

Hinsdale Real Estate Development, LLC

v.

Town of Hinsdale

Docket Nos.: 24344-08PT/25269-09PT

DECISION

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

Map 24/Lot 59 - \$4,345,900 (land \$1,224,900; building \$3,121,000), a racetrack and commercial building on 62.88 acres (“Lot 24/59”);

Map 19/Lot 15 - \$187,500 (land \$66,900; building \$120,600), kennels on a 5.50 acre lot (“Lot 19/15”);

and 2009 assessments of:

Map 24/Lot 59 - \$4,747,000 (land \$1,232,600; building \$3,514,400), a racetrack and commercial building on 66.76 acres (“Lot 24/59”);

Map 19/Lot 15 - \$187,500 (land \$66,900; building \$120,600), kennels on a 5.50 acre lot (“Lot 19/15”), (collectively the “Appealed Properties”).

The Taxpayer also owns, but is not appealing, Map 24/Lots 2-4 (consisting of 1.86 acres) and Map 24/Lot 60 (consisting of 8.55 acres), two vacant lots with a combined total assessment of \$81,800; further, although the Taxpayer owned and appealed Map 24/Lot 59-1 for tax year 2008, two raceway buildings on a 28.684 acre lot (tax year 2008) and 24.154 acre lot (tax year 2009) assessed for \$318,100, the Taxpayer withdrew its appeal of that lot on August 11, 2010

(collectively the “Non-Appealed Properties). The Appealed Properties and Non-Appealed Properties will collectively be referred to in this Decision as the “Property.”

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 they were assessed 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) there is little demand for commercial real estate in the Town due to its small population and low median household income;
- (2) the racetrack is a special purpose property which was designed for either dog or horse racing;
- (3) live greyhound racing was not economically viable for this location on April 1, 2008;
- (4) the improvements on the Appealed Properties were in “total disrepair,” had been fully depreciated and, therefore, had no contributory value;
- (5) the highest and best use of the Appealed Properties on April 1, 2008 was commercial land for future development; and
- (6) an appraisal of the Appealed Properties prepared by Daniel F. Clifford, MAI of Boggini Realty Advisors (the “Boggini Appraisal”) estimated the combined market value to be \$2,000,000 on April 1, 2008.

The Town argued the assessments were proper because:

- (1) the Boggini Appraisal utilized the sales comparison approach to value the Appealed Properties and, for various reasons, three of the four comparable sales used by Mr. Clifford are not reliable indicators of value;
- (2) the lone sale that was “comparable” is the sale to Wal-Mart of Lot 24/59-1;
- (3) the owner had the Appealed Properties listed for sale in 2010-2011 with a real estate agency for \$3,900,000 which further calls into question the validity of the value conclusion in the Boggini Appraisal;
- (4) while the amount of depreciation on the improvements may be too low on the assessment-record cards for the Property, it is clear Lot 24/59-1 is underassessed and the combined impact of any adjustments may be offsetting; and
- (5) the board has a review appraiser on staff who can be utilized.

The parties stipulated the level of assessment in the Town was 93% in tax year 2008 and 102.4% in tax year 2009, the median ratio calculated by the department of revenue administration. The board has responded to the specific requests for findings of fact and rulings of law made by each party in the Addendum to this Decision.

Subsequent to the hearing, the board decided to engage its RSA 71-B:14 staff review appraisers to perform an inspection and independent valuation of the Property to include all property that comprised the entire estate of Hinsdale Real Estate Development LLC (“HRED”). The board is authorized to engage its review appraisers for this purpose under this statute. See Appeal of Sokolow, 137 N.H. 642 (1993). One of its review appraisers, Ms. Theresa M. Walker, completed these steps and filed her report (the “Walker Report”) with the board on October 14, 2011. The parties were given a twenty (20) day period to submit written comments. The

Taxpayer did not submit any comments or objections to the Walker Report. The Town filed comments on October 31, 2011 (“Town Comments”) which the board has considered in arriving at its decision.

Board’s Rulings

Based on the evidence, the board finds an abatement is warranted based on the findings below. Before proceeding to the board’s detailed findings, a description of the Property and its history is helpful in understanding the board’s conclusions.

Overview

The Property consisted of approximately 107.474 acres in fiscal year 2008 and 106.824 acres in fiscal year 2009¹ and is known as the Hinsdale Greyhound Park. The majority of the Property, according to the Hinsdale Zoning Ordinance (the “Ordinance”), is on Route 119 (Brattleboro Road) in the Roadside Commercial Development (“RC District”), a liberal commercial zoning district that allows a wide variety of residential and commercial uses. The remainder of the track parcel (east of Liscomb Brook) is within the Rural/Agricultural District (“RA District”) which is designed to accommodate residential uses in what is commonly recognized as being a rural environment. Portions of the track parcel are also in the flood plain overlay district which has certain criteria for issuing building permits to protect future development from potential flood damage. The Property is improved with a pari-mutuel racing facility, including grandstand, kennel buildings, heated gravel racetrack and accessory buildings. The facility opened in 1958 as a seasonal harness racing facility and was converted to a greyhound racetrack in the early 1970s.

¹ See Walker Report at p. 5.

The history of the greyhound racing industry in general and the financial history of the Hinsdale Greyhound Race Track in particular indicates the economic viability of this economic entity has been shrinking for the past several decades (see Boggini Appraisal (Taxpayer Exhibit No. 5 at pp. 23-29). “In a report prepared for the New Hampshire Attorney general by Brayman, Houle, Keating & Albright, Certified Public Accountants, for the 13 weeks ending on February 4, 2008, the Hinsdale Greyhound Racing Association had operating income of -\$126,075. The losses were continuing unabated and the regional economy, which had entered a pronounced recession, could not help the greater economic and cultural forces that were working against the Hinsdale Greyhound Race Track as a viable economic entity.” Id. at p. 28.

The Property was acquired on October 29, 2007 for \$3,300,000² by HRED from Hinsdale Greyhound Racing Association, Inc. (“HGRA”). The transaction was an intra-corporate sale and was not considered an arm’s-length transaction as the majority shareholder of HGRA was one of two members of HRED. This sale included the land that was subject to a December 15, 2006 purchase and sale agreement to Wal-Mart Real Estate Business Trust (“Wal-Mart”) referenced below.

Subsequent to the October 29, 2007 transaction, on July 14, 2009, 0.65 acres was transferred to Justaplain Realty, LLC, a mobile home park that originally had its septic system tied in with the greyhound track. The transfer was to allow the mobile home park to install its own septic system.

² According to the Boggini Appraisal, the acquisition was in the amount of \$3,300,000; however, according to the Walker Report, the tax stamps reflected a value of \$2,800,000.

Further, subsequent to the October 29, 2007 transaction, on September 19, 2009, the Taxpayer transferred the Wal-Mart Parcel to Wal-Mart³ for \$2,130,000. Included in the sale to Wal-Mart was Map 24, Lot 58 (the “Morris Parcel”) purchased by HRED on September 19, 2009 for \$180,000. The Wal-Mart sale included easements with covenants and restrictions (“ECR”) affecting the land which specifically placed use restrictions on a portion of the track parcel (Map 24 Lot 59) which prevents the lot from being developed with certain businesses that compete with Wal-Mart.

It should be noted that Wal-Mart had an existing store (in leased space) several miles north of the Property and was seeking to buy a site to build a larger store. Wal-Mart approached the Taxpayer to purchase a portion of Map 24 Lot 59; Wal-Mart and the Taxpayer cooperated in the subdivision and approval processes and the September 2009 sale for \$2,130,000 appears to be an arm’s-length transaction.

The remaining track parcel (Map 24, Lots 59 & 60 and Map 19, Lot 15) and the building lot Map 24 Lot 2-4⁴ were placed on the market by Premier Properties at an asking price of \$3,900,000; the listing price was based on what the Taxpayer had invested in the Property through various mortgages. After approximately one year of exposure to the market, the listing expired. There was “no significant interest” in the Property and no offers were received.

Two appraisals were prepared and reviewed by the board in making its determination: 1) the “Boggin Appraisal” prepared by Daniel F. Clifford (Taxpayer Exhibit No. 5); and the Walker Report prepared by the board’s review appraiser, Theresa M. Walker, at the suggestion of the parties and upon request of the board. Mr. Clifford prepared a retrospective market value

³ The Wal-Mart parcel was put under contract for sale on December 15, 2006 for \$2,300,000 but prior to the sale numerous amendments and the size of the parcel was reduced; thus, the final price was reduced.

⁴ Map 24 Lot 60 and Map 24 Lots 2-4 are a portion of the Non-Appealed lots.

“as is” of the “marketable rights and interests of 68.38 acres of land improved with the Hinsdale Greyhound Park” as of April 1, 2008 and determined a market value of \$2,000,000 for those rights appraised. Ms. Walker prepared her report as of April 1, 2008 and April 1, 2009, and determined the entire Property consisted of three economic units (see Walker Report at p. 1), a building lot, the Wal-Mart parcel and the track parcel. Ms. Walker determined the market value of the building lot for 2008 and 2009 was \$75,000; the Wal-Mart parcel for tax years 2008 and 2009 was \$2,500,000; and the track parcel was \$454,000 and \$462,000 for 2008 and 2009 respectively. The Town presented little evidence in support of its assessed value. It called Mr. Carl Thomas, sole member of HRED to testify to the \$3,900,000 listing price of the Property and Stephan Whalen of Vision Appraisal who offered little evidence of how the assessments were derived. In fact, Mr. Whalen had never been inside the Property but had merely driven “by and around” it. The board will discuss the evidence in its detailed findings below.

Detailed Findings

For the reasons stated below, the appeals for abatement are granted. The board will first summarize its value conclusions and findings of value specific to each parcel. In making market value findings, the board considers and weighs all the evidence, including the Boggini Appraisal, the Walker Report and the parties’ testimony applying the board’s “experience, technical competence and specialized knowledge” to the 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 evidenced 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).

Appealed Properties

Mr. Clifford (Boggini Appraisal) prepared an appraisal estimating the “as is” retrospective market value of the marketable rights and interests of the 68.38⁵ acre tract of land improved with the greyhound racetrack and simulcast facility known as the Hinsdale Greyhound Park. Mr. Clifford arrived at a market value conclusion of the real estate only of \$2,000,000, based on his determination the highest and best use of the land as though vacant is for future development. Because Hinsdale Greyhound Park experienced a negative cash flow for several years⁶, and the expense to comply with the statutory requirements that live dog racing be conducted 50 days annually, it was unable to attract any investor interest. As a result, Mr. Clifford determined the improvements had no value. “Once the value of the vacant land exceeds the value of the improved property, the highest and best use becomes use of the land as though vacant.” Id. at p. 43.

Of the 68.38+/- acres appraised by Mr. Clifford, approximately 21 acres were determined to be in the flood plain with an additional wooded area encumbered by a utility easement traversing the northwest corner of the site. As a result, the highest and best use of the 21 acres was determined to be for conservation purposes or open space use of the land.

⁵ The acreages vary minutely per parcel.

⁶ “As of November 6, 2006, the company incurred a net loss of \$330,912. As of the 25 weeks ending in April of 2008, the operating loss was \$177,664.” (Taxpayer Ex. 5 at p. 46)

The remaining 47.38+/- acre site, zoned RC, was determined to have a highest and best use for future development, “as demand dictates,” with an additional portion of the land determined to be of marginal utility and its highest and best use is to remain vacant.

Because of the troubled finances of the HGRA, Mr. Clifford concluded selling a portion of the land to Wal-Mart was “the correct economic decision.” He did not determine, however, that the sale to Wal-Mart “portends a pattern for future land development along Route 119, including the subject property;” in fact, he classified the sale as a “one-off,” not a trend. The market was stronger when the purchase and sale agreement was signed by Wal-Mart in 2006 and no developers have “stepped forward to develop or purchase additional land on a speculative basis on Route 119.”

Based on a sales comparison approach and review of comparable sales, including the Wal-Mart sale, Mr. Clifford’s conclusion of market value (see Taxpayer Exhibit No. 5 at p. 62) of the Appealed Properties was \$2,000,000.

Entire Estate

When a taxpayer, as in these appeals, owns more than one taxable property, an abatement can only be granted if that taxpayer’s entire estate within the taxing jurisdiction is shown to be disproportionately assessed even if that taxpayer elects to challenge only one property or only a portion of their taxable estate. The supreme court has held the board must consider a Taxpayer’s entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985);

When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer’s properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. Bemis &c. Bag Co. v. Claremont, 98 N.H. 446, 451, 452 (1954).

“Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant....In one sense...plaintiff is one party and all the remaining taxpayers the other party. The question is in what way between these two parties the constitutional rule of equality of burden shall be carried into effect.” Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 206 (1899).

See also Appeal of City of Lebanon, 161 N.H. 463, 468-69 (2011);

When a taxpayer owns more than one lot within a given municipality, a request for abatement will always require consideration of the assessment on any other parcels for which the owner is also the taxpayer.

We have not had occasion to address the circumstances presented in this case where the taxpayer owns two lots but is the taxpayer with respect to only one lot. We now clarify that when a taxpayer owns more than one parcel in any given municipality, a request for abatement on one will always require consideration of the assessment on any other parcels for which the owner is also the taxpayer. This approach comports with the purpose of the standard laid out in *Appeal of Town of Sunapee* and *Bemis & c. Bag Co.* for determining whether an individual taxpayer is entitled to an abatement by requiring the taxpayer to present evidence of assessments only on property for which it has a tax burden. The standard stems from the constitutional principal “that all taxes on ‘estates’ shall be proportional and reasonable (Const. Pt. II, Art. 5) which means equal and just.” *Id.* at 450. “Equality in the burden of taxation cannot exist without uniformity in the mode of assessment as well as in the rate of taxation.” *Id.*

This principle is based on Part I, Article 12 of the New Hampshire Constitution which requires each person who is provided the protection of government to contribute his or her share in the expense of such protection. Further, as stated in Lebanon, to ensure that each person’s share is proportional and reasonable (Part II, Article 5) relative to market value (RSA 75:1), the taxpayer’s entire estate, not just a select portion of it, must be considered in determining whether these constitutional requirements have been met. In other words, to prevail in a tax abatement appeal, a taxpayer has the burden of proving by a preponderance of the evidence that he or she is paying more than his or her proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).

As stated above, the board directed Ms. Walker to perform an inspection and independent valuation of the Property to include all property that comprised the entire estate of HRED. Ms. Walker was in attendance at the hearing on this appeal, reviewed all of the evidence submitted at the hearing, inspected the Property with representatives of the Taxpayer and the Town, and performed an appraisal, as of April 1, 2008 and April 1, 2009, based on her determination of the highest and best use of the Property. Ms. Walker determined the Property consisted of three economic units: 1) the building/development lot; 2) the Wal-Mart parcel; and 3) the track parcel. See Walker Report at p. 1. A highest and best use analysis was performed and the sales comparison approach was utilized in determining the indicated market values of each economic unit.

Building/development Lot (Map 24, Lots2-4):

This lot consists of 1.86 acres capable of supporting a small commercial development. Ms. Walker determined its highest and best use, based on her inspection of the lot and the surrounding development, to be for future commercial development such as a free standing retail store or professional office building. She analyzed three comparable sales, two in Hinsdale and one in Swanzey, and after adjusting for time, location, site condition and lot size, estimated a \$75,000 market value for this economic unit based on a \$40,000 per acre unit value.

Wal-Mart Parcel (Map 24, Lot 59-1):

This parcel was placed under contract in December 2006 to be sold to Wal-Mart. Based on her analysis of the sale, Ms. Walker determined the highest and best use of this lot was for development of a big-box retail store. In valuing this parcel, sales of more than 50 retail sites in New Hampshire were reviewed. From this review, a summary of sales of big-box retail sites in New Hampshire over the past ten (10) years were researched with data for all were confirmed by

a party to each transaction. Four sales were directly analyzed (see Walker Report at p.16) and adjusted for differences in time, location and land to building ratios to arrive at a market value of \$15 per square foot or \$2,500,000 for this economic unit.

Track Parcel (Map 24, Lots 59 & 60 and Map 19, Lot 15):

This economic unit consists of three lots totaling 76.93 acres as of April 1, 2008 and 80.81 acres as of April 1, 2009. The usable portion was estimated by Ms. Walker to be approximately 50 acres with the remainder impacted by Liscomb Brook, wetlands, flood zones and steeply sloping terrain, an additional 2.584 acres reportedly used as a manure dumping site with possible contamination and a small upland area that was not accessible.

The usable portion is located west of Liscomb Brook and encompasses the frontage on Route 119. Ms. Walker noted this area could accommodate many commercial uses permitted by zoning and its highest and best use, as vacant, is for future commercial development. Ms. Walker determined the highest and best use of the unusable portion is for open space or conservation purposes.

Ms. Walker and Mr. Clifford are in agreement that the track parcel is a “limited market property” and the improvements are considered “special purpose.” Ms. Walker reviewed the financial information in the Boggini Appraisal and concurred its current use was “not considered financially feasible or maximally productive, and continued use of the track parcel as a greyhound racing facility was not its highest and best use.” Thus, Ms. Walker’s conclusion was the improvements did not contribute any value to the track parcel.

In arriving at a value of the track parcel, Ms. Walker reviewed in depth whether the Wal-Mart store would attract other large, national retailers in the future. See Walker Report at p.12. Also, because the track parcel is subject to ECR’s which are part of the deed to Wal-Mart, this

would restrict the parcel for future development. Thus, she determined the highest and best use would be for future redevelopment (and possible subdivision) for general commercial uses.

Although both are retail uses, this highest and best use is distinctly different than the one arrived at in the Wal-Mart parcel, which was for development of a big-box retail store.

Three comparable sales were utilized in determining her estimated market value of the usable portion of the track parcel (Walker Report at p. 21) with a resulting range in value of \$4,470 to \$8,992 per acre. Ms. Walker determined \$8,000 per acre was appropriate indicating a market value of \$400,000 for the usable portion of the track parcel.

Ms. Walker estimated the unusable portion of the track parcel to have a contributory value of low utility/conservation and valued the unusable portion at \$2,000 per acre.

Thus, Ms. Walker determined the market value of the track parcel as of April 1, 2008 to be \$454,000 and \$462,000 as of April 1, 2009.

Summary

The supreme court has held that “property is to be valued at its ‘best and highest use’.” State v. Town of Allenstown, 124 N.H. 487, 491 (1984) citing 590 Realty Co., Ltd. V. City of Keene, 122 N.H. 284, 285 (1982) and Blue Mountain Forest Association v. Town of Croydon, 119 N.H. 202, 203 (1979).

Further, as the Appraisal Institute notes:

In all valuation assignments, opinions of value are based on use. The highest and best use of a property to be appraised provides the foundation for a thorough investigation of the competitive position of the property in the minds of market participants. Consequently, highest and best use can be described as the foundation on which market value rests. (Emphasis added.)

See The Appraisal of Real Estate, 305 (12th ed. 2001).

The board concurs with the highest and best use determinations in the Walker Report and further notes both appraisers considered the Hinsdale Greyhound Park to be a “special purpose” property. The Boggini Appraisal valued only the Appealed Properties and the Walker Report appraised the “entire estate” estimating market value based on three economic units. The board concurs with both appraisers the Hinsdale Greyhound Race Track is a special purpose property. Further, based on the declining greyhound racing industry and the financial history, the race track was not economically feasible on the effective dates of value and continued use of the track parcel as a greyhound racing facility was not its highest and best use. Thus, the board concurs with both the Boggini Appraisal’s and Walker Report’s opinion that the buildings were of no value and the highest and best use of the track parcel is as vacant land for future commercial development.

The board finds the Walker Report provides the best evidence of value of the Property’s market value. The board concurs with Ms. Walker’s determination of three economic units of the Property (the “entire estate”) and her assumptions and analyses for each of the economic units. The ECR places significant limitations on the use of the track parcel as the ECR prohibits the development of uses on this parcel that compete with Wal-Mart. As stated in the ECR:

Seller covenants that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of the Wal-Mart Tract, either as owner or lessee, no space in or portion of the Seller Tract, and no space in or portion of any other real property adjacent to the Seller occupied by or conveyed to any other party for use as (i) a membership warehouse club, (ii) a pharmacy, (iii) a discount department store or other discount store, as such terms are defined below, (iv) a variety, general or “dollar” store, (v) a grocery store or supermarket as such terms are defined below, or (vi) as any combination of the foregoing uses” and, “ ‘Grocery Store’ and ‘supermarket’ , as those terms are used herein, shall mean a food store or a food department containing more than 10,000 square feet of building space used for the purpose of selling food for off premises consumption, which shall include but not be limited to bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. ‘Discount department store’ and/or

‘discount store’, as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of building space used for the purpose of selling a full line of hard goods and soft goods (e.g., clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart.

With respect to the Boggini Appraisal sales comparison analysis, the board finds the inclusion of the sale of the Wal-Mart parcel should not be used as a comparable because the highest and best use of the Appealed Properties as determined by both Mr. Clifford and Ms. Walker was for future commercial development, whereas the highest and best use of the Wal-Mart parcel was for development of a big-box retail store. Further, the existence of the ECR of the Appealed Properties certainly limits the possible future uses and therefore affects the perceived market value to any prospective purchasers. Therefore, the board gave little weight to Mr. Clifford’s sales comparison analysis.

The board has given no weight to the Town’s limited evidence. The Town argued the \$3,900,000 listing of the Appealed Properties should be considered by the board in making its determination of value. Mr. Carl Thomas, one of the co-owners of the HRED testified the listing price was set based solely because that was the amount invested in the Property. He further testified the listing price was merely to see if there was a market at this price and no offers were received.

Based on the above, the board has determined the value of the Property (entire estate) based on three economic units as determined by Ms. Walker. The resultant market values and

equalized assessed values are as follows:

<u>Tax Year 2008</u>	Mkt. Value	Equalized Assessed Value
Track Parcel		
(Map 24, Lot 59 & 60 and Map 19, Lot 15) -	\$ 454,000	\$ 422,200
Building/Development Lot (Map 24, Lot 2-4) -	75,000	69,800
Wal-Mart Parcel (Map 24, Lot 59-a) -	<u>2,500,000</u>	<u>2,325,000</u>
TOTAL (2008)	\$3,029,000	\$2,817,000

<u>Tax Year 2009</u>	Mkt. Value	Equalized Assessed Value
Track Parcel		
(Map 24, Lot 59 & 60 and Map 19, Lot 15) -	\$ 462,000	\$ 473,100
Building/Development Lot (Map 24, Lot 2-4) -	75,000	76,800
Wal-Mart Parcel (Map 24, Lot 59-a) -	<u>2,500,000</u>	<u>2,560,000</u>
TOTAL (2009)	\$3,037,000	\$3,109,900

Subtracting the revised total assessments of the Property for tax year 2008 of \$2,817,000 from the total assessments of \$4,933,300 results in the Taxpayer being entitled to an abatement of \$2,116,300 based on the Taxpayer's entire estate. Subtracting the revised total assessments of the Property for tax year 2009 of \$3,109,900 from the total assessments of \$5,334,400 results in the Taxpayer being entitled to an abatement of \$2,224,500 based on the Taxpayer's entire estate.

If the taxes have been paid, the amount paid on the value in excess of the amounts stated above shall be refunded with interest at six percent per annum from date paid to refund date.

RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the properties pursuant to RSA 75:8, the Town shall use the ordered assessments for subsequent years. RSA 76:17-c, I and II.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing

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

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Douglas S. Ricard, 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 Requests, “neither granted nor denied” generally means one of the following:

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

Taxpayer’s Requests for Findings of Fact

1. That as of April 1, 2008 the highest and best use of Taxpayers property Map 24, Lot 59 was as vacant land for future commercial development.

Granted.

2. That as of April 1, 2008 the highest and best use of Taxpayers property Map 19, Lot 15 was as vacant land for future commercial development.

Granted.

3. That as of April 1, 2008 it was no longer economical viable to operate a greyhound race track in Hinsdale, NH.

Granted.

4. That the improvements on both Map 24, Lot 59 and on Map 19, Lot 15 were for a special purpose, i.e. pari-mutuel greyhound racing for which there is no alternative use for such improvements.

Granted.

5. That as of April 1, 2008 the economic life of the improvements on both Map 24, Parcel 59 and on Map 19, Lot 15 had expired.

Granted.

6. That as of April 1, 2008 the improvements on Map 24, Parcel 59 had no value.

Granted.

7. That as of April 1, 2008 the improvements on Map 19, Parcel 15 had no value.

Granted.

8. That the demographics in Hinsdale, NH indicate that there is very little demand for commercial real estate.

Neither granted nor denied.

9. The area population and median household income are weak and do not meet the criteria that most national retailers require.

Neither granted nor denied.

10. The new Wal-Mart constructed on adjoining property will not necessarily spur additional development.

Granted.

11. The availability of commercial development sites in Hinsdale, NH vastly outweighs the demand for such land.

Neither granted nor denied.

12. That approximately 21 acres of Taxpayer's land is located in a flood hazard area or is encumbered by a power line easement such that the development of that acreage is limited.

Granted.

13. That the front ten acres of Taxpayer's land having frontage on NH Route 119 has greater value than the 10 acres abutting it to the east which is more valuable than the 28 acres abutting the middle ten acres to the east.

Neither granted nor denied.

14. That as of April 1, 2008 the fair market value of Taxpayer's Map 24, Parcel 59 and Map 19, Parcel 15 was Two Million (\$2,000,000.00) Dollars.

Neither granted nor denied.

15. That as of April 1, 2009 the fair market value of Taxpayer's Map 24, Parcel 59 and Map 19, Parcel 15 was Two Million (\$2,000,000.00) Dollars.

Neither granted nor denied.

16. That for both tax years 2008 and 2009 the Town of Hinsdale's equalization ratio was one hundred (100) per cent.

Denied.

Town's Requests for Finding of Fact and Rulings of Law

1. "When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town." Appeal of Sunapee, 126 N.H. 214 (1985).

Granted.

2. Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant. Id.

Granted.

3. That Plaintiff owned 5 parcels of land as of April 1, 2008: Map/lot 24/59, 24/59/1, 19/15, 24/60 and 24/2/4.

Granted.

4. That Plaintiff's appraisal report states that parcel 24/59/1 went under contract to be sold to Wal-Mart on December 15, 2006 for \$2,300,000.

Granted.

5. That as of April 1, 2008 and April 1, 2009, lot 24/59/1 was assessed by the Town at \$318,100.

Granted.

6. That the ultimate sale price of \$2,130,000 for parcel 24/59/1 indicates that this parcel was substantially under-assessed.

Granted.

7. That in 2010-2011, Plaintiff has had a broker list 78 acres for sale, including the properties (68 acres combined) under appeal in this matter, for sale for \$3,900,000—almost double the \$2,000,000 valuation set forth in Plaintiff appraisal report.

Neither granted nor denied.

8. That this \$3,900,000 listing for 78 acres of Plaintiff's property comes to a \$50,000 per acre sales price.

Neither granted nor denied.

9. That of the four sales presented in Plaintiff's appraisal report, Sale #3 is the most comparable sale and is the best indicator of value.

Neither granted nor denied.

10. That sale comparable #1 has net adjustments of 40%, suggesting that it's comparability to the subject is quite low. This sale transacted at a price of \$2,833 per acre prior to the 40% positive adjustments made to the transaction, which raised the sale price up to \$4,364 per acre. (See Clifford report, pg. 55).

Neither granted nor denied.

11. That sale comparable #2 is only 1.34 acres, a size that is hardly comparable to the subject 68.38 acre size.

Neither granted nor denied.

12. That sale comparable #4 is from Newport, NH. Newport is not the same real estate market as Hinsdale.

Neither granted nor denied.

13. That the comparable sales analysis in Plaintiff's appraisal is unreliable, when measured against the Wal-Mart sale price and Plaintiff's own opinion of the approximate market value of the property as evidenced by the \$3,900,000 listing that it authorized a real estate broker to list the property for.

Denied.

14. That Plaintiff has failed to meet its burden of proof.

Denied.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Michael P. Bentley, Esq., Lane & Bentley, PC, PO Box 472, Keene, NH 03431, counsel for the Taxpayer; John J. Ratigan, Esq., Donahue, Tucker & Ciandella, PLLC, 225 Water Street, Exeter, NH 03833, counsel for the Town; Chairman, Board of Selectmen, Town of Hinsdale, PO Box 13, Hinsdale, NH 03451; and Vision Appraisal Technology, Attn: Mike Tarello, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: January 31, 2012

Anne M. Stelmach, Clerk