

Real Estate Consultants of New England, Inc.

Temple N.H. Zoning Board of Adjustment
c/o Attorney Christopher Drescher
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March 24, 2021

RE: Peer review of opinion by
Brian C Underwood, CAE, FRICS
Special exception request
Bens Pure Maple Products, LLC
Map 2 Lot 17
Webster Highway and N.H. Route 101
Temple New Hampshire.

Dear Mr. Drescher,

I am providing this letter to assist the Temple N.H. Zoning Board of Adjustment (Board) with their deliberations relative to the proposed development of the above site. To assist the Board, I will review three letters prepared by Mr. Underwood that were submitted in support of the application. The letters focus on the question of value loss to surrounding property values.

The Board has expressed a lack of confidence in the amount and quality of the evidence provided to date. Seeking to be better versed on this topic, the Board minutes express the desire for more information and explanation of the data and analysis done by Mr. Underwood.

To perform this review, I have done the following:

- Review each of the three Underwood letters carefully and report what I find to be reasonable and what may be unclear or limited in relation to their stated purpose.
- Looked at the town development and land use so I can familiarize myself with the area.
- Offer suggestions regarding the type of data, research and analysis that might give the Board a greater comfort level i.e., understanding and confidence during their deliberations.

This letter is written with the understanding and intention that it is to be use only in conjunction with the request before the Temple N.H. Zoning Board of Adjustment. The information contained herein is specific to the needs of the Board and for the intended use stated in the letter. Parties using this for any purpose other than that stated herein must assume full responsibility and do so at their own risk. I cannot accept any responsibility for any damages suffered by third parties because of the unauthorized or inappropriate use of this letter.

It has been prepared for the exclusive use of the Board identified herein. By reason of this letter, I am not required to give further consultation, testimony, depositions, or be in attendance for any legal proceeding with reference to this matter unless prior arrangements have been previously made.

Information contained herein that has been obtained from third parties is assumed to be correct and reliable. The opinions, and conclusions herein, are my personal, impartial, and unbiased professional analyses, opinions, conclusions, and recommendations.

I have no present or prospective interest in the property that is the subject of this letter, and I have no personal interest with respect to the parties involved. I have no bias with respect to any property that is the subject of this letter or to the parties involved. My engagement in this assignment was not contingent upon developing or reporting predetermined results.

My compensation for completing this assignment is not contingent upon the reporting of a predetermined conclusion that favors the cause of the client, the attainment of a stipulated result, or the occurrence of a subsequent event related to the intended use of this letter.

Underwood letter 11/12/2020

- This is the original letter.
- Paragraph 3 - Describes the proposed facility to be located at the corner of Rte. 101 & Webster Highway. It also explains that there are few mixed-use properties along Webster highway that include the existing Ben's Pure Maple Syrup Products facility and the Connolly Brothers Dairy Farm.
- Paragraph 4 - States the proposed use at the Rte. 101 location is consistent with other commercial uses found along Rte. 101.
- Paragraph 6 - States the relocation of Ben's business to the corner of Rte. 101 "effectively eliminates any additional traffic from the proposed expansion and reduces the existing traffic volume on Webster Highway past other residential properties..."

LeMay comment: Relocation to the new site "...eliminates any additional traffic from the proposed expansion." seems to indicate that the existing Ben's facility will remain in place after the new facility is built. If this is the case, a reasonable person could anticipate an increase in traffic on Webster Highway from Rte. 101 to the original site as the business grows. This is not clear. If, on the other hand, the existing facility discontinued, then it seems reasonable that traffic near the original facility should decrease.

- Paragraph 8 – *The highest and best use discussion states "In the case of the immediate neighborhood, if the proposed maple syrup facility is approved, the highest and best use of the surrounding residential properties will not change: therefore, there is no indication from a highest and best use analysis that there would be any diminution in value."*

LeMay comment: This is a correct statement but by itself does not fully answer the value loss question. Value loss can occur without a change in the highest and best use. Value gain can also occur if Highest and Best Use changes to a more profitable use.

- Paragraph 9 – *The report examines sale data (referred to as statistical data) “...for properties along Webster Highway and Old Revolutionary Rd. in Temple to test for marketing time, discounted asking prices, or other adverse conditions due to their location near the existing Ben’s Maple Products and the Connolly Dairy Farm, just up the road.”*

LeMay comment: To examine data for “marketing time, discounted asking prices, or other adverse conditions due to their location...” is correct and can be expanded to include analysis of price differences between home sales having a perceived negative influence with similar home sales without said influence. This would bolster the analysis presented.

- Paragraph 10 page 3 – *Concedes that “...the data is not completely conclusive; it does provide further support that agricultural / commercial establishments along Webster Highway do not adversely impact property values.”*

LeMay comment: This conclusion relates to the properties within the small study area of Webster Highway and Old Revolutionary Rd. in the vicinity of the existing Ben’s facility and the Connolly Dairy Farm. The existing and proposed buildings are quite different in location, size, design, and use making them not comparable; they would not be used together in a sales comparison approach. The data shows that the existing Ben’s facility and the Connolly Dairy farm do not cause diminution in surrounding property values. These two businesses are over 1,000 feet from the site of the proposed new retail building. They are not relevant or like the proposed building at the new location question.

LeMay comment: Because of the above, the conclusions in Letter 1 page 3 are not supported by the materials presented. I believe that this is the reason that the Board is struggling with the opinion letter and has asked for more data.

Underwood letter 1/27/2021

- This is the second letter intended to supplement the first letter regarding the data provided, and the original overall opinion. It also discusses additional information received by the ZBA after his testimony.
- Paragraph 3 page 1- Presents Section 13A, 3 of the Temple zoning ordinances.

LeMay comment: The first paragraph of Section 13A, 3 of the Temple zoning ordinance states: “The proposed use shall not adversely affect the value of adjacent property.”

- Paragraph 4 page 1 - *Here an interpretation of the term “adjacent property” is given by Mr. Underwood and he concludes “It is the adjacent or abutting properties that have a common end point or border with the subject property that are in question.”*

LeMay comment: A view of the property tax map shows that (ignoring roads) seven (7) lots 2-14,2-18,2-17-1,2A-27-2,2-16,2-282-16,2-15-2 can be considered to have a “border with the subject”. Of these lots, the owner of subject lot 2-17 also owns 2-14,2-18,2-17-1. Of the 10 sales provided in Mr. Underwood’s data set, only the sale at 52 Old Revolutionary Rd. lot 2-15-2 has a common physical border with the proposed site.

- Paragraph 11 page 3 “Regardless if there is limited data or an overabundance of data, the fact remains that the ZBA has not received any credible evidence or expert opinion to support that there would be an adverse effect on adjacent property.”

LeMay comment: This does not prove anything. The applicant has the burden.

Underwood letter 2/26/2021

- This is the third letter intended to supplement the prior letters regarding the data provided, and the original opinion.
- Paragraph 6 Page 2 – “There was concern that because of the lack of evidence specific to Temple this somehow precludes me from providing an expert opinion. It is correct that the data for similar agricultural type establishments in Temple is limited to non-existent. However, I am fully confident in my opinion concerning the impact on surrounding property values based on 29 years of experience and as a former ZBA chairman...My purpose in researching and citing sales data was to evaluate whether the data contradicts my opinion: it does not.”

LeMay comment: There is no doubt that Mr. Underwood is satisfied that the data does not contradict his opinion. However, the Board does not have the same confidence. The Board members do not have Mr. Underwood's background; this is probably why they are asking for more data and more detailed explanations.

In residential communities like Temple, it is often impossible to find an existing example of a commercial enterprise like the one proposed. It is reasonable for the Board to expect to see sale data and examples from Temple used to support an expert opinion, in this case it is not feasible. This is the crux of the disconnect between what the appraiser has done and the Board's expectations.

Comments

Randall Bell, MAI in his work Real Estate Damages: An Analysis of Detrimental Conditions¹, makes the following statement:

“The most significant issue in assessing the consequences of a detrimental condition on residential property values is the general predisposition of people to believe that detrimental conditions affect residential property values...*If market value is going to be affected, then this particular attribute has to be given enough weight in the decision process of buyers and sellers to have a material effect on the price.* In other words, the detrimental condition issue must be important relative to all the other variables that influence the home purchase decision, (public safety, quality of schools, access to employment, church to synagogue, or friends and relatives, special features of the home, affordability, etc.)”

Mr. Bell’s statement succinctly explains why the assumption that value loss always occurs simply because property owners disapprove of the introduction of a new attribute into a neighborhood is not an absolute fact. Property owners do not determine if an attribute affects their property value, Buyers do. Buyers are the *market makers*; only through their buying decisions can it be determined if and to what extent the presence or absence of a neighborhood attribute influences value.

For a Zoning Board of Adjustment, the question is.

“Will the granting of the requested approval impact the value of surrounding properties?”

Unfortunately, there are no sales in Temple that can be found to develop residential / commercial examples to answer this question. In this situation, it is reasonable to research communities along Rte.101 to identify sales of residential properties that have some level of exposure to a commercial property.

¹ Bell, Randall, Real Estate Damages: An Analysis if Detrimental Conditions, Chicago: Appraisal Institute 1999, page 38.

The sales needed are those that can be analyzed to see if a commercial activity on Rte. 101 can affect surrounding residential property values. No two properties are alike, it is highly unlikely that a property identical to the proposed building will be found.

Sale data from other communities can be used to determine the percent of impact (is any exists) that a commercial use has on a residential sale. The purpose #1) determine was there an impact (positive or negative)? #2) how great was the impact (percent)? The purpose of this type of analysis to develop a basis for estimating the percentage adjustment for impact on value.

After sales have been found they should be verified with a party related to the transaction (the Buyer or the listing or selling Broker). During the sale verification the following question should be asked: *“Did the commercial activity have any effect on the listing or sale price of the home?”* The answer provides insight into the minds of the purchasers and a basis from which a conclusion can be made as to whether the commercial property had an influence on the final sale price.

Analysis of these commercially proximate sales can/may include a comparison to the prices paid for comparable homes having no commercial proximity.

If data is limited another possible test is to check the sale price of a commercially proximate home to the median price for similar homes having no commercial proximity. If the price paid falls within a reasonable percentage of the median, and the sale verification indicates no influence, it can be concluded that no adverse influence is indicated.

This type of evidence could bolster Mr. Underwood’s position and likely give the Board more confidence during their deliberations.

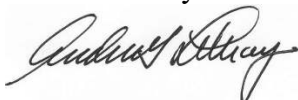
Suggestion

The following areas can be considered as possible sources of some useful sale data. All have commercial businesses near residential land uses. Below is the general location and business name. It is not necessary to check all the locations however, if two or three examples can be developed, this should give the Board increased confidence about the opinion provided about this question.

- Bedford: Rte. 101- Walgreens,
- Temple: Rte. 45 South of Rte. 101 Intersection – Wheeland’s Auto & Truck service
- Dublin: Rte. 101 & 137 – Citgo. Rte. 101 In center of town, Yankee publishing & AVA Restoration services
- Wilton: Rte. 101 & 131 – Northeast Performance Diesel, House by the side of the road Convenience CTR.
- Marlborough: Rte. 101 (Main St.) – Cheshire Fence, Streeter’s Treasure Hunting Supplies, Cheshire Foreign Auto services, Marlborough Country Convenience store & Gas, Muse gifts & books, Chickadee Bakery, Mother’s Hardware, Getty gas.

It is my hope this material proves helpful to the Board in this matter.

Sincerely



Andrew G. LeMay CG-NH#8