

**Independence Equity Partners, LLC**

**v.**

**Town of Bedford**

**Docket No.: 26293-11PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2011 assessment of \$8,000,000 (land \$1,680,400; building \$6,319,600) on Map 13/Lot 37/3, 15 Constitution Drive, an office building with 101,381 square feet of rentable space on approximately 9.29 acres<sup>1</sup> (the “Property”). 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 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.

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<sup>1</sup> Each party’s appraiser used this estimated acreage. The Town’s assessment-record card (“ARC”) however, indicates 9.09 acres.

The Taxpayer argued the assessment was excessive because:

- (1) an appraisal prepared by Wesley G. Reeks, MAI (the “Reeks Appraisal,” Taxpayer Exhibit No. 1) estimates the market value of the Property was \$5.2 million as of the April 1, 2011 assessment date and is the best evidence of value;
- (2) Mr. Reeks’ market rent and other estimates and assumptions are well supported and his market value conclusion is more credible than the Town expert’s opinion and establishes the disproportionality of the assessment; and
- (3) the assessment should be abated based on a market value finding of \$5.2 million adjusted by the level of assessment in the Town.

The Town argued the assessment was proper because:

- (1) an appraisal prepared by Stephen Traub, ASA (the “Traub Appraisal,” Municipality Exhibit B) estimates the market value of the Property was \$7.576 million as of the assessment date using credible estimates and assumptions and is the best evidence of market value;
- (2) the Reeks Appraisal relied upon by the Taxpayer contains key estimates and assumptions that are not credible and this appraisal does not satisfy the Taxpayer’s burden of proving disproportionality;
- (3) a CB Richard Ellis (the “CB Ellis Appraisal,” Municipality Exhibit A), obtained by the Taxpayer for financing purposes, estimates the market value of the Property was \$8.9 million in November, 2010, higher than the appealed assessed value and the market value estimate in the Traub Appraisal, making the lower Reeks Appraisal estimate less credible; and
- (4) the appeal should be denied.

The parties agreed the level of assessment in the Town was 105.2% in tax year 2011, the median ratio calculated by the department of revenue administration. Prior to the close of the

November 6, 2013 hearing, the parties requested additional time to file memoranda of law and proposed findings of fact and rulings of law and the board granted this request. (See Tax 201.36.) The board has reviewed the subsequent “Memorandum” filed by each party and has responded to their requested findings of fact and rulings of law in Addendum A attached hereto.

### **Board’s Rulings**

Based on the evidence presented, the board finds the Taxpayer met its burden of proving disproportionality and the assessment on the Property should be abated to \$7,364,000 for tax year 2011 based upon a market value finding of \$7 million, rounded, adjusted by the level of assessment. The appeal is therefore granted for the reasons stated below.

The parties do not dispute the proportionality of an assessment is dependent on a reasonable market value finding adjusted by the level of assessment in the municipality. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (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). Where there is conflicting evidence, as in this appeal where expert appraisers presented market value estimates that differ by millions of dollars, the board must determine for itself the weight to be given each piece of evidence because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. at 68; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The parties’ expert appraisers (Mr. Reeks and Mr. Traub) largely agree on the basic facts pertaining to the Property and employed the same two approaches (income and sales comparison) to arrive at their respective market value conclusions. The Property is a large, two-

story multi-tenant office building consisting of approximately 101,381 square feet of rentable space. (Cf. Taxpayer's Memorandum, p. 2; and Town's Memorandum, pp. 1-2.) From the photographs and other evidence presented, the Property appears to be an attractive office building consisting of a central atrium and two "wings" with a paved and lighted parking area (with 387 spaces) that is adequate for its current use. The Property is well situated in a small office park and its location is within ¼ mile of the intersection of Route 101 and Route 114 with good access to Interstates 293 and 93 and Route 3 (the FE Everett Turnpike).

The Property was purchased by the Taxpayer in September, 2000 for \$9.4 million. (Traub Appraisal, p. 39.) The appraisers agree the Property is in good condition, with no functional obsolescence or deferred maintenance observed. The Taxpayer made substantial renovations to the common areas and hallways in 2010 "at a cost of just under \$450,000." (Reeks Appraisal, p. 31.)

Both appraisers used the income and sales comparison approaches to value the Property and placed primary reliance on the income approach; both appraisers also noted the Property has experienced vacancy rates that have been higher than comparable office properties in the same market area for a long period of time and both incorporated this factor in their respective appraisals.<sup>2</sup> Despite these similarities, and as indicated above, these expert appraisers differ in their value conclusions by almost \$2.4 million.

These differences stem mainly from disagreements regarding the following key assumptions in the income approach: the (modified gross) market rental rate, "other income"

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<sup>2</sup> Mr. Reeks reported the occupancy level was 57.2% as of the date of his appraisal and "had a prolonged period of vacancy, averaging over 25% over the preceding 5 years according to the [Taxpayer's] representative." (*Id.*, p. 56.) Mr. Traub reports a similar vacancy history: 27% in 2007 and 2008, "which grew to about 36% around 4/1/09" and further states the "best" the Property was "able to do in the past has been 15% vacancy." (*See* Traub Appraisal, p. 3.)

from tenant reimbursements, operating expenses, vacancy rate, capitalization rate and “stabilization” costs (to achieve the targeted occupancy level). (Cf. Taxpayer’s Memorandum, p. 5; and Town’s Memorandum, pp. 7-11.) The board has weighed the evidence presented on these issues and makes the following specific findings.

A. Market Rent and Other Income Estimates

The parties disagree substantially regarding the best estimate of a modified gross rental rate per square foot: Mr. Reeks estimated \$14.50 and Mr. Traub estimated \$16. The board has weighed all of the evidence presented on this issue and finds a \$16 per square foot rental rate is appropriate for the Property.<sup>3</sup>

Mr. Traub arrived at this estimate using five comparable sales in the Town and the board finds the adjustments he made to these comparables to be reasonable and well supported. (See Traub Appraisal, p. 49; and Town’s Memorandum of Law, pp. 7-8.) In comparison, Mr. Reek’s lower estimate of \$14.50 per square foot is less credible for several reasons. Mr. Reeks gave little weight to the \$17 per square foot “published lease rate” (established by the Taxpayer’s own professional leasing agents) or the lower \$16 per square foot rate they “actually quote” to prospective tenants. (Cf. Taxpayer’s Memorandum of Law, pp. 2-3.) Mr. Reeks also failed to take into account the actual rents on the Property, which averaged more than \$16 per square foot in the most recent period analyzed by Mr. Traub. (See Town’s Memorandum, p. 9.)

The Property generates some additional income in the form of tenant reimbursements.

The board finds Mr. Reeks’ estimate of \$2.25 per square foot is reasonable, which results in

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<sup>3</sup> In addition to the evidence presented at the hearing, the board also considered the additional evidence submitted by both parties after the hearing with respect to one former tenant (“IMS Health”) who moved from the Property to 35 Constitution Avenue: the evidence is in dispute as to whether IMS Health is paying a modified gross rent of \$17.25 (according to the Town) or \$14.50 (according to the Taxpayer’s expert, Mr. Reeks). The board’s \$16 market value finding is within the range of this additional disputed evidence.

potential other income of \$228,107. (See Reeks Appraisal, pp. 55-56 and 60.) The board finds Mr. Traub's lower estimate (\$138,000) to be less reasonable because it probably does not adequately account for the lower reimbursements resulting from higher vacancy rates. (See Traub Appraisal, p. 52.)

B. The Stabilized Vacancy Assumption

The parties' experts estimated high stabilized vacancy rates for the Property that were relatively close to each other (25% by Mr. Reeks and 22% by Mr. Traub), even though each acknowledge actual vacancy rates for commercial office space in the Town (and the adjacent City of Manchester) were considerably lower (in the 12% range, according to Mr. Traub); their higher estimates were no doubt influenced by the historically high vacancy rates on the Property for a number of preceding years. (See Reeks Appraisal, p. 56; Traub Appraisal, pp. 53-54; and fn. 1.) While neither expert provided a full and satisfactory explanation for the cause or causes of this chronic high vacancy problem,<sup>4</sup> the board finds the evidence supports a stabilized vacancy factor of 22% for the Property based on their appraisals and their testimony.

In general, rental rates and vacancy factors should be correlated with each other to some degree, with higher rents likely to result in higher vacancy factors, all other things being equal. In a competitive real estate market, commercial office buildings of similar size, quality, condition and location will attract tenants based on the rents they charge, assuming other inducements (such as tenant improvement allowances) are also similar. Therefore, a building owner offering space at a higher rent is likely to have a higher vacancy factor than one willing to

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<sup>4</sup> In certain instances, ineffective marketing or management can be a cause of high vacancies and overall poor financial performance in a commercial office building. See, e.g., Flatley v. City of Manchester, BTLA Docket Nos. 22838-06PT and 23796-07PT (February 27, 2009). Here, however, no facts were presented that would allow the board to find the Property was not professionally managed. In this regard, Mr. Traub, the Town's expert, did not assert that inefficient marketing or management was the cause of the Property's chronic high vacancy rates.

lease space at a lower rent. For these and other reasons, Mr. Reeks assumptions of a much lower rental rate (\$14.25) juxtaposed with an even higher vacancy factor (25%) is less credible than Mr. Traub's alternative assumptions of a \$16 rental rate and a 22% vacancy factor.

C. Estimated Operating Expenses

The board finds the most reasonable estimate of stabilized operating expenses (\$627,572) incorporates a five percent management fee (which both parties utilized), Mr. Reeks lower reserves estimate (\$30,414) and other expenses of \$525,000, rounded [an amount somewhat closer to Mr. Reeks' estimate (\$556,582) than to Mr. Traub's estimate (\$427,831)]. With respect to the latter estimate, Mr. Reeks, unlike Mr. Traub, did not rely simply on historical expense averages but instead incorporated some amount of inflation in his estimate by acknowledging that the majority of expenses incurred by the Taxpayer have trended upward in the past several years.

D. Market Value Findings

The board developed its market value findings using the above estimates and two additional assumptions: (1) a tax-adjusted capitalization rate of 11% (between the higher rate of 11.16% estimated by Mr. Reeks and the lower rate of 10.665% estimated by Mr. Traub); and (2) stabilization costs of \$400,000 to achieve the estimated vacancy rate (between Mr. Traub's higher estimate of \$437,000 and Mr. Reeks' lower estimate of \$285,901). Employing these estimates, the board finds the most reasonable estimate of the market value of the Property in tax year 2011 is \$7 million, rounded, based on the income approach calculations in Table 1.

<u>TABLE 1</u>		
Gross Rentable Area (square feet)		101,381
Modified Gross Rent (per square foot)		\$16
Other Income		\$228,107
Potential Gross Income		\$1,850,203
Vacancy Rate		22%
Effective Gross Income		\$1,443,158
Expenses:		
	Management	\$ 72,158
	Other Expenses	\$525,000
	Reserves	\$ 30,414
	Total Expenses	(\$627,572)
Net Operating Income		\$815,586
Capitalization Rate		11%
Indicated Value		\$7,414,418
Less: Stabilization costs		(\$400,000)
Market Value		\$7,014,418
<b>Rounded</b>		<b>\$7 million</b>

This market value finding is considerably higher than Mr. Reeks’ \$5.2 million estimate and somewhat lower than Mr. Traub’s \$7.567 million estimate and is based on the board’s review of the evidence as a whole. Among other things, the board noted the purchase price paid by the Taxpayer, a knowledgeable real estate investor (\$9.4 million in September, 2000) and the \$8.9 million value conclusion in November, 2010 in the CB Ellis Appraisal (prepared by the same company that acts as the Taxpayer’s leasing agent). Even allowing for some market depreciation between the date of purchase and the assessment date and the fact the CB Ellis Appraisal was a “leased fee” rather than a “fee simple” appraisal, the facts presented support the board’s \$7.1 million market value finding as of the April 1, 2011 date of assessment.

Applying the sales comparison approach, Mr. Reeks arrived at an indicated value of \$5.8 million, rounded, and Mr. Traub arrived at an indicated value of \$8.1 million, rounded. (See

Reeks Appraisal, p. 49; and Traub Appraisal, p. 73.) Neither appraiser, however, placed material weight on this approach in developing their final market value conclusions. The board also considered the sales comparison approach but gave it no weight based on the evidence presented. The board finds the most likely buyer of the Property would be an investor motivated to purchase it for its income producing potential, making reliance on the income approach more reasonable.

In summary, the board finds the Taxpayer met its burden of proving disproportionality and that the market value of the Property in tax year 2011 was \$7 million. Adjusted by the level of assessment, the assessment is abated to \$7,364,000.

If the taxes have been paid, the amount paid on the value in excess of \$7,364,000 for tax year 2011 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. The Taxpayer has an appeal pending for tax year 2012 (BTLA Docket No. 26928-12PT): the 2012 appeal is currently in the mediation process and, unless resolved at that stage, will be scheduled for hearing in due course.

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,

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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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Albert F. Shamash, Member

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Theresa M. Walker, Member

**Addendum A**

The proposed findings of fact and conclusions of law filed by each party 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 board's responses, "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 PROPOSED FINDINGS**

1. The property under appeal is a 2-story office building of 101,381 SF located on 15 Constitution Drive in Bedford, with a center entrance atrium and two office wings radiating off from the atrium. Reeks Appraisal, Taxpayer's Exhibit (hereafter, "Ex.") 1, p.31, Floor Plans contained in Exhibit B to appraisal.

**Granted.**

2. The appearance and condition of the building is average for office buildings in its market area. It has been well maintained. In 2010, the owner invested approximately \$450,000 to improve the atrium and common area hallways to make them more attractive to tenants and prospective tenants. Ex. 1, p. 31.

**Neither granted nor denied.**

3. The Property's location on Constitution Drive, while good, is not as desirable as other locations in Bedford, including South River Road, which have more direct access to the interstate highway system. Ex.1.

**Granted.**

4. The Property is owned by an entity controlled by Aegean Capital, LLC, a real estate investment and management firm that owns more than 750,000 SF of commercial real estate in New England. See, [www.aegeancapitalllc.com](http://www.aegeancapitalllc.com).

**Granted.**

5. The Property has on-site management to direct day-to-day operations.

**Granted.**

6. The New Hampshire office of CB Richard Ellis, a national known real estate consulting firm, handles the leasing of the Property and did so during the time period pertinent to the date of appraisal.

**Granted.**

7. While the Property's published lease rate, as of the date of appraisal, was \$17 per SF on a modified gross basis (i.e. tenants pay a base rate and then that rate plus a proportional share of only certain costs, such as electricity), CB Richard Ellis agents actually quoted a rate of \$16 per SF, modified gross, to prospective tenants, and also offered concessions typical in the commercial real estate market of free rent for some time, paying for tenant improvements and similar incentives.

**Neither granted nor denied.**

8. The Property has had high vacancy levels since Aegean acquired it in the early 2000s. See Ex.1, p. 66, Summary of Operating Experience, 2006-2011. As of April 1, 2011, occupancy was at 57.2% and has declined since then.

**Granted.**

9. There is no credible evidence that unlucky or ineffective management or marketing have been the cause of the Property's high vacancy levels. See, cf., *John J. Flatley v City of Manchester*, 2009 N.H. Tax Lexis 10 (February 27, 2009) (evidence suggested that taxpayer had not retained reputable commercial brokerage firm to lease property and may have been "penny wise and pound foolish" in its marketing strategy).

**Neither granted nor denied.**

10. No weight should be given to the CB Richard Ellis appraisal proffered by the Town (Municipality Exhibit A) as it was done on a leased fee, not fee simple basis, no witness was offered to explain the analysis and it relied on an occupancy level of 90% which the Town's own expert said was not realistic.

**Neither granted nor denied.**

11. The parties' appraisers, Wesley G. Reeks, MAI and Stephen G. Traub, ASA agree that even at a stabilized level, the property would have a significantly higher vacancy rate than the average vacancy level in Bedford as of April 1, 2011 of 12.8%, with Mr. Reeks assuming a 25% vacancy and collection factor and Mr. Traub 22%. Ex.1, p. 56 and Ex. C, p. 51.

**Granted.**

12. As both appraisers found, the income approach to value is the most relevant indicator of value for income producing property such as the Property.

**Granted.**

13. Mr. Reeks, based on an analysis of 3 rent comparables in Bedford and 1 in Manchester, concluded that the appropriate rental market rate for this property was \$14.25 per SF, modified gross. Ex 1, pp. 51-54. Rental Comparable 1 was located at 35 Constitution Drive, near the subject, and leased 13,044 SF for a lease rate of \$13.04 per SF, modified gross. Mr. Reeks noted that based on his experience in appraising other properties in the Constitution Drive area, as of the date of appraisal, many properties in that area were being leased at rates in the \$13-14 SF range.

**Neither granted nor denied.**

14. Mr. Traub concluded that an appropriate market rental rate was \$16.00 per SF, modified gross. He based his analysis on 5 rental comparables located in office parks known as Bedford Farms and Executive Park on South River Road, in what he conceded were superior locations to Constitution Drive. Ex. C, p. 49. While he made adjustments to account for these differences, he offered no rental comparables from the Constitution Drive area as of the date of appraisal.

**Neither granted nor denied.**

15. Mr. Traub offered no explanation as to why if his analysis was correct, the property was not able to achieve higher occupancy levels when the leasing brokers were offering, in effect, \$16 per SF as the starting point for negotiations.

**Denied.**

16. Mr. Reeks' rental market study is well supported and its market rental rate of \$14.25 per SF, modified gross, reflects the rate that a reasonable and knowledgeable prospective purchaser would expect to address the vacancy levels and achieve a higher stabilized occupancy.

**Denied.**

17. Mr. Reeks' expense estimate in his income proforma is well-supported by market data and the Property's own expense experience. In particular, it reasonably reflected the fact that while income may not always rise, expenses do tend to increase over time and that certain expenses, such as maintenance and repair, utilities and janitorial, would increase under higher stabilized occupancy.

**Neither granted nor denied.**

18. Mr. Traub's over-all expense estimate in his pro forma of \$497,994, before reserves, was below the level of expenses for this Property, in all years but one, 2010. In that year, 2010, the Property's occupancy was well below the level of Mr. Traub's assumed stabilized occupancy.

**Neither granted nor denied.**

19. Mr. Reeks' expense estimate in his income proforma is well supported and properly reflects the expenses that a reasonable and knowledgeable purchaser for this Property would expect as of April 1, 2011.

**Neither granted nor denied.**

20. Mr. Traub's selection of a capitalization rate of 8.5% reflects his determination that:

The most likely purchaser could be institutional level or at worst an upper end non-institutional buyer based on the size and scope of the property (greater than \$5,000,000 but less than \$10,000,000) and greater than 100,000 SF in one of the most desirable NH office markets. So the appraiser will primarily use low risk non-institutional level capitalization rate criteria.

Ex. C, p.59.

**Granted.**

21. There is no evidence that this Property would be considered for purchase by an institutional grade investor or would be considered "low risk" by any non-institutional investor.

**Neither granted nor denied.**

22. Mr. Reeks' selection of a base capitalization rate of 9.0%, before adjustment for the tax factor, was well supported and reasonable.

**Denied.**

23. Mr. Reeks' conclusion that the Property had a market value of \$5,200,000 is well supported and reflects the price that a reasonable and knowledgeable purchaser would pay for this Property as of April 1, 2011.

**Denied.**

24. The Taxpayer has met its burden of demonstrating the disproportionality of its assessment of \$8,000,000 and is entitled to an assessment as of April 1, 2011 of \$5,470,000, based on Mr. Reeks' value of \$5,200,000, adjusted by the agreed upon equalization ratio of 105.2%.

**Denied.**

### **TOWN'S PROPOSED FINDINGS**

1. The property was acquired by the taxpayer in the year 2000 for \$9,400,000, Appraisal, Stephen Traub (hereinafter "Traub"), p. 39, and an appraisal performed by CB Richard Ellis, dated December 3, 2010, on behalf of the taxpayer, identified the market value for the leased fee as \$8,900,000. Town Exhibit B.

**Granted.**

2. "The subject building exhibits all pertinent features of the typical office building in this area and its design and layout is [sic] good and adequate for a variety of office-oriented uses by multiple tenants...The building possesses no functional obsolescence and it has all necessary features of a typical multi-tenant office building in this market area." Appraisal, Wesley Reeks (hereinafter "Reeks"), p. 38.

**Granted.**

3. Mr. Reeks estimates an effective age of 15 years for this 23-year old property, indicating it has been well maintained, Reeks, p. 31, and there is "zero" deferred maintenance. Reeks, p. 3.

**Neither granted nor denied.**

4. "The vacant spaces are all finished out and would require minimal TI's for occupancy," Reeks, p. 33, and the atrium giving access to the property as well as all common area hallways and bathrooms were renovated in 2010 at a cost of just under \$450,000. Reeks, p. 31.

**Granted.**

5. "[T]he subject site is best suited for office development," Reeks, p. 38, and "Based upon its size, good access, surroundings, and proximity to Everett Turnpike and Interstate 93, the subject is physically adequate for a number of uses." Reeks, p. 38.

**Granted.**

6. Both Mr. Reeks and Mr. Traub applied the same 10% adjustment to account for the difference between the Constitution Drive location and the most desirable location in Bedford, South River Road. See Reeks, pp. 49 (sales) and 53 (rents), and Traub, pp. 49 (rents) and 72 (sales).

**Granted.**

7. “At neighboring properties 2, 9, 18, 32, 47 and 48 Constitution Drive, those facilities have nearly no vacant spaces. Nearby 25 Constitution Drive was purchased and then converted into 4 upscale condominiums. Two were sold and two are being rented.” Traub, p. 31.

**Granted.**

8. In Bedford, the market vacancy rate for office space declined from 14.7% in 2009 to 12.8% in 2011.

**Granted.**

9. “[T]he building has had a lengthy period of high vacancy since its acquisition, with an average vacancy of roughly 25% for 7 years through 2008. According to building records, since 2008 vacancy has worsened to [sic] 34% to 43% through 2011. The vacancy as of the date of this report (15 February 2013) is 54.6%.” Reeks, p. 8.

**Granted.**

10. “Since this abysmal performance does not appear to be property related, market related, or locationally-related to that extent, as other properties on Constitution Drive are not experiencing that level of vacancy, it could to some extent be the result of an unlucky or possibly less than effective management or marketing of the property. I realize there may be some reasons why the subject is not keeping pace with the market, but a disconnect that great between the subject vacancy levels and the overall office market vacancy levels in Bedford or in the immediate subject location within Bedford should not exist.” Traub, p. 51.

**Granted.**

11. “In fact, if the subject were operating at or near the overall Bedford vacancy rate, the Bedford market vacancy rate itself would be closer to 12% than 13%. So to some extent, its high vacancy ironically is already built into the Bedford market vacancy levels of 12.80% and it would otherwise be closer to 12%.” Traub, p. 51.

**Granted.**

12. The market value of commercial rental property is based upon the capacity income, not management. Demoulas v. Town of Salem, 116 N.H. 775, 781-782 (1976).

**Granted.**

13. A reasonable buyer might conclude that the property could be marketed and managed in a better fashion. See, e.g., John G. Flatley v. City of Manchester, Docket Nos. 22838-06PT, 23796-07PT, p. 8, see also, Mt. Washington Hotel Preservation Limited Partnership v. Town of Carroll, Docket Nos. 19177-01PT and 19856-02PT, pp. 9-10.

**Neither granted nor denied.**

14. The “abysmal performance” of the property cannot be ascribed to the building or location, as the subject “is readily marketable in the market in its current configuration and condition.” Reeks, p. 33.

**Granted.**

15. Mr. Traub determined a \$16/sf market rent based on 5 rent comparables in the Town of Bedford that rent on a modified gross basis, with a range of \$15.25-\$19/sf, an average of \$16.33/sf and the median being \$16.33/sf, 4 of which only required an adjustment for location, and comparable 5, an 19<sup>th</sup> century barn, requiring an adjustment for quality and condition. Traub, p. 49.

**Granted.**

16. Mr. Reeks’ rent comparable 3 is a triple net lease of a property located in Manchester that required a gross adjustment of 45%. Reeks, p. 53.

**Granted.**

17. Mr. Reeks’ rent comparable 1, located on Constitution Drive, is not a market rent as it represents a reduced rate in compensation for the tenant investing a considerable amount in necessary TI’s to make the space tenantable, and further has an aggressive escalator of \$1.00 per year. Testimony of Stephen Traub.

**Neither granted nor denied.**

18. Mr. Reeks’ comparable rent 2 is a condominium converted to office space in an industrial park, surrounded by industrial uses, such as shipping and receiving.

**Neither granted nor denied.**

19. Mr. Reeks concludes a market rent of \$14.25, Reeks, p. 53, \$1.00 less than Traub rent comparable 5, which is an 18<sup>th</sup> century barn. Traub, p. 50.

**Granted.**

20. Mr. Traub's expenses are "based on actual expenses for 2008, 2009 and 2010," and are "checked against other similar properties and/or surveys," to which is added 5% for management, and 3.61% (\$.50/sf) for reserves, Traub, pp. 55-58, resulting in an expense of \$5.41/sf and an expense ratio of 39.11%, Traub, p. 58.

**Granted.**

21. Mr. Reeks' "[e]xpenses are estimated based on actual expenses from the subject for 2006, 2007, 2008, 2009 and 2010..." Reeks, p. 57, but sets expenses for insurance, utilities, administration, and combined janitorial/repair/maintenance higher than any actual year for individual categories, totals and averages, resulting in an expense of \$6.44/sf, and an expense ratio of 54.2%. Reeks, pp. 59-60.

**Granted.**

22. The actual average expenses of the subject for the years 2006-2010, inclusive, removing taxes, and adding the \$.30 Mr. Reeks recommended for reserves, is \$5.40/sf, and \$5.34/sf for the three years 2008-2010. Reeks, p. 58.

**Granted.**

23. Mr. Traub incorporates in his repair/maintenance expense the expense of janitorial services, as reflected on the expense statement provided by the taxpayer, appearing at p. 86 of Mr. Traub's appraisal. Testimony of Stephen Traub.

**Granted.**

24. The fair market value of the property on April 1, 2011 was \$7,567,000. Traub, p. 2.

**Denied.**

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Margaret H. Nelson, Esq., Sulloway & Hollis, P.L.L.C., PO Box 1256, Concord, NH 03302, counsel for the Taxpayer; Chairman, Bedford Town Council, Town of Bedford, 24 North Amherst Road, Bedford, NH 03110; and Barton L. Mayer, Esq., Upton & Hatfield LLP, PO Box 1090, Concord, NH 03302-1090, counsel for the Town.

Date: January 28, 2014

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Anne M. Stelmach, Clerk