

**EIP Ocean Road, LLC**

**v.**

**Town of Greenland**

**Docket Nos.: 26744-12PT/27494-13PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2012 assessment of \$18,399,600 (land \$2,712,000; improvements \$15,687,600) and the 2013 assessment of \$16,789,900 (land \$2,712,000; improvements \$14,077,900) on Map R20/Lot 8, 150 Ocean Road, a distribution warehouse consisting of a total of 367,166 square feet on 33.4 acres of land (the “Property”). For the reasons stated below, the appeals for abatement are granted.

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

The Taxpayer argued the assessments were excessive because:

- (1) the Taxpayer is a real estate investment company and the successor to a related entity (Equity Industrial Greenland LP) that purchased the Property in May, 2009 at a price (\$17,925,000) not reflective of its fee simple market value because it was a sale/leaseback transaction that also included a “Guaranty” of rents for a five year period (see Taxpayer Exhibit No. 12) with the owner/occupant of the Property (NIKE, Inc.);
- (2) the April 12, 2013 Market Analysis Report prepared by Christopher Snow (admitted as Taxpayer Exhibit No. 1, hereinafter the “Snow Appraisal”), utilizing both the sales comparison and income approaches to value, estimates the Property had a market value of \$12 million as of April 1, 2012;
- (3) the April 2, 2014 Real Estate Appraisal prepared by Stephen H. Berg, MAI, SRA, of Sargent Consulting, Ltd. (admitted as Taxpayer Exhibit No. 2, hereinafter, the “Berg Appraisal”), placing “sole weight” on the sales comparison approach, estimates the Property had a market value of \$11.8 million as of April 1, 2012 and \$12.1 million as of April 1, 2013;
- (4) the Snow and Berg Appraisals reach reasonably consistent market value conclusions and are the best evidence of the value of the Property in tax years 2012 and 2013;
- (5) the higher sale prices reflected in the Property’s May, 2009 (\$17,925,000) and September, 2012 (\$18,399,600) sale transactions do not reflect market value for several reasons, including the fact the first transaction was a sale/leaseback with a “Guaranty” of above-market rents by the seller and the second transaction was a transfer between related entities; and
- (6) the assessments should be abated based on a market value of approximately \$12 million in each tax year.

The Town argued the assessments were proper because:

- (1) the Town performed a revaluation in tax year 2013;
- (2) the Property has had a good occupancy history over the long term and is in a very good location, close to an interstate highway (I-95);
- (3) the Real Estate Appraisal prepared by Stephen G. Traub, ASA, of Property Valuation Advisors (admitted as Municipality Exhibit A, hereinafter the "Traub Appraisal"), utilizing the sales comparison and income approaches to value, estimates the Property had a market value of \$17,265,000 as of April 1, 2012 and \$17,500,000 as of April 1, 2013 and is the best evidence of the market value of the Property in each tax year; and
- (4) the appeals should be denied.

The board held a consolidated hearing of these appeals on June 17, 2015. The parties did not dispute the level of assessment in the Town was 104.2% in 2012 and 96.9% in 2013, the median ratios computed by the department of revenue administration. The Taxpayer filed its "Trial Memorandum" and the Town filed its "Post Hearing Memorandum" on June 25 and 26, 2015, respectively.

### **Board's Rulings**

Based on the evidence presented, the board finds the Taxpayer met its burden of proving the Property was disproportionally assessed in each tax year and finds the most reasonable indication of the market value of the Property was \$14.7 million in tax year 2012 and \$15.1 million in tax year 2013. These market value findings (after application of the respective 104.2% and 96.9% levels of assessment) result in abated assessments of \$15,317,400 for tax year 2012 and \$14,631,900 for tax year 2013. The appeals are therefore granted for the reasons discussed below.

As the parties recognize, a proportional assessment in each tax year must be based on a reasonable estimate of market value 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, 368 (2003). In arriving at a proportional assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

The Property is a large, regional “distribution” warehouse facility consisting of 367,166 square feet, benefiting from more specialized improvements (higher ceiling heights, more loading doors, etc.) than a conventional, smaller warehouse facility. The parties agree the Property is in a good location with convenient access to I-95 and proximity and access to an interstate is of importance for a warehouse distribution facility of this type. The board finds these factors enhance the value of the Property.

The Property was purchased in August, 1988 by NIKE, Inc. and has been occupied as a distribution warehouse by several NIKE subsidiaries (Bauer Hockey U.S.A., Inc. and Cole Haan, subsequently sold to another company<sup>1</sup>). The acquisition, development and occupancy of the Property are detailed in Taxpayer Exhibit No. 7, the Berg Appraisal (p. 5) and the Traub Appraisal (p. 41), as well as in the Trial Memorandum (p. 1). Because of the “heavy influence from easements, wetland buffers and flood zone,” the developable area is “about 20 acres” of the 33.4 acre site. (Trial Memorandum, p. 1.) The warehouse building on the Property was constructed in 1980 with an addition constructed in 1996 and consists of approximately 85% warehouse and 15% office. (Id.)

The board has reviewed all of the market value evidence presented, consisting chiefly of the two appraisals relied upon by the Taxpayer (the Snow and Berg Appraisals) and the one

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<sup>1</sup> Cole Haan was a NIKE subsidiary until it was sold in February, 2013 to another company (“Apax”) and, according to the Berg Appraisal (p. 5), Cole Haan took over the “entire building” as of June 1, 2013 with a five year lease.

appraisal relied upon by the Town (the Traub Appraisal), as well as the discussion of these appraisals in the Trial Memorandum and the Post Hearing Memorandum. All three appraisals develop the sales comparison and income approaches to value the Property, but differ by about \$5.5 million in their value conclusions (approximately \$12 million in the Taxpayer's two appraisals and approximately \$17.5 million in the Town's appraisal).

In making market value findings, the board applies its "experience, technical competence and specialized knowledge" to the evidence presented. See RSA 71-B:1; and former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it"). Further, in making findings where there is conflicting evidence, "judgment is the touchstone." See 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, 115 N.H. at 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994). 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).

The board finds the most likely buyer of a warehouse distribution facility of this large size (367,166 square feet) will be an owner/occupant and such a buyer is likely to place predominant weight on the sales comparison approach rather than the income approach. Cf. Traub Appraisal, p. 95: "since buildings of this size are often bought for owner occupancy and not for rental, the [sales comparison] approach is an approach to which the market participants

would give weight.” Mr. Berg, for his part, states he placed “sole weight” on the sales comparison approach in arriving at a value conclusion for the Property. (See Berg Appraisal, p. 69.) The board finds the income approach is also less reliable to estimate the value of the Property because most of the comparable rentals presented as evidence reflect listing or “asking” prices and most are for buildings much smaller in size than the Property. [See Snow Appraisal, pp. 41-47; Berg Appraisal, pp. 60-61 (noting a “dearth of information”); and Traub Appraisal, pp. 58-61 (noting “limited rental activity in the 200,000+SF warehouse/industrial” market).]

Altogether, the three appraisals present a total of 10 sales as comparables to the Property. For these sales, the range of unadjusted values is \$21.69 to \$51.07 per square foot in the Snow Appraisal (p. 38), \$22.60 to \$51.08 per square foot in the Berg Appraisal (p. 57) and \$30.17 to \$55.86 per square foot in the Traub Appraisal (p. 90).

Taking principally into consideration the size of the Property (much larger than any of the New Hampshire sales presented as comparables) and its very good proximity and access to an interstate highway (I-95), the board finds the best value indications arise from two Massachusetts sales located close to I-495 in the Greater Boston area: 325 Turnpike Road in Southborough; and 45 Commerce Way in Norton. All three appraisals use the Southborough and Norton sales. (See Snow Appraisal, p. 38; Berg Appraisal, pp. 57-58; and Traub Appraisal, p. 90) The Southborough property is very similar in building size (368,500 square feet) to the Property (367,166 square feet), has somewhat more land (51.5 acres compared to 33.4 acres) and sold in November, 2012 for \$15 million, indicating a price per square foot of \$40.71. The Norton property is somewhat larger (approximately 404,000 square foot building with 73.61 acres of

land) and sold in June, 2011 for \$20.6 million, indicating a price per square foot of approximately \$51.<sup>2</sup>

Using its judgment and experience, first taking into account the fact industrial land and construction costs in the Greater Boston area are likely to be higher than in New Hampshire due to density, availability and other factors, while also considering the long-term occupancy history of the Property and its relative age and condition, the board finds the most reasonable market value indication for the Property is \$40 per square foot in 2012, which results in a market value finding of \$14.7 million, rounded (367,166 square feet x \$40 = \$14,686,640). Applying Mr. Berg's estimate of a three percent appreciation factor (see Berg Appraisal, p. 56), the board finds the most reasonable market value indication for 2013 is \$15.1 million, rounded.

As a test of reasonableness of these findings, the board reviewed and modified certain calculations in the respective income approaches presented in the Snow, Berg and Traub Appraisals. Notwithstanding their disagreements regarding market rent and the appropriate vacancy and collection factor, Mr. Snow and Mr. Traub each estimated stabilized effective gross income of about \$1.5 million. (Cf. Snow Appraisal, p. 60; Traub Appraisal, p. 67; and Taxpayer Exhibit No. 14.) Deducting an estimated \$160,000 for net expenses and reserves (below the aggregate amounts estimated by both Mr. Snow and Mr. Berg, but higher than the amounts estimated by Mr. Traub) results in a net operating income ("NOI") of \$1,340,000 (very close to Mr. Snow's own estimate of "1,338,974"; see Snow Appraisal, p. 60; and Taxpayer Exhibit No. 14). Applying a rounded 9% tax-adjusted capitalization rate [close to Mr. Berg's "8.92%" rate for 2012 (see Berg Appraisal, p. 68), but higher than Mr. Traub's "7.826%" rate and lower than

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<sup>2</sup> According to the Taxpayer's representative, one motivation for the sale of the Norton property at this price was the buyer's intention to "immediately add 150,000 [square feet of building space] as there was expansion capability and land to do so." (See Trial Memorandum, p. 9.)

Mr. Snow's "10.67%" rate (see Taxpayer Exhibit No. 14)] results in a value indication of \$14.9 million, rounded, which is supportive of and consistent with the board's market value findings using the sales comparison approach (\$14.7 million and \$15.1 million in 2012 and 2013, respectively).

As a further test of reasonableness, the board considered the probative value, if any, of the 2012 and 2009 transactions noted above which transferred ownership of the Property. On the one hand, and in light of the limited evidence presented, the board could place no weight on the 2012 stated price ("18,399,600") because this transaction transferred title between related entities and, according to the Trial Memorandum (p. 4), this price was simply "the assessed value at that time." On the other hand, the board finds some consideration can be given to the 2009 sale price (\$17.925 million), reasonably adjusted. The board finds merit in the Taxpayer's arguments that this price is not reflective of the fee simple value of the Property because it was the result of a sale/leaseback with highly favorable financing terms given as buyer inducements, including a five-year rent Guaranty from NIKE at above market rents and a high indicated "Cap Rate." (See Trial Memorandum, pp. 3-4 and 8); and Taxpayer Exhibit Nos. 8 and 12.] Applying a 15% to 20% discount factor to the sale price because of these special circumstances results in value indications (\$14.3 million to \$15.2 million, rounded) that bracket the board's market value findings for 2012 and 2013 (\$14.7 million and \$15.1 million, respectively) and are therefore supportive of those findings.

For all of these reasons, the board finds the Taxpayer met its burden of proving disproportionality and the appraisal and other evidence presented supports a conclusion the market value of the Property was \$14.7 million in tax year 2012 and \$15.1 million in tax year 2013. Adjusted by the respective levels of assessment (104.2% and 96.9%), the assessments

should be abated to \$15,317,400 in tax year 2012 and \$14,631,900 in tax year 2013. The appeals are therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$15,317,400 in tax year 2012 and \$14,631,900 in 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 \$14,631,900 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

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Michele E. LeBrun, Chair

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Albert F. Shamash, 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 Greenland, P.O. Box 100, Greenland, NH 03840; and Property Valuation Advisors, 63 Hill Street, Newburyport, MA 01950, Contracted Assessing Firm.

Date: 7/21/15

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Anne M. Stelmach, Clerk