

**Colonial Plaza Realty Trust**

**v.**

**City of Lebanon**

**Docket Nos.: 22815-06PT/23886-07PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” tax year 2006 assessment of \$9,979,500 (land \$2,837,700; buildings \$7,141,800) and tax year 2007 assessment of \$9,394,100 (land \$2,837,700; buildings \$6,556,400) on Map 114/Lot 8, a multi-tenant retail center on 7.28 acres of land at 5 Airport Road (the “Property”).<sup>1</sup> 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 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 assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

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<sup>1</sup> Subsequent to the hearing of these appeals (on August 20, 2009), the Taxpayer filed a tax year 2008 appeal (Docket No. 24276-08PT).

- (1) a summary appraisal report prepared by Wesley G. Reeks, MAI (the “Reeks Appraisal,” Taxpayer Exhibit No. 1) estimates the market value of the Property was \$6.5 million in tax year 2006 and \$6.7 million in tax year 2007, relying primarily on the income approach, but also supported by the sales comparison approach;
- (2) the Property has four rentable buildings as well as outbuildings and storage sheds and part of the retail space is on the second floor (Building #1) and part is in the (below grade) basement (Building #4);
- (3) Mr. Reeks concluded the Property is not “investment grade” and would not appeal to institutional investors, primarily because of the local rather than “national” tenant profile;
- (4) the assessments should be abated based on the market value estimates in the Reeks Appraisal, adjusted by the agreed-upon level of assessment in each tax year;
- (5) the City’s appraiser (Mr. Spring) used sales that were less comparable because of their locations (in Nashua, Portsmouth and Derry) and some had appeal to institutional investors having supermarkets and other more “credit-worthy” or “national” tenants;
- (6) Mr. Spring’s appraisal is also less credible in his application of the income approach compared to Mr. Reeks, who made more reasonable rent and other assumptions; and
- (7) the Property is entitled to an abatement.

Notwithstanding the board’s prior rulings to the contrary (see below), the City continued to challenge the Taxpayer’s standing to maintain these appeals and then argued, in the alternative, that, if the Taxpayer has standing, then the assessments on the Property should be abated somewhat, but not to the extent contended by the Taxpayer, because:

- (1) the Property has very good proximity to Interstate 89, abutting an on-ramp to it and is located at a signalized intersection (Airport Road) which leads to the airport, and has frontage and access

on both Route 12A (Plainfield Road) and Airport Road, all of which are desirable features (see Municipality Exhibit B, an aerial photograph showing these features);

(2) there are a number of ‘big-box’ retailers in this area located further from Interstate 89 and very little vacant land is available for development;

(3) a self-contained appraisal report prepared by Donald V. Spring, MAI (the “Spring Appraisal,” Municipality Exhibit A) estimates the market value of the Property was \$8.7 million in tax year 2006, relying (like Mr. Reeks) primarily on the income approach, but also supported by the sales comparison approach;

(4) Mr. Spring, in his income approach, found the Property had a higher income, a lower vacancy rate and lower expenses, as well as a lower capitalization rate than those utilized by Mr. Reeks, which collectively support Mr. Spring’s higher market value conclusion;

(5) the best evidence of the market value of the Property is the \$8.7 million estimated in the Spring Appraisal for tax year 2006 and the assessments, if abated, should be reduced to this value adjusted by the agreed-upon level of assessment for tax year 2006; and

(6) Mr. Spring did not perform an appraisal for tax year 2007, but the “subsequent year statute,” RSA 76:17-c should be applied to arrive at a proportional assessment for that year.

The parties agreed the level of assessment in the City was 93.4% in 2006 and 92% in 2007, the median ratios computed by the department of revenue administration.

### **Board’s Rulings**

After the Taxpayer completed its presentation at the August 20, 2009 hearing, the City made several motions to dismiss based upon “standing” and the “one estate or two” (“entire estate”) issues, both of which were denied for the reasons stated in the board’s prior rulings on these issues and need not be repeated here. See the board’s May 13, 2009 and July 20, 2009 Orders; cf. the City’s August 13, 2009 “Notice of Reservation of Legal Defenses.”) The board

considered the City's arguments but does not agree with its conclusions for the reasons indicated in its prior orders and the Taxpayer's points in rebuttal to the City's position. See, e.g., the Taxpayer's Objection to the City of Lebanon's Motion to Reconsider filed on June 18, 2009.

Following the hearing, the board directed one of its review appraisers, Ms. Theresa M. Walker, to research, write and file a report based upon a review of the testimony and documentary evidence presented at the hearing, including the respective appraisals of Mr. Reeks and Mr. Spring. Ms. Walker performed an informal site inspection on September 5, 2009. She filed her report (the "Walker Report") on September 28, 2009 and the parties were given ten (10) days to file any written comments to the report. The City filed its "Comments on Summary Appraisal Report" ("Comments") on October 8, 2009.<sup>2</sup>

Based on the evidence presented, including the two appraisals, the Walker Report and the Comments, the board finds the proper (rounded) assessments to be \$6,295,000 in tax year 2006 and \$6,384,800 in tax year 2007, based on (rounded) market value findings of \$6,740,000 and \$6,940,000 for the Property, adjusted by the 93.4% and 92% levels of assessment for these tax years. The appeals are therefore granted for the reasons discussed below.

As noted above, the two appraisers relied primarily on the income approach but came to market value conclusions that differed by \$2.2 million in tax year 2006 (\$6.5 million by Mr. Reeks and \$8.7 million by Mr. Spring). Mr. Spring did not make a separate estimate of the market value of the Property in tax year 2007; for that year Mr. Reeks estimated its value at \$6.7 million.

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<sup>2</sup> The board has considered the Comments and, to the extent necessary, has assimilated them in considering the Walker Report and making the board's own findings based upon the evidence presented. The Comments need not be addressed further, except to note the City is incorrect in assuming, without sufficient basis, and 'objecting' based on its supposition that: "the taxpayer's employees or representatives assisted" with what the Walker Report (at p. 2) describes as her "informal site inspection on September 5, 2009." In fact, Ms. Walker met with no one (including any employee or representative of the Taxpayer) on that day, but simply observed the Property on her own when she was in the area with a family member. The board finds no "potential prejudicial effect" of any sort occurred, or could have occurred, based on this brief visit to the Property.

The board's task is to make relevant findings to determine what are proportional assessments and whether abatements should be granted based on the evidence presented and the Taxpayer's burden of proof. In making market value findings, the board considers and weighs all of the evidence, including the respective appraisals submitted for the Taxpayer and the City, 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"). Further, in making findings where there is conflicting evidence, 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 N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

Both appraisers recognized the somewhat unusual nature of the Property, consisting of four buildings housing an amalgam of tenants anchored by the owner (LaValley's a building supply/lumber center). The City's appraiser, Mr. Spring, for example, described the Property as containing an "odd combination of properties [buildings]." See, e.g., the Spring Appraisal, p. 96; the Reeks Appraisal, pp. 45-46; Taxpayer Exhibit No. 4 (photographs); and Municipality Exhibit B (aerial photograph); cf. the Walker Report, p. 2. While the City emphasized the desirable location of the Property, near an exit to Interstate 89, the impact on value of this recognized positive attribute is offset by the limited size of the Property for an alternative commercial (so-called "big box") development.

The parties agreed the income approach provides the most reliable indication of value based upon the market data available. See, e.g., Reeks Appraisal (Taxpayer Exhibit No. 1), p. 74 (“all emphasis is placed in the income capitalization approach”); and Spring Appraisal (Municipality Exhibit A), p. 53 (income capitalization “is the best approach for properties that are purchased for an annual return on the investment . . . and is the most likely method of valuation by a potential buyer”).

While both used the income approach, there were some differences in several key assumptions each employed. The board finds both appraisers to be well qualified and experienced. On balance, however, the board placed more weight on the Reeks Appraisal, because it generally employed more credible assumptions.

Turning to the key differences, Mr. Reeks used a 5% vacancy factor, which the board finds to be more reasonable than the 3% used by Mr. Spring. While it is true the Property is almost fully leased at the present time, one major tenant (LaValley’s) accounts for over 50% of the leased space and losing this tenant would have a major impact on actual vacancy rates.

Another difference pertains to the square footage used by each appraiser. Mr. Reeks made adjustments due to the fact some of the space is second floor space and some is basement space, but Mr. Spring did not do so, resulting in an estimate of rental square footage (96,498) that was substantially higher. See Walker Report, p. 4. On balance, the board finds the adjustments made by Mr. Reeks to arrive at his rental square footage estimate (86,148) are more reasonable and supported by the evidence presented. Id. Mr. Reeks testified he physically inspected and measured the Property in arriving at this estimate.

In addition, the board finds the methodology and conclusions of Mr. Reeks in estimating market rents to be more reasonable. In particular, Mr. Reeks found, analyzed and employed market data for small, medium and large rental comparables (see Taxpayer Exhibit No. 1, pp. 57-

68), which the board finds provides more reliable evidence given that the Property has a mix of rental units and tenants of various sizes rather than a more uniform tenant rental mix. However, the board does not entirely agree with his estimation of operating expenses. In particular, the board finds a 5% “management” expense is reasonable (compared to the 4.5% used by Mr. Spring) and inclusive of any “administrative” expense, negating the need to deduct an additional \$0.25 per square foot (about 2.8% of effective gross income) for this factor. Making these changes yields lower total expenses and higher net operating incomes in each year.

The board also considered the difference in capitalization rates used by Mr. Reeks (9%) and Mr. Spring (8.3%). While both are somewhat supported, the board finds the 9% capitalization rate used by Mr. Reeks is more appropriate than the lower rate used by Mr. Spring given the board’s finding the Property is not an “institutional” grade property. See also Walker Report, pp. 5-6.

Based on these findings, the board estimated the market values of the Property in tax years 2006 and 2007, using the income approach, as follows:

	<b>2006</b>	<b>2007</b>
Potential Gross Income (PGI) (including expense reimbursements)	\$ 796,243	\$ 820,130
Vacancy & Collection Loss (5%)	(\$39,812)	(\$41,006)
Effective Gross Income	\$ 756,431	\$ 779,124
Expenses	(\$149,814)	(\$154,308)
Net Operating Income (NOI)	\$ 606,617	\$ 624,816
Capitalization Rate	9%	9%
Indicated Market Value	\$6,740,189	\$6,942,400
Indicated Market Value (Rounded)	\$6,740,000	\$6,940,000
Agreed Level of Assessment	93.4%	92.0%
Proportional Assessment	\$6,295,160	\$6,384,800
Proportional Assessment (Rounded)	\$6,295,200	\$6,384,800

While the board is aware of the City’s sharp disagreements (see, for example, the Comments filed by the Taxpayer’s attorney in response to the Walker Report and the objections

noted above) and arguments to the contrary, the board finds the Taxpayer met its burden of proving the Property was disproportionately assessed to a greater degree than acknowledged by the City (in the Spring Appraisal). The board's findings are based on the income approach estimates in the Reeks Appraisal, as modified above.<sup>3</sup>

In summary, if the taxes have been paid, the amount paid on the value in excess of \$6,295,200 in tax year 2006 and \$6,384,800 in tax year 2007 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.<sup>4</sup> The board has not allocated the value between the land and buildings and the City shall make this allocation in accordance with its assessing practices. RSA 76:11-a. As noted above, the Taxpayer has appealed the assessment for tax year 2008. That appeal will continue to be processed unless the parties notify the board of a settlement.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed 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

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<sup>3</sup> The board also considered the use of the sales comparison approach by the two appraisers. Both appraisers used the sales comparison approach primarily as a test of the reasonableness of the income approach discussed above. The board finds the comparables used by Mr. Reeks to be more reasonable than those used by Mr. Spring. Among other things, the board finds the sales selected by Mr. Spring from Nashua, Portsmouth and Derry to be less comparable to the Property than those selected by Mr. Reeks.

<sup>4</sup> Mr. Spring did not estimate the market value of the Property for tax year 2007. As noted above, the City argued the "subsequent year statute," RSA 76:17-c, should apply. The board disagrees because a separate appeal was filed for tax year 2007; based on the consolidated hearing and evidence presented for both appeals, the board has made separate market value findings for tax years 2006 and 2007.

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.

Attached as Addendum A hereto are the board's responses to the requests for findings of facts and rulings of law submitted by the Taxpayer.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Addendum A**

The Taxpayer's requests for findings of fact and rulings of law 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 proposed findings and rulings, "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 REQUESTS FOR FINDINGS OF FACTS AND RULINGS OF LAW**

1. The property under appeal is a multi-tenant retail shopping center known as the Colonial Plaza Shopping Center ("the Property" or "the Shopping Center") located at 5 Airport Road (City's Tax Map 114, Lot 8) in the City of Lebanon (hereafter, "the Property").

**Granted.**

2. The BTLA has already ruled that the proportionality of the assessment of this property is to be determined separately from the proportionality of the property located at 3 Airport Road (City's Tax Map 114, Lot 6), for which the Taxpayer is the Ground Lessor, under a long-term ground lease which gives effective control of the property to the Walgreen Company which built and operates a drug store on the site. See BTLA Order dated May 13, 2009 and Order denying the City's Motion to Reconsider dated July 20, 2009.

**Granted.**

3. The Property has some 7.280 acres of land and is improved with a 4 building, multi-tenant retail center, with 86,148 Square Foot ("SF") of gross building area, constructed in phases since 1975. The main building, referred to as Building 1 is L-shaped and includes a large retail space, second floor office/showroom space, and attached and detached warehouse storage space, occupied by LaValley Building Supply, the principal tenant and two smaller tenants. Building 2 is a service garage building occupied by Midas Muffler. Building 3 is a single tenant restaurant building. Building 4 is a multi-tenant strip building which is divided into 8 spaces and includes basement retail space. Additional site improvements include a detached storage building and two storage sheds used by LaValley, asphalt paving and exterior pole lighting. With the exception of Midas Muffler, all the tenants are local enterprises.

**Neither granted nor denied.**

4. The square footage of the various buildings making up the Shopping Center are :

- Building 1 Retail Area 38,816 SF
- Building 1 Warehouse Area 9,155 SF\*
- Building 1 Second Floor Area 15,429 SF
- Building 2 5,176 SF
- Building 3 4,000 SF
- Building 4 Retail Area 7,020 SF
- Building 4 Basement Area 6,550 SF

Gross Building Area 86,148 SF

\*includes 5,215 SF of attached unheated warehouse space in Building 1 and the detached storage building of 3,840 SF but not the two sheds. See Taxpayer's Exhibit 1, p.27.

**Neither granted nor denied.**

5. Due to its size, physical characteristics, tenant mix and other factors, the Property is not an institutional grade property which would be purchased by a national, institutional grade investor.

**Granted.**

6. The most appropriate approach to the valuation of this Property is the Income Capitalization Approach. Exhibit 1, p.74; Exhibit A, p.108.

**Neither granted nor denied.**

7. The Taxpayer's appraiser, Mr. Reeks, sought market rental rate data from similar tenant-occupied facilities with locational and physical characteristics to the Property, dividing them into three groups – small rentals to compare to the units in Building 4, medium size rentals to compare to subject units in the 2,000-6,000 SF range in Buildings 1, 2, and 3 and larger rentals to compare to the LaValley space which comprises most of Building 1. See Exhibit 1, pp. 57-64. Mr. Reeks identified at least 4 rental properties for each category of rental comparables – small, medium, and large.

**Granted.**

8. The rental rates Mr. Reeks applied to the Shopping Center, based on his market analysis, are reasonable and properly supported by market data.

**Granted.**

9. No comparable rental data was available for the second floor and basement retail space, or for the warehouse space used by LaValley Supply.

**Granted.**

10. Second Floor and basement retail space when part of a multi-tenant retail center, typically rents for discounts from first floor retail space because it has less appeal to prospective tenants and their customers.

**Granted.**

11. The attached and detached warehouse space which is unfinished and unheated at the Shopping Center would have limited market appeal and would not command the same rental rates as finished first floor retail space.

**Granted.**

12. Mr. Reeks' estimate of rental rates for second floor retail and the warehouse space at 50% of the first floor space's rental rates was reasonable.

**Granted.**

13. Mr. Reeks' estimate of rental rates for the basement retail space at 25% of the rental rates for the ground level retail space was reasonable.

**Granted.**

14. Mr. Reeks' decision to assign no independent rental value to the two storage sheds was also reasonable as they would have no value except to another lumber hardware business which was not a probable successor tenant.

**Granted.**

15. The City's appraiser, Mr. Spring's, decision to apply the same rental rate to the 15,429 SF of second floor retail space and 5215 SF SF of attached warehouse space of Building 1 was not reasonable as it assumes that any probable successor tenant would also be a lumber and hardware supply company, like the present tenant, and results in an overstatement of fair market value.

**Neither granted nor denied.**

16. Mr. Spring's attempt to justify his rental estimates based on the assumption of a continuation of the current use by LaValleys Hardware is not supported by market data, given the presence of a Home Depot near-by, and violates New Hampshire law which holds that transmissible value, not value in use, is the standard for determining value for the purposes of *ad valorem* taxation. RSA 75:1; *590 Realty Co., Ltd. v. City of Keene*, 122 N.H. 284, 285 (1982); *Trustees of Phillips Exeter Academy v. Town of Exeter*, 92 N.H. 473, 481 (1943); *See also, Vaillancourt v. Town of Greenville* 2007 N.H. Tax LEXIS 34 \*10 (2007); *MacDonald v. Town of Sunapee*, 2000 N.H. Tax LEXIS 55 \*9 (2000); *Windhurst v. Town of Hopkinton*, 1997 N.H. Tax LEXIS 200 \*4 (1997).

**Neither granted nor denied.**

17. Mr. Spring failed to provide any analysis to support his claim that his retail rental rate for Building 1 of \$9.00 SF was a blended or over-all rate reflecting a lower rate for the second floor and warehouse space and such a blended or over-all rate would have required a first floor retail rate of some \$11.00 SF for which there was no market support.

**Neither granted nor denied.**

18. Mr. Spring's discount of the 6,552 SF of basement retail rental rates at 50% of the ground floor retail was insufficient and results in an overstatement of fair market value.

**Neither granted nor denied.**

19. Mr. Spring failed to account for what property he included in the 11,000 SF of the "outbuildings for lumber" which he valued at \$2.75 SF. See Municipality Exhibit A, p. 105.

**Granted.**

20. Mr. Spring's estimate of a rental rate of \$2.75 for 11,000 SF of "outbuildings for lumber", based on a cost analysis, is not reasonable and overstates fair market value as he presented no market evidence that those sheds would have any independent market value to any probable purchaser of this Property.

**Granted.**

21. Adjusting Mr. Spring's vacancy and collection loss by applying his assumed rental rate of \$14.00 SF for smaller retail space (Ex. B, p. 105) by 2,895 SF which he assumes would be vacant at any one time would result in an adjustment to Potential Gross Income of \$40,530, similar to Mr. Reeks' adjustment of \$42,237 based on his allowance of 5% factor for vacancy and collection. Exhibit 1, p76.

**Neither granted nor granted.**

22. Mr. Reeks' capitalization rate of 9%, derived from a variety of accepted methods, properly reflected the fact that this Property is not an institutional grade property and its probable purchaser would be a regional investor. Exhibit 1, pp. 72 -73.

**Granted.**

23. Mr. Spring's capitalization rate of 8.3% improperly assumes that this Property is an institutional grade investment. See Exhibit B, p. 99.

**Granted.**

24. Mr. Reeks' estimate of the value of the Property under the Income Capitalization Approach is reasonable and results in a well supported estimate of the Property's fair market value as of April 1, 2006 and April 1, 2007.

**Neither granted nor denied.**

25. The Taxpayer has met its burden of demonstrating that its assessments of \$9,979,500 as of April 1, 2006 and \$9,394,100 as of April 1, 2007 were excessive and disproportional and is entitled to an abatement based on Mr. Reeks' value estimates, adjusted by the stipulated equalization ratios for Lebanon as of April 1, 2006 and April 1, 2007, as shown below:

Tax Year	Fair Market Value	Ratio	Assessed Value
2006	\$6,500,000	93.4%	\$6,071,000
2007	\$6,700,000	92%	\$6,164,000

**Neither granted nor 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, Board of Assessors, City of Lebanon, 51 North Park Street, Lebanon, NH 03766; and Shawn M. Tanguay, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the City.

Date: November 17, 2009

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Anne M. Stelmach, Clerk

**Colonial Plaza Realty Trust**

**v.**

**City of Lebanon**

**Docket Nos.: 22815-06PT/23886-07PT**

**ORDER**

The board has reviewed the “City’s” December 17, 2009 “Motion for Rehearing” (the “Motion”) of the board’s November 17, 2009 Decision granting abatements in these appeals and the “Taxpayer’s” December 23, 2009 “Objection” to the Motion. The December 23, 2009 suspension order (entered solely due to vacation and other schedule conflicts) is hereby dissolved. Having now fully considered the issues presented, the board denies the Motion.

As noted in the Objection, the board has already addressed the “entire estate” issue presented in the Motion on several occasions prior to the Decision, after reviewing the extensive memoranda of law submitted. See, e.g., the board’s May 13, 2009 and July 20, 2009 Orders.<sup>5</sup> The Motion (in paragraph 9) references the City’s prior “two Memorandums of Law” and states “the relevant facts and legal authority remain the same.” Since the operative facts are not in dispute and the board disagrees with the City’s repeated contentions that the board “misapplied New

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<sup>5</sup> See also the January 26, 2009 Order (at pp. 3-4), which framed the issue arising at hearings held on December 16, 2008 and January 7, 2009 of “whether the City, in the Colonial Plaza appeals, can offset any overassessment on the Colonial Plaza shopping center (Lot 8) against any underassessment of the Walgreen drug store (Lot 6).” That order permitted the parties more time for “limited discovery” by the City and to brief this issue, which then resulted in the subsequent orders and the Decision. The board notes the two Walgreen drug store appeals for the same tax years (Docket Nos. 22988-06 and 23504-07) were voluntarily withdrawn in July, 2009.

Hampshire law,” no grounds exist for granting a “rehearing” to re-plow arguments already presented and ruled upon. See RSA 541:3 and Tax 201.37.

The Motion is therefore denied for all of the reasons previously articulated by the board. Any appeal to the supreme court must be filed within thirty (30) days of the Clerk’s date shown below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify that copies of the foregoing Order have been mailed this date, postage prepaid, to: Margaret H. Nelson, Esq., Sulloway & Hollis, P.L.L.C., PO Box 1256, Concord, NH 03302, counsel for the Taxpayer; Shawn M. Tanguay, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the City and Chairman, Board of Assessors, City of Lebanon, 51 North Park Street, Lebanon, NH 03766.

Dated:

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Anne M. Stelmach, Clerk