

Q.A. Technology Company, Inc.

v.

Town of Hampton

Docket No.: 25369-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” tax year 2009 abated assessment of \$11,818,400 (10.26 acres of land assessed ad valorem at \$1,574,900; building assessed ad valorem at \$10,241,600; 19.74 acres of land in current use (“CU”) assessed at \$1,900) on Map 140/Lot 2, 110 Towle Farm Road. At issue in this appeal is the proportionality of the ad valorem assessments on the 10.26 acres of land and the building used as a corporate headquarters (the “Property”), not including the CU assessment on the remaining 19.74 acres of land. For the reasons stated below, the appeal for further abatement on the Property is granted.

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

The Taxpayer argued the abated assessment was excessive because:

- (1) after acquiring an undeveloped 30-acre parcel of land in 1998, the Taxpayer in 2001 constructed a corporate headquarters, single tenant building for “office and engineering/high tech assembly” on 10.28 acres of land and the remaining 19.74 acres are in CU;
- (2) this is the Property’s highest and best use as detailed in the testimony and appraisal prepared by Michael J. Farinola (see “Farinola Appraisal,” Taxpayer Exhibit No. 6, p. 59) and by the Town’s appraiser (see “Crafts Appraisal,” Municipality Exhibit B, p. 36);
- (3) the Property has “many exceptional construction details,” making it ‘super adequate’ for its highest and best use (see Taxpayer’s Request for Finding No. 8¹);
- (4) because of these features, the cost approach to value should be given “no weight” and the best evidence of the market value of the Property is contained in the Farinola Appraisal, which estimated a \$4,540,000 reconciled value using the sales comparison and income approaches (see Taxpayer’s Request for Findings Nos. 13, 14, and 23); and
- (5) the assessment on the Property should be abated to \$4,540,000 adjusted by the level of assessment in the Town.

The Town argued the assessment as abated was proper because:

- (1) after an “onsite inspection” (as noted in Municipality Exhibit A), the Town abated the assessment (from \$12,503,000 to \$11,818,400);
- (2) the Crafts Appraisal, prepared for the Town by John M. Crafts, MAI, estimating the market value of the Property to be \$10,500,000 as of the April 1, 2009 assessment date (not including the land in CU), is supportive of the abated value ([$\$10,500,000$ market value estimate equates to an assessed value of $\$11,025,000$, reasonably close to the abated assessment ($\$11,816,500$)]);

¹ The board has responded to the parties’ respective requests for findings of fact and rulings of law in the Addendum to this Decision.

(3) the Farinola Appraisal presented by the Taxpayer is not credible because it was prepared for a different purpose, as of a different date than the assessment, did not place any value on the 19.26 acres of excess land and did not give any weight to the cost approach;

(4) the best evidence of market value is the Crafts Appraisal, which relied upon and reconciled the cost, sales and income approaches to arrive at a reasonable estimate of market value; and

(5) the Taxpayer did not meet its burden of proving it was entitled to a further abatement.

The parties agreed the level of assessment in the Town was 105% in tax year 2009, the median ratio calculated by the department of revenue administration. (See also Municipality Exhibit A.)

The parties suggested a view of the Property would be helpful to the board. On June 25, 2012, the board viewed the Property and was given a tour of the building interior with both parties present. On that date, the board also conducted exterior inspections of several of the comparable properties utilized in the appraisals.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer met its burden of proving disproportionality and the assessment should be abated to \$8,716,900 (based on a market value estimate of \$8.3 million for the Property, adjusted by the 105% level of assessment for tax year 2009, plus the \$1,900 CU assessment). The appeal is therefore granted for the reasons stated below.

1. Description of the Property

A. Physical Attributes

The Property consists of a sizable parcel of land on which a large corporate headquarters building was constructed for owner-occupancy by a single user. The parties agree the Property is

in “very good to excellent overall condition.” The building has a brick façade and is “X-shaped” with the main entrance on the second floor accessible via a “covered walkway.” (Farinola Appraisal, p. 46.)

The building consists of four levels (including a walkout basement and an attic) and has 83,047 square feet of effective building area out of a total of 117, 547 square feet of gross building area. (Farinola Appraisal, p. 7; Crafts Appraisal, p. 1.) This difference stems from the fact the attic and, to a lesser extent, portions of the basement, are “primarily mechanical and storage areas.” (Farinola Appraisal, p. 7.)

Among its unusual features, the building has a roof “constructed with 20 weight copper panels” having a “100 year life span,” an HVAC system using “cooling tubes” fed by “huge blocks of ice in eight attic mounted chiller units” operated with “off peak” electricity to save energy, and “methyl methacrylate” flooring in some areas. (Farinola Appraisal, pp. 47-49; Crafts Appraisal, p. 34.) The parties agree these and other features resulted in considerably higher construction costs.

B. Mix of Light Industrial (R&D) and Commercial (Office) Uses

The parties, and their appraisers, agree the building has a mix of “R&D” and office space, along with supporting mechanical and storage areas. Of the 83,047 square feet of rentable area, the appraisers estimated 56% is devoted to R&D, 27% to office and 17% to mechanical and storage areas. (Farinola Appraisal, p. 7; Crafts Appraisal, p. 33). Assuming the mechanical and storage areas are equally supportive of the other two uses, roughly 65% of the building can be described as light industrial (R&D) and the remaining 35% as commercial (office) space.

2. The Parties' Differing Market Value Estimates

The parties do not dispute assessments must be based on market value and the focus of a tax abatement appeal is proportionality, which requires the board to decide whether the Property was assessed higher in relation to its market value than the level generally prevailing in the municipality. [See, e.g., RSA 75:1; Appeal of Andrews, 136 N.H. 61, 64 (1992); and Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985).] While the parties agree on how to determine proportionality (estimated market value adjusted by the level of assessment), they disagree sharply in their respective valuation approaches² and, more significantly, their market value estimates of the Property in tax year 2009.

The Taxpayer relied on the Farinola Appraisal, which employed the sales comparison and income approaches to arrive at a market value estimate of \$4.54 million; this appraisal included a cost approach but placed no weight on it in its final reconciliation of value. The Town relied on the Crafts Appraisal, which employed and reconciled all three approaches to arrive at a market value estimate of \$10.5 million. These estimates differ by about \$6 million and also differ from the \$11.25 million equalized value of the abated assessment on the Property.³

3. The Board's Findings

The board has reviewed the appraisals and other evidence presented in order to determine the most reasonable estimate of market value in order to achieve a proportional assessment. The board finds the market value of the Property was \$8.3 million in tax year 2009.

² "There are three recognized approaches to value: 1) the cost approach; 2) the comparable sales approach; and 3) the income approach." Appraisal Institute, The Appraisal of Real Estate 130 (13th ed. 2008). 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 "not foreclosed from choosing a particular method to the exclusion of the others." Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

³ \$11,816,500 abated ad valorem assessment on the Property divided by 105% level of assessment = \$11,253,809. (As noted above, the focus of this appeal is the ad valorem assessment on the Property (10.26 acres of land and the building). The \$1,900 CU assessment on the remaining 19.74 acres is not in dispute.)

As the supreme court has recognized, in an abatement proceeding the valuation of property is a question of fact for the tribunal to resolve, after considering all the relevant evidence before it, and the question includes deciding whether a party's "appraisal method was appropriate." 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. As further recognized, "[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"; "nor is specific weight required to be allocated to any of the several approaches"; 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 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, 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).

As a preliminary matter, the Town leveled three criticisms at the Farinola Appraisal. The board finds none of them to be material.

First, the Town noted the Farinola Appraisal estimates market value as of a different date (August 17, 2009) than the assessment date (April 1, 2009). There was no evidence presented that would allow the board to conclude the market value changed appreciably, if at all, in this four month time span and three of his four sales occurred either at the time of, or before, the assessment date. The board finds the date of the appraisal is not so far removed from the assessment date as to impact the probative value of the Farinola Appraisal.

Second, the Town criticized Mr. Farinola for presenting an appraisal with a different stated purpose (estate planning). A more careful review of the appraisal, however, indicates Mr. Farinola stated both a 'primary' use ("estate planning") and a 'secondary' purpose ("tax abatement efforts") for this appraisal. (See April 2, 2010 transmittal letter in Farinola Appraisal.) More to the point, the standard and accepted market value definition utilized by Mr. Farinola and the market value standard in New Hampshire are essentially the same. [Id.; RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).]

Third, the Town faulted the Farinola Appraisal (p. 81) for not placing a value on the "excess land." This criticism is misconceived because the 19.26 acres of "excess land" in question are in CU and it would be improper to value it for ad valorem tax purposes. Although the value of land in CU may be germane to other purposes, it is not relevant to determining the proportionality of the assessment. In this regard, the Town's own appraiser (Mr. Crafts) also recognized this "excess land" was in CU and therefore did not value it. (See Crafts Appraisal, p. 46 and May 23, 2012 transmittal letter.) Consequently, it is altogether proper for the board to consider the Farinola Appraisal and give it the weight it deserves.

Turning to the merits of determining the proportionality of the assessment, the board considered all three approaches before deciding which is most likely to lead to a reliable estimate of market value for the Property based on the evidence presented and applying the board's own judgment and experience. The board finds merit in the Taxpayer's argument that the cost approach is entitled to little or no weight for at least two reasons.

First, the improvements on the Property were constructed some time ago (eight years prior to the 2009 tax year) to meet the specific preferences and requirements of the owner-occupant (the Taxpayer). It was evident from the view that the Taxpayer constructed a building that would enhance the Taxpayer's business value, separate from concerns regarding real estate value. The Taxpayer is a designer and manufacturer of 'high tech' components ("probes" for integrated circuit boards) for the electronics testing industry and uses the design and layout of the building to showcase its technology and competency to customers. The parties agreed the building has a number of costly features not typically found in other R&D or office buildings, like the very unusual heating and cooling system, the copper roof and the specialized flooring. It is unlikely that these features would be value enhancing to an amount correlative to their cost. The board thus agrees with the Taxpayer that these features are indications of super-adequacy.⁴ (See Taxpayer Request No. 8.)

Second, Mr. Farinola's cost approach estimate is more than three times higher than his final indication of value using the other two approaches. (\$14.7 million compared to \$4.54 million.) He placed no weight on the cost approach in his final reconciliation of value, but did not address the large disparity in the value indications arrived at in the three approaches. In

⁴ Super-adequacy is "a type of functional obsolescence caused by something in the subject property that exceeds market requirements, but does not contribute to value an amount equal to its cost." [See The Appraisal of Real Estate 390 (11th ed. 2008).]

responding to board questions at the hearing, he agreed the large disparity is likely some evidence of obsolescence that was not accounted for in his cost approach. In the Crafts Appraisal (p. 52), Mr. Crafts derived a very large “external obsolescence”⁵ adjustment (\$3.9 million) using somewhat circular reasoning to bring the market value indication arrived at in his cost approach closer to the range of market value estimates in his other two approaches. This adjustment is so large and so speculative in nature as to cast substantial doubt on the reliability of the cost approach. While there is good reason to believe there is external obsolescence, superadequacy or a combination of both, the board does not agree with the methodology in the Crafts Appraisal for measuring it and consequently cannot place any weight on the cost approach.⁶

Based on the appraisal and other evidence presented, the board finds the sales comparison approach is deserving of the most weight. As noted in the Crafts Appraisal (p. 50), commercial construction in 2009 “was at a virtual standstill” and there was a lack of entrepreneurial incentives “to risk their time and money,” making the market for this property type “primarily driven by owner-occupants.” A potential buyer of the Property would likely rely on the sales comparison approach which incorporates the fundamental principle of substitution. The board will therefore discuss its findings using the sales comparison approach in some detail and then mention how it used the income approach as a test of reasonableness.

⁵ External obsolescence is “an impairment of the utility or salability of an improvement or property due to negative influences outside the property.” (*Id.*, p. 365.)

⁶ The board need not dwell on Mr. Craft’s assertion at the hearing that the cost approach should be employed because of his belief the Property can be considered a “limited market” property that justifies use of the cost approach. There is no mention of this concept in his appraisal and the board does not agree the Property has the characteristics of a limited market property.

The board reviewed the sales data and other information provided in the Farinola and Crafts appraisals in depth and finds six of the eight sales are entitled to some weight as indications of the market value of the Property. Each appraiser provided only a brief summary and limited data regarding each sale and neither party provided the assessment-record cards required by Tax 201.33(f), which would have provided more detailed information and allow for a more complete analysis. The board could not place any weight on the 1 Liberty Lane sale in the Farinola Appraisal and the Merrimack sale in the Crafts Appraisal and found the six remaining sales probative in estimating the market value of the Property for the following reasons.

Mr. Farinola listed 1 Liberty Lane as a comparable, but he himself discounted its “reliability” for several reasons, including the inclusion of valuable “furnishings and art work” and “very useful excess acreage.” (Farinola Appraisal, pp. 67-68.) The evidence presented at the hearing indicates 1 Liberty Lane sold in April, 2009 at a price indicative of a different highest and best use (from a higher quality corporate headquarters facility⁷) and through an auction procedure after being on the market for a relatively short time (seven months).

For somewhat different reasons, the Merrimack sale used by Mr. Crafts (21 & 25 Manchester Street and 10 Al Paul Lane) is not reasonably comparable and should be excluded from the analysis. This was a “bulk” sale of three office buildings sited on three separate lots of record and the three buildings have a total of approximately 151,000 square feet of office space 100% leased at the time of sale. (Crafts Appraisal, pp. 59 and 68.) Merrimack would likely

⁷ 1 Liberty Lane was the subject of tax year 2006 and 2007 appeals decided by the board: Thermo-Fisher Scientific, Inc. v. Town of Hampton, BTLA Docket Nos. 22992-06PT/23519-07PT (March 1, 2011). In that decision (p. 4), the board described 1 Liberty Lane as having many executive style features not present on the Property, such as separate cafeteria and executive dining areas, an executive parking garage, a climate controlled wine room, a greenhouse and “meticulously landscaped” grounds with walking trails, as well as access to a helipad.

appeal to an institutional investor rather than an owner-occupant and is too dissimilar to be a reliable comparable to the Property.

The board therefore focused its analysis on the six remaining sales (three from the Farinola Appraisal and three from the Crafts Appraisal) and made needed adjustments to arrive at a reasonable indication of market value. In its analysis, the board first noted a significant error in the Exeter and Seabrook sales in the Farinola Appraisal in that Mr. Farinola calculated and reported prices per square foot using gross building size rather than effective building area, the standard and agreed unit of comparison for the Property and the other sales.⁸ When this obvious inconsistency in the Farinola Appraisal is corrected, the reported prices per square foot increase substantially (from approximately \$48 to \$96 and \$53 to \$90 for Exeter and Seabrook, respectively).

Next, the board considered whether an adjustment to the comparable sales utilized in the Crafts Appraisal was warranted as each sale is stated to be the transfer of the “leased fee” interest, not the fee simple interest that must be valued for tax assessment purposes. The Crafts Appraisal does not discuss why Mr. Crafts believed no adjustments are warranted for this factor and there is little information in the appraisal regarding the leases except for Salem, which warrants a 10% adjustment.⁹ Even if the board were to assume (without additional evidence) that all the other lease rates reflected market rents, the likely purchaser of a leased building would be an investor motivated by the income stream, rather than an owner-occupant and there is

⁸ For example, the Exeter property is stated to have a “Bldg. Size” of 28,044 square feet; however, in the comment section Mr. Farinola states, “This includes 14,022± square feet of first floor space, 2,545± square feet of finished basement area and 11,437± square feet of unfinished basement....” (See Farinola Appraisal, p. 67 and of Improved Sales B-2 and B-3, Part IV – Exhibits And Addenda, where he describes Improved Sales B-2 and B-3.)

⁹ According to the Crafts Appraisal, the Salem property consists of two buildings, one of which was vacant at the time of sale and the other of which was leased at a “below market rate of \$9.00/SF.” (Crafts Appraisal, pp. 59 and 63.) Mr. Crafts also testified at the hearing “the lease of the Salem property was slightly below market.”

arguably less risk in buying a leased building than a vacant building. For these reasons, the board finds some additional analysis and perhaps downward price adjustments should have been made to the other leased fee sales in the Crafts Appraisal.

The board then made other adjustments to the six sales to improve their comparability to the Property. These included adjustments for time,¹⁰ location, size and quality/condition. Further, the board determined an additional adjustment was necessary for building “type” since the full office and R&D sales differ from the mixed R&D/office design and layout of the Property. These adjustments result in a calculated range of value indications of \$76 to \$117 per square foot. (\$108, \$110 and \$117 for the Crafts sales and \$87, \$104 and \$76 for the Farinola sales.) This spread is reflective of the fact the Property is somewhat distinct from the primarily office and primarily R&D sales used by Mr. Crafts and Mr. Farinola, respectively.

Taking all relevant factors and all six sales into account, the board found the most reasonable indication of value is about \$100 per square foot, leading to a market value finding of \$8.3 million for the Property.¹¹

The Farinola and Crafts appraisals both employed the income approach to arrive at reconciled market value estimates. The board, on the other hand, considered the income approach for comparative purposes only to test the reasonableness of its findings in the sales comparison approach. Upon examination of the respective income approach assumptions used by these appraisers, the board found several reasonable and necessary adjustments, when made,

¹⁰ 3% per year adjustment for time through the fall of 2008 (to reflect an appreciating market) and a -10% adjustment afterward (to take into account market changes caused by the financial and real estate declines after the fall of 2008). In comparison, Mr. Crafts applied a blanket -10% adjustment for sales occurring in 2006 through 2008 (Crafts Appraisal, pp. 60 and 63) and Mr. Farinola states it is reasonable to apply a 3% appreciation rate for sales occurring in 2005 and 2006 and “no appreciation from 2007 to the present.” (Farinola Appraisal, pp. 64 and 67.)

¹¹ 83,047 square feet x \$100 per square foot = \$8,304,700, rounded to \$8.3 million

lead to a correlated indication of market value. The adjustments involve modifying the market rental rate (to \$10.50 per square foot, midway between the rates used by these appraisers), blending their expense estimates (to \$85,000) and using the 8% vacancy factor and 8.64% capitalization rate in the Crafts Appraisal. Carrying out the standard income approach calculations with these adjustments results in an estimate of value very close to \$8.3 million.

As a final check on reasonableness, the board notes the appeal document contains a statement by the Taxpayer's representative (a commercial real estate broker) to the effect the Property "has a value per square foot of approximately \$101." This estimate (when multiplied by the 83,047 square feet of rentable space) is within one percent of the \$8.3 million estimate arrived at by the board after considering all of the evidence presented.

For all of these reasons, the board finds the Taxpayer met its burden of proving disproportionality and the assessment for tax year 2009 should be abated to \$8,716,900 (based on the market value estimate of \$8,300,000 for the Property adjusted by the 105% level of assessment and adding in the CU assessment of \$1,900).

If the taxes have been paid, the amount paid on the value in excess of \$8,716,900 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 property pursuant to RSA 75:8, the Town shall use the ordered 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

Addendum A

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

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

Taxpayer's Requests

1. The subject property is located at 110 Towle Farm Road, Hampton, NH and is identified on the Hampton tax rolls as Map and Lot 0140-0002-0000.

Granted.

2. The usable building area and rentable area for the subject property as of April 1, 2009 was 83,047 square feet (Farinola at 2; Crafts appraisal at 1).

Granted.

3. Of the 83,047 square feet, 22,423 (27%) is office, 46,506 (56%) is research and development, and 14,118 (17%) is mechanical and storage. (Farinola at 7; Craft at 33).

Granted.

4. The 2009 assessed value for the subject property was \$11,818,400.

Granted.

5. The 2009 Hampton tax rate was \$16.28 per thousand.

Neither granted nor denied.

6. The 2009 equalization ratio for Hampton was 105.0%, and this ratio may be used for purposes of proving whether or not the subject property was proportionally or disproportionately assessed in 2009.

Granted.

7. The highest and best use of the subject property as improved is its “current or similar commercial use.” Farinola at 59. See also Crafts at 36 (“the highest and best use of the subject, as improved, is for utilization as a single-tenant facility as an office and engineering/high tech assembly facility.”)

Granted.

8. The subject property contains many exceptional construction details, making it an example of super-adequacy.

Granted.

9. It is not disputed that the Taxpayer timely mailed an Application for Abatement of Taxes for the 2009 real estate taxes assessed against the subject property on March 1, 2010, that the Town of Hampton failed to fully grant the Taxpayer’s request for an abatement and that the Taxpayer timely filed the petition initiating this action on or before September 1, 2010, the statutory deadline by which appeals of 2009 tax assessments must be filed with the Board of Tax and Land Appeals.

Granted.

10. The April 1, 2009 fair market value for the subject property, as determined by the Town of Hampton for ad valorem tax purposes, was \$11,255,619, derived by dividing the assessed value of \$11,818,400 by the equalization ratio of 105.0%.

Denied.

11. Disproportional assessment of the subject property is proven by demonstrating the fair market value of the property is less than \$11,255,619.

Denied.

12. Michael J. Farinola of New Hampshire Commercial Appraisals and John M. Crafts of Crafts Appraisal Associates, Ltd. are qualified experts on the subject of commercial real estate valuation in Hampton, New Hampshire.

Granted.

13. “The reproduction cost method, to which appraisers resort when valuation by the other two methods [comparable sales or income] is not feasible, tends to inflate fair market value by setting a price that often exceeds the level of actual market price negotiations.” Manchester Housing Authority v. Reingold, 130 N.H. 598, 602 (1988) (internal cites omitted) (eminent domain context).

Neither granted nor denied.

14. Given a market exists for the subject property, and that neither appraiser identified the subject property as “unique”, “special purpose” or “limited market”, the cost approach will be given no weight.

Neither granted nor denied.

15. The ideal comparable property to the subject is an owner-occupied, single-user property. “The size of the building makes it more likely to be owner-occupied rather than leased and it is difficult to find comparable properties of this size that are purchased by investors based on the projected income stream resulting from leasing such properties.” NH Ballbearings, Inc. v. City of Laconia (BTLA Dockets Nos.: 23243-06PT/23808-07PT).

Neither granted nor denied.

16. Each of the comparable sale properties used by Mr. Farinola is appropriate in valuing the subject property using the comparable sales approach because i) they are used or occupied in a manner similar to the subject property (owner occupied), and ii) each sale was a fee simple transaction, which is the type of transaction likely to occur with the subject property.

Denied.

17. Each of the four comparable sales in the Crafts appraisal should be given little or no weight because a) none of the properties were located in the Seacoast area, b) all were used predominantly as offices, and c) all were investment, or “leased fee,” transactions rather than owner-occupied properties like the subject.

Denied.

18. The market value of the subject property using the comparable sales approach is \$4,320,000. Farinola at 68.

Denied.

19. The range of rental rates for the office/R&D and office/warehouse properties set forth at pp 72 and 73 of the Farinola appraisal are appropriate in valuing the subject property using the income approach because i) they are used in a manner similar to the subject property, namely, mostly as R&D or warehouse and secondarily as office, and ii) several of the properties are located in the Seacoast area.

Denied.

20. Each of the five comparable rents in the Crafts appraisal should be given little or no weight because a) each corresponded to space much smaller than the subject property, the biggest being 58% (1617 Southwood Drive, Nashua) and the smallest being 19% (12A Manor Parkway, Salem) of the subject property's usable building area, b) most were used predominantly as offices (both 21 & 25 Manchester Street, 10A St. Paul Lane, Merrimack and 7 Holland Way, Exeter were, in fact, 100% office space), and c) the appraisal makes no adjustment for these significant differences.

Granted.

21. The market value of the subject property using the income capitalization approach to value is \$4,880,000. Farinola at 69.

Denied.

22. Based on the testimony, greater weight will be given to the testimony and report of Mr. Farinola.

Denied.

23. The fee simple value of the subject real estate as of April 1, 2009 is \$4,540,000.

Denied.

Town's Requests

1. This is an appeal under RSA 76:16-a from a decision by the Hampton Board of Selectmen on an RSA 76:16 application for a property tax abatement for the tax year 2009; the Board of Selectmen already decided to reduce the assessment from \$12,503,000 to \$11,818,400, and the equalization ratio for Hampton for the year 2009 is 105%, which is not in contest. Town's Exhibit A.

Granted.

2. The 2009 assessed value of \$11,818,400 as equalized represents a fair market value of \$11,255,619. See Real Estate Appraisal/Summary Report of Crafts Appraisal Associates, Ltd. as of April 1, 2009, Town's Exhibit B (hereinafter, the "Crafts Report") at page 1.

Denied.

3. The property here involved consists of approximately 30 acres of land with almost 1,700 feet of road frontage along the southern side of Towle Farm Road in Hampton and a 117,547 square foot building constructed on four levels and utilized for office and research and development purposes by a single user. See the Crafts Report at page 32.

Denied.

4. The subject property is in an industrial zone and its neighborhood includes other commercial, office, and industrial uses. See Crafts Report at pages 24-28.

Granted.

5. The building is in excellent condition and has unusual features that enhance its value, such as an expensive high quality floor finish of methyl methacrylate. See Crafts Report, Town's Exhibit B, at pages 33-34.

Denied.

6. The Crafts Report, which was done exclusively for tax assessment purposes, presents three valuation approaches, all of which produce values that are in a narrow range, and indicates that the subject property as of April 1, 2009 had a fair market value of \$10,500,000, which would result in an assessed value of \$11,026,900. Crafts Report at page 2 and 76-77.

Granted.

7. The taxpayer has introduced only one document (Taxpayer Exhibit 6) that contains the market value of \$4,540,000 claimed by the Taxpayer for the tax year 2009—a Retrospective Summary Appraisal Report by Michael J. Farinola dated April 2, 2010 (hereinafter, the “Farinola Report”) giving a value as of August 17, 2009; reliance upon this Report, whose cover letter indicates it was done primarily for estate purposes and only secondarily to assist in tax abatement efforts, would result in a loss to the tax base in one year of over \$7.7 million dollars. Farinola Report at page 93.

Denied.

8. Like the Crafts Report, the Farinola Report presents values under the Cost Approach, the Sales Comparison Approach, and the Income Approach; however, the Farinola Report’s values as summarized on page 89 are, by his own admission, at a wide range with each other and his Report on page 61 notes that, “If good market data is available, the value indications of the three approaches should fall within a fairly narrow range.” (Farinola testimony)

Granted.

9. For the Calculator Method used by both experts under the Cost Approach, Marshall & Swift indicates in Section 14, Page 1, that “Engineering and research and development industrial buildings, which have a larger amount of divided and finished space, between 20% and 80%, are listed separately from manufacturing buildings even though they may contain some manufacturing or assembly. The so-called best hi-tech, research and development and service center structures will approach good office buildings in cost, with many partitions, high cost mechanical and fine detail.” (Crafts Testimony)

Neither granted nor denied.

10. Both appraisers testified that the current use of the property as a single tenant facility, with areas of office, research and development, and high tech assembly, represents its highest and best use, that the cost to construct this facility in 2001 was over \$18,000,000, and that reproducing this construction today would cost in excess of \$20,000,000. (Farinola and Crafts testimony)

Neither granted nor denied.

11. Both experts testified at the hearing, and the taxpayer's own tax representative recognized in his closing argument, that the subject property represents a limited market property. (Farinola and Crafts testimony and closing argument by Christopher Snow).

Neither granted nor denied.

12. In its Reconciliation of Approaches section, the Farinola Report does not follow the value generated by its own Cost Approach (\$14,700,000), which is a figure that exceeds but is still in the range of the Town's assessed value and the Town's expert's opinion of value. See Farinola Report at pages 89- 91.

Granted.

13. The use of appropriate quality, comparable sales such as those utilized in the Sales Comparison Approach within the Crafts Report, results in a value of \$125.00 per square foot (Crafts Report at page 62); the taxpayer's own tax representative submitted to the Board on September 1, 2010 a "Market Analysis" (hereinafter, the "Snow Report"), in which he represented that the property should be valued at \$101.00 per square foot of building, almost twice the per square foot rate used in the Farinola Report (although Mr. Snow multiplied that rate only by 69,340 square feet of building instead of by the 83,047 square feet utilized by both the Farinola and Crafts Reports).

Granted.

14. The comparable sales utilized in the Farinola Report under the Sales Comparison Approach, through which he derives a \$52.00 per square foot value (Farinola Report at page 68), are inferior in quality, except for the One Liberty Lane property, and have lesser percentages of finished area and therefore are not in fact comparable; in the sales grid in his Market Analysis, Mr. Snow Report makes a 20% adjustment for the building quality/condition for the 135 Folly Mill Road, Seabrook property that Mr. Farinola does not make in his grid. Farinola Report at 67.

Neither granted nor denied.

15. As to the Liberty Lane property, Mr. Farinola himself recognizes that there are difficulties regarding its sale and questions its reliability (see Farinola Report at pages 64 and 68), and Mr. Crafts testified from his experience appraising the One Liberty Lane property that this property was only marketed for a short period of seven months before it was sold utilizing an atypical, bid process procedure designed to get rid of the property.

Neither granted nor denied.

16. The Farinola Report in its Income Approach (Farinola Report at pages 72-73) uses rental comparables that are much inferior in quality, or are older, or have lesser percentages of quality finished area than the subject property and thereby generates a rental rate of \$6.50 per square foot, which is far lower than either the \$13.00 per square foot rental rate utilized in the Crafts Report (at page 71) or in the \$12.00 per square foot rental rate utilized in the Snow Report.

Neither granted nor denied.

17. The Farinola Report at page 81 recognizes “little value” in the 19.74 acres in current use, even though the Town’s tax assessment card in his Addendum indicates that only 8.74 acres of that 19.74 acres are as wetlands (see mappings at Town’s Exhibit D and Crafts Report on pages 37a and 37b); because the remaining 11 acres has significant road frontage and has development potential, the Farinola Report seriously underestimates the value of this acreage property for estate planning purposes, which was the primary purpose of the Report.

Denied.

[Town’s Rulings of Law]

1. The burden in this case is upon the party seeking the abatement to show that its assessment represents a disproportionate share of the common tax burden in Hampton. Appeal of Sunapee, 126 N.H. 214 (1985), and Q.A. Technology Co., Inc. has failed to carry its burden as to the tax year 2009 here in question.

Denied.

2. Under RSA 76:2, the property tax year for 2009 ran from April 1, 2009 to March 31, 2010, but the key date for assessment purposes is April 1, 2009. See, RSA 76:10 and 74:1 and Section G of the Board's RSA 76:16-a appeal form; accordingly, where the Farinola Report states that the value given therein is as of August 17, 2009, and not April 1, 2009, this report should be excluded.

Denied.

3. For all the reasons set forth in the findings of fact, the conclusions as to value of the Farinola Report are deemed not to be credible.

Denied.

4. Because for the subject property the R & D space (56%) is of the same high end quality finish as the office space (27%), the Crafts Report correctly utilized comparable properties consisting of similar high quality finish and having a greater percentage of finished office space than the comparables utilized in the Farinola Report; the Crafts approach is consistent with the Marshall and Swift Valuation Service section 14, page 1 under Occupancy.

Denied.

5. Because the lease rates of the comparable sales in the Crafts Report were at market, the leased fee interests utilized have the same value as fee simple interests.

Denied.

6. The subject property as a single user corporate headquarters/research and development building of exceptional quality is hereby recognized as a "limited market property," defined as "a property that has relatively few potential buyers at a particular time," and for which the cost approach has been recognized to be a reliable method of valuation. Wal-Mart Real Estate Business Trust v. Town of Rindge, BTLA decision dated January 10, 2011.

Denied.

7. The opinions of value as of April 1, 2009 in the Crafts Report, Town's Exhibit B, are found to be the more credible, and the fair market value for 2009 is no lower than the reconciled value of \$10,500,000 set forth in that Report at pages 76-77.

Denied.

8. The assessed value for 2009 of Town of Hampton is upheld, because it is within an acceptable range from the Crafts Report value. Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979); alternatively, any abatement off of the already reduced assessment should be no more than the figure that corresponds to the \$10,500,000 fair market value set forth in the Crafts Report.

Denied.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Christopher Snow, Property Tax Advisors, Inc., 125 Brewery Lane, Suite 6, Portsmouth, NH 03801, representative for the Taxpayer and Paul J. Alfano, Esq., Alfano Law Office, 4 Park Street, Concord, NH 03301, Taxpayer's counsel; Mark S. Gearreald, Esq., 100 Winnacunnet Road, Hampton, NH 03842, counsel for the Town; and Chairman, Board of Selectmen, Town of Hampton, 100 Winnacunnet Road, Hampton, NH 03842.

Date: August 23, 2012

Anne M. Stelmach, Clerk