

1 The Meeting of the Board of Review of the City of Onalaska was called to order at 9:01 a.m. on  
2 Tuesday, September 6, 2016. It was noted that the meeting had been announced and a notice  
3 posted at City Hall.

4  
5 Roll call was taken with the following members present: Ald. Jim Binash, Ald. Jim Bialecki,  
6 Ald. Barry Blomquist, City Clerk Cari Burmaster, Mayor Joe Chilsen

7  
8 Also Present: City Attorney Sean O’Flaherty, City Assessor Heather Wolfe, Daniel Furdek of  
9 Real Estate Appraisals, Inc., Michael Lee of Paradigm Tax Group

10  
11 **Item 2 – Approval of minutes from the previous meeting**

12  
13 Motion by Ald. Bialecki, second by Ald. Blomquist, to approve the minutes from the previous  
14 meeting as printed and on file in the City Clerk’s Office.

15  
16 On voice vote, motion carried.

17  
18 **Consideration and possible action on the following items:**

19  
20 **Item 3 – Presentation of objections for actual real/personal property values by owners or**  
21 **their representatives according to the procedures established in Sec. 70.47(8) of the**  
22 **Wisconsin Statutes**

23  
24 The following is a verbatim transcript. Spoken figures are assumed and transcribed as dollar  
25 amounts based on context.

26  
27 Cari: The first hearing that we have in order here is Michael Lee. He represents Paradigm Tax  
28 Group, who is here for the property of Spirit Spe Portfolio 2006/Shopko Stores Operating  
29 Company. And if we are prepared to conduct the hearing I would like to swear in both Mike and  
30 the assessors.

31  
32 Ald. Binash: All right. Please proceed.

33  
34 Daniel: Mr. Chairman, I would like to interject here at this point because I think we would  
35 dispose of this hearing. And I would like to pass out this copy of the statutes regarding this  
36 matter.

37  
38 Ald. Bialecki: Thank you.

39  
40 Ald. Binash: Thank you.

41

42 Ald. Blomquist: Thank you.

43

44 Daniel: If Mike Lee wants ...

45

46 Cari: I can give him those copies. Do you want one, Sean, for right now? I can make another  
47 one.

48

49 Daniel: I'm sorry; I thought you were going to mark that as an exhibit. I don't know if you have  
50 to mark statutes as an exhibit. And just for reference, I have the subpoena that was issued to  
51 Shopko. And just for your convenience I've made copies of it so you could refer to it. There's  
52 not much to refer to because they didn't comply with anything in the subpoena. And what I  
53 would like to point out on the statutes that I handed out, on the second page, on page 36,  
54 70.47(af) ... I'm sorry; [it's] 70.47(a). The part that I highlighted was: "*... and such person in*  
55 *good faith presented evidence to such board in support of such objections and made full*  
56 *disclosure before said board.*" Now, they didn't provide anything on that subpoena. They've  
57 provided a lease, which I'm going to give you a copy of – [and it's] 419 pages – which maybe  
58 they thought the volume would overwhelm us. But they didn't provide anything that was helpful  
59 to the assessment. As a matter of fact, they purposely avoided the information in the lease that  
60 we requested. Now, going down on that page, page 36 of the statutes, 70.47(af) [says]: "*No*  
61 *person may appear before the board of review*" – and that's the section I highlighted – and then  
62 further on down it says: "*unless the person supplies to the assessor all of the information about*  
63 *income and expenses as specified in the manual under 73.03(2a) that the assessor requests.*"  
64 Now, there is nothing ambiguous about "unless" and "all." I mean, that's why these statutes  
65 were written this way. And they were written to help the Board of Review so that we could get  
66 the information to make a proper assessment. Now, what Shopko has done is really thinks that  
67 the Board of Review are a bunch of fools because they requested stuff under a subpoena, but  
68 Shopko decided not to supply anything. On the following page, page 37, under 70.47(8d), that  
69 section reads – and I'll read the whole thing – "*It may and upon request of either the assessor or*  
70 *the objector shall compel the attendance of witnesses for hearing, except objectors who may*  
71 *testify by telephone*" – 'shall compel' – "*and the production of all books, inventories,*  
72 *appraisals, documents and other data which may throw light upon the value of property, and,*  
73 *with regard to an objection that is subject to (7)(c) or (16)(c), may, on a showing of good cause,*  
74 *compel the attendance of witnesses for depositions.*" But the key part of that is "shall" and "all."  
75 There is nothing ambiguous. It doesn't say, "If the objector feels like it," or, "If the objector  
76 thinks it's relevant," or, "If the objector feels that they can make fools out of the Board of  
77 Review and disregard their subpoena." Now, this is the statutes, which is also called the law.  
78 But Shopko decided that they're the important person here and they don't have to provide  
79 anything because of a subpoena because the Board of Review requested it."

80

81 Ald. Binash: Sir, excuse me just a second. Can you kind of give examples of what it is that  
82 you're talking about?

83  
84 Daniel: Yes. Let me just hand this out. Now, this is the only thing that they supplied. And they  
85 supplied a lease by electronic transmission. Let me just hand this out.

86  
87 Cari: And if we can, mark the statutes as “Exhibit One.”

88  
89 Ald. Binash: Thank you.

90  
91 Cari: Mike, do you need a copy of that?

92  
93 Michael: Is that the lease?

94  
95 Cari: Yes.

96  
97 Michael: I have a copy.

98  
99 Ald. Binash: And please reference the subpoena to what it is that you’re stating.  
100

101 Daniel: Yes. Now, in the subpoena we requested, the third page describes what the definition of  
102 the instructions and the documents to be produced. So on page 3 that I handed out of the  
103 subpoena it lists all the items that we wanted. They did not respond to any one of these, except  
104 they provided a 419-page lease that eliminated the information that we would need such as rent  
105 per square foot, rent per year – anything like that that’s typical in a lease. But they provided a  
106 lease that had no relevant information in it. Now, they did not address any of these issues that  
107 we requested – all 22 of them. They didn’t provide a letter saying, ‘We don’t have that  
108 document,’ [or], ‘It’s not applicable because we don’t have it,’ [or], ‘We don’t have any sales,’  
109 [or], ‘We don’t have any listings,’ which Heather has a couple listings that they do have on  
110 properties. The only thing that they provided, like I said, was that lease, which I’m going to go  
111 into to show you how they obstructed this subpoena [and] how they didn’t comply with it. Now,  
112 if they don’t have some of these items, that’s fine. But they didn’t address one of them. Not one  
113 of them, except the lease that they provided, which doesn’t have any information.

114  
115 Cari: Just for interjection, that subpoena will be marked “Exhibit Two.”

116  
117 Daniel: And now amended and restated master lease ... If you will turn ... I copied the table of  
118 contents. On page 1 of the table of contents, it says ‘Terms of Lease.’ Section A-5, that was  
119 removed from this document. We don’t have it. On page 5 of the table of contents, it listed  
120 Exhibits A-1, A-2. They didn’t provide any of that. It must have been removed from the lease.  
121 Sub-portfolios A-5, A-6, A-7, we don’t have it. [Regarding] Initial Base Rent Allocation, now  
122 they claim, ‘OK, this was a sale of multiple Shopkos, millions of dollars. We structured a lease  
123 at the same time.’ They have that amount in there like \$100 million. But they didn’t allocate

124 one lease for us. They didn't give us the allocation to the Shopko in Onalaska – which, his  
125 representative told me, was \$12. He was taken off the phone at that point, and that's when Mike  
126 Lee got involved. Now, on the first page – if you turn to that page – there's a blank page. Then  
127 the next page refers to "Fee Properties" and "Leasehold Properties." I don't know if it's  
128 highlighted on your copy, but it's in the fifth line – "Fee Properties." Then down on the seventh  
129 line, "Leasehold Properties." That's Exhibit A-1, Exhibit A-2. They didn't provide any of that  
130 stuff. That's information that the assessor thinks would shed light on the assessment. On page 2  
131 ... As I said before, Exhibit 5 is not in this lease. That is something that the assessor requires to  
132 make a proper assessment. They have all the information. The more information that we have,  
133 we can do a proper assessment. Now, you can surmise the only reason they don't provide it is  
134 because our assessment is too low. Now, let me find where they completely disregarded the  
135 income on the lease. Page 3, Article 2: Rent. [Regarding] the base rent, they're showing the  
136 amount \$66,433,139 of all of the properties that they bought. Exhibit B attached here, too, is the  
137 exhibit that allocates to each property location. Right up above the Exhibit B it says: "Base rent  
138 for the premises allocated to each property location is set forth on Exhibit B." They excluded  
139 that section.

140

141 Michael: B-4 is in there.

142

143 Daniel: Pardon?

144

145 Michael: It's in there, B-4.

146

147 Daniel: It's a blank page.

148

149 Michael: No, it's not. It's in there.

150

151 Daniel: Well, OK. Can I see it? I got a blank page.

152

153 Michael: It's in the lease.

154

155 Daniel: And the amount allocated to Shopko is in the lease?

156

157 Michael: Yes.

158

159 Daniel: Can I see it?

160

161 Michael: It's in the lease.

162

163 Daniel: This copy was not in my section. It wasn't. Here's what was in my section. We  
164 shouldn't have a discussion here. ... OK, OK. This is the important thing. Can we make a copy

165 of this for the Board of Review now?

166

167 Cari: Yes. JoAnn [Deputy City Clerk JoAnn Marcon] can make a copy for all of us.

168

169 Michael: It was in the lease that we provided. I understand that it's a huge lease.

170

171 Daniel: I looked at all 419 pages. All I got was a blank where it says "Exhibit B – Intentionally  
172 Omitted." That's on the last page that I handed out.

173

174 Michael: I just printed it out right there.

175

176 Daniel: What you provided was intentionally omitted. Regardless, they did not comply with the  
177 rest of the subpoena.

178

179 Ald. Binash: Just a second. Mr. O'Flaherty?

180

181 Sean: Madam Clerk, was the information sent to you?

182

183 Cari: It was originally sent to the attorneys, and I think I did get a forwarded copy. Do you want  
184 me to go check that and verify what we do have in there?

185

186 Sean: Would you please? Yes. Thank you.

187

188 Michael: Do we have a chance to respond?

189

190 Ald. Binash: Yes.

191

192 Michael: Now, or is that later?

193

194 Ald. Binash: Let's wait until the City Clerk gets back, and let's resolve this issue first about  
195 whether we received it or not. We won't make any assumptions one way or the other.

196

197 Daniel: The last page that I had was "Exhibit B – Intentionally Omitted." I looked through the  
198 lease, and now he provides it.

199

200 Ald. Binash: Let's wait until Cari gets back and see what the city received. If we didn't receive  
201 it, then we could make the assumption that you did not as well, so let's hold off.

202

203 Cari: So for clarification in there, the exhibit is Exhibit B-4. Where you were looking at in the  
204 documents itself, it said "Exhibit B." And that page in particular where it says "Exhibit B" does  
205 say "Intentionally Omitted." So I guess we were talking about kind of two different places in the

206 document itself. So the one we're referencing that you were looking for is actually Exhibit B-4.

207

208 Ald. Binash: So the city did receive something?

209

210 Cari: Yes. And that page is there with the numbers.

211

212 Ald. Binash: OK. But the assessor did not?

213

214 Daniel: I did not see it in the lease. I looked through every page of the lease.

215

216 Ald. Binash: All right.

217

218 Daniel: But regardless, they did not address any other of the 22 issues. This is one major issue  
219 that was neglected in the copy I got. But regardless, they didn't address any of the 22 issues in  
220 the subpoena. And Heather is right now getting the listings of the Shopkos that they did not  
221 provide. We asked for all the information. They did not provide that. And they didn't respond  
222 to any one of the 22 issues that we asked in that subpoena. Whether they have the information or  
223 not, they're required to respond to that subpoena, which they didn't. Now, I'm not opposed to  
224 proving that our assessment is correct. But the penalty for failure to supply or answer all the  
225 questions that are in the subpoena is they don't get a hearing. That's statutory. Let's say they  
226 provided the lease information. They didn't answer any of the other 21 issues in that subpoena.  
227 And on that basis, I'm asking the Board of Review to dismiss this hearing because they didn't  
228 respond to the subpoena. That's in the statutes. [We need] all the information – not just the  
229 lease. [We need] all of the documents that may shed light on the value of that property.

230

231 Cari: And for the record, I would like to mark the Amended and Restated Master Lease that Dan  
232 had provided to us as "Exhibit Three."

233

234 Ald. Binash: I think before we make a decision on whether to have a hearing or not, Mr.  
235 O'Flaherty, is the assessor correct that if you don't comply to all it negates the hearing? Or if  
236 Shopko did reply in some form or other, does that still mean that we can proceed?

237

238 Sean: Pursuant to the subpoena, the failure to produce the documents requested concerning  
239 income and expenses may prohibit the taxpayer from appearing or testifying by telephone at a  
240 subsequent hearing before the Board of Review in objecting to the valuation by the assessor of  
241 the properties as defined in the subpoena. If the Board of Review finds that the failure to comply  
242 with the subpoena is material, then the Board of Review would move to deny the hearing. If the  
243 Board of Review found that the failure to comply with the subpoena was not material, it would  
244 allow the hearing to go forward.

245

246 Ald. Binash: Let me ask the members of the board. Do you have a particular opinion? But if

247 we proceed with hearing from Mike, are we then going on with the hearing? Or are we just  
248 looking for a rebuttal?

249  
250 Sean: We're just looking for a rebuttal with respect to this issue.

251  
252 Ald. Binash: With compliance?

253  
254 Sean: With respect to this issue such as in the past when we have had a request to appear by  
255 telephone that has come before this Board of Review. Both sides have the chance to lay out their  
256 rationale.

257  
258 Ald. Binash: All right. Well, at this time why don't we hear from the Shopko representative for  
259 rebuttal on the issues.

260  
261 Cari: I would just like to remind the board that we are not taking testimony because nobody is  
262 sworn in. This is just a rebuttal.

263  
264 Michael: First off, I know the assessor said that we don't have respect. But we have Shopko,  
265 and we have tons of respect for the assessor and for the Board of Review. We know you guys  
266 have a tough job, and we're just trying to make sure the value from the Shopko, which is one of  
267 the highest in the state, that it's being equitably valued. In regards to the subpoena, we did send  
268 a response. We've had this problem come up before, and usually we talk to the assessor about it  
269 and they're usually understandable. But this is a triple-net lease. Shopko is paying the taxes.  
270 It's owned by a rete in New York. It's a billion-dollar rete where getting all the income data and  
271 all the expenses is going to be really hard to do, and it's going to take a lot of time. They haven't  
272 responded to us yet. We did provide the lease. We told the assessor about the lease. It was one  
273 of the first things we did over the phone. They have always known what the lease amount has  
274 been on that Shopko. We did respond to the subpoena.

275  
276 Ald. Binash: Specifically, there were 22 documents that we requested. Can you specifically  
277 state which of the 22 you responded to?

278  
279 Ald. Bialecki: Mr. Chairman, one question before you go on. You stated this has happened to us  
280 before. Can you clarify what you meant by that?

281  
282 Michael: Usually we talk to the assessor about it. On triple-net leases, usually the assessor  
283 understands that the tenant is the one paying the property taxes and not the owner. It can be  
284 really hard to get the income data from that property. But we did provide the lease information,  
285 which includes the income tax on the property going back to 2006. They do have that  
286 information, so we're not hiding anything. We gave them the information that we have from  
287 Shopko, which is the huge lease. It's a complicated lease. It's kind of a bulk portfolio lease. It's

288 500 pages, but we've always told the assessor what the rental rate was on the Shopko. We're not  
289 trying to fool anybody. We're giving the information that we have on the property. But usually  
290 when talking to the assessor they understand that triple-net leases that are owned by a rete, it's  
291 hard to get that information. And it's the tenant that's paying the property taxes. It's not the  
292 owner. We have all the information. You have the information that Shopko has. You know the  
293 lease amount. Based on that lease amount, that is the income information for the past years. I've  
294 never seen this many items requested for an appeal in Wisconsin. We've done a ton of appeals  
295 in Wisconsin. I've never seen this much information requested. We're just not able to get all  
296 this information for you. We've tried. We've reached out to the owners, and it could take more  
297 time or we may never get that information. But you do have the lease information on the  
298 property. You do know the income on the property, which I think is most of the information  
299 needed on this. But mortgage documents? They're requesting insurance policies [and]  
300 construction data. There is no way we're going to be able to get that information. I'm not sure if  
301 this was used to intimidate us from the appeal, but there is just no way to get all this information.  
302 We just represent Shopko, which is the taxpayer, and they are paying the taxes. We think they at  
303 least deserve due process even if you don't agree with us on a lower value. [We] just [want] a  
304 fair review of the assessment that we think is overstated.

305  
306 Daniel: Mr. Chairman, the subpoena was sent to the taxpayer. Even though Shopko has to pay  
307 the taxes, it's the taxpayer's responsibility to provide this information or to respond to the  
308 subpoena. We don't have it. When there is a \$100 million sale, they have allocations, like they  
309 did on this document that was produced today. But they also have appraisals on every property  
310 that is in that allocation. That's how they come up with a lease amount. It's required by FASB,  
311 the Financial Accounting Standard Board rules, which they followed, which is mentioned in their  
312 lease. It's required by GAAP, the Generally Accepted Accounting Principles, which is  
313 referenced in their lease. They have this information. They have the appraisals. The taxpayer  
314 did not want to provide it. Now, if Paradigm, the tax rep, didn't get it, I can believe that. But it's  
315 the taxpayer's responsibility, regardless of who pays the taxes, to provide that information. And  
316 that's who the subpoena was sent to: the taxpayer. They didn't address one of the issues.  
317 Paradigm addressed the lease and said that they may have difficulty getting that information.  
318 But it's the taxpayer's responsibility to provide all the information, or at least respond to that  
319 subpoena. [They] say, 'We don't have it.' They can say they have the respect for the Board of  
320 Review. I'm not saying that Mike is not respecting you now, but the respect shows in what they  
321 do. They can say they respect you, but they didn't answer one of the 22 items requested in the  
322 subpoena.

323  
324 Ald. Binash: If I may ... If they didn't respond to that ... If they had responded, how would that  
325 have helped you or changed your opinion about the assessment that you made?

326  
327 Daniel: If they would have provided the appraisal that they had on the property, that would have  
328 been helpful. If the appraisal said \$12 million, that would be new information. If the appraisal

329 said \$8 million [or] \$9 million [or] \$2 million, that would provide information on this property.  
330 They have those appraisals. They're required to get them when they made this \$100 million  
331 transaction or however much it was, but they failed to provide it. That's information that we like  
332 to see. Appraisals on financing documents, this was a financing arrangement. I'm sure it's  
333 typical. A rete owns it. They buy it under the agreement that they're going to lease it back to  
334 Shopko. That happens all the time. I've done a dozen of those. We've got the appraisals on  
335 those properties because they're required to have those appraisals. They know that that's  
336 information that's detrimental to their position. That's why they didn't provide it.

337  
338 Michael: Actually, on the tax bills, it's mailed to Shopko because Shopko pays the taxes on it. It  
339 wasn't mailed to the owner; it was mailed to Shopko, which is the taxpayer. The only  
340 information Shopko has is the lease they have with the owner. We gave that information. We  
341 did respond to the subpoena; I've reached out to multiple people about it. We've been trying to  
342 explain ourselves that this is the tenant that's the taxpayer that they don't have this information.

343  
344 Ald. Binash: You said you tried to reach out to multiple people. Do you mean here at the city or  
345 the assessor or whom?

346  
347 Michael: I've told the assessor that they're the tenant. I've talked to the Board of Review,  
348 Amanda Jackson [of O'Flaherty Egan Heim & Birnbaum]. I've tried to talk to anybody about  
349 this.

350  
351 Ald. Binash: On Exhibit Three, it says "Onalaska, Wisconsin – base rent \$735,000." What is  
352 the base rent? Can you explain that?

353  
354 Michael: That's the annual rent. That's the annual rent that they pay.

355  
356 Ald. Binash: Is that a lease that you pay?

357  
358 Michael: Yes, that's the allocated lease amount. This is a huge lease. It's on, I think, over 100  
359 Shopkos all over the U.S. Investors bought into a rete looking for like a 5-percent return, and  
360 then they allocated the lease amounts out. It's kind of a bulk-portfolio lease. It's somewhat  
361 complicated.

362  
363 Ald. Binash: Getting back to the 22 issues that were on the subpoena, can you address any  
364 specific one as to ones you responded to?

365  
366 Michael: We tried to ... With limited information, we tried to ... Let me show you this. We  
367 have the appraisal and we have the lease information. That's about it. I think from the lease  
368 information, that gives you the income data on the property going back. Other than that ... And  
369 we have appraisal information. We brought forth a fee simple appraisal. Our belief is it always

370 should be fee simple value, which is Wisconsin ... which is in their statutes. We provided a fee  
371 simple appraisal on the property. If the owners had an appraisal on it ... I don't even know if  
372 they do or not; they haven't been responding to us. But that would be a leased fee appraisal,  
373 which is completely different. That would be based on investors that are trying to invest in this  
374 all-cash deal with a rate, which is usually high sales because they're just looking for a 5- or 4-  
375 percent return.

376

377 Ald. Binash: You say it's difficult with a triple-net lease. What is a triple-net lease?

378

379 Michael: A triple-net lease is when the tenant pays the taxes. The tax bills go to the tenant, and  
380 the owner is kind of out of the picture. A triple-net lease, usually on a single-tenant property like  
381 this one, the owner is pretty much out of the picture. They pay an annual rent to the owner,  
382 which is a multibillion dollar rate, and they're pretty much out of the picture. They just collect a  
383 check, and then the tenant is the one that takes care of the taxes. And the tenant doesn't have all  
384 the information that the assessor requested.

385

386 Ald. Binash: Thank you.

387

388 Daniel: Mr. Chairman, I would like to point out the listings on Shopko that Heather Milde just  
389 produced. We knew about them, but we like the taxpayer to provide all the information that they  
390 have regardless of whether we have it or not. They may have more information. This is  
391 information on the sale of Shopkos in Wisconsin. They didn't provide it. I'm going to let Cari  
392 hand it out, and I'm just going to point out a couple things.

393

394 Sean: Mr. Assessor, can you point out which item in the subpoena you're referring to with  
395 respect to these listings?

396

397 Daniel: Item Number 9: "*All sale documents related to the property and all other Shopko stores*  
398 *located in Wisconsin, including but not limited to offers to purchase, purchase agreements,*  
399 *closing statements, appraisals, real estate tax returns, and deeds.*" Item 11 is: "*All sale*  
400 *documents supporting claim that assessment exceeds fair market value.*" Naturally they  
401 wouldn't provide this document. The first one is ...

402

403 Sean: Mr. Assessor, could you address Item 14, please?

404

405 Daniel: Yes, I'm sorry. There it is specifically: "All listing contracts for sale of property or all  
406 other Shopko properties in the State of Wisconsin from 2009 to the present." That's in the  
407 document that they failed to provide. These are the ones that we know of. The first one is nine  
408 miles south of the subject, which is listed ...

409

410 Heather: It's currently listed for \$9,172,414.

411  
412 Daniel: The eyesight is the first thing to go when you get older. On the second page, it's 25  
413 miles from the subject's store. That listing is for \$8,100,000. The third one is 90 miles from the  
414 subject's store, and it's listed for \$8,275,862, which definitely supports our assessment.  
415 Naturally they wouldn't provide this information. This is calculated. These omissions are  
416 calculated to avoid the value of the assessment.

417  
418 Ald. Binash: Mike, any response to that representing Shopko?

419  
420 Michael: This is the same type of thing. A lot of times Shopko isn't selling these stores. These  
421 are exchanging hands to retes and investment companies, also. Any of the information on the  
422 sales is all public data, anything you can find about them. This isn't information that we would  
423 have. Shopko is a tenant here. They're not the owners of these buildings most of the time. The  
424 sale information would be information the owners would have. Shopko is just the tenant paying  
425 the taxes.

426  
427 Daniel: Well, here again, the tax rep says he requested all this information from the taxpayer,  
428 and the taxpayer did not provide it. Now, if the subpoena was sent to the tax rep, they could  
429 have provided this information or answered all these items. They say, 'It's public information,  
430 so we expected you to know about it.' No. A lot of assessors don't do as good a job as Heather  
431 does, so they don't know about it. But furthermore, we asked for it in the subpoena and they  
432 didn't even address this issue. Oh, [it's] public information. Get it yourself. OK, that would  
433 have been information that we required, that we want. That would have been answering the  
434 subpoena. They ignored that item specifically. Why? Because it supports the assessment.

435  
436 Ald. Binash: Cari, do we want to introduce any of these as exhibits?

437  
438 Cari: We do, and we're a little behind on here. The first one, the Exhibit B-4 that we used for  
439 clarification, is going to be Exhibit Four. The next one, the copy of the subpoena that came from  
440 Mike Lee with the handwriting on it, is Exhibit Five. And then the packet with the Shopko  
441 comparisons on it is Exhibit Six.

442  
443 Ald. Binash: Anything further? Any issues that the board would like to bring up or discuss?

444  
445 Ald. Bialecki: Based on what I've heard so far, there is no need to ping-pong this back and forth  
446 any more. It appears to me that information was subpoenaed in good faith to the taxpayer, and  
447 you, as their consultant to work for them, needed to get those records and did not. It makes me  
448 wonder how interested they were in even having this hearing in that the subpoena itself was  
449 issued on July 14. That's almost two months ago already. You would have thought that  
450 somebody would have had their act together. And I agree that I don't know that it's our  
451 obligation when this petition comes in to be asked for records that we have to go out and find

452 them. That seems counterproductive to the interests of the assessor's office.

453  
454 Motion by Ald. Bialecki, second by Ald. Blomquist, to dismiss the hearing for Spirit Spe  
455 Portfolio 2006/Shopko Stores Operating Co., LLC.

456  
457 Michael: Can I be heard on the record, at least? I mean, we should at least get a fair ...

458  
459 Ald. Binash: Discussion ... Mr. O'Flaherty?

460  
461 Sean: Given that the hearing did not begin, I would make the recommendation that the motion  
462 be that the subpoena was not materially complied with, so there will not be a hearing rather than  
463 dismissing the hearing.

464  
465 Ald. Bialecki: Would you withdraw your second?

466  
467 Ald. Blomquist: On what basis?

468  
469 Ald. Bialecki: I want to withdraw my motion.

470  
471 Motion and second withdrawn.

472  
473 Motion by Ald. Bialecki, second by Ald. Blomquist, to dismiss the hearing for Spirit Spe  
474 Portfolio 2006/Shopko Stores Operating Co., LLC based on the fact the majority, if not all the  
475 information requested in the subpoena dated July 14, was not provided.

476  
477 Michael: Is there any way we can respond just to make sure we have somewhat a due process  
478 and at least be heard if they think the valuation is out of line?

479  
480 Ald. Bialecki: I don't know at this point. ... We made a motion.

481  
482 Cari: Just for clarification, I think the motion is that we are not going to hold the hearing. That's  
483 the intent of the motion: that we are not going to be holding the hearing at all.

484  
485 Ald. Binash: The only discussion point I have is that with respect to Exhibit Four, I think that  
486 was the documents requested to be produced, and then Shopko said, 'See appraisal. See  
487 appraisal.' They're stating that they did respond in some way. But our assessor is saying  
488 materially, they did not provide what we had requested in order to make a good review of the  
489 circumstances. And for that reason, I think that's why the motion came forward.

490  
491 On roll call vote: Mayor Joe Chilsen – aye, Ald. Jim Binash – aye, Ald. Barry Blomquist – aye,  
492 Ald. Jim Bialecki – aye, City Clerk Cari Burmaster – aye. Motion carried unanimously.

493  
494 Michael: Is there some type of document that ...?  
495

496 Cari: There's no determination because we did not hold a hearing, so there's no determination  
497 by the Board of Review because there's no changes and there was no hearing held. There's no  
498 paperwork issued or anything. We didn't deny the appeal; we denied having the hearing.  
499

500 Cari: The second hearing we had scheduled was for Ducks Limited, LLC, but I do not have any  
501 representatives here. I am assuming they are a no-show and we will not be having that hearing  
502 for lack of representation here. Do you want me to go check my emails just to make sure I  
503 haven't gotten any notifications?  
504

505 Sean: Yes, please.  
506

507 Cari: I am just having my deputy verify that she has not gotten anything either because we had  
508 both had contact with them. I do not have any emails, voicemails, fax – anything in thus far.  
509 The Deputy City Clerk will be back to verify what she has.  
510

511 Sean: As we're waiting for Miss Marcon, my understanding is the assessor has a specific request  
512 regarding adjournment.  
513

514 Ald. Bialecki: I am aware of that, and my point is that at some point I'll make a motion that we  
515 take an extended recess, but not adjourn the Board of Review until we've had time to consider  
516 everything we've looked at today.  
517

518 Sean: Thank you.  
519

520 Ald. Binash: Cari, there is one thing. Just to clarify the exhibits on the previous issue, can you  
521 kind of go through that again and tell us which ones are Exhibits One through Six?  
522

523 Cari: On the exhibits that we have in place, Exhibit One is a copy of the statutes. Exhibit Two is  
524 a copy of the subpoena. Exhibit Three, the title of the top of that says "Amended and Restated  
525 Master Lease." Exhibit Four is the handout clarification of that Exhibit B-4 that has the numbers  
526 on it. Exhibit Five is a copy of the pages of the subpoena that have the handwriting on from  
527 Mike Lee. Exhibit Six is the Shopko comparables.  
528

529 Cari: JoAnn, can you clarify that you have no information from them either? OK, we have no  
530 information from the other party.  
531

532 Motion by Ald. Bialecki, second by Ald. Blomquist, to dismiss the request for a hearing by  
533 Ducks Limited, LLC, based on the fact there is no representation present.

534  
535 On roll call vote: Mayor Joe Chilsen – aye, Ald. Jim Binash – aye, Ald. Barry Blomquist – aye,  
536 Ald. Jim Bialecki – aye, City Clerk Cari Burmaster – aye. Motion carried unanimously.

537  
538 Motion by Ald. Bialecki to recess the Board of Review until the board has had the opportunity to  
539 review any and all data from today’s meeting or any other information that presents itself. The  
540 Board of Review will hold another meeting if necessary and have a formal adjournment at that  
541 time.

542  
543 Cari: If I could, I would like to make a suggestion that maybe we go to a date certain because I  
544 don’t want this to go on for too much of a length of time. As you know, we’re in budget time  
545 and it’s critical that we get this wrapped up. I might suggest that next Tuesday is the Council  
546 meeting at 7 p.m. Maybe we could meet at 6:30 p.m., just right before that to finalize the issue  
547 on this and get everything wrapped up. I don’t know if it would be possible for the board  
548 members to meet at that time.

549  
550 Ald. Binash: By wrapped up, are we also including Ducks Limited?

551  
552 Cari: Ducks Limited is done.

553  
554 Ald. Binash: Any other persons or corporations that might come forward is what we’re talking  
555 about?

556  
557 Cari: Nobody else really has a right to appeal at this time. Their deadline has passed. It would  
558 only be doing any kind of a correction from probably the assessors’ viewpoint because it would  
559 have to be a correction or an error they would find that we would need to correct before we  
560 would close the tax roll. So basically it’s just the procedure before we would be able to close the  
561 tax roll and say, ‘This is our final numbers. This is what we’re going to send forward.’

562  
563 Ald. Bialecki: If you feel we’ve had a reasonable amount of time to review everything and  
564 conclude next Tuesday at 6:30, I’m fine. ... If it’s the final conclusion, I have no problem with  
565 that.

566  
567 Ald. Blomquist: Is this the final conclusion on Shopko only?

568  
569 Ald. Bialecki: Not yet.

570  
571 Ald. Blomquist: I mean, that’s the deadline she’s putting on this issue.

572  
573 Cari: We’d have to make a deadline on any property in the city by the 13<sup>th</sup> because if we go sine  
574 die, that’s final. We can’t change anything else after that date because that’s what we’re sending

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15

575 in for the tax roll. That's what we're budgeting on. That's when everything starts moving  
576 forward.

577

578 Motion by Ald. Bialecki, second by Ald. Blomquist, to amend the previous motion and include  
579 the fact the Board of Review is in recess until 6:30 p.m. on Tuesday, September 13.

580

581 Vote on the amendment:

582

583 On voice vote, motion carried.

584

585 Vote on the original motion, as amended:

586

587 On voice vote, motion carried.

588

589 The Board of Review is recessed until 6:30 p.m. on Tuesday, September 13.

590

591

592 Recorded by:

593

594 Kirk Bey