



Town of Kittery, Maine  
200 Rogers Road, Kittery ME 03904

## **Board of Assessment Review**

Meeting Agenda

Remote Meeting

**Monday, December 6, 2021**

**9:30 A.M.**

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The public may attend the meeting remotely via Zoom. Register via Zoom at:

[https://us02web.zoom.us/webinar/register/WN\\_t9ish1stQ1uWCBIQhM9KGA](https://us02web.zoom.us/webinar/register/WN_t9ish1stQ1uWCBIQhM9KGA)

After registering, you will receive a confirmation email containing information about joining the webinar.

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**1. CALL TO ORDER:** Remote Meeting- 9:30 A.M.

**2. ROLL CALL**

**3. PUBLIC HEARING:** None

**4. OTHER BUSINESS:** Approval of Minutes: July 28, 2021

**5. ADJOURNMENT**

Please direct questions or comments about this hearing to the Kittery Assessing Department at 207-475-1306 or [assessing@kitteryme.org](mailto:assessing@kitteryme.org).

1 1. Call to Order

2 Chair Afienko called the meeting to order at 4:00 P.M.

3 2. Roll Call

4 Members present: Joe Afienko, Chair; Mary Thron, Member; Alan Rindler; Member; and  
5 James Katsiaficas, attorney from Perkins Thompson.

6 Other people present in roll call, Stephen Langsdorf, attorney from Preti-Flaherty,  
7 Edward Tinker, Kittery Contract Assessor; Paul McKenney, Kittery Contract Assessor;  
8 and Jon Shafmaster, Appellant.

9 3. New Business/Public Hearing

10 a. Appeal 1, 284 US Route 1 (Tax Map 31 Lot 6). Owner/Applicant Jonathan  
11 Shafmaster requests consideration of an application of appeal for real commercial  
12 property assessment.

13 Chair Afienko opened the public hearing and requested the property owner to proceed  
14 with his presentation.

15 Stephen Langsdorf presented that the Board keep in mind the assessment date of April  
16 1, 2020 for both hearings regarding the evidence and the argument of the pandemic for  
17 both hearings.

18 Jon Shafmaster presented his case and issues. He does not have an issue with the  
19 Assessors' formula of cap rate and fair market value, saying it is standard. His two  
20 issues are: the formula does not capture depreciation which is 2.5%, and it assumes  
21 that all leases are the same (i.e., triple net leases). Mr. Shafmaster explained to the  
22 Board the triple net lease and how this does not apply to his three tenants. He  
23 expressed that to determine a value the Assessors would have to take into account the  
24 types of leases the three tenants have. Mr. Shafmaster discussed the assessment date  
25 of April 1, 2020, and the need for a reassessment to reflect the situation of retail during  
26 the pandemic. Mr. Shafmaster also argued that the standard cap rate should not be  
27 applied to his mall due to the quality of the tenant and the length of the lease. He  
28 explained the terms of the leases of his tenants to support this.

29 Questions of the Appellant were opened up to the Board and the Attorneys.

30 Mr. Langsdorf asked the Appellant if he was a certified Maine appraiser or assessor,  
31 and what qualifications he has to give opinions regarding appropriate capitalization  
32 rates.

33 Mr. Shafmaster replied that he was a major outlet mall developer, and the first to  
34 develop the outlet in Kittery in 1980, and has been in the outlet mall building and  
35 developing business.

36 Mr. Langsdorf summarized Mr. Shafmaster's response that the Assessors should have  
37 taken his three individual leases and determined the cap rate for his specific property.

38 Mr. Langsdorf briefly reviewed the three ways the State of Maine requires the  
39 Assessors to value a property, and the evidence offered by Mr. Shafmaster. Discussion  
40 continued around the factors and evidence.

41 Member Thron asked for clarification on the rent calculation and the timeframe of that  
42 figure.

43 Mr. Shafmaster confirmed it was the rent calculation for the year ending March 31,  
44 2020, and that next year that calculation would be less due to COVID. The rest of the  
45 numbers in the calculation would not change.

46 Member Rindler asked Mr. Shafmaster if he had responded to the Town's income and  
47 expense requests, stating initially there was no response. It was determined that during  
48 the abatement process after revaluation, Mr. Shafmaster provided that information. Mr.  
49 Rindler asked if financial information given at the abatement would have been the same  
50 information presented now.

51 Mr. Shafmaster reported that he is unaware since his CFO provided the evidence.

52 Mr. Rindler continued with the issue of the evidence submitted does not reflect the  
53 appropriate timeframe of the year ending April 1, 2020, thus the Board does not have  
54 the evidence needed to provide relief. Discussion continued briefly around the evidence  
55 and financials submitted to the Town.

56 Chair Afienko had no questions of Mr. Shafmaster.

57 Mr. Langsdorf asked the Board to consider issuing a judgment now, since there is no  
58 evidence submitted by the Appellant for the correct timeframe. Otherwise, the  
59 Assessors will present their case.

60 The Board agreed to hear the Assessor's presentation before making a ruling.

61 Mr. Katsiaficas asked for clarification on the three assessment values listed for the  
62 property.

63 Mr. Tinker reviewed the three figures: the preliminary assessment, the assessment after  
64 the informal hearing, and the final assessment after the abatement.

65 Chair Afienko asked the Assessors to proceed with their presentation as there were no  
66 more questions of Mr. Shafmaster.

67 Mr. McKenney proceeded with the Town's presentation. He reviewed the revaluation  
68 process of all properties in the town. Mr. McKenney noted that all commercial properties

69 were requested to submit income and expense questionnaires for the 2019 tax year. Mr.  
70 McKenney explained that all three valuation approaches were utilized: the sales  
71 comparison approach, the cost approach and the income approach. He noted that  
72 commercial properties increased in value 18% since the last revaluation in 2013.

73 Mr. Tinker continued the presentation discussing the assessment value process in the  
74 commercial properties, describing the assessment as a blended value of all three  
75 approaches. He described how they used Mr. Shafmaster' s evidence at the abatement  
76 to reduce the assessment. Mr. Tinker described how the Town determined the 9.4 cap  
77 rate, and how the Town determined the lease terms translated to value.

78 Chair Afienko asked if Mr. Shafmaster disagreed, and he replied that he was under the  
79 impression that it was the prior calendar year, not the fiscal year ending April 1, 2020.  
80 He also expressed his issue with the lack of weight the lease terms and quality of  
81 tenants have in the assessment. Mr. Shafmaster continued to discuss the uncertainty of  
82 COVID and the effects on retail. Mr. Shafmaster expressed his opinion that the  
83 Assessors should take the future into consideration in the valuation process.

84 Chair Afienko asked the Assessors if the effects of COVID would be taken into  
85 consideration for April 1, 2021. Mr. Tinker replied that the Town would look at the prior  
86 year activity. Mr. Langsdorf explained the difference of valuation in terms of selling the  
87 property versus the Town's tax assessment.

88 Mr. Shafmaster disagreed with the Town, and believes his valuation should be specific  
89 to his property, not any other commercial property. Mr. Tinker described the different  
90 factors that are individually applied, usually condition factors, and in Mr. Shafmaster's  
91 case, the income data he provided that was applied to the value.

92 Ms. Thron asked the Assessors about the cost approach. Mr. Tinker explained that the  
93 cost approach was looked at, and all three approaches were blended together for one  
94 value. The evidence Mr. Shafmaster provided was a breakdown of the value, and not  
95 how the value was determined. Mr. Tinker explained that the appraisal tables were  
96 created. Discussion continued on the Assessors' methodology.

97 Ms. Thron asked about the quality and length of leases and if the Town analyzes this  
98 information. Mr. Tinker replied that they rely on the questionnaires to input the data into  
99 the market data system. He explained the data that the Appellant presented is the same  
100 data they used in the analysis.

101 Ms. Thron continued and asked about the reason for the adjustments made by the  
102 Town already. Mr. Tinker explained that the adjusted value was due to the evidence  
103 submitted by Mr. Shafmaster during the informal hearing and the abatement.

104 Discussion continued around the cap rate by Mr. Shafmaster, the Board and the  
105 Assessors.

106 Chair Afienko reiterated that the Board was not given enough information to determine if  
107 the Assessors' value is wrong compared to Mr. Shafmaster's value. He also questioned  
108 vacant commercial buildings, rent prices, and COVID in terms of the factors they have  
109 in the Assessors' value.

110 Mr. Langsdorf read the requirements of the taxpayer for the hearing in order for the  
111 Board to consider an adjustment. Bringing evidence on a future date is not acceptable  
112 for the present hearing. His burden of proof has not been met due to the lack of relevant  
113 evidence needed for the Assessors' value to be overturned.

114 Chair Afienko agreed with Mr. Langsdorf in that there was not enough evidence to  
115 review.

116 Mr. Shafmaster requested the Board table the hearing for 60 days so that he can  
117 provide the accurate figures needed.

118 Brief discussion continued regarding extending the hearing or voting today.

119 Ms. Thron asked if the Town adjusts the assessment for the Outlets or commercial  
120 properties each year. Mr. McKenney replied that legally they could not do that unless  
121 there was a substantial change in the commercial market compared to the residential  
122 market. He noted that every property has the right to file an abatement each year.

123 Member Thron moved to deny the appeal. Seconded by Mr. Rindler. The motion passed  
124 3-0.

125 The Board took a recess at 5:20 PM, and reconvened at 5:28 PM.

126 Mr. Katsiaficas read the findings of fact and the Board discussed and voted for each  
127 one as follows:

128 1. Appellant represented himself and offered his opinion of value using an income  
129 method, but did not present an appraisal of the Property performed by a Maine  
130 certified professional real estate appraiser.

131 2. Appellant argues that based upon actual rental and other income, expenses,  
132 taxes and a capitalization rate of 11 percent to reflect the length of leases and  
133 quality of tenants, the April 1, 2020 value of the Property was \$2,676,520.

134 3. The Town undertook a townwide revaluation in 2020, and those values were used  
135 for April 1, 2020; the Town used all three approaches to value -- income, sales and  
136 reproduction cost -- to determine value through a blended value that takes into  
137 account building size, location, age, condition and income.

138 4. After informal discussion, the Town reduced the initial revaluation value for the  
139 Property from \$5,667,800 to the April, 2020 assessed value of \$5,280,200, and the  
140 Assessor granted an abatement to further reduce the Property's valuation to  
141 \$4,708,700 after reviewing Appellant's specific rental income and expense data.

142 5. At the hearing, the Appellant presented evidence of actual rental and other  
143 income, expenses, and taxes for the entire calendar year 2020, which was beyond  
144 the assessment date of April 1, 2020; therefore, the Appellant has failed to present  
145 credible evidence of value that would overcome the presumption of validity of the  
146 Assessor's April 1, 2020 valuation of the Property, and so has failed to meet its  
147 burden on its claim of overvaluation. The Board declined to grant Appellant an  
148 extension of time to bring in other data prior to April 1, 2020, since the Appellant had  
149 received an abatement for this year already based on actual data, and the Appellant  
150 should have understood that actual data for this abatement application was needed  
151 here.

152 On Motion of Member Thron, seconded by Member Rindler, based on the above, the  
153 Board voted to deny the abatement appeal by a vote of 3 - 0.

154 Mr. Afienko moved to approve the findings of fact as written, and deny the appeal. Mr.  
155 Rindler seconded. The motion passed 3-0.

156 Ms. Thron moved to authorize the Chair to sign a written notice of decision and findings.  
157 Seconded by Mr. Rindler. The motion passed 3-0.

158 b. Appeal 2, 375 US Route 1 (Tax Map 47, Lot 4): Owner/Applicant F/C Kittery  
159 Development LLC requests consideration of an application of appeal for real  
160 commercial property assessment. Agent is Jonathan Block, Pierce Atwood LLP.

161 c. Appeal 3, 318 US Route 1 (Tax Map 38, Lot 13A): Owner/Applicant F/C Kittery  
162 Development LLC requests consideration of an application of appeal for real  
163 commercial property assessment. Agent is Jonathan Block, Pierce Atwood LLP.

164 d. Appeal 4, 294 US Route 1 (Tax Map 38, Lot 14): Owner/Applicant Ripley Road  
165 Associates LLC requests consideration of an application of appeal for real commercial  
166 property assessment. Agent is Jonathan Block, Pierce Atwood LLP.

167 e. Appeal 5, 345 US Route 1 (Tax Map 47, Lot 1): Owner/Applicant CPG Kittery  
168 Holdings LLC requests consideration of an application of appeal for real commercial  
169 property assessment. Agent is Jonathan Block, Pierce Atwood LLP.

170 f. Appeal 6, 325 US Route 1 (Tax Map 38, Lot 7): Owner/Applicant CPG Finance II LLC  
171 requests consideration of an application of appeal for real commercial property  
172 assessment. Agent is Jonathan Block, Pierce Atwood LLP.

173 Jonathon Block presented his case. He noted that it is the tenants of the properties that  
174 are also affected, since the tenants pay net rents which includes paying the property  
175 taxes. Assessments over the 2019 and 2020 tax year were noted, showing an increase  
176 in value despite the decline in brick-and-mortar retail and the COVID pandemic. Mr.  
177 Block discussed the April 1 assessment date and State law, emphasizing the  
178 importance of the property value on April 1 being a closed outlet mall. Mr. Block  
179 discussed the decline of brick-and-mortar sales, cap rates, and asset values. Mr. Block

180 requested an executive session to discuss proprietary financials, including: tenant sales  
181 volumes, income expenses and income approach, rent roll, and income statements.

182 The Board discussed the option of executive session to review the information.

183 Mr. Rindler made a motion to go into executive session. Seconded by Ms. Thron. The  
184 motion passed 2-1.

185 The Board went into executive session at 6:05 PM, and reconvened at 6:37 PM.

186 Chair Afienko made a motion to emerge from executive session. Seconded by Mr.  
187 Rindler. The motion passed 3-0.

188 Chair Afienko requested that the Appellant and the Town summarize the factors of the  
189 assessments and values.

190 Mr. Block stated that in the income approach the major difference is the cap rate. The  
191 comparable sales data supports the value presented by the property owner. Data was  
192 reviewed regarding national cap rates provided by an international company, Green  
193 Street Advisors.

194 Mr. Langsdorf objected to this data by Green Street Advisors, stating it is an unknown  
195 company making determinations for Kittery.

196 Mr. Tinker could not verify the company.

197 Mr. Block stated the Simon Properties utilizes Green Street Advisors for their analytical  
198 resources. Cap rates were discussed, as well as outlet shopping center sales. Mr. Block  
199 utilized sales data to determine the Kittery Outlets would be valued at 20 million dollars  
200 instead of the 61 million dollars the Town stated. The sale data was national data, not  
201 specifically Maine sales data. Declining sales data was mentioned, in terms of different  
202 retail establishments, noting apparel stores declining specifically. Mr. Block referenced  
203 several included articles provided to the Board for review. He summarized that the  
204 assessed value increasing from 58 million dollars to 61 million dollars in this retail  
205 environment is unjust. He asked for the supporting data on cap rates, and comparable  
206 sales from the Town.

207 Chair Afienko asked to hear from the Town.

208 Mr. Tinker presented for the Town. He made the distinction of the difference between an  
209 indoor versus outdoor mall, and that in the local Seacoast area the outdoor mall has  
210 regained its value. He clarified the increase in the value from 2019 to 2020, stating the  
211 2019 value was based on the last revaluation of 2013. The Appellant's property  
212 increased 4.85%, with the tax burden decreasing 28.35%. The cap rate was discussed,  
213 with the property noted as a "B" quality. Mr. Tinker reported that the Town used the net  
214 operating income provided by the Appellant.

215 Mr. Rindler asked for clarification on the derivation of the cap rate and if it was standard  
216 within the State of Maine. Mr. Tinker replied that it is, and that the blended cap rate  
217 formula was used in other commercial properties in Kittery.

218 Mr. Rindler also asked for a rebuttal to the Appellant's proposed cap rate, and Mr.  
219 Tinker replied that the difference is that the Town does not believe it is a "C" or "C  
220 minus" property.

221 Mr. Rindler asked the Town's opinion on the difference of the mall versus the outlet. Mr.  
222 Tinker replied that the malls are the ones having the difficulty of the pandemic's effects  
223 and the retail decline in recent years.

224 Chair Afienko commented on the economic report of national retail and how that  
225 translates to the local retail market. Mr. Tinker commented that they try to stay as local  
226 as possible for the market.

227 Mr. Block proceeded to ask the Town questions as there were no further questions from  
228 the Board to the Town.

229 Mr. Block asked if the buyers for strip malls in Kittery are local businesses or national  
230 companies, and that the market is more than local. Mr. Tinker replied that multiple  
231 people or companies can own the buildings. He also replied that cap rates and income  
232 data would be local to the area, not national.

233 Mr. Block asked for details on how the Town classifies the property as a "B" factor level.  
234 Mr. Tinker replied they base the factor on the property, the tenants, the location, and  
235 income. Mr. Block asked for more clarification if there were written standards for the  
236 classifications. Mr. Tinker replied that they create a set of standards as part of the  
237 revaluation by a physical view of each property. Mr. Block asked if there were any sales  
238 of strip malls in the year prior to April 1, 2020 in Kittery. Mr. Tinker replied that there  
239 were a few sales of commercial properties, including some on Route 1, but he did not  
240 have the sales data.

241 Chair Afienko commented that without comparable sales data it is difficult to use the  
242 sales approach for value, and that they rely on the other two approaches.

243 Mr. Tinker briefly explained the approaches and how the Town utilizes the models to  
244 create values. He also noted that the Town did not receive the confidential financial  
245 information from the Appellant until the abatement filing, not at the revaluation.

246 Chair Afienko asked if they had received the confidential information would it have  
247 changed the value for April 1, 2020 and Mr. Tinker replied no.

248 Ms. Thron asked if there was a change at the abatement filing, and the Assessors  
249 replied no.



250 Mr. Block asked for more information regarding the cap rate, however Mr. Tinker could  
251 not provide the specific answer regarding the sale data that resulted in the cap rate  
252 used for the value.

253 Mr. Rindler asked if the Appellant was satisfied with the tax assessments in prior years.

254 Mr. Block replied no, but that the fact that the valuation increased during a time that the  
255 mall was shut down, coupled with the long-term trend of declining brick-and-mortar.

256 Mr. Rindler clarified that the long-term trend of decline was the reason for his question  
257 about the value in prior years, since the decline has been happening since 2016  
258 according to the Appellant.

259 Mr. Block replied that the Appellant may have been dissatisfied with prior year's  
260 assessments but they did not file abatements. It was the increase that got their  
261 attention.

262 Discussion continued briefly on the assessed values, the tax rate, and the increases or  
263 decreases. Mr. Langsdorf summarized the revaluation and the need to bring the ratio of  
264 assessed value in line with the sales and market value.

265 Mr. Block rebutted and summarized the market value went up, which would cause a  
266 potential buyer to look at generated income, risk assessment, asking prices, and cap  
267 rates.

268 Ms. Thron moved to close the public hearing. Seconded by Mr. Afienko. The motion  
269 passed 3-0.

270 Deliberation

271 Ms. Thron stated that the deciding factors are whether the malls are a "B" verses "C"  
272 condition rate, and the corresponding cap rates. She noted that it is not surprising the  
273 value went up, and it did not go up as much as most properties in Kittery. She stated  
274 she takes the data provided by Green Street Advisors at face value.

275 Chair Afienko noted the Town's point of view and the Appellant's point of view based on  
276 the confidential data. He acknowledged the national retail data is informative, but that  
277 the Town took into consideration everything they had to reach their value. The national  
278 data does not reflect on the Board's job on granting an abatement.

279 Mr. Rindler agreed with the Chair. He noted the information presented in the documents  
280 described the year 2020, as opposed to the year leading up to April 1, 2020. The  
281 national organization's data and opinion should not be the basis for the decision of the  
282 Board. The Assessors answers to his questions were appropriate to their job  
283 performance, and the Appellant's confidential information was not enough to persuade  
284 him that the value was wrong. Mr. Rindler does not feel there is sufficient evidence that  
285 the Assessors' valuation was manifestly wrong.

286 Ms. Thron agreed that the Board has not received enough evidence to show that the  
287 Town was manifestly wrong. She noted the cap rate differences and the impact they  
288 have on the assessment, but that she did not hear enough to know what the cap rate  
289 should be.

290 Chair Afienko moved to deny the abatement for the properties. Seconded by Mr.  
291 Rindler. The motion carried 3-0.

292 The Board took a recess at 7:26 PM, and reconvened at 7:33 PM.

293 Mr. Katsiaficas read the findings of fact and the Board discussed and voted for each  
294 one as follows:

295 1. Appellant argues as to all properties that are the subject of these Appeals that: (a)  
296 Governor Mills declared a Civil State of Emergency on March 15, 2020 due to the  
297 COVID-19 pandemic; (b) Kittery Premium Outlets was closed to the public from  
298 March 19, 2020 to April 1, 2020; (c) the Town has increased the assessed values of  
299 the Properties for 2020; (d) consumer habits have changed with technology to shift  
300 sales from brick and mortar retail outlets to online retail outlets such as Amazon and  
301 Wayfair; (e) the Assessor did not use proper valuation techniques to value the  
302 Properties; and (f) the Assessor failed to consider all relevant factors in determining  
303 just value, particularly the economic obsolescence and loss of value of brick and  
304 mortar retail outlets. The Appellant also contested the increase in the overall  
305 assessed value from \$58,300,000 to \$61,600,000 at the same time as a long-term  
306 decline in sales continued and the beginning effects the of COVID-19 pandemic  
307 emerged.

308 2. Atty. Block presented the Appellant's own opinion of value based upon a  
309 capitalization rate of 11.89% and income and expense information that it had  
310 provided to the Town Assessor to arrive at an April 1, 2020 value of \$40,000,000,  
311 and supported that with sales reports and retail sector reports that the Appellant  
312 provided, one of which characterized the Properties as C to C+ in quality. The  
313 Appellant did not present real estate appraisals by a certified Maine real estate  
314 appraiser for the Properties.

315 3. The Town Assessor did not agree with the Appellant's capitalization rate; he  
316 testified that he calculated all capitalization rates in the same manner and applied  
317 the capitalization rate of 10.42% to Appellants' property using Appellants' income  
318 and expense information, and characterized all of the Properties as B in quality. The  
319 Assessor testified that he arrived at this value by looking at comparable sales and  
320 replacement cost less depreciation as well as income, and looked at rental income,  
321 vacancy rate and building condition. The Assessor noted that contrary to the  
322 Taxpayer's argument that brick-and-mortar retail sales have declined in recent  
323 years, the Properties' net operating income has been consistent over the period from  
324 2016 through 2019. He also observed that the April 1, 2020 assessed value of

325 \$61,600,000 was a blended value from all three approaches; the income method  
326 alone would have provided a greater value of \$70,962,985.

327 4. The Board is not persuaded by Appellant's presentation of national trends and  
328 statistics of unknown origin and quality, and finds that the Assessor reviewed the  
329 information provided by Appellant fairly according to the Town's standards.

330 5. Therefore, the Board concludes that Appellant has failed to provide credible  
331 evidence of value to support the alleged overvaluation of the Properties, and that  
332 Appellant has failed to meet its burden on the issue of overvaluation.

333 6. The Appellant failed to demonstrate that the Properties were assessed differently  
334 than similar properties of the same class, and so Appellant has failed to meet its  
335 burden on the issue of unjust discrimination.

336 On Motion by Chair Afienko, seconded by Member Rindler, based on the above, the  
337 Board denied the abatement Appeals and authorized the Chair to sign the findings by a  
338 vote of 3 - 0.

339 4. Other Business

340 Approval of Minutes- June 23, 2021

341 Chair Afienko moved to approve the minutes as written. Seconded by Mr. Rindler.  
342 Motion passed 2-0-1.

343 5. Adjournment

344 Chair Afienko moved to adjourn the meeting at 7:42 PM.

Submitted by Carrie Varao on August 25, 2021.

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information, the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website.