

Wal-Mart Real Estate Business Trust

v.

Town of Rindge

Docket Nos.: 22873-06PT/23932-07PT/24293-08PT/25048-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the assessments by the “Town” for tax years 2006, 2007, 2008 and 2009 on Map 006/Lot 098 (the “Property”), a Wal-Mart located on US Route 202, based on the following stipulated information:

Tax Year	2006	2007	2008	2009
Assessment	\$5,946,000	\$5,946,000	\$5,946,000	\$5,946,000
Level of Assessment (Median Ratio)	86.0%	90.5%	98.6%	102.6%

The parties further stipulated the Property consists of 17.309 acres of land and the size of the retail building is 74,506 square feet. 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 Taxpayer carried this burden, but only to the extent acknowledged by the Town and discussed further below.

The Taxpayer argued the assessments were excessive because:

- (1) the “Reeks Appraisal” (Taxpayer Exhibit No. 1, along with an “Errata Sheet,” Taxpayer Exhibit No. 4), prepared by a designated MAI appraiser, Wesley G. Reeks, estimates the market value of the Property to be \$3,500,000, \$3,670,000, \$3,710,000 and \$3,010,000 in tax years 2006, 2007, 2008 and 2009, respectively;
- (2) Mr. Reeks personally inspected and measured the Property (finding a higher square footage than indicated on the Town’s assessment-record cards) and utilized the cost, sales and income approaches to arrive at a reconciled estimate of value for each year, placing the most weight on the sales comparison approach;
- (3) the Town did not present any appraisal of its own; and
- (4) the Reeks Appraisal is the best evidence of the Property’s market values and substantial tax abatements should be granted for each tax year.

The Town argued the assessments, except for the limited abatements acknowledged below, are proper because:

- (1) Mr. Reeks did not give any weight to the board’s December 17, 2009 decisions in the Wal-Mart appeals for “Conway” (BTLA Docket Nos.: 20892-04PT/21665-05PT/22694-06PT and “Plymouth” (BTLA Docket No. 21720-05PT) and concludes, contrary to these decisions, the cost approach is not as valid as the sales comparison and income approaches;
- (2) in the 2008 appeal document, the Taxpayer used a different cost estimate (\$56.42 base cost per square foot), higher than Mr. Reeks, and the Taxpayer also applied a longer useful life (35 years) and a different paving cost estimate than Mr. Reeks, casting further doubts on the accuracy of his calculations;

(3) Mr. Reeks' cost computations are not credible because when his physical depreciation and functional obsolescence numbers (over \$2.4 million) are subtracted from his replacement cost new estimate, the residual building value is only about \$800,000, less than the original cost of the paving on the Property;

(4) John M. Crafts, a designated MAI appraiser, reviewed the board's decisions in Conway and Plymouth, as well as the "Walker Appraisal" mentioned in those decisions, agreed with the use of the cost approach to value the Property and prepared a "Calculator Cost Form" (Municipality Exhibit A) using cost estimates from the Marshall Valuation Service to calculate market values for the Property of \$5,469,022, \$5,577,164, \$5,498,068 and \$5,553,380 for tax years 2006, 2007, 2008 and 2009, respectively; and

(5) these estimates should be multiplied by the Town's level of assessment for each year to arrive at the abated assessment for each year.

At the end of the hearing, the parties' attorneys asked for and received additional time to submit requested findings of fact and rulings of law. The board has responded to the specific requests for findings of fact and rulings of law made by each party in the Addendum to this Decision.

Board’s Rulings

Based on the evidence, and for the reasons explained below, the board finds the Property was disproportionately assessed in each tax year, but only to the extent acknowledged by the Town at the hearing. The board finds the following abatements, based on the Town’s estimates using the cost approach, should be applied:

	2006	2007	2008	2009
Market Value Findings (See Municipality Exhibit A)	\$5,469,022	\$5,577,164	\$5,498,068	\$5,553,380
Level of Assessment (Median Ratio)	86.0%	90.5%	98.6%	102.6%
Abated Assessment:	\$4,703,358.92	\$5,047,333.42	\$5,421,095.05	\$5,697,767.88
Rounded	\$ 4,703,400	\$ 5,047,300	\$ 5,421,100	\$ 5,697,800

The appeals are therefore granted, for the reasons discussed below.

Much of the board’s reasoning and discussion below will draw upon the board’s findings and conclusions in the Conway and Plymouth decisions, which involved, respectively, a “standard” (Division “1”) and a somewhat larger, “super” Wal-Mart store. The board finds it prudent and reasonable to do so insofar as the central questions presented, such as how best to estimate the market value of a Wal-Mart store, are essentially the same.

1. Description of the Property

The Property is a standard (Division 1) store. (See Taxpayer Request No. 1.) It is located on US Route 202, a major road artery in the Town, providing good access to Peterborough and Keene from northern Massachusetts. As the Reeks Appraisal (pp. 24-25) notes, it is also 1½ miles south of Route 119 in a “Business-Light Industrial District” zone, with “nearby” commercial and residential development.

Mr. Reeks describes the improvements as including a one-story, 74,506 square foot building with an actual age of 13 years (year built 1993) but an effective age of 10 years (id., p. 27), and a 2,315 square foot greenhouse. (Id., p. 55). He also states there was “no significant

deferred maintenance” and concluded the Property was in “average condition.” (Id., p. 29.)

Based on the testimony, photographs and other evidence presented, however, the board finds merit in Mr. Crafts’ conclusion that the Property is better described as being in “good” condition. (See Municipality Exhibit A.)

2. The Parties’ Differing Market Value Estimates

As both parties well recognize, assessments must be based on market value and the focus of a tax abatement appeal is proportionality, which requires the board to decide whether the Property was assessed higher in relation to its market value than the level generally prevailing in the municipality. See, e.g., RSA 75:1; Appeal of Andrews, 136 N.H. 61, 64 (1992); and Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). They also recognize the burden of proof rests with the Taxpayer on this central issue. In Public Serv. Co. v. Town of Ashland, 117 N.H. 635, 637 and 640 (1977), the supreme court affirmed the denial of an abatement and noted:

The taxpayer has the burden of proof and it is the taxpayer’s responsibility to satisfy the board as to the disproportionality of the tax burden imposed by the selectmen. “The burden is on the company to satisfy [the trier of fact] by a preponderance of the evidence that it was paying more than its proportionate share of the taxes... and thus entitled to an abatement.” New England Power Co. v. Littleton, 114 N.H. [594,] at 599 [1974].

As the supreme court has further recognized, in an abatement proceeding the valuation of property is a question of fact for the trial court to resolve, after considering all the relevant evidence before it, and the question includes deciding whether a party’s “appraisal method was appropriate.” See Rye Beach Country Club v. Town of Rye, 143 N.H. 122, 127 (1998), citing City of Manchester v. Town of Auburn, 125 N.H. 147, 154 (1984) and other authorities. As further recognized, “[t]here are multiple approaches to the valuation of property” and “no rigid formula which can be used to arrive at full and true value for property tax assessment”; “nor is specific weight required to be allocated to any of the several approaches”; and the trial judge can “accept or reject such portions of the evidence presented as he f[inds] proper, including that of

the expert witnesses.” Crown Paper Co. v. City of Berlin, 142 N.H. 563, 570 (1997) (citations, quotations and brackets omitted).¹

There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality’s general level of assessment, represents a reasonable measure of one’s tax burden. Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). The challenge is magnified, of course, when a more substantial and complicated type of property, such as a ‘big box,’ free standing store constructed to the special requirements of a major retailer like the Taxpayer, is involved.

In making market value findings, the board considers and weighs all of the evidence, including the respective appraisals of each party, 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, 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., State of New Hampshire v. Frederick, BTLA Docket No. 23317-07ED (December 3, 2008); cf. 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).

¹ In Crown Paper, the experts disagreed on whether the “income method or cost method” should be used as the primary method for valuing a paper mill and the trial court ruled in favor of the municipality’s primary use of the cost method. Id.

While the parties agree on the measure of proportionality (the level of assessment) in each tax year, they disagree sharply in their respective estimates of market value. The table below summarizes these differences.²

The board finds the cost approach is the most reliable indicator of market value based on the arguments and evidence presented. (See Town Request No. 3.) The Property is a “limited market” property. (See Town Request No. 2.) Upon review of the accepted definition of a limited market property (as well as a “special-purpose” property), the board finds the Property meets the definition of a limited market property. As noted in Conway (p. 12) and Plymouth (p. 9), a limited market property is defined as “a property that has relatively few potential buyers at a particular time” and a special-purpose property is defined as “a limited market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built.” The cost approach is recognized to be a reliable method of valuing a limited market property. (Id.)

Use of the cost approach requires estimating the site value and the depreciated value of the improvements. The board finds these values are reasonably estimated by the Town’s expert, Mr. Crafts, and the Taxpayer failed to meet its burden of proving lower values are more reasonable.

In estimating market value using the cost approach, Mr. Reeks asserted substantial “incurable functional obsolescence” and depreciation exists and should be recognized. The board disagrees. As in the Conway and Plymouth appeals, where the Taxpayer presented similar

²

	Market Value Estimates:			
	2006	2007	2008	2009
Taxpayer (Reeks Appraisal)	\$3,500,000	\$3,670,000	\$3,710,000	\$3,010,000
Town (Crafts’ Calculations Using Cost Approach)	\$5,469,022	\$5,577,164	\$5,498,068	\$5,553,380
Net Differences	\$1,969,022	\$1,907,164	\$1,788,068	\$2,543,380
Percentage difference	36.0%	34.2%	32.5%	45.8%

arguments using two other appraisers, the board finds the Taxpayer did not meet its burden of proving these factors exist to reduce the estimated market value of the Property.

There was some evidence presented indicating properties such as this sell for less than their original construction costs, which is an indication that functional (or economic) obsolescence exists. (Mr. Reeks was not given access to the Taxpayer's construction cost information.) However, there was no evidence presented that any functional obsolescence exists as the Property continues to operate for the purpose and the user for which it was constructed (its acknowledged highest and best use). It flies in the face of reason and business reality to conclude the Taxpayer and other similar "big-box" users would continue to develop properties of this type with the knowledge that each store will have substantial functional obsolescence as soon as it is built and throughout its useful life.

The board reviewed Mr. Reeks testimony, his narrative explanation of "incurable functional obsolescence" (Reeks Appraisal p. 29 and pp. 52-53), as well as his calculations using the cost approach (*id.*, p. 55), where he applied \$1,230,000 of functional obsolescence, but finds they are not credible. He obtained this estimate simply by subtracting his estimate of the value of the Property to a single-user like the Taxpayer and his estimate of value for a multi-tenant use, but the board finds changing the highest and best use of the Property is neither reasonable nor proper. Property must be valued at its highest and best use, even if there may be few, if any, other potential purchasers for that use. See, e.g., Public Service Co. v. New Hampton, 101 N.H. 142, 145-147 (1957), cited and applied in 590 Realty Co., Ltd. v. City of Keene, 122 N.H. 284, 286-87 (1982) (master erred by not considering all relevant factors pertaining to transmissible value including the fact the specialized features of the building "functioned well" and most of the clinic's offices were occupied for the purpose intended). (Cf. Taxpayer Request No. 4.) When Mr. Reeks' incurable physical depreciation and functional obsolescence estimates are added

together (\$1,225,190 and \$1,230,000 = \$2,455,190), they reflect about 75% of the total cost new of the building improvements (\$3,253,306), which is simply not credible, as the Town emphasized at the hearing.

Mr. Crafts did not do an appraisal of his own. (See Taxpayer Request No. 22.) He was, however, knowledgeable regarding the Conway and Plymouth decisions and developed reasonably supported cost estimates which the board found to be more credible than Mr. Reeks' estimates. Mr. Crafts found no functional obsolescence exists and applied much lower physical depreciation estimates to the Property.

Further, the board finds Mr. Reeks' use of the sales comparison and income approaches and the greater weight he gave to them in estimating the market value of the Property to be unwarranted by the limited and unreliable market data available. (See Town Request Nos. 14-16 and 19.) The board need not go into an extended discussion of all the reasons the board finds the sales comparison and income approaches to be far less useful than the cost approach for valuing a Wal-Mart store. The board discussed the weaknesses of these approaches in its earlier decisions. (See Conway, pp. 10-11 and Plymouth, pp. 7-9.)

3. Summary

In summary, the board finds the Taxpayer, relying on the Reeks Appraisal, did not meet its burden of proving substantial disproportionality. Instead, the board finds the Property is entitled to tax abatements, but only to the more limited extent acknowledged by the Town at the hearing, based upon the cost approach computations presented by Mr. Crafts, in Municipality Exhibit A.

If the taxes have been paid, the amount paid on the value in excess of the abated assessments (of \$4,703,400, \$5,047,300, \$5,421,100 and \$5,697,800 for tax years 2006 through 2009, respectively) shall be refunded with interest at six percent per annum from date paid to

refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered 2009 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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Addendum A

The parties' 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

1. The subject property whose assessment is under appeal is a 74,506 square foot discount retail building on 17.309 acres located on Route 202 in Rindge, New Hampshire, presently occupied by a Wal-Mart retail store, of a size referred to as "Division 1".

Granted.

2. The property's location in the south western portion of New Hampshire is not close to a major population center in either New Hampshire or Massachusetts and is about 40 miles from the nearest interstate highway artery.

Neither granted nor denied.

3. In determining the value of real estate for *ad valorem* assessment the statutory standard is fair market value, the amount a willing buyer would pay a willing seller for the real estate after reasonable efforts have been made to obtain the highest price for it. RSA 75:1. *Trustees of Phillips Exeter Academy v. Town of Exeter*, 92 N.H. 473, 481 (1943).

Granted.

4. The property's value to the current owner is not the test of *ad valorem* valuation as the issue is the transmissible value of the real estate. *Trustees of Phillips Exeter Academy v. Town of Exeter*, 92 N.H. 473, 481 (1943); *590 Realty Co., Ltd. v. City of Keene*, 122 N.H. 284, 285 (1982).

Granted.

5. The taxpayer presented the only appraisal in this matter, prepared by Wesley G. Reeks, MAI. Taxpayer **Exhibit 1**.

Granted.

6. Mr. Reeks developed estimates of value under all three recognized approaches to value – cost, sales comparison (“market”), and income.

Granted.

7. The Town did not dispute that Mr. Reeks had properly estimated the value of the land associated with the property as of April 1, 2006 at \$85,000 for a rounded total of \$1,470,000.

Granted.

8. Mr. Reeks properly developed the value of the base costs of the property's discount retail building, using the Marshall Valuation Service's category of a Class C average discount retail building, along with estimates for the greenhouse and other improvements.

Neither granted nor denied.

9. Mr. Reeks demonstrated that due to changing economic conditions and business models, many retail buildings do not last as long as the Marshall Valuation Service's estimate of economic life.

Neither granted nor denied.

10. Mr. Reeks' reliance on the age life method of depreciation to compute physical depreciation was reasonable.

Denied.

11. Mr. Reeks properly accounted for functional obsolescence associated with the size of this property based on market data.

Denied.

12. Mr. Reeks' estimate of value under the cost approach for April 1, 2006, in the amount of \$3,660,000 properly accounted for all forms of depreciation applicable to the Subject Property, which is necessary to make the cost approach a valid indication of fair market value.

Denied.

13. Mr. Reeks properly determined the value of the property under the Income Approach to be \$3,570,000 as of April 1, 2006, relying on appropriate rental comparables to determine potential gross income, including rentals by Walmart of two discount retail spaces in Williston, Vermont and Keene, New Hampshire.

Denied.

14. Mr. Reeks' capitalization rate was developed using standard techniques and properly reflected the expected return and risk associated with this property, assuming a market sale of the Subject Property.

Neither granted nor denied.

15. Three sales of discount retail buildings formerly occupied by Walmart "Division 1" stores occurred in late 2009 in Scarborough, Sanford and Ellsworth, Maine, sold to regional discount retailers, which provided probative evidence of the market value of such discount retail buildings.

Denied.

16. It was undisputed that when the Taxpayer sells any of its discount retail buildings, it lists the property for sale with knowledgeable commercial real estate brokers, and takes other reasonable steps to obtain the highest price possible in the marketplace.

Denied.

17. While the Taxpayer normally includes deed restrictions which restrict the sale to preclude sales to its principal competitor Target, and national or regional supermarket chains, it allows the sale of the property to a wide range of other national, regional and local businesses.

Denied.

18. The sales of the discount retail buildings in Maine should properly be considered fee simple transfers due to the minimal impact of the deed restrictions.

Denied.

19. Mr. Reeks properly relied on the three Maine Sales and a listing of another large discount retail building being listed by Home Depot and properly adjusted for the time of the sale and any differences between those properties and the subject property.

Denied.

20. Mr. Reeks' estimate of the market value of the subject Property as of April 1, 2006 in the amount of \$3,460,00 was well supported and resulted in a Square Foot value of approximately \$47.00 well within the range of \$35-50.00 SF that such retail buildings typically transact for in the market place.

Denied.

21. Mr. Reeks properly adjusted his 2006 market value estimate by the income approach to arrive at reasonable estimates of the subject Property's fair market value as of April 1, 2007, April 1, 2008 and April 1, 2009.

Denied.

22. The Town stipulated that the statistical calculation presented by the Town, through John Crafts, MAI, which included Mr. Reeks' land estimate, was not an appraisal or an opinion of value.

Granted.

23. While Mr. Crafts indicated that he believed that the cost approach could be used to value a discount retail building, he had not done any independent analysis which would allow him to conclude that such an approach, without any allowance for functional obsolescence, would represent the fair market value of the Subject Property.

Neither granted nor denied.

24. The Town has admitted that based upon the statistical calculation it presented, its assessments of the subject Property for tax years 2006-2009 were excessive and disproportional and that the Taxpayer should receive abatements totaling \$59,088.10, as well as statutory interest under RSA 76:17-c, assuming the Taxpayer has paid its taxes.

Neither granted nor denied.

25. The Taxpayer has met its burden of demonstrating that its Property has been disproportionately assessed and is entitled to reduced assessments based on Mr. Reeks' appraisal, as shown below, and corresponding abatements of taxes paid for tax years 2006-2009.

Tax Year	Fair Market Value	Ratio	Assessed Value
2006	\$3,500,000	86%	\$3,010,000
2007	\$3,670,000	90.5%	\$3,321,350
2008	\$3,710,000	98.6%	\$3,658,060
2009	\$3,010,000	102.6%	\$3,088,260

Denied.

Town's Requests

1. The property under appeal consists of a 17.3 acre lot improved with a 74,506 square foot building, a 2,315 square foot garden/greenhouse structure, and 280,000 square feet of pavement/parking, abutting Route 202, a major north-south highway in southwestern New Hampshire.

Granted.

2. The property under appeal is a limited market property.

Granted.

3. The cost approach to estimating value is the most reliable indicator of value for the property under appeal. *Wal-Mart Real Estate Business Trust v. Town of Conway, BTLA Docket Nos. 20892-04PT/21665-05PT/22694-06PT, p. 12; Wal-Mart Real Estate Business Trust v. Town of Plymouth, Docket No. 21720-05PT, p. 8.*

Granted.

4. The Taxpayer's appraiser, Wesley Reeks, submitted an appraisal that reconciles three approaches to value by stating that the cost approach is "*insignificant*," and then placing "*similar emphasis*" on the values he derived from the sales and income approaches. **Reeks Appraisal, p. 91.**

Granted.

5. The Taxpayer submitted a "Cost Approach Summary" to this Board in support of its appeal for tax year 2008.

Granted.

6. The Cost Approach Summary submitted by the Taxpayer as part of its tax year 2008 appeal adopts and approves of the cost approach to value, and it uses an estimated building life of 35 years, a base square foot cost of \$56.42, a paving cost of \$3.65 per square foot, and no functional obsolescence.

Granted.

7. The paving and lump sums cost submitted by the Taxpayer as part of its 2008 appeal are more reliable than the estimates developed by Mr. Reeks.

Neither granted nor denied.

8. In support of his use of only a 30 year economic life for the Rindge Wal-Mart building, Mr. Reeks stated that he knew of no “*big box*” stores built in 1971 and still in use; however, there are no such stores because big box stores did not exist in 1971.

Neither granted nor denied.

9. The Reeks appraisal improperly assigns \$1,230,000 functional obsolescence (depreciation) for a building built to design, size and specification for its current owner/occupant; a building that is good and adequate for its current owner. **Reeks Appraisal, p. 53.**

Neither granted nor denied.

10. Mr. Reeks admits that his method of calculating functional obsolescence is “*convoluted significantly*” because he believes there is a limited market for use by a single tenant, and the building might be converted to a multi-tenant use. **Reeks Appraisal, p. 53.**

Granted.

11. Mr. Reeks’ calculation of functional obsolescence is based on his income capitalization approach value estimates; the amount of functional obsolescence is the difference between his estimate of value based on a single tenant and his estimate of value based on multi-tenant use, even though multi-tenant use is not the highest and best use of the property. **Reeks Appraisal, p. 53.**

Granted.

12. This Board has decided that functional obsolescence for this type of property cannot be based on a change in the highest and best use. **Wal-Mart Real Estate Business Trust v. Town of Conway, BTLA Docket Nos. 20892-04PT/21665-05PT/22694-06PT, p. 13.**

Neither granted nor denied.

13. Mr. Reeks testified that his assignment of functional obsolescence was appropriate because the Rindge Wal-Mart building would stay vacant for a long time if Wal-Mart left; however, Mr. Reeks had no knowledge of the demand for or the availability of other property in Rindge suitable for a big box store.

Granted.

14. The Reeks appraisal and Mr. Reeks' testimony relied on the opinion that Wal-Mart buildings are not suitable for use by another retailer; yet 3 of the 4 comparable sales in the Reeks appraisal are sales of Wal-Mart buildings to other retailers. **Reeks Appraisal, p. 58-64.**

Neither granted nor denied.

15. The sales approach to value is not reliable for the property under appeal based on the evidence presented, because, *inter alia*, the evidence presented by the Taxpayer in support of the sales approach depended on three sales of unoccupied Wal-Mart buildings "*where the taxpayer had the atypical motivation of a seller having surplus property on its hands, once it decided to build a new store in the same market area and once it decided to encumber the sale of each old store with deed restrictions that limited the pool of potential buyers to exclude what it perceived to be its competitors.*" **Wal-Mart Real Estate Business Trust v. Town of Plymouth, Docket #21720-05PT, page 8.**

Granted.

16. The sales approach to value as presented by the Taxpayer in this case is unreliable because the Taxpayer's analysis included no sales of big box retail stores operating at their highest and best use. *Id.*

Granted.

17. Mr. Reeks testified that his comparable sales analysis used a low (10%) adjustment to account for the deed restrictions Wal-Mart imposes on property it sells because the deed restrictions are intended only to eliminate Target as a buyer; but this is inconsistent with his testimony that Target is one of the "*big box*" users which would not be interested in buying a Wal-Mart building.

Neither granted nor denied.

18. Mr. Reeks testified that he would discount the value of the Rindge Wal-Mart building by 36% because of functional obsolescence even if the building were brand new.

Neither granted nor denied.

19. The income capitalization approach to value does not yield a reliable estimate of value for the property under appeal because the Taxpayer did not submit “*reliable market data for any lease of free standing big box retail stores.*” **Wal-Mart Real Estate Business Trust v. Town of Plymouth, Docket #21720-05PT, page 8.**

Granted.

20. Mr. Reeks conceded at the September 8, 2010, hearing that his calculations based on the income approach were speculative.

Neither granted nor denied.

21. Wal-Mart did not provide to the Town or to its own appraiser any data on actual costs of construction or land development.

Granted.

22. Some of the data used in the Mr. Reeks “Cost Approach Summary” was based on Mr. Reeks’ own subjective adjustments of cost data from Marshall’s Valuation Service.

Granted.

23. Neither the Reeks appraisal nor Mr. Reeks’ testimony provided convincing support for the assumption that Sanford and Ellsworth Maine have equal “*locational characteristics*” to Rindge; for example, there was no comparison of sales at these Wal-Mart stores, no traffic counts, and no information on median income, median house values, or population. The only locational characteristic Mr. Reeks used was proximity to an interstate highway.

Neither granted nor denied.

24. The Reeks appraisal contains too many flaws and questionable undocumented adjustments to be considered a reliable reconciled market value for tax years 2006 through 2009.

Granted.

25. The estimate of value shown on the Cost Calculator Form prepared by the Town’s expert, John Crafts, is more reliable and more consistent with the Board’s analysis in the *Plymouth* and *Conway* decisions than the value shown in the Reeks Appraisal.

Granted. (The board references Municipality Exhibit A, the “Calculator Cost Form,” not the page attached to the Town’s Request.)

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; Beth R. Fernald, Esq., Bradley & Faulkner, P.C., PO Box 666, Keene, NH 03431, counsel for the Town; Chairman, Board of Selectmen, Town of Rindge, PO Box 163, Rindge, NH 03461; and Vision Appraisal Technology, Attn: Mike Tarello, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: 1/10/11

Anne M. Stelmach, Clerk