

Cropsey & Mitchell Company, Inc.

v.

Town of Tilton

Docket Nos.: 25219-09PT/25973-10PT

DECISION

The “Taxpayer”¹ appeals, pursuant to RSA 76:16-a, the “Town’s” tax year 2009 total assessment of \$1,624,300 on the “Property,” comprised of the following individual lot assessments:

Map U05/28 (“Lot “28,” 307 Main Street) - \$231,100 (land \$84,200; building \$146,900), a 1-story store/office building on 0.28 acres;

Map U05/29 (“Lot 29,” Main Street) - \$50,700 (land only), a 0.08 acre lot;

Map U06/1 (“Lot 1,” 322 Main Street) - \$1,214,100 (land \$84,000; building \$1,130,100), a 3-story commercial building on 0.4 acres;

Map U06/2 (“Lot 2,” 322 Main Street) - \$79,000 (land \$66,100; improvements \$12,900), a 0.3 acre lot; and

Map U06/6 (“Lot 6,” 14 Mill Street) - \$49,400 (land only) a 1.21 acre lot;

and the Town’s tax year 2010 total assessment of \$1,540,100, comprised of the following individual lot assessments:

Map U05/28 (Lot 28, after merger with Lot 29) - \$243,600 (land \$96,700; building \$146,900), a 1-story store/office building on 0.36 acres;

¹ At the hearing, the Taxpayer’s owner, James M. Cropsey, confirmed that legal title to three of the parcels (Map U06/1, Map U06/2 and Map U06/6) were held by two separate corporations (MC & G, Inc., with an undivided 64.3% interest, and Van Sycklen Enterprises, LLC, with a 35.7% interest) as a result of “1031 exchange” transactions (in August 2000) and explained these companies are owned by Cropsey & Mitchell Company, Inc., a corporation Mr. Cropsey owns and controls. The parties therefore agreed the caption of this appeal should be changed to reflect this common ownership by Cropsey & Mitchell Company, Inc.

Map U06/1 (Lot 1, after merger with Lot 2) - \$1,247,100 (land \$104,100; building \$1,143,000), a 3-story commercial building on 0.7 acres; and
Map U06/6 (Lot 6) - \$49,400 (land only), a 1.21 acre lot.

There is no dispute the Taxpayer, between 2009 and 2010, voluntarily merged Lot 29 into Lot 28 and Lot 2 into Lot 1. For the reasons stated below, the appeals for abatement are granted.

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

The Taxpayer argued the assessments were excessive because:

- (1) the market value of Riverfront Place (consisting of Lots 1, 2 and 6) was estimated at \$710,000 as of April 1, 2009 and \$630,000 as of April 1, 2010 by Charles F. Schubert, Jr., a certified general appraiser and Vice President of Applied Economic Research (hereinafter, the "Schubert Appraisal," Taxpayer Exhibit No. 1);
- (2) the market value of the Main Street Property (consisting of Lots 28 and 29) was estimated at \$115,000 for tax year 2009 by the Taxpayer's representative, Mark Lutter of Northeast Property Tax Consultants (hereinafter, the "Lutter Estimate," Taxpayer Exhibit No. 6)²;
- (3) the Schubert Appraisal, which relied primarily on the sales comparison approach, and the Lutter Estimate, which relied primarily on the income approach, are the best evidence of the market values of Riverfront Place and the Main Street Property, respectively;

² In the 2010 appeal document, however, Mr. Lutter estimated the market value of the Main Street Property to be \$200,000.

(4) the Main Street Property is comparable to a 5-unit commercial property in Laconia at 588 Endicott Street, consisting of 6,696 square feet of rentable space, which sold for \$150,000 in October, 2010; and

(5) the total assessments should be abated, based on these market value estimates adjusted by the level of assessment in the Town in each tax year.

The Town argued the assessments were proper because:

(1) the Schubert Appraisal does not provide a credible indication of market value for Riverfront Place because it relies on older sales, including one that may have been distressed and several of which were “private” sales;

(2) the Lutter Estimate is not credible in estimating market value for the Main Street Property since it is based solely on an analysis prepared by a tax representative who is neither an independent (unbiased) witness nor an appraiser and refers to only one sale;

(3) the Town assessed Lot 6 (14 Mill Street) separately from Riverfront Place because it is a non-contiguous lot and the Taxpayer provided no evidence of the market value of the lot; and

(4) the Taxpayer failed to meet its burden of proving disproportionality and the appeals should be denied.

The parties agreed the level of assessment in the Town were 99.1% in tax year 2009 and 97.3% in tax year 2010, the median ratios calculated by the department of revenue administration. To assist in its deliberations, the board viewed the Property on August 31, 2012.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer met its burden of proving disproportionality and the total assessments on the Property should be abated to \$1,353,300 in

tax year 2009 and \$1,211,300 in tax year 2010 for the reasons explained below. The appeals are therefore granted.

1. The Property

Each of the lots which are the subject of this appeal (including Riverfront Place, which consists of Lots 1, 2 and 6, and the Main Street Property, which consists of Lots 28 and 29) are located in the same general vicinity, diagonally across the street from each other. There is no dispute Riverfront Place and the Main Street Property, while in common ownership, are dissimilar enough to be distinct economic units.

The key facts pertaining to Riverfront Place summarized below are drawn from the Schubert Appraisal (pp. 18, 25 and 69) and testimony at the hearing. Riverfront Place is a converted 3-story, historic mill building constructed at least 100 years ago. The mill building (Lot 1), together with the adjoining parking area (Lot 2) is 0.7 acres in size, with 535 feet of frontage on the Winnepesaukee River and 621 feet of frontage on W. Main Street (Route 3). A municipal park along the river front separates Riverfront Place from Lot 6, which is described below.

Lot 6 is a non-contiguous, undeveloped lot situated about 800 feet away from the mill building (with access via a proposed walkway through the Town's riverfront park). According to the Schubert Appraisal, Lot 6 "is required to provide enough parking [a total of 78 spaces] to expand the current use of the [mill] building to its full potential," but there was conflicting evidence presented as to whether development of Lot 6 was in fact essential to the full development of Riverfront Place. At the time of the assessments and to this day, Lot 6 remains a vacant, undeveloped lot.

The parties agree Riverfront Place has been partially converted into professional and office space on the main floor and this converted space is “95% occupied as professional office and retail space,” with additional “partially renovated space” on the “top floor” and vacant space awaiting renovation in the “walkout basement space.” Mr. Schubert concluded Riverfront Place had approximately 12,500 square feet of “finished” space for both tax years and 22,558 square feet of “unfinished” space.

Based on the evidence, as well as a recent supreme court ruling, the board has concluded that Lot 6 should be appraised and assessed separately from Riverfront Place (Lots 1 and 2). As previously stated, Lot 6 is approximately 800 feet from the mill building and is non-contiguous with Lots 1 and 2. Mr. Schubert included Lot 6 in his estimate of the market value of Riverfront Place because he assumed the Town would require development of Lot 6 into 78 parking spaces prior to additional renovations being completed in the mill. However, the Town argued the zoning ordinance does not require a minimum number of parking spaces.

The board finds the evidence mixed and whether development of additional parking spaces is required by the Town, but was not persuaded that Lot 6 is an integral part of the operation of Riverfront Place located approximately 800 feet away. Additionally, based on Mr. Cropsey’s testimony regarding the unusually high costs of building a parking lot, such development may not be economically feasible.

The supreme court recently addressed the issue of whether municipalities can apply the “doctrine of assemblage” when assessing separate, non-contiguous lots. “We hold that RSA 75:9 prohibits the assemblage of non-adjoining parcels for appraisal...” Appeal of Johnson, 161 N.H. 419, 422-23 (2011). Consequently, the board finds Lot 6 is a separate economic unit from Riverfront Place.

The Main Street Property is a 1-story building with an adjacent parking area which is 8,628 square feet (rentable space) in size demised into four “Suites.” (See Lutter Estimate, p. 1.)

The Taxpayer presented photographs to show the poor condition of the Main Street Property.

From Mr. Cropsey’s testimony, it is clear that no renovations are underway and that the

Taxpayer operates the Main Street Property separately from Riverfront Place.

2. The Board’s Market Value Findings

Determining the proportionality of an assessment requires an estimation of market value adjusted by the level of assessment in the Town. See, e.g., RSA 75:1; and Appeal of Andrews, 136 N.H. 61, 64 (1992). When a Taxpayer owns multiple properties within the Town, the Taxpayer’s entire estate must be considered in determining proportionality. Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985).

In a tax abatement proceeding, the valuation of property is a question of fact for the tribunal to resolve, after considering all the relevant evidence before it. See Rye Beach Country Club v. Town of Rye, 143 N.H. 122, 127 (1998), citing City of Manchester v. Town of Auburn, 125 N.H. 147, 154 (1984) and other authorities. In addition, the court has noted “[t]here are multiple approaches to the valuation of property” and “no rigid formula which can be used to arrive at full and true value for property tax assessment”; and the trial judge can “accept or reject such portions of the evidence presented as he f[inds] proper, including that of the expert witnesses.” Crown Paper Co. v. City of Berlin, 142 N.H. 563, 570 (1997) (citations, quotations and brackets omitted).

In making market value findings, the board considers and weighs all of the evidence, including any appraisal submitted, 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, 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).

A. Riverfront Place

The Taxpayer placed exclusive reliance on the Shubert Appraisal and Mr. Schubert’s testimony to establish the market value of Riverfront Place. Including Lot 6, he estimated the market value was \$710,000 in 2009 and \$630,000 in 2010³.

Mr. Schubert used the sales comparison and income approaches to arrive at his reconciled market value estimates, but gave little weight to the income approach, due in part to Riverfront Place’s partially renovated condition. (See Schubert Appraisal, p. 84.) He also distinguished between the value of the “Finished Portion” (12,500 square feet) and the “Unfinished Portion” (22,558 square feet of vacant space yet to be renovated) by utilizing two distinct sets of comparable sales.

As a historic, partially renovated mill building in the process of a conversion, but not yet completely redeveloped to a commercial use, Riverfront Place is a challenging property to

³ These market value estimates can be compared to the Town’s equalized assessments for Riverfront Place (Lot 1 and Lot 2, contiguous lots merged between 2009 and 2010) and Lot 6 of approximately \$1,355,000, rounded, for 2009 and \$1,332,000, rounded, for 2010. (\$1,342,500 total assessment for 2009 divided by 99.1% level of assessment; and \$1,296,500 total assessment for 2010 divided by 97.3% level of assessment.)

appraise. While not agreeing entirely with the methodology utilized by Mr. Schubert, the board finds the four comparables utilized in the valuation of the finished space probative of value (as a starting point) and agrees with Mr. Schubert's reasons for relying primarily on the sales comparison approach.

In his sales comparison approach, Mr. Schubert used four sales (located in Laconia, Concord, Plymouth and North Conway) to estimate a value, as of April 1, 2009, of \$60.89 per square for the Finished Portion. Mr. Schubert used three other sales (in Laconia, Littleton and Franklin) to estimate a much lower value of \$9.80 per square foot for the Unfinished Portion. (See Schubert Appraisal, p. 70.) To calculate 2010 values, Mr. Schubert used the same comparable sales and methodology and simply increased the time adjustment (by -10%).

The board does not agree utilization of two distinct sets of comparable sales is the most reasonable valuation methodology since this approach, in effect, values the mill building as comprising two separate economic units and then simply adds the two values to arrive at a total market value indication. A potential buyer is more likely to value Riverfront Place as a single economic unit and base the price he or she is willing to pay on an estimate of effective space, giving full weight to the Finished Portion and partial weight (say 50%) to the Unfinished Portion, which is inherently more risky and will require additional renovation costs. The board finds the "effective area" of the building (full weight to the Finished Portion, 50% weight to the Unfinished Portion) was approximately 24,000 square feet. This estimate corroborates to the "effective" area calculated on the Town's assessment-record card ("ARC"), which utilizes an effective area of 24,343 square feet.

The board found Mr. Schubert's adjustments to each sale to be generally reasonable. However, Mr. Schubert did not directly account for the limited land area (0.7 acres) in relation to

the building size. The board finds an additional land-to-building ratio (“LTB”) adjustment is reasonable since the four comparables vary widely in this feature. This feature relates directly to parking capacity, which is a common component of value for many commercial properties. The board utilized a -10% adjustment for the sales in Laconia and Concord, -20% for Plymouth and -15% for North Conway. The net effect of these adjustments, as well as modifying the size adjustment (based on effective area rather than the 12,500 SF Finished Portion) and applying the weighting to each sale used by Mr. Schubert, results in a market value estimate of \$1,100,000, rounded, for Riverfront Place as of April 1, 2009. The board’s calculations are shown in Table 1 (below).

The board noted Mr. Schubert applied a “2 year discount @15% for Holding Property” in his estimates, based on “a two-year wait until the Property can continue to be developed”. (See Schubert Appraisal, p. 68.). The board does not agree and finds this discount is not appropriate since Mr. Schubert had already adjusted his sale comparables for time (“Market Conditions”) and applying this additional discount is tantamount to ‘double-dipping.’ Mr. Schubert’s method is also inconsistent in that he applies the same 15% discount to his 2010 estimate as to his 2009 estimate. Additionally, the board’s methodology of calculating effective area (and valuing the Unfinished Portion at 50% of the value of the Finished Portion) already takes into consideration the time required and the risks associated with continued renovation and lease up of the Unfinished Portion of Riverfront Place.

In sum, the board finds the market value of Riverfront Place was \$1,100,000 as of April 1, 2009. Applying, as Mr. Schubert did, a 10% decline between 2009 and 2010, the board finds the market value of Riverfront Place was \$1,000,000, rounded, as of April 1, 2010. Adjusting

these market value estimates by the level of assessment in each tax year results in abated assessments for Riverfront Place of \$1,090,100 in tax year 2009 and \$973,000 in tax year 2010.

B. The Main Street Property

The Taxpayer relied on the analysis presented by its tax representative (the Lutter Estimate), rather than using the professional expertise of an appraiser like Mr. Schubert, to argue the Main Street Property was disproportionately assessed. The board finds the Main Street Property was disproportionately assessed, but not to the extent claimed in the Lutter Estimate. Mr. Lutter argues his income approach suggests “a market value around \$115,000” in 2009, but this approach was not adequately developed or supported. Among other things, it is not clear whether Mr. Lutter is using actual or market derived rents and expenses in his limited analysis.⁴ Moreover, it is inconsistent with the \$200,000 market value estimate stated by Mr. Lutter in the 2010 appeal document. (See fn. 1.)

Mr. Lutter also presented just one comparable sale in another municipality (588 Endicott Street in Laconia), which sold on October 27, 2010 for \$150,000, or \$22.40 per square foot after being on the market for approximately three months. This property is described as a mixed-use, 5 unit building (“[s]mall stip/office/apartment & retail building”) on the listing sheet (in Taxpayer Exhibit No. 6). The board cannot place undue weight on one sale and, even if it opted to do so, there is no analysis by Mr. Lutter as to what adjustments would be appropriate to account for physical differences between the Main Street property and this sale.

The board also reviewed the testimony of Mr. Cropsey as to the continuing problems encountered in finding tenants at this location. His testimony, the photographs (in Taxpayer

⁴ See, e.g., Brehm v. Town of Chichester, BTLA Docket No. 24351-08PT (July 9, 2010) (board could give no weight to a “simplified income approach,” which used only historic, property specific data rather than market data).

Exhibit No. 6) and the board's own view of the property confirm the generally poor condition of the Main Street Property.

Using its judgment and experience, the board finds the most reasonable estimate of the market value of the Main Street Property in 2009 was \$25 per square foot of rentable space or \$215,700 (8,628 square feet x \$25). Applying a 10% market decline between 2009 and 2010 (the percentage used in the Schubert Appraisal), the board's market value estimate for 2010 is \$194,100, rounded. (These estimates bracket Mr. Lutter's own estimate of a \$200,000 market value in the 2010 appeal document.) Applying the level of assessment in each tax year to these estimates, results in rounded abated assessments of \$213,800 in 2009 and \$188,900, rounded, in 2010.

C. Lot 6

In light of the Johnson decision discussed earlier (applying RSA 75:9) and the fact the Taxpayer presented no market evidence to challenge the \$49,400 assessment in each tax year, the board finds no abatement is warranted on Lot 6.

3. Summary

In summary, the board finds the Taxpayer met its burden of proving disproportionality and the total assessment on the Property should be abated to \$1,353,300 in tax year 2009 and \$1,211,300 in tax year 2010, as detailed below:

Tax Year:	2009	2010
Riverfront Place (Lot 1 and Lot 2)	\$1,090,100	\$973,000
Main Street (Lot 28 and 29)	\$213,800	\$188,900
Lot 6	\$49,400	\$49,400
Property Total	\$1,353,300	\$1,211,300

The appeals are therefore granted.

If the taxes have been paid, the amount paid on the assessment on the Property in excess of \$1,353,300 for tax year 2009 and \$1,211,300 for tax year 2010 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 2010 assessment 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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

			TABLE 1			
	Subject	1	2	3	4	
	Riverfront Place	426 S. Main St	99-101 N State St	Highland St	3277 White Mtn Hwy	
	<u>Tilton</u>	<u>Laconia</u>	<u>Concord</u>	<u>Plymouth</u>	<u>Conway</u>	
Effective Bldg. Area	24,000	12,408	12,686	20,984	22,100	
Land area (in acres)	0.7	0.63	0.68	3.8	1.84	
LTB Ratio	1.27	2.21	2.33	7.89	3.63	
Sale Price		\$725,000	\$1,100,000	\$1,500,000	\$1,045,000	
Price/SF		\$58.43	\$86.71	\$71.48	\$47.29	
Property Rights (adjustment)	Fee Simple	Fee Simple	Fee Simple	Partial Leased Fee	Fee Simple	
		0%	0%	-10%	0%	
Market Conditions (adjustment)	2009 & 2010	12/23/2008	7/25/2008	12/27/2005	1/14/2005	
		-3%	-5%	8%	12%	
Adjusted Price/SF		\$56.68	\$82.37	\$70.05	\$52.96	
Other Adjustments:						
Location/Access		-15%	-30%	0%	0%	
Building Size		-10%	-10%	0%	0%	
Quality/Condition		15%		-10%	10%	
LTB Ratio		-10%	-10%	-20%	-15%	
Net Other Adjustments		-20%	-50%	-30%	-5%	
Final Adj. Price/SF		\$45.34	\$41.19	\$49.04	\$50.31	
Value Indication		\$1,088,201	\$988,491	\$1,176,897	\$1,207,471	
Weight		30%	30%	20%	20%	
Contributory Value		\$ 326,460	\$ 296,547	\$ 235,379	\$ 241,494	
Estimated Value (Rounded)					\$1,100,000	
Reconciled Price/SF					\$45.83	
Notes:						
1. This modified grid is based on p. 70 of Schubert Appraisal, with certain additional adjustments.						
2. Building size calculation (rounded): 12,500 SF of Finished Portion x 100% + 22,558 SF of Unfinished Portion x 50%.						
3. Land area includes Lots 1 & 2.						
4. Property rights adjustment for partial leased fee (Comp. 3) is the same as Mr. Schubert's "Occupancy" adjustment.						
5. Except for LTB adjustment and revised size adjustments (based on 24,000 SF), all other adjustments are similar to those in the Shubert Appraisal.						

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Tilton, 257 Main Street, Tilton, NH 03276; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 11/2/12

Anne M. Stelmach, Clerk