RSA 124-A:13, II; and Matthews, 136 N.H. at 222 (“the DOT (department of transportation) is bound by these federal regulations.”).

There is no evidence to suggest the procedures set forth in these statutes and regulations (including appeal of any relocation award by the State of New Hampshire Department of Transportation to the Transportation Appeal Board), will not be adequate to address and resolve the Condemnees’ claims; if the Condemnees remain dissatisfied, appeal to the supreme court is the proper and accepted remedy. Id. The board therefore finds the Condemnees’ arguments that the board should instead now consider and rule on part or all of its moving and relocation claims is without merit on procedural grounds.

III. Further Proceedings

If either party seeks to appeal the amount of damages awarded by the board, a petition must be filed in the Carroll County Superior Court to have the damages reassessed. This petition must be filed within twenty (20) days from the clerk's date below. See RSA 498-A:27.

Because the board’s award exceeds the damage deposit, and if neither party appeals this determination, the Condemnor shall add interest to the excess award. The interest rate is

established under RSA 336:1. Interest shall be paid from the taking date to the payment date.

See RSA 524:1-b; Tax 210.11.

If neither party appeals the board's award, the board shall award costs to the prevailing party. RSA 498-A:26-a; see also RSA 71-B:9; Tax 210.13 and 201.39. In this case, the Condemnees are the prevailing party because the board's award exceeds the Condemnor's offer (or deposit) of damages. See Fortin v. Manchester Housing Authority, 133 N.H. 154, 156-57 (1990). The Condemnees may file a motion for costs within forty (40) days from the date of this Report if neither party appeals the board's award. The motion must include the following:

- 1) an itemization of the requested costs, Tax 201.39;
- 2) a statement that the prevailing party sought the other party's concurrence in the requested costs, Tax 201.18(b); and
- 3) a certification that a copy of the motion was sent to the other party, Tax 201.18(a)(7).

If the other party objects to the request for costs, an objection shall be filed within ten (10) days of the motion.

A list of recoverable costs can be found in Superior Court Rule 87. Expert fees are limited to reasonable fees incurred for attending the hearing. No fees are recoverable for preparing to testify or for preparing an appraisal. See Fortin, supra, 133 N.H. at 158.

State v. Calvin J. Coleman (P-21)								
Docket No. 23375-08ED								
Sand Reserves - "Before"								
	Year	1	2	3	4	5	6	7
INCOME								
Sand Reserves (Tons)		1,000,000	864,000	725,280	583,786	439,461	292,251	142,096
Sand Quarried (Tons)	2.0%	136,000	138,720	141,494	144,324	147,211	150,155	142,096
Royalty of Sand (\$/Ton)	3.5%	\$ 1.11	\$ 1.15	\$ 1.19	\$ 1.23	\$ 1.27	\$ 1.32	\$ 1.36
Gross Income		\$ 150,960	\$ 159,368	\$168,245	\$177,617	\$187,510	\$197,954	\$193,886
EXPENSES								
Management	3.5%	\$ 1,000	\$ 1,035	\$ 1,071	\$ 1,109	\$ 1,148	\$ 1,188	\$ 1,229
Insurance	3.5%	\$ 2,500	\$ 2,588	\$ 2,678	\$ 2,772	\$ 2,869	\$ 2,969	\$ 3,073
Property Taxes	3.5%	\$ 4,467	\$ 4,623	\$ 4,785	\$ 4,953	\$ 5,126	\$ 5,305	\$ 5,491
Total Expenses		\$ 7,967	\$ 8,246	\$ 8,534	\$ 8,833	\$ 9,142	\$ 9,462	\$ 9,793
NET OPERATING INCOME								
		\$ 142,993	\$ 151,123	\$159,711	\$168,783	\$178,367	\$188,492	\$184,093
Discount Rate			10%					
INDICATED VALUE								
			\$ 801,782					

State v. Calvin J. Coleman (P-21)				
Docket No. 23375-08ED				
Sand Reserves - "After"				
	Year	1	2	3
INCOME				
Sand Reserves (Tons)		395,000	259,000	120,280
Sand Quarried (Tons)	2.0%	136,000	138,720	120,280
Royalty of Sand (\$/Ton)	3.5%	\$ 1.00	\$ 1.04	\$ 1.07
Gross Income		\$ 136,000	\$ 143,575	\$ 128,847
EXPENSES				
Management	3.5%	\$ 1,000	\$ 1,035	\$ 1,071
Insurance	3.5%	\$ 2,500	\$ 2,588	\$ 2,678
Property Taxes	3.5%	\$ 4,467	\$ 4,623	\$ 4,785
Total Expenses		\$ 7,967	\$ 8,246	\$ 8,534
NET OPERATING INCOME				
		\$ 128,033	\$ 135,329	\$ 120,312
Discount Rate			10%	
INDICATED VALUE			\$ 318,629	

State v. Calvin J. Coleman (P-21)										
Docket No. 23375-08ED										
Stone Reserves Valuation - "Before"										
	Year	1	2	3	4	5	6	7	8	9
INCOME										
Stone Reserves (Tons)		53,904,000	53,616,000	53,322,240	53,022,605	52,716,977	52,405,236	52,087,261	51,762,926	51,432,105
Rock Quarried (Tons)	2.0%	288,000	293,760	299,635	305,628	311,740	317,975	324,335	330,821	337,438
Royalty of Rock (\$/Ton)	3.5%	\$ 0.80	\$ 0.83	\$ 0.86	\$ 0.89	\$ 0.92	\$ 0.95	\$ 0.98	\$ 1.02	\$ 1.05
Gross Income		\$ 230,400	\$ 243,233	\$ 256,781	\$ 271,084	\$ 286,183	\$ 302,124	\$ 318,952	\$ 336,718	\$ 355,473
EXPENSES										
Management	3.5%	\$ 1,000	\$ 1,035	\$ 1,071	\$ 1,109	\$ 1,148	\$ 1,188	\$ 1,229	\$ 1,272	\$ 1,317
Insurance	3.5%	\$ 2,500	\$ 2,588	\$ 2,678	\$ 2,772	\$ 2,869	\$ 2,969	\$ 3,073	\$ 3,181	\$ 3,292
Property Taxes	3.5%	\$ 4,467	\$ 4,623	\$ 4,785	\$ 4,953	\$ 5,126	\$ 5,305	\$ 5,491	\$ 5,683	\$ 5,882
Total Expenses		\$ 7,967	\$ 8,246	\$ 8,534	\$ 8,833	\$ 9,142	\$ 9,462	\$ 9,793	\$ 10,136	\$ 10,491
NET OPERATING INCOME		\$ 222,433	\$ 234,987	\$ 248,247	\$ 262,251	\$ 277,041	\$ 292,662	\$ 309,159	\$ 326,582	\$ 344,982
Net Present Value			10%	\$3,582,696						
Reversion Cap Rate		13%								
Sale of Property at Reversion		\$ 8,838,609								
Reversion Discount Rate			12%	\$295,014						
INDICATED VALUE				\$3,877,711						

State v. Calvin J. Coleman (P-21)										
Docket No. 23375-08ED										
Stone Reserves Valuation - "After"										
	Year	1	2	3	4	5	6	7	8	9
INCOME										
Stone Reserves (Tons)		48,904,000	48,616,000	48,322,240	48,022,605	47,716,977	47,405,236	47,087,261	46,762,926	46,432,105
Rock Quarried (Tons)	2.0%	288,000	293,760	299,635	305,628	311,740	317,975	324,335	330,821	337,438
Royalty of Rock (\$/Ton)	3.5%	\$ 0.40	\$ 0.41	\$ 0.64	\$ 0.66	\$ 0.69	\$ 0.71	\$ 0.73	\$ 0.76	\$ 0.79
Gross Income		\$ 115,200	\$ 121,617	\$ 191,767	\$ 202,448	\$ 213,724	\$ 225,629	\$ 238,196	\$ 251,464	\$ 265,470
EXPENSES										
Management	3.5%	\$ 1,000	\$ 1,035	\$ 1,071	\$ 1,109	\$ 1,148	\$ 1,188	\$ 1,229	\$ 1,272	\$ 1,317
Insurance	3.5%	\$ 2,500	\$ 2,588	\$ 2,678	\$ 2,772	\$ 2,869	\$ 2,969	\$ 3,073	\$ 3,181	\$ 3,292
Property Taxes	3.5%	\$ 4,467	\$ 4,623	\$ 4,785	\$ 4,953	\$ 5,126	\$ 5,305	\$ 5,491	\$ 5,683	\$ 5,882
Total Expenses		\$ 7,967	\$ 8,246	\$ 8,534	\$ 8,833	\$ 9,142	\$ 9,462	\$ 9,793	\$ 10,136	\$ 10,491
NET OPERATING INCOME										
		\$ 107,233	\$ 113,371	\$ 183,232	\$ 193,615	\$ 204,582	\$ 216,166	\$ 228,403	\$ 241,328	\$ 254,979
Net Present Value			10%	\$2,548,238						
Reversion Cap Rate		13%								
Sale of Property at Reversion		\$ 6,557,196								
Discount Rate			12%	\$218,866						
INDICATED VALUE				\$2,767,104						

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify copies of the foregoing Report have been mailed, this date, to: Lynmarie C. Cusack, Esq., State of New Hampshire, Department of Justice, 33 Capitol Street, Concord, NH 03301, counsel for the Condemnor; George F. Burns, Esq., Bernstein Shur, 100 Middle Street, P.O. Box 9729, Portland, ME 04104-5029; Roy W. Tilsley, Jr., Esq., Bernstein Shur, Jefferson Mill Building, 670 N. Commercial Street, Suite 108, P.O. Box 1120, Manchester, NH 03105, counsel for the Condemnees; and Randall F. Cooper, Esq., Cooper, Cargill & Chant, 2935 White Mountain Highway, North Conway, NH 03860, counsel for the Town of Madison.

Date: March 16, 2010

Anne M. Stelmach, Clerk