

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE ASSESSMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **NEW DAWN CENTRE INC. (formerly New Dawn Centre for Social Innovation Inc.)** from a decision of the Nova Scotia Assessment Appeal Tribunal dated November 16, 2022, respecting property located in the Cape Breton Regional Municipality

BEFORE: Richard J. Melanson, LL.B., Member

APPELLANT: **NEW DAWN CENTRE INC.**
(formerly New Dawn Centre for Social Innovation Inc.)
John Whalley, Vice-President

RESPONDENT: **DIRECTOR OF ASSESSMENT**
Robert W. Andrews, Counsel

HEARING DATE: July 30, 2024

DECISION DATE: **October 24, 2024**

DECISION: The appeal is denied.

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I INTRODUCTION

[1] The appellant, New Dawn Centre Inc. (formerly New Dawn Centre for Social Innovation Inc.) (New Dawn) is a corporation, operating on a not-for-profit model, which owns a property located at 37 Nepean Street, Sydney, in the Cape Breton Regional Municipality (CBRM). New Dawn acquired the property in 2013. There are two structures on the property. One structure is the former Holy Angels High School. It houses a mix of commercial tenants, only a few of which pay market rent. The second structure was a former convent. It was substantially renovated from 2017 through 2020 and houses the Eltuek Arts Centre. Eltuek tenants do not pay market rent.

[2] New Dawn appealed a decision of the Nova Scotia Assessment Appeal Tribunal (NSAAT) dated November 16, 2022. The NSAAT decision related to the 2022 assessment year and confirmed the assessed value of \$4,850,000 established by the Director of Assessment. The Board notes that most of the Director's assessment functions are performed by the Property Valuation Services Corporation (PVSC), a special purpose corporation established by legislation for this purpose.

[3] New Dawn says that the assessed value is too high because the Director relied almost exclusively on the cost approach. The cost approach to valuation involves determining the underlying land value and adding the depreciated replacement cost new of the structures on the land. The Director's evidence indicated a market value of \$4,946,000 using this approach. New Dawn submits this is not appropriate because two-thirds of the substantial Eltuek renovation costs, of over \$15.7 million, were paid by public funding. New Dawn says the income approach should be used for a commercial property. The income approach is based on reviewing revenues, expenses, and vacancy rates for

a property to derive net operating income. A capitalization rate is applied to the result to arrive at market value.

[4] The Director's evidence included an income valuation approach in this proceeding. This evidence indicated a market value of \$4,624,000 using this approach. The appellant submits the Director has normalized income and expenses, from derived market data, because of the not-for-profit nature of its enterprise. New Dawn says this is not appropriate and unfairly penalizes such entities, resulting in them becoming potentially unsustainable. This situation arises because of the ensuing high tax burden, when combined with actual rents that are insufficient to pay them. New Dawn argues that an income approach using actual rental income and expenses should be used to determine its property's market value and this would lead to a lower assessment.

[5] In response, the Director submits the status of the owner of the property does not impact its assessed value. The Director says the assessed value of a property is based on what a willing purchaser will pay to a willing buyer in the market. Issues about the impact of real property taxes on not-for-profit enterprises are a matter of tax policy that are addressed through other parts of the *Assessment Act* and the *Municipal Government Act (MGA)*. Because of the nature of New Dawn's enterprise, the Director says the property's actual rental income does not reflect the market value of the property to a third-party buyer. The Director's expert evidence indicates that in the income approach, when considering what a third-party buyer will pay, it is appropriate to adjust potential future rents and expenses to more closely match comparable rental properties.

[6] The Director's evidence also included a direct comparison approach. This involves looking for similar properties that have sold in the marketplace during the

relevant period to derive a market value. With this approach, the Director's evidence showed a market value of \$4,963,000. New Dawn's main issue with this evidence appears to be that the chosen properties were not sufficiently like the subject property and that they were not operated by not-for-profit enterprises.

[7] While this matter raises interesting issues about not-for-profit entities, in the final analysis, this case turns primarily on the failure of the appellant to present sufficient evidence, to establish on the balance of probabilities, the extent to which, if any, the market value of the property should be lowered.

[8] New Dawn presented no expert evidence of its own that established a basis for determining the market value of the property. In essence, New Dawn submitted that the income approach should be used and that its actual rental and expense data should be plugged into the Director's expert evidence income approach analysis to derive a market value.

[9] On the other hand, the Director has provided expert evidence that provides market value estimates based on three recognized approaches to property valuation. They all produce relatively similar results that support the NSAAT's decision on market value. New Dawn has not provided sufficient evidence to establish a lower valuation.

[10] Even if the Board found that the income approach should be used, the Board disagrees that the exercise suggested by New Dawn would establish the market value of this property. That is because the income approach seeks to establish the present value of future income. While it is arguable existing rents can play a role in the calculation, their impact on market value depends on how they relate to potential future rents over an investment time horizon. There are several factors that could require

adjustments to rents and expenses discussed in more detail later in this decision. These factors could even lead to using a different type of approach than used by the Director's expert. Therefore, proceeding as suggested by New Dawn would not lead to a decision that can be supported in principle or by the evidence.

[11] The appellant has, therefore, not met the burden of proof to succeed in this appeal. Accordingly, the appeal is dismissed.

II ISSUES

[12] The only issues before the Board are whether New Dawn has shown, on the balance of probabilities, that the assessment of the property for the 2022 taxation year should be less than \$4,850,000 as determined by the NSAAT and, if so, how much less?

III BACKGROUND

[13] This is an appeal from a NSAAT decision brought under the *Assessment Act*, R.S.N.S 1989, c.23 (*Act*). The NSAAT confirmed the Director's assessed value for the property in the amount of \$4,850,000 for the 2022 taxation year. There are two relevant dates used to establish the assessed value. The first is the base date. For the 2022 taxation year, the market value of the property must be determined using a base date of January 1, 2021. In addition, the valuation exercise considers the physical characteristics of the property as of the state date, which in this case is December 31, 2021. In other words, after establishing a market value as of January 1, 2021, the Director must assess whether there have been any alterations throughout the ensuing calendar year that might impact the market value.

[14] New Dawn is incorporated under the laws of Nova Scotia. John Whalley is a Vice-President of New Dawn. He was the appellant's only witness at the hearing. Along with the Notice of Appeal and the NSAAT decision under appeal, he pre-filed a presentation [Exhibit N-3] that included documentary evidence and submissions. This included a valuation report prepared by Nancy LeBlanc-Arsenault, AACI, P.App. Ms. LeBlanc-Arsenault is a PVSC assessor. She prepared a valuation report as part of the Director's case before the NSAAT. In pre-hearing correspondence, Mr. Whalley confirmed he would not be calling Ms. LeBlanc-Arsenault as a witness. Mr. Whalley also filed assessment and revenue information for three selected not-for-profit commercial properties, comparing them to New Dawn's situation.

[15] Robert W. Andrews, Senior Legal Counsel with PVSC, represented the Director. He called Mathew J. Whittleton, B. Comm, BBRE, AACI, P. App., as his only witness. Mr. Whittleton is a Director, Commercial Valuation Standards and Portfolio Relations, with PVSC. He prepared two reports, both filed on July 2, 2024. The first report was a response to issues raised in New Dawn's appeal. The second report was entitled Market Valuation Report - Commercial.

[16] Mr. Whalley described New Dawn as a not-for-profit organization that sought to create an arts centre in a relatively low-income community. The company purchased the property at 37 Nepean Avenue in Sydney, Nova Scotia in 2013 for \$250,000. The property was the site of the former Holy Angels High School and a former convent. The location of the property is shown in a site plan reproduced below:

SITE PLAN



[Exhibit N-5, p.13]

[17] The property is also depicted in the aerial views reproduced below:



East Facing



West Facing

[Exhibit N-5, p.8]

[18] The former high school, now known as the New Dawn Centre, was converted into rental space leased by a variety of tenants. The evidence establishes that most of these tenants do not pay market rent. The goal appears to be to establish a cultural hub where artists and organizations are provided affordable rent. That said, there were tenants in 2021, such as the Nova Scotia Community College, which did pay market rent. The idea was to generate some profit from these tenants to help offset the costs associated with below market affordable rents.

[19] Extensive renovations, costing more than \$15.7 million, were done to the former convent, between 2017 and 2020. The former convent was converted into a modern arts centre, known as the Eltuek Arts Centre. Mr. Whalley testified that federal and provincial government departments and agencies funded more than \$10,000,000 of these costs, or approximately two-thirds of the project costs. New Dawn was responsible for the remainder. This is consistent with the financial information in Appendix A attached to the Notice of Appeal [Exhibit N-1] and reproduced elsewhere in the filings. The tenants in the Eltuek Arts Centre generally do not pay market rent for their spaces. Mr. Whalley

testified this was consistent with commitments made allowing New Dawn to obtain public funding, and the purpose of this public funding.

[20] Mr. Whalley testified that the property generates net annual income in the range of \$25,000 to \$50,000. This is consistent with some of the information provided by New Dawn to the Director showing net income of \$29,332 for 2020 (Exhibit N-3, p.57]. That said, Appendix G to Mr. Whittleton's Market Valuation Report-Commercial shows net operating losses of \$267,806.21 for 2020, also based on the information provided by New Dawn. [Exhibit N-5, p.51]

[21] The assessed value of the property has increased dramatically from \$469,400 in 2016 to \$4,850,000 in 2022. New Dawn's 2022 tax bill would have been \$253,160 at the commercial tax rate of approximately 5.2%. However, CBRM mitigated the tax impact by providing relief in the form of a grant in the amount of \$145,768. The total tax bill was \$107,392 for the 2022 taxation year. This grant was based on a CBRM Council policy established under s.71 of the *MGA*. This provision allows a municipal council to exempt property used by registered charities for charitable purposes or that perform a service a municipal council would otherwise perform. As well, the provision allows for the reduction of the tax rate to the residential rate if the property is used by a community, charitable, fraternal, cultural, recreational, educational, sporting, or religious organization. In the case of New Dawn, approximately 11% of the assessed value was deemed exempt, approximately 79% was taxed at the residential rate, and approximately 10% was taxed at the full commercial rate.

[22] New Dawn must apply to the municipality for a tax relief grant every year. Mr. Whalley described the grant process as being precarious because it is dependant on

the discretion of Council and its current views on the need to support the arts. He also said tax relief varied widely across different organizations. As well, even with tax relief, as the assessed value of the property goes up, the net amount of property tax also goes up. Given the goal of providing affordable rents, Mr. Whalley testified this will soon be unsustainable.

[23] The Board notes that in 2020, as shown in Schedule G of Mr. Whittleton's Market Valuation Report – Commercial, the property taxes accounted for approximately 13% of New Dawn's total operating expenses and were equal to 22% of its operating revenues. Except for management expenses, real property taxes account for the largest expense item in Schedule G. Unfortunately for New Dawn, as discussed later in this decision, the real property tax burden and the company's not-for-profit mission do not determine the assessed value of the property under the *Act*.

IV EXPERT EVIDENCE

[24] Mr. Whittleton was qualified as an expert in the valuation and assessment of land and improved property, including commercial property, in the Province of Nova Scotia. He was the only expert who testified in this proceeding. As noted previously, New Dawn included a valuation report prepared by Ms. LeBlanc-Arsenault as part of the Director's case in the NSAAT appeal. Ms. LeBlanc-Arsenault was not called and was not subject to questioning by the parties or the Board. New Dawn's main purpose in filing this report appears to have been to challenge the basis upon which Ms. LeBlanc-Arsenault arrived at her valuation. This impacts and limits the use the Board has made of Ms. LeBlanc-Arsenault's report.

[25] Mr. Whittleton's Market Valuation Report-Commercial provides detailed descriptions of the property, the valuation approaches he considered, the data he used, and how that data was incorporated into the valuation. Mr. Whittleton's ultimate opinion on the market value of the property is set out at the end of his report:

FINAL VALUE CONCLUSION

The preceding analysis indicates:	
Cost Approach	\$4,946,000
Income Approach	\$4,624,000
Direct Comparison Approach	\$4,963,000

The subject property has been valued for the purposes of this proceeding using the three approaches to value as stated above. Based on a full inspection of the property, the Cost Approach valuation of the property slightly differs from the published assessed value at \$4,850,000 as building sizes and obsolescence were updated. Regardless of the valuation methodology selected as most appropriate to estimate value of a property, examination of the additional valuation methodologies is valuable where feasible as a check on outcome of the valuation process and to provide additional support. An income valuation is provided herein using market area inputs. In this case, the income approach indicated a lower value than both the direct comparison and cost approaches. Given the number of assumptions that were required to complete the Income Approach and the current set-up of the income performance of the property where the tenants are on a cost recovery lease basis, usable areas are utilised and expenses are considered high, this approach was less relied upon in the reconciliation. If an income approach is to be relied upon however, the assumptions and stabilised performance herein are considered to be necessary to reflect the fee simple interest of the subject property. The direct comparison and cost approaches were relied upon equally. There is good evidence of similar type properties which have sold in the general market which provides a good indication of value. Given the cost approach and direct comparison approach were relied upon equally, the average of both approaches was used to derive the overall market value.

Accordingly, it is my opinion that the market value of the subject as of January 1, 2021 is \$4,955,000.

In accordance with the foregoing, it is my opinion that the market value of the subject property for the 2022 assessment year is:

\$4,955,000
Four Million, Nine Hundred Twenty Thousand Dollars

The 2022 assessment under appeal has a published value of \$4,850,000. Based on the foregoing analysis, the 2022 assessment is within approximately 2% of my opinion of value for the subject property and is well supported by the three approaches to value.

[Exhibit N-5, p.30]

V ANALYSIS AND FINDINGS

[26] The valuation of property is governed by s. 42(1) of the *Act*, which directs that property be assessed at its “market value,” and that taxation must “fall in a uniform manner.” The full provision states:

Valuation

42 (1) All property shall be assessed at its market value, such value being the amount which in the opinion of the assessor would be paid if it were sold on a date prescribed by the Director in the open market by a willing seller to a willing buyer, but in forming his opinion the assessor shall have regard to the assessment of other properties in the municipality so as to ensure that, subject to Section 45A, taxation falls in a uniform manner upon all residential and resource property and in a uniform manner upon all commercial property in the municipality.

[27] The appellant filed this appeal to the Board under s. 86 of the *Act*. The Board’s duties on appeal are stated in s. 87 of the *Act*:

Duties of Utility and Review Board upon appeal

87 (1) The Nova Scotia Utility and Review Board shall inquire into the matter *de novo* and shall examine such witnesses and take all such proceedings as are requisite for a full investigation of the matter.

(2) On the appeal the Board shall have all the powers of the Tribunal.

[28] Section 87(1) of the *Act* requires the Board to hear assessment appeals *de novo*. This means that the Board conducts a whole new proceeding in which the evidence before the NSAAT may or may not be presented again and new evidence may be introduced. The Board’s decision is based on the evidence submitted in this appeal, and not a result of a review of the process followed by NSAAT. The Board is not looking for errors within the reasons of the NSAAT but is looking at whether, based on the information before the Board, the NSAAT reached the right result. Therefore, NSAAT’s understanding of the issues is not an issue in the appeal.

[29] It was not clear that New Dawn fully understood the type of hearing that was being conducted. The evidence and submissions in the pre-filed exhibits consisted, in large part, of challenging the rationale of the NSAAT's decision, the evidence placed before that tribunal, and its process. That said, New Dawn's main point that the Director should use an income approach using actual rents was consistently raised in the presentation to the Board.

[30] On an appeal, the Board has all the powers of the NSAAT. In deciding the appeal the Board may confirm, reduce, or increase the valuation of the property that is subject of the appeal, or may dismiss the appeal (*Act*, s. 74(1)(a)-(b)).

[31] The burden is on the appellant to prove that the Director's assessment of the property was wrong, and what it should be. This is founded on the common law principle that the person "who asserts, must prove." As stated by the Court of Appeal in *Nova Scotia (Director of Assessment) v. Wandlyn Inns Ltd.*, 1996 CanLII 80 (NSCA), 1996 NSCA 80 at para 73: "The burden was on the taxpayer to prove that the Director's assessment was incorrect and to prove the extent to which the Director erred." In that case, the Court said that the burden is also on the taxpayer to show that taxation did not fall in a uniform manner.

[32] The market value of a property is the price if sold "in the open market by a willing seller to a willing buyer." In *Wandlyn Inns*, the Nova Scotia Court of Appeal said it was the price that could be obtained "...in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest...." *Wandlyn Inns* also reminds us that the assessment of fair market value is an "inexact science." Justice Hallet explained that:

...the value sought for assessment purposes is a product of the exercise of the opinion of the assessor, who is required to direct his mind not to an imaginary auction but to an imaginary sale between a willing buyer and a willing seller on a prescribed date.

[*Wandlynn Inns*, p.10]

[33] Ordinarily, commercial properties are valued based on the income approach. The Director appears to accept this general proposition. However, the Director says in the circumstances of this case, where most of the leases have below-market rents, or what Mr. Whittleton describes as “cost recovery leases,” the income approach is not a reliable indication of market value. In Mr. Whittleton’s opinion, there are too many adjustments that must be made to both income and expenses to place any significant weight on the income approach.

[34] New Dawn does not dispute that its operating model for the property is different than most commercial properties. In fact, the appellant highlights the not-for-profit model in opposing the Director’s approach to adjusting rents and expenses. New Dawn’s point is that the low rents impact the market value of the property and that this must be reflected in the income approach. Mr. Whalley said that any buyer seeking financing would have to present the actual rent roll and this would impact how much a financial institution would be willing to lend. In turn, this would impact the market value of the property.

[35] In Mr. Whittleton’s opinion, s.44 of the *Act* allows an assessor to adjust actual rents and expenses if they do not reflect commercial market conditions. Section 44 of the *Act* says property assessments are based on the fee simple interest “...with no reduction in value...merely because the property is subject to any lien, mortgage, lease, claim, license or any other encumbrance on title.” The status of leases as an encumbrance on title can have complexities that were not explored in the evidence. If

they are not such an encumbrance, theoretically a new owner could displace existing tenants in favour of higher rents. If the property's leases are an encumbrance on title, the wording of the provision says that a reduction in price cannot be made "merely" because they exist.

[36] In the Board's opinion, s.44 of the *Act* does not mean existing leases must be completely disregarded. When the Board questioned Mr. Andrews on this point, he agreed that other valuation principles come into play when considering existing leases. In the Board's view, it might be open to argument, particularly if backed by a qualified expert, that the existing below-market leases do have an impact on the market value a willing purchaser will pay. The Board had no such expert evidence. That said, the Board disagrees with New Dawn's proposition that, if it accepts the income approach should be used in this case, the Board can simply use the actual rents and expenses, along with the capitalization rate used by Mr. Whittleton, and base the market value on his methodology.

[37] Key to the market value analysis using the income approach is the premise that both parties are deemed to be acting in self-interest. Therefore, when assessing the price that a commercial property can command on the market, the potential buyers cannot be restricted to not-for-profit entities. It must be assumed that the buyer will attempt to maximize the income stream from the property once it is acquired. This could mean rental increases when leases are renewed. It could lead to displacing tenants who cannot afford higher rents. A new owner would also look to decrease expenses to the extent possible.

[38] As explained by Mr. Whittleton, a potential buyer also has an investment horizon within which the income potential is analyzed. He talked about a potential ten-year time horizon. Therefore, even considering current rents, the length of the terms of

the leases, and the renewal provisions, could potentially have an impact on a buyer's assessment of the quality of the investment and how much the buyer is willing to pay. The Board has none of this information. It does not have any expert evidence about how such information might factor into a market price.

[39] As well, Mr. Whittleton used a 9% capitalization rate applied to the net operating income. This net operating income was derived from potential gross rental income based on market data, adjusted for a 15% vacancy rate, along with adjusted expenses to reflect more typical market conditions. It was the extent of the adjustments that, in part, led Mr. Whittleton to choose what he said was a high capitalization rate. With different adjustments, or none at all, as suggested by New Dawn, a different capitalization rate might well be appropriate. This is a key input in the income approach and the Board has no expert evidence it can rely upon about what that rate would be in a scenario as proposed by New Dawn.

[40] The Board further notes that Schedule G of Mr. Whittleton's Market Valuation Report-Commercial shows an operating loss for 2020 if actuals are used, based on the information he received from the owner. The information in the evidence also shows operating losses for prior years. This is not necessarily surprising, given the timing of the renovation work. That said, using the actuals as reported to Mr. Whittleton, and applying the same vacancy and capitalization rates, would appear to result in the property having no value. This is not reasonable.

[41] Finally, in a discussion with the Board about the impact of using actual rents over an investment time horizon, Mr. Whittleton suggested an entirely different methodology might be used. He referenced the discounted cash flow method. It was not

discussed in any detail, and not adopted by Mr. Whittleton for the purposes of this proceeding. However, as the Board understands it, this method essentially looks at the potential cash flow over the different years in the analysis and applies a discount rate which can vary yearly over this time horizon. It is, therefore, not at all clear to the Board that Mr. Whittleton's income approach would be appropriate for the exercise proposed by New Dawn.

[42] The Board finds that deriving a market value for the property incorporating actual operating expenses and rents, even if this was appropriate (and the Board has explained why, in its opinion, it is not appropriate to simply transpose existing rents without further analysis), would result in speculation not adequately supported by evidence. This would not be a principled way of proceeding. The appellant has failed to establish a market value different than that found by the NSAAT. On this basis alone, this appeal cannot succeed.

[43] On the other hand, the Director has presented expert opinion evidence that follows valuation methodologies that are well established. The Board accepts Mr. Whittleton's opinion that the highest and best use of the property is as a multi-tenant commercial property. This reflects the Appraisal Institute of Canada's definition of the term being "[t]he reasonably probable use of real property, that is physically possible, legally permissible, financially feasible, and maximally productive, and that results in the highest value."

[44] Mr. Whittleton's direct comparison approach used three commercial properties in Sydney, one in Amherst and one in Bedford. The purpose of the exercise is to determine the price per square foot for buildings of different sizes. While there are

differences between the comparables and the subject property, the Board notes that the outliers in Bedford and on Esplanade Street in Sydney, with a significant price per square foot, were not ultimately used to establish the \$30 unit rate per square foot Mr. Whittleton applied to the rentable area for the property. The underlying land value comparables were reasonable. The appellant did not provide any comparable property analysis. Therefore, the Board is satisfied that Mr. Whittleton's Market Valuation Report-Commercial is the best evidence about the market value of the property if the direct comparison approach is used.

[45] Mr. Whittleton's cost approach uses an industry standard methodology. The underlying value of the land, estimated at \$300,200, was derived using reasonable comparable properties. The replacement cost, estimated at a combined \$13,188,697 for both buildings, was derived by inspecting the property and using Marshall & Swift, an industry standard costing manual. Site improvements for canopies and paving in the amount of \$61,141 appear reasonable. Mr. Whittleton applied a depreciation rate of 10% for the Eltuek Arts Centre and 65% for the New Dawn building. This appears reasonable given the recent renovations to the Eltuek Arts Centre and the age of the New Dawn Centre. Finally, Mr. Whittleton also applied a functional obsolescence depreciation factor because the buildings are no longer used for their original intended purpose.

[46] The Board is satisfied that the cost approach valuation of \$4,946,000 in the Market Valuation Report-Commercial is founded on a reasonable application of costing principles. New Dawn did not provide any costing information that challenged Mr. Whittleton's conclusions. The appellant's main argument was that it was not an appropriate method because of the significant funding contributions by government

entities resulting in a higher replacement cost. The source of the funding does not impact the valuation under the cost approach. Mr. Whittleton's evidence is the best evidence before the Board about the value of the building using the cost approach.

[47] Mr. Whittleton's income approach used market net rent figures derived from market data collected by PVSC in CBRM. Net rent is the most common type of commercial lease, where operating costs are assigned to tenants above the net rent amount. The net rent range was between \$8.50 and \$12.50 per square foot in CBRM. Mr. Whittleton explained that New Dawn did not have net leases, but gross leases where all the operating expenses were covered by the landlord and recovered through rents. The gross rent figures were below market rents because they only sought to recover New Dawn's costs without a provision for material profit.

[48] Mr. Whittleton used \$10.50 per square foot for the Eltuek Arts Centre and \$8.50 per square foot for the New Dawn Centre. Using the potential gross income approach, these figures are reasonable, given the respective condition of the two buildings. Applying these figures to the available space adjusted for vacancy, produced an effective gross income of \$562,169. Mr. Whittleton then looked at expenses and adjusted them to reflect the CBRM expense data because he was of the opinion that some of the New Dawn expenses were unreasonably high. Mr. Whittleton also made an allowance of 10% for non-recoverable rents.

[49] Mr. Whittleton indicated the capitalization rates in CBRM were in the range of 7.5% for Class A building, 8% for Class B buildings and 9% for Class C buildings. Mr. Whittleton chose a 9% rate to reflect the condition of the New Dawn Centre and the "operating setup and performance of the property."

[50] Property valuation involves the use of professional judgment and expertise. Given that the appellant did not provide an expert valuation report containing a professional opinion suggesting a different income approach to value, the Board is satisfied that Mr. Whittleton's evidence is the best available evidence on the market value of the property using the income approach. His conclusion follows recognised valuation principles applied in a reasonable manner. That is not to say that, if another professional opinion on valuation were before the Board, a different outcome might not be possible. The Board must decide cases on the evidence before it.

[51] The Board does have concerns that the income approach used by both Ms. Leblanc-Arsenault and Mr. Whittleton produced significantly different results. Ms. LeBlanc-Arsenault's market valuation indicated a market value of \$3,514,728 using gross revenue of \$376,578, expenses of \$112,973, net operating revenue of \$263,605, and a capitalization rate of 7.5%. Mr. Whittleton's income approach indicated a market value of \$4,624,000, using potential gross income of \$661,375, expenses of \$146,013, net operating income of \$416,156, and a capitalization rate of 9%. Mr. Whittleton testified before the Board, explained his methodology, was subject to cross-examination, and provided a more detailed and updated report. He testified in a direct and forthright manner, explaining and not deviating from the professional judgments he made. The Board has used the results of his report in coming to a determination on the income approach. The Board is also mindful that New Dawn did not propose that the Board should use Ms. LeBlanc-Arsenault's valuations and was critical of her approach.

[52] In the circumstances of this case, Mr. Whittleton indicated he did a reconciliation of the three approaches and gave more weight to the cost and direct

comparison approaches. In fact, it appears to the Board the final opinion on the market value gives almost no weight at all to the income approach. The figure of \$4,955,000 is very close to the average of the market values derived from the cost and direct comparison approaches. In any event, based on the evidence presented in this case, the Board agrees a reconciliation of approaches, as opposed to choosing only one, is a reasonable way of proceeding, when faced with a somewhat unique set of circumstances, including recent major renovations and below-market rents.

[53] Even if the Board gave equal weight to the three valuation approaches in Mr. Whittleton's report, the derived market value figure would be \$4,844,333. This is within \$6,000 of the market value determined by the NSAAT. In the Board's opinion, determining market value relies heavily on an assessor's judgment and analytical skills. This is an area of expertise that is well recognized and understood by the Board. The Board accepts that Mr. Whittleton is an experienced and well-qualified expert who applied such judgment and analytical skills. In the absence of expert evidence to the contrary, the Board is satisfied that in the unique circumstances of this case, and the way the evidence was presented, the way Mr. Whittleton did his reconciliation is acceptable.

[54] The evidence shows a reasonable basis, on the balance of probabilities, for finding that the market value of the property is not less than found by the NSAAT. The Director did not request that the Board establish a higher assessed value. Therefore, the Board confirms the assessed value for the property at \$4,850,000.

[55] New Dawn provided evidence about various comparisons between the increase in the assessed value of various types of apartment buildings, offices, retail space and industrial buildings, between 2023 and 2024. New Dawn provided evidence

about the ratio between the 2024 assessed value and 2023 revenue for the Sydney YMCA, the Cape Breton Centre for Craft & Design, Horizon Achievement Centre and New Dawn. The point of this evidence appears to be that New Dawn is not being treated in the same manner as other non-profits, potentially raising issues about uniformity of taxation.

[56] The term “uniformity” is not defined in the *Act*. Leaving aside the fact that New Dawn’s data related to years which are not part of the analysis for the 2022 taxation year, case law has held that uniformity is not determined by looking at select examples of neighbouring or similar properties. The case law supports Mr. Whittleton’s opinion, and Mr. Andrews’ submission, that uniformity is generally derived from the Generalized Level of Assessment, which is a statistical analysis, calculated using municipality-wide data on taxation of commercial properties for the base date. [see; *Morrison v. Nova Scotia (Director of Assessment)*, 2003 NSUARB 32; *Waisman (Re)*, 2024 NSUARB 50(CanLII); *Nova Scotia (Director of Assessment) v. Doucette*, 1992 CanLII 2613 (NSCA)]. The appellant presented no evidence that could be used to establish that uniformity had not been achieved in CBRM.

VI CONCLUSION

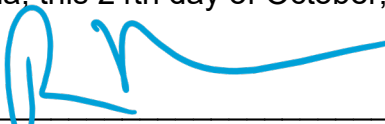
[57] The Board is satisfied that the appellant has failed to establish, on a balance of probabilities, that the assessed value determined in the NSAAT decision was wrong, nor has New Dawn established a lower assessed value for the property. Only the Director presented evidence on market value by a qualified expert. The Board accepts this evidence establishes a reasonable basis for the valuation of this property. The Board would only caution that, as with any case, if different expert evidence were available in

future assessment years, which challenged the conclusions on the acceptable methodologies and the ultimate valuation, there might be a different result. That would be entirely dependant on the way any subsequent case is presented. On the facts and expert opinion evidence presented in this case, the appellant has not discharged its evidentiary burden.

[58] The Board is aware that the not-for-profit model for commercial properties creates significant challenges for New Dawn. There is a disconnect between the goal to maintain affordable rents for the arts and the increasing value of the property on the market from which the assessed value is derived. The tax relief provisions in the *Act* and the *MGA* provide some relief but still leave not-for-profits in a tenuous position. That said, this latter aspect relates to government policy that can only be changed by government, and not this Board.

[59] The appeal is dismissed. An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 24th day of October, 2024.



Richard J. Melanson