John J. Flatley d/b/a John J. Flatley Company[1]

v.

City of Nashua

Docket No.: 25043-09PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2009 total assessment of $69,655,300 on the "Property," consisting of three office buildings and an "industrial complex," identified as follows:

Map 0000A/Lot 00713 (10 Tara Boulevard) - $18,437,900 (land $6,649,300; building $11,788,600), an office building on 10.12 acres;

Map 0000A/Lot 00721 (1 Tara Boulevard) - $6,947,300 (land $3,106,200; building $3,841,100), an office building on 4.5 acres;

Map 0000A/Lot 00738 (98 Spit Brook Road) - $10,938,800 (land $3,580,200; building $7,358,600), an office building on 4.61 acres; and

Map 0000A/Lot 00798 (100 – 300 Innovative Way) - $33,331,300 (land $8,358,200; building $24,973,100), an industrial complex on 182.94 acres.

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[1] The Taxpayer is a sole proprietor (John J. Flatley) doing business as John J. Flatley Company, a fact confirmed at the hearing. The board will therefore change the name of this docket as indicated above.

(The Taxpayer also owns, but is not appealing, a number of other properties in the City, but the parties agreed these non-appealed parcels were proportionally assessed.) For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the total assessment was excessive because:

(1) four separate appraisals prepared by a certified general appraiser, Wesley G. Reeks, MAI, estimate the aggregate value of the Property as of the assessment date was $54.71 million (see the "Reeks Appraisals," Taxpayer Exhibit Nos. 1, 2, 3 and 4); and

(2) for the reasons noted at the hearing, the Reeks Appraisals constitute the best evidence of the market value of the Property and the total assessment should therefore be abated accordingly.

The City argued the total assessment should be abated, but to a more limited extent, because:

(1) the City performed a revaluation in tax year 2009 and reduced the assessment on the Property somewhat in that year; and

(2) after receiving the Reeks Appraisals, the City obtained four appraisals of its own by a certified general appraiser, Stephen G. Traub, ASA (see the "Traub Appraisals," Municipality Exhibit A, B, C and D), who estimated the market value of the Property as of the assessment date

was $67.11 million, leading the City to recommend the total assessment be abated to that level only.

The parties agreed the level of assessment in the City was 100% in tax year 2009, the median ratio calculated by the department of revenue administration. (This and other stipulations are contained in a document filed with the board at the start of the hearing.)

Board's Rulings

Based on the evidence, the board finds a proportional total assessment for the Property in tax year 2009 is $63.5 million (rounded). The appeal is therefore granted.

A. The Evidence Presented

Each party relied on the appraisals and testimony of one expert who differed in estimating the Property's market value by a large magnitude ($12.4 million) and as discussed in more detail below. The board considered and evaluated the significant points of agreement and disagreement and weighed all of the evidence before arriving at its own estimate of the Property's market value (rounded to the nearest $100,000).

Both experts used the income capitalization and sales comparison approaches to value the Property. They both concluded use of the cost approach would not lead to a credible indication of market value for the Property and placed more weight on the income approach than the sales comparison approach.

They also valued the Property as four separate parcels located in close proximity to one another and a major highway (the F.E. Everett Turnpike/U.S. Route 3 at Exit 1). The board accepts this approach because that is how the market is likely to value them rather than in the aggregate. In addition, one of the four parcels, 100-300 Innovative Way, has considerable excess land available for future development (112.94 acres). The City did not undertake a separate appraisal of the value of this excess land but instead accepted the $3,540,000 estimate arrived at in the Reeks Appraisal. (See, e.g., Taxpayer Exhibit No. 4, pp. 4 and 63, and Municipality Exhibit D, p. 3.)

Each appraiser analyzed and presented a substantial amount of financial data and market information (detailed in four separate appraisals each prepared) to support his respective estimates of value. Mr. Traub relied, in part, upon the accuracy of some of the historical financial data gathered by Mr. Reeks (rather than independently verifying items such as the Taxpayer's expense figures for 2008 and 2009, for example).

Critical points of disagreement concern certain key variables employed in the income approach, including estimates of market rent, expenses and capitalization rates. The two experts also disagreed on how much "deferred maintenance" and whether "stabilization costs" should impact the market value of the individual parcels as of the assessment date (April 1, 2009).

As noted above, both appraisers employed the sales comparison approach, but gave limited weight on the indicated values using this approach, placing more reliance on the income approach. They both used one comparable sale (166 S. River Road in Bedford) for the three office buildings and another common comparable (8 Cotton Road in Nashua) for the industrial complex.

The appraisers disagreed somewhat on how much weight can or should be given to the purchase price paid for the industrial complex (100 – 300 Innovative Way) by the Taxpayer. Mr. Reeks noted the Taxpayer purchased the industrial complex for $40 million in July, 2007 (see Municipality Exhibit Q). He did not, however, place any weight on this transaction, contending the price was a result of a "bidding war" and was "oversold by approximately 15% to 25%."

(Taxpayer Exhibit No. 4, p. 8.) Mr. Traub disagreed, stating "the sale . . . is considered arm's-length and representative of market value at that time." (Municipality Exhibit D, p. 39.)

The board notes the Taxpayer is a knowledgeable and experienced developer owning multiple commercial properties in the City and elsewhere, making it unlikely the Taxpayer would have paid more than he felt the Property was worth, based on market conditions at the time, and further notes the purchase took place less than two years before the assessment date. The purchase price, however, may have been influenced positively to some degree by the Taxpayer's status as an abutting owner of a large number of commercial, developable properties.

B. The Board's Findings

In order to be proportional, assessments must be based on market value. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In arriving at a proportionate assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

In making market value findings, the board considers and weighs all of the evidence, including the respective appraisals of each party, applying the board's "experience, technical competence and specialized knowledge" to this evidence. See RSA 71-B:1; and former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it").

Further, in making findings where there is conflicting evidence, the board must determine for itself the weight to be given each piece of evidence because "judgment is the touchstone." See, e.g., State of New Hampshire v. Frederick, BTLA Docket No. 23317-07ED (December 3, 2008); cf. Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New

England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The board examined the areas of agreement and disagreement in the Reeks Appraisals and the Traub Appraisals. For example, the board agrees with both appraisers that the income capitalization approach should be given more weight than the sales comparison approach to estimate the market value of the Property and concurs with their decision not to use the cost approach. [2] The board has made its own findings, however, incorporating what it believes are the most reasonable assumptions for arriving at estimates of the market value of the Property based on the evidence presented. These findings are detailed below.

10 Tara Boulevard

10 Tara Boulevard consists of a parcel of approximately ten acres in a larger office park. It is improved with a 6-story office building constructed in 1985 containing 164,054 square feet of rentable space, according to the Reeks Appraisal. (Taxpayer Exhibit No. 2, pp. 24 and 27.) It has a basement-level parking garage with 26 indoor spaces and ample outdoor parking (about 754 cars). (Id., p. 29.)

The two appraisers differ by $2.75 million in their estimates of the market value of this parcel. Mr. Reeks estimates its value at $16 million and Mr. Traub estimates its value at $18.75 million. (Compare Taxpayer Exhibit No. 2, p. 2 and Municipality Exhibit B, p. 2.)

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

The chief differences in their use of the income approach pertain to the estimate of market rent per square foot ($18 by Mr. Reeks and $18.50 by Mr. Traub), the appropriate vacancy factor (10% by Mr. Reeks and 9% by Mr. Traub), the amount of deferred maintenance that should be deducted ($801,500 by Mr. Reeks and $164,000 by Mr. Traub) and the capitalization rate (10.35% by Mr. Reeks and 10.28% by Mr. Traub).

Using its judgment and experience, the board finds a reasonable estimate of the market value of 10 Tara Boulevard as of the assessment date using the income approach is $17.8 million (rounded). While the rental rate differences are relatively small (within 3% of each other), the board finds the market rent per square foot estimated by Mr. Reeks is better supported and more reasonable. Among other things, Mr. Reeks, unlike Mr. Traub, did not rely on rents from the subject building.

The board employed the operating expense and reserve estimates in the Traub Appraisal because it found them to be more reasonable than those contained in the Reeks Appraisal. The board need not resolve the questions that arose during the extensive cross-examination of Mr. Reeks regarding some computational errors because the net difference, if the historical figures are averaged, is relatively nominal in amount.

The board employed the 10% vacancy factor estimated by Mr. Reeks, finding it to be more supportable. On the issue of deferred maintenance and how it is likely to impact market value, however, the board finds Mr. Reeks overestimated the deduction that should be applied and the lower estimate in the Traub Appraisal is reasonable. Mr. Reeks accepted at face value a large amount of costs itemized by the Taxpayer's employee ($801,500) and deducted them from his value estimate as "deferred maintenance." The board, however, finds Mr. Traub's reasoning more persuasive that a lesser amount ($164,000 for several items) is more appropriate and the remainder of the items (such as roof replacement) may eventually be needed but were not "immediately" necessary and did not affect market value of a building that is of "good quality" and appears to be "well maintained on the exterior and interior." (Compare Taxpayer Exhibit No. 2, p. 29; and Municipality Exhibit B, p. 51.) No evidence was presented by the Taxpayer as to why the other items would not be accounted for by the replacement reserves added to the expense estimates.

With respect to capitalization rates for the three office buildings (but not the industrial complex), Mr. Reeks used the same 10.35% capitalization rate (calculated using an 8.5% base rate, applying a tax rate and level of assessment that were both incorrect), while Mr. Traub estimated lower capitalization rates, which were not uniform and were based on his perception of whether each of the parcels would appeal to an "institutional grade" investor. The board finds, based on the evidence presented, it is more reasonable to conclude a uniform capitalization rate of 10.28% (8.3% base rate plus 1.982% tax rate, rounded) should be applied to the three office building parcels. (As discussed below, the board applied a lower rate, 9.4%, to the industrial complex.)

The relevant calculations using the income approach are shown below:

10 Tara Boulevard
Income Approach

Rentable Area (SF)	164,054
Rent per SF	$18.00
Expense Reimbursement/Other Income	$109,615
Potential Gross Income	$3,062,587
Vacancy/Bad Debt	10%
Effective Gross Income	$2,756,328
Operating Expenses (before reserves)	$864,596
Reserves	$47,566
Net Operating Income (NOI)	$1,844,166
Cap Rate	10.28%
Indicated Value	$17,939,361
Less: Deferred Maintenance	$164,000
Value based on Income Approach	$17,775,361
Rounded	$17,800,000

Using the sales comparison approach, the board finds a reasonable estimate of market value for 10 Tara Boulevard is $17.2 million (rounded), calculated as follows:

10 Tara Boulevard
Sales Comparison Approach

Gross Building Area (SF)	173,688
Value per SF	$100
Indicated Value	$17,368,800
Less: Deferred Maintenance	$164,000
Value based on Sales Comparison Approach	$17,204,800
Rounded	$17,200,000

This estimate employs a $100 price per square foot, giving approximately equal weight to the estimates of Mr. Reeks ($98) and Mr. Traub ($103), and uses the same deferred maintenance estimate as shown above for the income approach.

The board finds it is more reasonable to use gross building area (as Mr. Traub did) rather than net rental area (as Mr. Reeks did) since this is how buyers are likely to value the building using the sales comparison approach. The board did note and correct for Mr. Traub's minor error in his calculations (since the gross building area is actually 173,688, not "176,688"; cf. Municipality Exhibit B, pp. 57 and 58).

In their reconciled values, both appraisers gave more weight to the income approach than to the sales comparison approach. Weighting these respective approaches by approximately 75% and 25%, the board's reconciled estimate of market value is $17.6 million (rounded).

1 Tara Boulevard

1 Tara Boulevard consists of a parcel of 4.5 acres in a larger office park. It is improved with a 4-story office building constructed in 1983 containing 56,191 square feet of rentable space (47,048 square feet above grade and 9,143 square feet below grade) and adequate parking (149 open spaces), according to the Reeks Appraisal. (Taxpayer Exhibit No. 1, pp. 24, 27 and 29.)

The two appraisers differ by much less ($690,000) in their estimates of the market value of this smaller building. Mr. Reeks estimates its value at $4,710,000 and Mr. Traub estimates its value at $5,400,000. (Compare Taxpayer Exhibit No. 1, p. 2 and Municipality Exhibit A, p. 2.) Both experts agree the office space below grade (9,143 square feet) is rentable at a rate approximately one-half the space above grade (47,048 square feet) and are fairly close in their rent estimates ($8.63 and $17.25 by Mr. Reeks and $8.90 and $17.75 by Mr. Traub). They agree on the appropriate vacancy factor (10%), but disagree on the amount of deferred maintenance that should be deducted ($94,000 by Mr. Reeks and none by Mr. Traub).

Using its judgment and experience, the board finds a reasonable estimate of the market value of 1 Tara Boulevard as of the assessment date using the income approach is $5.0 million, (rounded). Again, while the rental rate differences are relatively small (within 3% of each other), the board finds the market rents per square foot estimated by Mr. Reeks for the space above and below grade are better supported and more reasonable. Among other things, Mr. Reeks, unlike

Mr. Traub, did not rely on rents from the subject building. The board employed similar reasoning to what is discussed above (for 10 Tara Boulevard) to conclude, as Mr. Traub did, that no deferred maintenance deduction is warranted and applied a 10.28% capitalization rate.

The relevant calculations using the income approach are shown below:

1 Tara Boulevard
Income Approach

Above Grade (SF)	47,048
Below Grade (SF)	9,143
Net Rentable Area	56,191
Rent per Square Foot	
Above Grade	$17.25
Below Grade	$8.63
Expense Reimbursement/Other Income	$41,750
Potential Gross Income	$932,232
Vacancy/Bad Debt	10%
Effective Gross Income	$839,009
Operating Expenses (before reserves)	$313,844
Reserves	$16,295
Net Operating Income (NOI)	$508,870
Cap Rate	10.28%
Indicated Value	$4,950,096
Less: Deferred Maintenance	$0
Value based on Income Approach	$4,950,096
Rounded	$5,000,000

Using the sales comparison approach, the board finds a reasonable estimate of market value for 1 Tara Boulevard is $5.5 million (rounded), calculated as follows:

1 Tara Boulevard
Sales Comparison Approach

Gross Building Area (SF)	60,780
Value per SF	$90
Indicated Value	$5,470,200
Less: Deferred Maintenance	$0
Value based on Sales Comparison Approach	$5,470,200
Rounded	$5,500,000

This estimate employs a $90 price per square foot, giving approximately equal weight to the estimates of Mr. Reeks ($86) and Mr. Traub ($96). As in the income approach, no deduction is made for deferred maintenance items.

As noted above, both appraisers gave more weight to the income approach than to the sales comparison approach. Weighting these respective approaches as indicated above, the board's reconciled estimate of market value is $5.1 million (rounded).

98 Spit Brook Road

98 Spit Brook Road consists of a parcel of 4.61 acres. It has a 4-story office building containing 101,228 square feet of rentable space (92,666 above grade and 8,562 below grade), according to the Reeks Appraisal. (Taxpayer Exhibit No. 3, pp. 24 and 27.) It has 16 underground parking spaces and 345 open parking spaces. (Id., p. 29.)

The two appraisers differ by $1,550,000 in their estimates of the market value of this building. Mr. Reeks estimates its value at $8,500,000 and Mr. Traub estimates its value at $10,050,000. (Compare Taxpayer Exhibit No. 3, p. 2 and Municipality Exhibit C, p. 2.) Both experts agree the office space below grade (8,562 square feet) is rentable at a rate approximately one-half the space above grade (92,666 square feet) and are fairly close in their rent estimates (8.63 and $17.25 by Mr. Reeks and $8.90 and $17.75 by Mr. Traub, the same estimates used for 1 Tara Boulevard). They agree on a higher vacancy factor (12%), but disagree on the amount of deferred maintenance (including stabilization costs) that should be deducted (a total of $572,647 by Mr. Reeks and $58,000 by Mr. Traub).

Using its judgment and experience, the board finds a reasonable estimate of the market value of 98 Spit Brook Road as of the assessment date using the income approach is $9.5 million (rounded). As with the above buildings, while the rental rate differences are relatively small (within 3% of each other), the board finds the market rents per square foot estimated by Mr. Reeks for the space above and below grade are better supported and more reasonable. Among other things, Mr. Reeks, unlike Mr. Traub, did not rely on rents from the subject building. The board also employed similar reasoning (to what is discussed above) to conclude, as Mr. Traub did, that a lower deferred maintenance deduction of $58,000 is warranted for this building and a 10.28% capitalization rate is appropriate. In addition, the board does not find it reasonable to deduct "stabilization costs" (as Mr. Reeks did) to arrive at a reasonable market value estimate because of a lack of credible evidence and justification for such a deduction until the building reaches a stable occupancy. (See Taxpayer Exhibit No. 3, p. 58.)

The relevant calculations using the income approach are shown below:

98 Spit Brook Road
Income Approach

Above grade (SF)	92,666
Below Grade (SF)	8,562
Net Rentable Area	101,228
Rent per square foot	
Above grade	$17.25
Below Grade	$8.63
Expense Reimbursement/Other Income	$29,242
Total Potential Gross Income	$1,701,621
Vacancy/Bad Debt	12%
Effective Gross Income	$1,497,426
Operating Expenses (before reserves)	$475,266
Reserves	$29,356
Net Operating Income (NOI)	$992,804
Cap Rate	10.28%
Indicated Value	$9,657,627
Less: Stabilization Costs	$0
Less: Deferred Maintenance	$58,000
Value based on Income Approach	$9,599,627
Rounded	$9,600,000

Using the sales comparison approach, the board finds a reasonable estimate of market value for 98 Spit Brook Road is $9.6 million (rounded), calculated as follows:

98 Spit Brook Road	
Sales Comparison Approach	
Gross Building Area (SF)	104,940
Value per SF foot	$92
Indicated Value	$9,654,480
Less: Deferred Maintenance	$58,000
Value based on Sales Comparison Approach	$9,596,480
Rounded	$9,600,000

This estimate employs a $92 price per square foot, giving approximately equal weight to the estimates of Mr. Reeks ($86) and Mr. Traub ($99), and uses the same deferred maintenance estimate as shown above for the income approach.

Here, both the income and sales comparison approaches indicate the same estimated market value. The board therefore finds the market value of this parcel is $9.6 million (rounded).

100 – 300 Innovative Way (The Industrial Complex)

100 – 300 Innovative Way consists of a total of 182.94 acres, with 70 acres already developed and 112.94 acres of "excess" land. The developed area consists of a 3-story industrial complex containing 672,869 square feet in three connected buildings (built in 1980, 1982 and 1984) with ample parking (2,085 open spaces) and was constructed as a research and development facility for a single user. (Reeks Appraisal, Taxpayer Exhibit No. 4, pp. 30 and 32) The original improvements include an 800-seat cafeteria, a large conference center and a gymnasium (now a privately operated facility open to tenants and the public). (Id., p. 30.) Since its purchase in 2007, the Taxpayer has been converting the buildings into multi-tenant usage. (Id.)

The two appraisers differ by $7.41 million in their estimates of the market value of this industrial complex. Mr. Reeks estimates its value at $25.5 million and Mr. Traub estimates its value at $32.91 million. (Compare Taxpayer Exhibit No. 4, p. 2 and Municipality Exhibit D, p. 3.) The chief differences in their use of the income approach pertain to the estimate of market rent ($7.50 by Mr. Reeks and $7.95 by Mr. Traub) and the size of the rentable area (672,869 square feet by Mr. Reeks and 644,897 square feet by Mr. Traub). While they agree on the appropriate vacancy factor (20%), they disagree on the amount of deferred maintenance (including stabilization costs) that should be deducted (a total of $5,685,837 by Mr. Reeks and $2,237,737 by Mr. Traub) and on the capitalization rate (9.5% by Mr. Reeks and 9.1% by Mr. Traub).

Using its judgment and experience, the board finds a reasonable estimate of the market value of 100 – 300 Innovative Way as of the assessment date using the income approach is $31.3 million (rounded). In making this estimate, the board used the rentable area estimated by Mr. Reeks and his estimated rent per square foot. While the rental rate differences are somewhat larger (when compared to the other buildings), they are still relatively close (within 6% of each other). On balance, the board finds the market rent per square foot estimated by Mr. Reeks is better supported and more reasonable. Among other things, Mr. Reeks, unlike Mr. Traub, did not rely on rents from the buildings in the subject parcel.

To estimate a capitalization rate for the industrial complex, the board evaluated the different assumptions and financial and survey data utilized by Mr. Traub and Mr. Reeks. In brief, the board finds the most reasonable capitalization rate is 9.4%, a rate bracketed by the respective estimates of Mr. Traub (9%) and Mr. Reeks (9.5%). This 9.4% capitalization rate is based on a 9% estimated base rate and adding the property tax component (for only the estimated vacant space because the leases are 'triple net') and compares to an 8.3% base rate for the other three parcels before loading that rate for property taxes. The board finds the market would recognize a higher risk premium (to be compensated by a higher interest rate) due to the much larger amount of rentable space in the industrial complex and the additional economic uncertainties involved for a development of this scale.

The board disagreed with Mr. Reeks that a large "stabilization cost" adjustment is reasonable and agreed with the estimate of deferred maintenance made by Mr. Traub. The board finds the higher vacancy factor estimated and the other stabilized occupancy and expense assumptions for the industrial complex are sufficient to account for the longer anticipated period of absorption of the vacant space by the market.

As noted, the parties agreed on the value of the excess land which was added to the final value of this industrial complex. The board accepts this estimate as reasonable.

The relevant calculations using the income approach are shown below:

100 - 300 Innovative Way
Income Approach

Rentable Area (SF)	672,869
Rent per SF	$7.50
Expense Reimbursement/Other Income	$0
Total Potential Gross Income	$5,046,518
Vacancy/Bad Debt	20%
Effective Gross Income	$4,037,214
Operating Expenses (before reserves)	$1,109,545
Reserves	$110,681
Net Operating Income (NOI)	$2,816,988
Cap Rate	9.4%
Indicated Value	$29,967,957
Less: Stabilization Costs	$0
Less: Deferred Maintenance	$2,237,737
Add: Value of Excess Land	$3,540,000
Value based on Income Approach	$31,270,220
Rounded	$31,300,000

Using the sales comparison approach, the board finds a reasonable estimate of market value for 100 – 300 Innovative Way is $30.8 million (rounded), calculated as follows:

100 - 300 Innovative Way
Sales Comparison Approach

Gross Building Area (SF)	685,576
Value per SF	$43
Indicated Value	$29,479,768
Less: Stabilization Costs	$0.00
Less: Deferred Maintenance	$2,237,737
Add: Value of Excess Land	$3,540,000
Value based on Sales Comparison Approach	$30,782,031
Rounded	$30,800,000

This estimate employs a $43 price per square foot, giving approximately equal weight to the estimates of Mr. Reeks ($40) and Mr. Traub ($46), and uses the same deferred maintenance estimate as shown above for the income approach.

As noted above, both appraisers gave more weight to the income approach than to the sales comparison approach. Weighting these respective approaches as indicated above, the board's reconciled estimate of market value is $31.2 million (rounded). This estimated value is 22% less than the $40 million purchase price paid by the Taxpayer in July, 2007, 21 months before the assessment date, but is reasonable when the circumstances of the sale and the dramatic change in economic conditions and resulting downtown in the commercial market during the interim period are taken into account.

C. Summary

In summary, and in light of the 100% level of assessment in tax year 2009, the board finds the total assessment on the Property should be abated to $63.5 million (rounded) in tax year 2009. If the taxes have been paid, the amount paid on the value in excess of $63.5 million shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Until the City undergoes a general reassessment or in good faith reappraises the properties pursuant to RSA 75:8, the City 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

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John G. Cronin, Esq., and John F. Bisson, Esq., Cronin & Bisson, P.C., 722 Chestnut Street, Manchester, NH 03104, counsel for the Taxpayer; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: 11/7/11

Anne M. Stelmach, Clerk