

**Dudek Realty, Inc.**

**v.**

**Town of Barnstead**

**Docket Nos.: 26735-12PT and 27527-13PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2012 and 2013 assessments of \$1,251,400 (land \$312,000; improvements \$939,400) on Map 7, Lot 4, 27 Depot Street, an improved parcel consisting of approximately 110 acres of land (the “Property”). [The Taxpayer owns but did not appeal two other undeveloped lots (Map 4, Lot 7-1 and Lot 7-1-1) consisting of approximately 20 acres of land and the parties did not dispute the proportionality of their assessments.] For the reasons stated below, the appeals are granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment in each tax year 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 assessment was excessive because:

(1) the Taxpayer purchased the Property (along with the two non-appealed lots) for \$630,000 in June, 2012 at a well-advertised and competitive public auction conducted by an experienced auctioneer;

(2) the Property, the former “TIMCO” timber manufacturing facility, has 12 buildings which have deteriorated to a point making them “largely uninhabitable” (as shown by the photographs in Taxpayer Exhibit No. 4), a fact further evidenced by the two notices of condemnation issued by the Town’s fire chief in February, 2012 and April, 2013;

(3) Taxpayer Exhibit No. 2 (the “Snow Analysis”) identifies each building and estimates the rentable/habitable area is only 43,509 square feet (out of a total of 107,049 square feet) and presents a reconciled value conclusion of \$700,0000 for all three parcels (130 acres of land), based on the sales comparison and income approaches, and, after deducting \$40,000 for the two non-appealed lots (\$2,000 per acre x 20 acres), the resulting market value of the Property is \$660,000 as of April 1, 2012;

(4) an appraisal prepared for financing purposes by Ernest Toumpas of Capital Appraisal Associates, Inc. (the “Toumpas Appraisal,” Taxpayer Exhibit No. 3) estimates a value of \$885,000 as of July 12, 2013, again with the inclusion of the two non-appealed lots (which he valued at \$1,800 x 20 acres = \$36,000), leading to an indicated value of \$849,000 for the Property which is still “too high” but supports a finding of overassessment; and

(5) the assessments should be abated base on a market value of \$660,0000 in each tax year (adjusted by the respective level of assessment).

The Town argued the assessment was proper because:

- (1) the Town abated the tax year 2012 assessment (from \$1,692,200 to \$1,251,400) based on an income analysis indicating a total value for the Property of “\$1,154,444”;
- (2) the Town’s value conclusion is more credible than the Snow Analysis because Mr. Snow’s sales analysis relies on foreclosure and auction sales and one sale (400 North Main Street, Rochester) that was a land sale as “all buildings [were] removed after sale” and adjustments to several of the assumptions in his income analysis results in a much higher “indicated market value of \$1,600,706” (as shown in Municipality Exhibit B);
- (3) the value conclusion in the Toumpas Appraisal is understated primarily because Mr. Toumpas excludes substantial building space which contribute value to the Property [and which the Taxpayer intends to develop as shown in the plans submitted to the Town (see Municipality Exhibit E)];
- (4) another timber manufacturing property on Route 25 in Tamworth (described in Municipality Exhibit D) was purchased at auction in 2013 (for \$400,000) and a portion was resold in 2014 (for \$675,000); and
- (5) no further abatement is warranted and the appeals should be denied.

The parties agreed the level of assessment was 108.4% in 2012 and 107.4% in 2013, the median ratio calculated by the department of revenue administration.

### **Board’s Rulings**

Based on the evidence presented, the board finds the proper assessments to be \$910,600, rounded, in 2012 and \$902,200, rounded, in 2013. These abated assessments are based on a market value finding of \$840,000 adjusted by the level of assessment for each tax year.

The parties recognize that assessments must be based on market value adjusted by the level of assessment in the municipality. RSA 75:1; see, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). Arriving at a proportional assessment is a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). In making market value findings, the board considers and weighs all of the evidence presented, 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"). See also Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (all relevant factors affecting value must be considered).

Where there is conflicting evidence, the board must determine for itself the weight to be given each piece of evidence. Further, "[w]hen faced with conflicting [expert] testimony, a trier of fact is free to accept or reject an expert's testimony in whole or in part [citation omitted.] . . . [and can] credit the opinion of one expert over the opinions of other experts." LLK Trust v. Town of Wolfeboro, 159 N.H. 734, 740 (2010).

In these appeals, the Taxpayer relied on two appraisals that reached different value conclusions in support of its arguments that the Property was overassessed. The Town did not submit an appraisal of its own but instead relied on an income analysis and other evidence to question the weight that should be given to the Taxpayer's appraisals.

As noted above, the Taxpayer owns three contiguous parcels of land totaling 130 acres; the Property contains approximately 110 acres and the remaining 20 acres are on the two non-appealed, undeveloped lots. The Property is improved with 12 buildings constructed for the

former TIMCO timber manufacturing plant, which ceased operation around 2003. These buildings range in size from 240 square feet to 28,340 square feet and total 133,577 square feet and vary in quality and condition from “average” to “poor”. (See Taxpayer Exhibit No. 3, p. 20.) The Property was owned by a bank prior to the auction purchase in 2012 and the Property has had minimal occupancy since that time. (Id.) As noted above, after the time of purchase the Town’s fire chief issued two condemnation notices.

There is no dispute the Taxpayer acquired the Property, along with the non-appealed lots, for \$630,000 in May, 2012 at a public auction. According to the Taxpayer, the auction was “well attended” and “competitive” and was well advertised” and conducted by a professional auctioneer. The parties disagree regarding whether any weight can be placed on the auction price as an indicator of market value.

In a prior decision, the board gave some weight to a sales price obtained as the result of a competitive auction of a luxury home. “Based on its own review of the case and other authorities ...the board finds it is not precluded from giving some evidentiary weight to the auction price and has done so in its deliberations.” Joanne Broom Revocable Trust v. Town of North Hampton, BTLA Docket Nos.: 25668-10PT/26415-11PT, p. 7 (April 1, 2014); citing and discussing Society Hill at Merrimack Condo. Assn. v. Town of Merrimack, 139 N.H. 253, 255-56 (1994) (fact-finder has discretion whether to give weight to an auction price). In Broom, the board heard extensive testimony regarding the marketing history of the property before it was auctioned: it was listed for sale first through a realtor and then with the auctioneer; and the taxpayer submitted evidence the property was marketed “world-wide” through national publications.

In these appeals, however, the Taxpayer has not presented sufficient evidence regarding the marketing efforts undertaken to sell the Property to allow the board to place any significant

weight on the auction price as a reliable indicator of market value. In fact, the Snow Analysis prepared for the Taxpayer arrives at a market value conclusion for the three parcels (\$700,000) that is higher than the auction price.

The main market value evidence presented consists of the Snow Appraisal and the Toumpas Appraisal. As noted above, the Toumpas Appraisal reflects an adjusted market value for the Property of \$849,000, well above the \$660,000 adjusted market value reflected in the Snow Analysis.

Both appraisals rely on the income and sales comparison approaches, but the board finds the income approach is entitled to no weight for several reasons. First, both income approaches utilize a “direct capitalization” technique which assumes the Property’s income and expenses are stabilized. There is overwhelming evidence that contradicts this assumption as only very minimal portions of the Property were occupied during the 2012 and 2013 tax years. Second, significant portions of the Property will require extensive renovations and repairs prior to occupancy. Proper appraisal methodology would deduct the estimated “costs to cure” from a value indication, but neither Mr. Snow nor Mr. Toumpas made any such deduction.

Turning to the sales comparison approach, the board reviewed the photographic and other evidence regarding the Property in great detail, noting the apparent condition of each building and considering whether or not the space contributes to the market value of the Property as a whole. The Town argued Mr. Toumpas neglected to estimate the contributory value of all the improvements and the board agrees. Mr. Toumpas estimated a total of 133,577 square feet of improvements but stated 72,309 square feet is the “[t]otal usable GBA without immediate renovation”, and used this lower square footage in his sales comparison approach, assigning no value to the remaining 61,268 square feet. (See Taxpayer Exhibit No. 3, p. 20.)

The board finds that although the remaining 61,268 square feet are in “poor” or “fair” condition and would likely require fairly major renovations and repairs prior to occupancy, this portion of the Property is likely to contribute some value, albeit not to the same extent at the 72,309 square feet that is available for immediate occupancy. Using its judgment and experience, the board finds it is reasonable to apply a 10% factor to this additional 61,268 square feet of space in need of renovation and repair for valuation purposes, resulting in an effective size of 80,000 square feet [72,309 square feet +(61,268 square feet x 10%), rounded].

The board next considered the evidence regarding how much of the 110 acres on the Property is required to support the existing improvements and how much is “excess” or “surplus” land.<sup>1</sup> The board finds the Snow Analysis more credible in this respect than the Toumpas Appraisal. Mr. Snow concludes: “The improvements are on roughly 10 acres and the remaining [acreage] is surplus land,” attributing a value of \$2,000 per acre to the surplus land. (See Taxpayer Exhibit No. 2, second page, consisting of Mr. Snow’s transmittal letter to the Taxpayer.) The board therefore finds the primary developed site consists of 10 acres and the Property has 100 acres of surplus land (with an estimated value of \$2,000 per acre).

Next, the board reviewed all of the sales presented by the Taxpayer in the Snow Analysis and the Toumpas Appraisal, noting the parties’ disagreements regarding which sales were truly comparable and which should be discounted or ignored (for the reasons summarized above). The board finds the most meaningful indication of value can be derived from one comparable sale in both the Snow Analysis and the Toumpas Appraisal: 9 Great Falls Avenue in Rochester, which

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<sup>1</sup> The Snow Analysis used 104,003 square feet on 10 acres and valued the “excess land” at \$2,000 per acre. The Toumpas Appraisal used 72,309 square feet on 40 acres and valued the “surplus land” at \$1,800 per acre.

sold in June, 2011 for \$800,000.<sup>2</sup> (See Taxpayer Exhibit No. 1, p. 5 and Taxpayer Exhibit No. 3, p. 32.) This property consists of a 5.2 acre site improved with a 73,618 square foot industrial building, indicating an unadjusted price per square foot of \$10.86. Finding no adjustment for time of sale was warranted, the board applied adjustments for the Property's inferior location, condition and utility<sup>3</sup> and concludes this sale, properly adjusted, provides a reasonable market value indication of approximately \$8 per square foot for the Property's improvements and 10-acre primary site. Consequently, the board estimated the market value of the Property based on the following calculations:

80,000 square feet of X \$8 per square foot =	\$640,000
100 surplus acres X \$2,000 per acre =	<u>\$200,000</u>
Total Market Value of the Property =	\$840,000

After adjusting the Property's market level of \$840,000 by the level of assessment in each year under appeal, the board finds the property assessments to be \$910,600 (for tax year 2012) and \$902,200 (for tax year 2013). Consequently, the appeals are granted.

If the taxes have been paid, the amount paid on the value in excess of \$910,600 (for tax year 2012) and \$902,200 (for tax year 2013) 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 2013 assessment (\$902,200) for subsequent years. RSA 76:17-c, I and II.

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<sup>2</sup> Mr. Snow and Mr. Toumpas also both used the sale of 56 Davidson Drive in Farmington. The board did not place any weight on this sale as the Town raised credible concerns regarding the sales price as an indication of market value as it was sold as the result of a bankruptcy.

<sup>3</sup> Although neither Mr. Snow nor Mr. Toumpas utilized an adjustment for utility, the board finds it appropriate as the Property consists of 12 buildings of varying size, condition and construction characteristics, which is inferior to the comparable sale that is a single structure which is more adaptable to typical industrial uses and more acceptable in the market.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board’s decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board’s denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Albert F. Shamash, Member

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Christopher Snow, Property Tax Advisors, Inc., 56 Middle Street, Portsmouth, NH 03801, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Barnstead, P.O. Box 11, Center Barnstead, NH 03225; and R.B. Wood & Associates, 116 Fort Ridge Road, Alfred ME 04002, Contracting Assessing Firm.

Date: 5/26/15

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Anne M. Stelmach, Clerk