

**Coroc Lakes Region, LLC**

**v.**

**Town of Tilton**

**Docket Nos.: 23508-07PT/24302-08PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$30,958,600 (land \$10,494,900; building \$20,463,700) and 2008 assessment of \$30,526,700 (land \$10,494,900; building \$20,031,800) on the Tilton Factory Outlet Center, 120 Laconia Road (Routes 3 and 11), Map R20/Lot 3, consisting of 26.87 acres (the “Property”). For the reasons stated below, the appeals for abatement are denied.

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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) the taxable real estate value of the Property, a retail outlet center, is lower than its business value because it is a “Tanger” center with special characteristics not found in others;

(2) the Property is configured as an “in line” shopping center with many national retail tenants who are drawn to the Property because the Taxpayer provides many services not typically found in a conventional shopping center (including national advertising and promotions, an on-site management office, “piped-in” music, a children’s playground and other features);

(3) the appraisal and update prepared by Steven H. Berg, MAI, SRA, of Sargent Consulting, Ltd. (the “Berg Appraisal” and “Berg Updated Appraisal,” Taxpayer Exhibit Nos. 3 and 4) provides the best estimates of the market values of the Property as of the assessment dates, with the update reflecting the construction of a fourth building (housing a new “Old Navy” store) in August, 2007;

(4) according to Mr. Berg, the allocated purchase price of the Property in 2003 (approximately \$31.1 million) is “not necessarily” indicative of its market value because it was part of a much larger portfolio acquisition (cf. Taxpayer Request for Finding No. 3);

(5) the highest and best use of the Property is a shopping center, but there is “functional deficiency” in this use in part because of the lack of any “anchor” tenants and the physical configuration of the center;

(6) to address this issue, Mr. Berg prepared an analysis envisioning the demolition of one of the three buildings consisting of approximately 100,000 square feet (Building No. 1) to be replaced, in part with a “big box” or a supermarket anchor (50,000 to 100,000 square feet) with a better configuration;

(7) after imputing a value for the excess land and the demolition costs, Mr. Berg estimated reconciled market values of the Property to be \$21,250,000 in tax year 2007 and \$23,500,000 in tax year 2008 using the income, sales comparison and cost approaches, giving “equal weight” to each approach (see, e.g., Taxpayer Exhibit No. 3, p. 95 and Taxpayer Exhibit No. 4, p. 3);

(8) the Town was obligated to assess the Property, not based on “value in use,” but on the market value arrived at between a willing buyer and a willing seller and the market is limited because there are only a “small number” of potential buyers of the Property; and

(9) the assessments on the Property should be substantially abated, based on the market values estimated by Mr. Berg.

The Town argued the assessments were proper because:

(1) the Property is well located on Routes 3 and 11, close to an exit off Interstate 93, and is quite valuable because this location is a “gateway” to the Lakes Region;

(2) the Property was purchased for over \$31 million in 2003 and the Taxpayer assumed the existing tenant leases that were in place at a time when the tenant base was “largely the same” as it was in the years under appeal (2007 and 2008) and now;

(3) while the tenants in a Tanger outlet center may have an expectation of additional services, they pay for these services (through higher “CAM” (common area maintenance) charges of about \$10 per square foot rather than customary range of \$2.50 to \$3.50 per square foot for other shopping centers);

(4) Mr. Berg did not do a satisfactory analysis and provided no credible evidence to demonstrate his assumption of changing the configuration of the Property would be financially feasible and maximally productive, given the time (two to three years), construction and other costs and risks associated with demolition and reconfiguration of the Property (tearing down one building,

approximately 100,000 square feet, and constructing a new building for an “anchor” tenant that would have to be found);

(5) contrary to Mr. Berg’s analysis, the highest and best use of the Property is the existing use as an outlet mall;

(6) even if Mr. Berg’s estimated value per square foot (using the sales approach) is accepted at face value, the indicated value using the sales comparison approach is over \$33 million (as shown in Municipality Exhibit C);

(7) making basic adjustments to Mr. Berg’s income analysis (as shown in Municipality Exhibit B) results in indications of value of \$32 million and \$41 million, further supporting the assessments;

(8) as shown in Municipality Exhibit A, the Taxpayer reported (on its federal 2007 and 2008 “10-K” filings) that the real estate value of the Property was over \$34 million; and

(9) the Taxpayer has not met its burden of proof.

The parties agreed the levels of assessment in the Town were 91.3% in tax year 2007 and 100.1% in 2008, the median ratios calculated by the department of revenue administration. (See also Taxpayer Exhibit No. 1.)

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving disproportionality. The appeals are therefore denied.

In seeking abatements, the Taxpayer relied entirely on the appraisal work and testimony of Mr. Berg. No other witnesses testified on its behalf and its claims for abatement rest on the Berg Appraisal and the Updated Berg Appraisal. The board, however, finds a critical flaw in Mr.

Berg's analysis concerning the concept of highest and best use, a fundamental issue in the appraisal profession:

The "highest and best use" has been defined as "[t]he reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value. The Appraisal of Real Estate, 10th Ed. (Chicago, Ill., Appraisal Institute, 1993), p. 274; The Dictionary of Real Estate Appraisal, 2d Ed. 1989, p. 149; *See also*; *Appeal of Sawmill Brook Development Co.*, 129 N.H. 410, 412 (1987) (the highest and best use is "the use which will most likely produce the highest market value, greatest financial return or most profit...", quoting *Steele v. Allenstown*, 124 N.H. 487, 490 (1984)); *Digital Equipment Corp v. Hudson*, 1996 N.H. Tax LEXIS 6 (1996).

See Rockywold-Deephaven Camps v. Town of Holderness, BTLA Docket Nos. 20317-03PT, 21102-04PT/22042-05PT (Findings in Decision, August 25, 2008); see also Yankee Development Association v. Town of Durham, BTLA Docket No. 9346-90 (November 22, 1993): "The (highest and best use) must be a probable use and not a highly speculative one. There must be a demand for the use either in the present or in the near future. International Association of Assessing Officers, Property Assessment Valuation, 1977").

When an appraiser employs an alternative highest and best use assumption, it cannot be so speculative as to lead to an improbable or misleading outcome. In other words, a proposed highest and best use of property "requires a showing of reasonable probability" of accomplishing that use, both physically and with respect to other factors, because "physical adaptability alone is insufficient" and "conjectural and speculative evidence" must be discounted because elements affecting value, while within the realm of possibility, that are "not fairly shown to be reasonably probable, should be excluded from consideration." Cf. State of New Hampshire v. Labrador

Enterprises, LLC, BTLA Docket No. 20615-05ED, citing the Uniform Appraisal Standards for Federal Land Acquisitions (2000) (the “Yellow Book”) published by The Appraisal Institute.<sup>1</sup>

Where an appraiser places great weight on one factor (such as a specialized highest and best use concept), it must be shown to be credible, not speculative, and must have adequate supporting documentation in order to be considered in the valuation process. See Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The board must determine for itself the weight to be given each factor and the evidence presented to support a valuation 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. City of Portsmouth, 115 N.H. at 68; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

Applying these standards and principles, the board finds Mr. Berg’s analysis is not credible and cannot place weight on it for a host of reasons, many of which were pointed out by the Town through its cross-examination. These points include:

- Mr. Berg’s notion of highest and best use and his hypothesis regarding “functional deficiency” of the Property in its present configuration are not adequately supported and are illogical;
- In this regard, his key assumption that an “anchor” tenant is necessary to increase the “draw” of the Property in terms of the rents it could generate is not borne out by his analysis; and

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<sup>1</sup> The supreme court has held that the “definition” or concept of “fair market value for eminent domain purposes” is “in harmony with [the] definition for tax purposes.” 590 Realty Co. Ltd. v. City of Keene, 122 N.H. 284, 287 (1982), citing Amoskeag-Lawrence Mills v. State, 101 N.H. 392, 399 (1958).

- If Mr. Berg's assumption regarding highest and best use is correct, logic would indicate that such a reconfiguration would have occurred (or at least have been seriously considered by management) at some point in the Property's life (in fact, instead of reconfiguration, the Taxpayer constructed additional outlet space for a new Old Navy store opened in August, 2007);

In other words, the board finds Mr. Berg's highest and best use analysis leads to conclusions that are not reasonably probable and are overly speculative. Given the other evidence presented, including the long and successful history of the Property as an outlet mall, even before it was acquired by the Taxpayer in 2003. Mr. Berg's description of the Property as an "oversized shopping center without an anchor," in the board's view, misses the mark regarding how best to value it. Among other things, the rising market rents and general success of the Property over time in its present configuration casts doubt on Mr. Berg's highest and best use concept. Mr. Berg did not provide an adequate financial analysis of this use; nor was there any evidence presented that this hypothetical alternative was ever seriously considered by the Taxpayer or Tanger, a very large and knowledgeable retail shopping center operator.<sup>2</sup>

It is also evident that outlet malls are one of five recognized types of shopping centers in an active, well analyzed real estate market. See, e.g., Chelsea G.C.A. Realty Partnership, L.P. v. Town of Clinton, 844 A.2d 285, 286 (Conn. Super. 2004) (there are approximately 250 outlet centers in the U.S., compared to 2,500 enclosed regional malls; and "[o]utlet centers generally

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<sup>2</sup> (See, e.g., Municipality Exhibit A (excerpts from Tanger's 10-K filings reporting the Property had a (lower of cost or market) "real estate" value of over \$34 million in each tax year and indicating Tanger owned many "factory outlet centers," including the Property, with a total reported real estate value of \$1.287 billion in 2007 and \$1.399 billion in 2008). (Although the Taxpayer objected to the introduction of this exhibit by the Town, Mr. Berg himself relied on Tanger's 10-K filings. See Berg Appraisal, p. 40, fn. 10.) Mr. Berg testified Tanger was one of the top three outlet mall operators and that the other two are in the process of merging. The Berg Appraisal further states the Taxpayer is a "REIT (Real Estate Investment Trust)" whose holdings include 33 outlet centers in 23 states." Id.

have no anchor tenants and are better suited to many small tenants”).<sup>3</sup> Mr. Berg’s approach, emphasizing how unique the Property is and how it must be reconfigured because of “functional deficiency,” is simply not credible.

Further, while there is no doubt a difference between business value or going concern value, not taxable under RSA 75:1, and real estate value, which is subject to taxation, the Property’s unique location is a property right that must be recognized and valued, separate and apart from any business value enhancements that might arguably be attributable to the operations of the owner (Tanger, through its affiliate, the Taxpayer). The board finds the Property is in a highly desirable and valuable location just off I-93, adjacent and a “gateway” to the Lakes Region, evident from the many other prominent retailers in the vicinity (including Home Depot, Lowe’s, Wal-Mart, BJ’s, Kohl’s, Staples, etc.), and this location provides a unique “draw” for customers seeking an outlet mall shopping experience and destination (such as they would find in Kittery, Maine or North Conway, New Hampshire, for example).

Mr. Berg’s characterizations of the Town (that Tilton is a “suburb” and “not densely populated”) are overly simplistic and misleading because they ignore the fact that the outlet mall and other stores surrounding create synergy and make it a destination shopping center. There is

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<sup>3</sup> This Connecticut court further noted:

Outlet centers draw customers to a location that has a concentration of brand name factory stores. . . . The typical purchasers of outlet centers are major investors such as large pension funds, institutional investors and real estate investment trusts. . . . These typical national investors are . . . more concerned with the evaluation of actual income and expense data . . . than they are of market sales of similar properties.

Id. at 287. See also the “U.S. Shopping Center Definitions” April, 2009 survey published by the “Appraisal Institute, CoStar and the International Association of Shopping Centers”:

[http://www.icsc.org/srch/lib/2009\\_S-C\\_CLASSIFICATION\\_May09.pdf](http://www.icsc.org/srch/lib/2009_S-C_CLASSIFICATION_May09.pdf)

This survey indicates there are now 380 such centers, ranging in size from 50,000 to 400,000 square feet, have a trade area size of 25 to 75 miles, with no indication that any outlet mall in this survey requires an anchor store. The Property’s size, location and configuration are therefore not atypical of an outlet mall.

no basis for assuming that an anchor tenant, such as the supermarket envisioned by Mr. Berg, is needed to draw customers to the Property both because grocery shopping is already available close by (at the Shaw's across the street) and, more importantly, it is unlikely the typical outlet customer would be motivated to visit and shop only if there was an on-site grocery store available. The draw to the outlet center is the 53 existing retail stores on the Property, which include many national chains (which include Banana Republic, Brooks Brothers, Eddie Bauer, Gap, Levi's, Nike and Polo Ralph Lauren).

In addition to the highest and best use concept discussed above, which is critical, the board noted a number of other flaws and gaps in Mr. Berg's subsequent analyses which further reduce the credibility of his approach. These include, for example, the overly high, and very hypothetical, vacancy and collection factors he employed. There was no market based evidence to support this assumption and the actual vacancy rates at the Property were significantly lower. Another error noted at the hearing in the Town's cross-examination of Mr. Berg is his mistaken location of one of his comparables (Franklin Savings Bank, see Berg Appraisal, p. 50) and in not adjusting adequately for this less favorable location and inferior visibility.

Even if Mr. Berg's premise that an outlet mall has very substantial business value as well as real estate is accepted and therefore the actual rents paid by the tenants should be disregarded in estimating the "fee simple" value, his analysis is flawed. For example, when he concluded the existing size and layout caused the improvements to be dysfunctional, he used market rents and values per square foot of more conventional neighborhood shopping centers (in his income and sales comparison approaches), which, when applied to the actual square footage of the Property, generally support the Town's assessments in each year.

Mr. Berg's notion of dysfunctionality due to configuration and size considerations is not a valid basis for an abatement. The Property's specifically built configuration and size is intended to fulfill its specialized highest and best use (an outlet mall). In general, even when properties have specialized improvements, the law required that such valuable property be taxed so as not to "entirely escape its just share of the burden of taxation" because such properties still have "transmissible value." See 590 Realty Co. Ltd. v. City of Keene, 122 N.H. at 286-87, quoting from Public Service Co. v. New Hampton, 101 N.H. 142, 146-47 (1957); accord, Wal-Mart Real Estate Business Trust v. Town of Conway, BTLA Docket Nos.: 20892-04PT/21665-05PT/22694-06PT (Findings in Decision, December 17, 2009).

The board need not discuss the Town's evidence in any great detail because the board, as noted above, is unable to place any weight on Mr. Berg's conclusions. Contrary to the Taxpayer's proposed requests for findings (see #s 19 – 21 below), the Town was not obligated to present any evidence of its own to support the assessment since there is a presumption of validity and the Taxpayer has the burden of proving disproportionality. See also Municipality Exhibits B and C.

For all of these reasons, the appeals are denied. The board has responded to the Taxpayer's and the Town's "Requests for Findings and Rulings" in Addendum A.

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 the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board’s denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

### **ADDENDUM A**

The “Requests” received from the Taxpayer and the Town 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 Requests, “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 (see, e.g., Request No. 3);
- b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific 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 (see, e.g., Request No. 4).

### **TAXPAYER’S REQUESTS FOR FINDINGS AND RULINGS**

1. The property under appeal is the land and buildings associated with the Tanger Factory Outlet Center in Tilton, New Hampshire (Town’s Tax Map R20-3) (the “Property”).

**Granted.**

2. For the purposes of *ad valorem* taxation, the issue is what would a willing buyer pay a willing seller for the fee simple interest of the real estate as of the respective assessment dates. *Merrimack River Mills, L.L.C. v. City of Manchester*, 2004 N.H. Tax LEXIS 32 (2004); *241 Pine Street Ass’s L.P. v. City of Manchester*, 2004 N.H. Tax LEXIS 29 (2004); *Mountain Valley Ass’s v Town of Conway*, 1997 N.H. Tax LEXIS 227 (1997).

**Granted.**

3. Tanger Corporation (“Tanger”) purchased this property in 2003 as part of a large portfolio transaction involving the acquisition of 9 outlet centers totaling over 3,000,000 SF. The purchase price for the portfolio was \$491,000,000, of which \$31,179,133 was allocated to the subject, based at least in part, on accounting considerations of Tanger’s equity partner in the transaction. The purchase price for the portfolio represented a payment for both the “going concern” business value of the acquired outlet centers and the real estate value.

**Neither granted nor denied.**

4. The 2003 purchase does not provide probative evidence of the fee simple real estate value given the nature of the portfolio acquisition involving both business and real estate interests.

**Neither granted nor denied.**

5. Tanger operates the Property as an outlet center, which is a form of shopping center consisting of manufacturers and retailers’ outlet stores selling brand-name goods at a discount. Berg appraisal, Ex. 3, p. 28. Tanger is able to attract national retail businesses to its centers through a nationally coordinated marketing and advertising program and by providing a range of services to tenants which would not be typical of conventional shopping centers.

**Granted.**

6. As a result of consolidation in the outlet center business, as of the assessment dates of April 1, 2007 and April 1, 2008, Tanger was one of only three major outlet center operators. One of its principal competitors, Chelsea (a subsidiary of Simon) was already involved in the development of an outlet center in Merrimack, New Hampshire.

**Granted.**

7. As of April 1, 2007 and April 1, 2008, there was a limited number of probable purchasers which would be able to acquire and operate this Property as an outlet center.

**Denied.**

8. In determining the value of the real estate associated with the Tanger Factory Outlet Center, it is necessary to separate the business value from the fee simple real estate value. *See*, Berg Appraisal, Ex. 3, pp. 39-40; Maxwell O. Ramsland, Jr., MAI and William N. Kinnard, Jr. MAI, PhD., Quantifying Business Enterprise Value for Malls: The Appraisal Journal (April 1999).

**Neither granted nor denied (in part because the Taxpayer did not provide a copy of the cited article).**

9. The Taxpayer's appraiser Steven H. Berg, MAI, SRA properly determined that "*multi-tenant retail use*, the actual use of the subject, is possible, permissible, maximally profitable and accordingly, the highest and best use." Berg Appraisal, Ex. 3, p.33 (emphasis supplied).

**Denied.**

10. Mr. Berg's highest and best use determination of multi-tenant retail use expanded the pool of potential purchasers of this Property.

**Neither granted nor denied.**

11. Mr. Berg properly accounted for the functional deficiencies, associated with the large size of the shopping center and its inability to accommodate an anchor or anchor stores by assuming the demolition of Building 1 which would allow some 145,771 SF of existing in line shopping center space and land for potential expansion.

**Denied.**

12. Mr. Berg's highest and best use analysis as a multi-tenant retail space with expansion potential was reasonable and well supported. *See, e.g. Kerouac v. City of Nashua* 2001 N.H. Tax LEXIS 7 (2001) (City's assumption on highest and best use as commercial development reasonable and not speculative where needed zoning change reasonably probable); *Plaistow Bank & Trust Co. v. Town of Conway*, 1997 N.H. Tax LEXIS 136 (1997) (highest and best use as office space rather than bank reasonable given trends in the banking industry and changes in local economy); *Bussiere v. Town of New Boston*, 1994 N.H. Tax LEXIS (1994) (highest and best use of real estate is for investment land holding rather than a manufactured housing park).

**Denied.**

**Valuation Analysis**

13. Mr. Berg's determination of the value of the excess land available for expansion was well supported by his analysis of vacant land value under the Cost Approach. Berg Appraisal, Ex. 3, p. 67.

**Neither granted nor denied.**

14. Mr. Berg properly accounted for the costs to demolish Building 1 and the value of the potential for expansion in his analysis of both the Income and Sales approaches. Berg appraisal and update, Ex. 3, p. 58 and Ex. 4, p. 16.

**Neither granted nor denied.**

15. Mr. Berg's determination of value under the Income Approach was based on a reasonable analysis of market rents drawn from the Tilton market place, including the adjustment made during his testimony to Comparable Rental 1. See Berg Appraisal, Ex. 3, p.50.

**Neither granted nor denied.**

16. Reliance on market rents is necessary to determine the fee simple value of real estate for *ad valorem* purposes. *Demoulas v. Town of Salem*, 116 N.H. 775 (1976).

**Granted.**

17. Reliance on market rents for shopping centers also allows the business value of the Tanger operation, reflected in the leases at the Property, to be separated from the value of the real estate.

**Neither granted nor denied.**

18. Mr. Berg's analysis under the Sales and Income approaches, with the minor modifications he made during his testimony, properly reflected the fair market value of the fee simple interest in the Property's real estate as of April 1, 2007 and April 1, 2008.

**Denied.**

19. The Town offered no evidence of the fair market value of the fee simple interest in the fee simple interest in the Property's real estate.

**Neither granted nor denied.**

20. The Town's 2007 and 2008 assessments are not entitled to be considered presumptively reasonable because as its Assessor acknowledged, they were based on an appraisal which the Town elected not to present at hearing.

**Denied.**

21. The Town also admitted that its recalculations of Mr. Berg's 2007 Sales and Income analyses did not constitute an opinion of value.

**Granted.**

**Conclusion**

22. The Taxpayer has met its burden of demonstrating that its assessments are excessive and disproportional and is entitled to abatements based on Mr. Berg's conclusions of fair market value for 2007 and 2008, adjusted by the stipulated median ratios for Tilton as found by the Department of Revenue Administration.

Tax Year	Fair Market Value	Ratio	Assessed Value
2007	\$21,250,000	91.3%	\$19,401,250
2008	\$23,500,000	100.1%	\$23,523,500

**Denied.**

**TOWN'S REQUESTS FOR FINDINGS AND RULINGS**

1. The Tanger Outlet Mall (the Mall) was designed and built as an outlet mall (specialty mall) and not a neighborhood mall.

**Granted.**

2. The subject property had an assessment change from 2007 to 2008, as the Old Navy was built on a pad site in the parking lot.

**Granted.**

3. At the time of the Tanger purchase in 2003 the Mall had been in continuous operation as an outlet mall since its construction in 1993.

**Granted.**

4. Prior to the Tanger purchase in 2003, the majority of the tenants were national name brand companies and continue to be so, today.

**Granted.**

5. Since its inception in 1993, the mall has operated successfully.

**Granted.**

6. The highest and best use of the Mall is as an Outlet Mall (as currently configured and used) as it meets the four criteria presented in the highest and best use analysis.

**Granted.**

7. The taxpayer's appraiser failed to develop a credible appraisal report, as the analysis and value conclusions presented do not agree with the description of the property as an outlet mall and his stated highest and best use of the property.

**Granted.**

8. The taxpayer's appraiser proposed an unfounded, undocumented theory of the need for anchor stores to be successful despite its enormous past and present success, had numerous errors and lacked any credible evidence to support his conclusions.

**Neither granted nor denied.**

9. The taxpayer's appraiser did not have sufficient analysis to support key elements of this report i.e. either the 12% vacancy rate used in the income approach or the 33% vacancy and collection loss utilized on Page 97, financial feasibility and maximal profitability of the conversion and no analysis presented to capture an investor's return on/of the investment.

**Neither granted nor denied.**

10. The taxpayer's appraiser did not know the physical location of his comparable sales used to develop his estimate of market rent.

**Neither granted nor denied.**

11. The taxpayer's appraiser cited the incorrect market rent rate for his rental comparables.

**Neither granted nor denied.**

12. The taxpayer's appraiser admitted during his testimony that he did not include 100,648 square feet of the existing mall in his calculation for all three approaches to value. This omission results in a value that does not reflect the actual physical improvements on the site as of the date of appraisal.

**Granted.**

13. The taxpayer's appraiser admitted during his testimony that although he developed an estimate of value via the cost approach for the 2007 report he placed no weight on it in the final reconciliation. Further for the 2008 report he excluded the approach completely.

**Granted.**

14. The taxpayer's appraiser in his analysis of the property admitted that he did not consider the synergy created by the exit 20 location and the presence of anchor stores in the immediate area.

**Granted.**

15. The report and evidence presented in support of the appeal was found to contain numerous calculation errors, incorrect factual information about the rental comparables, and no analysis of the financial feasibility or the maximal profitability of changing the mall design and layout from an outlet mall to a neighborhood mall with an anchor store.

**Granted.**

16. The Town did not argue that Tanger has a superior business plan and management style that attracts tenants.

**Neither granted nor denied.**

17. The Town did testify, undisputed, that the added business value is attributable to higher than average CAM expenses.

**Granted.**

18. The Town clearly demonstrated that by reconstructing the taxpayer appraisers income and sales approach, utilizing all of his information (rental rates, vacancy and collection loss, cap rate & SF costs on the sales) but adding in the area of building one omitted by their appraiser clearly supports the Town assessment.

**Neither granted nor denied.**

19. No credible evidence was before the Board to warrant overturning the Town's assessment.

**Granted.**

20. Plaintiffs have the burden of proving that the true value of their property is different from that arrived at by the Assessors Appeal of Sawmill Brook Development Corp. 129 NH 410 (1987)

**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 Selectmen, Town of Tilton, 257 Main Street, Tilton, NH 03276; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: June 10, 2010

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Anne M. Stelmach, Clerk