**BY THE COURT:**

**DATE SIGNED: May 9, 2019**

Electronically signed by Judge Marshall B. Murray
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
BRANCH 43

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MAYFAIR MALL, LLC,

Plaintiff,

v. Case No. 14-CV-3776

CITY OF WAUWATOSA,

Defendant.

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**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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The Plaintiff, Mayfair Mall, LLC ("Mayfair"), brought this tax assessment challenge against the City of Wauwatosa ("the City") pursuant to Wis. Stat. § 74.37. On May 5, 2014, Mayfair filed the original summons and complaint, which challenged the City's 2013 assessment of the Mayfair Mall property. Mayfair later added the City's 2014 and 2015 assessments of the property to this challenge. The court trial began on May 4, 2017. The Court conducted approximately six non-consecutive weeks of trial, which concluded on June 28, 2018. Based on the evidence and testimony presented at the court trial, the Court makes the following findings of fact and conclusions of law.

## FINDINGS OF FACT

### I. Procedural facts and property description.

1. This action was brought by Mayfair pursuant to Wis. Stat. § 74.37(3)(d), for a partial refund of property taxes paid on property it owns in the City.

2. The subject property is known as Mayfair Mall, in Wauwatosa, Wisconsin, and is identified on the tax rolls of the City for 2013 and 2014 as Tax Parcel Nos. 335-9998-05, 335-9998-14, 335-9998-15 and 335-9998-20, and for 2015 as Tax Parcel Nos. 335-9998-05, 335-9998-14, 335-9998-15 and 335-9998-21.

3. General Growth Properties Inc. ("GGP"), through its limited liability company, Mayfair Mall, LLC, is the owner of Mayfair Mall, having purchased the mall in 1998. There has been no sale of Mayfair Mall since 1998.

4. GGP is a publically traded Real Estate Investment Trust ("REIT") that owns in excess of 131 super regional malls nationwide. It must make annual and quarterly filings with the SEC.

5. The City's assessment of Mayfair Mall as of January 1, 2013 and January 1, 2014 was $400,000,000 and for January 1, 2015 was $421,008,500.

6. The assessed value of the subject property for 2013, 2014, and 2015 was entered into the Assessment Roll for each year, to which the affidavit of the assessor was attached.

7. For 2013, 2014, and 2015, Mayfair served a timely claim for excessive assessment with respect to the assessments of Mayfair Mall.

8. The City's Board of Review sustained the assessments of Mayfair mall in 2013 and 2014 at $400,000,000 and at $421,008,500 for 2015.

9. The City imposed tax on Mayfair Mall in the amount of $9,494,395.60 for 2013, $9,356,713.20 for 2014 and $9,821,259.34 for 2015.

10. After each claim was denied or deemed denied, Mayfair timely commenced this action alleging excessive assessment.

11. Mayfair Mall, as of the assessment dates at issue, consists of: the Mall proper; an adjacent restaurant and retailer; a separate parking structure; two separate office buildings; an office building attached to the Mall; and a vacant parcel.

12. The Boston Store property, along with several acres of parking lot, is a separate parcel and is not owned by Mayfair and is not involved in this action.

13. In 2015, the assessment was increased to reflect the additions to the Mall property associated with preparing the adjacent Mall property for Nordstrom to build its store on its own tax parcel.

14. GGP invested approximately $70,000,000 in construction and renovations in preparation for the new Nordstrom store in the fall of 2014.

15. The Nordstrom store building and land on which the store is built is not included in the 2015 assessment of Mayfair Mall as Nordstrom owns its own building and land and is separately assessed for that property.

## II. The assessments performed by the City assessors were conducted consistently with the principles prescribed in the Wisconsin Property Assessment Manual ("WPAM").

16. The former City assessor, Steve Miner, was responsible for the 2011-2013 assessments of Mayfair Mall.

17. Mr. Miner is currently the Commissioner of Assessments for the City of Milwaukee. He supervises the assessment of 151,000 parcels and has 25 years of assessment experience. He is familiar with the WPAM.

18. For 2013, Mr. Miner valued Mayfair at $400 Million.

19. Mr. Miner combined four legal tax parcels for the assessment. He concluded the entire Mayfair property was one economic unit that was incapable of separate valuation for many reasons, including shared systems and parking structures that crossed parcel lines. The office portion was also transitioning to retail.

20. Mr. Miner also concluded the highest and best use of Mayfair for 2013 was continued use as a superregional mall. There was no evidence the mall would not continue to operate.

21. There was not a recent arm's-length sale of the subject property from which Mr. Miner could assess the value.

22. Mr. Miner had limited information when he set the assessment for 2013. He did not have the operating statements or any of the documents from the response to the Board of Review subpoena. He set the value without significant information that had been requested from the property owner.

23. Mr. Miner went through substantial efforts to obtain information from GGP regarding Mayfair, including sending out a written statutory request for information as well as emails and setting up meetings. However, GGP did not respond to a number of his requests. Mr. Miner received some information from GGP in July, but not the financing appraisal or other requested information.

24. Mr. Miner relied on the income approach for his 2013 assessment. He concluded the income approach produced the most reliable results for a property like Mayfair. The income approach is generally used to appraise mall properties.

25. The income approach generally requires an assessor to determine the Net Operating Income ("NOI") for the year in question and then apply that number to the capitalization rate ("cap rate") to produce the property's value. This is known as the Direct Capitalization method. A higher cap rate results in a lower property value.

26. Establishing the proper cap rate also involves determining the Class of mall.

27. Mr. Miner, as well as all of the City's experts, determined Mayfair is a Class A mall. GGP has also referred to Mayfair as a Class A mall in earnings calls with shareholders. The Cushman and Wakefield ("CW") appraisal, which will be discussed below, also considered Mayfair to be a Class A mall.

28. After determining the Class of mall, many assessors utilize the PWC Real Estate Investor Survey ("PWC") to determine the appropriate cap rate. PWC is widely respected and cited and used by the Appraisal Institute. Mayfair's experts, Peter Korpacz, Paul Bakken, and Richard Marchitelli, also relied upon the PWC in their appraisals.

29. Mr. Miner's 2013 initial income approach was based on the information received from GGP in July of 2013 as to the total revenue of the mall as well as other available resources.

30. While cap rates for Class A malls can be below 5 percent, producing higher values, Mr. Miner concluded a base cap rate of 6.1 percent and, as provided in the WPAM, partially "loaded" the cap rate to account for GGP's share of real estate taxes. He concluded a loaded cap rate of 7.19 to 7.55 percent was appropriate.

31. Mr. Miner considered the 2012 actual real estate tax expense of $5.1 Million and reimbursement of $3.92 Million when setting and loading the appropriate cap rate.

32. Mr. Miner applied his range of cap rates to Mayfair's NOI, which produced a value range of $413-434 Million. However, he conservatively set the assessment at $400 Million because he was operating on only the best available information and lacked information he had requested from GGP.

33. Mr. Miner's initial income approach appraisal of Mayfair for 2013 complied with the rules and procedures of the WPAM.

34. The assessment notice for 2013 was issued on September 3, 2013. The subpoena was issued after the first Board meeting on September 18, 2013.

35. The information that was eventually received in response to the subpoena also supported a value higher than $400 Million.

36. The City retained Mark Kenney as a consultant regarding the valuation of Mayfair.

37. Mr. Kenney is a very experienced appraiser and a credible and reliable expert witness. Mr. Kenney has held the MAI designation from the Appraisal Institute since 1990 and has been involved in 72 valuation assignments regarding regional and superregional malls. He was also involved in the seminal tax assessment case in Wisconsin, *Bonstores*, and various other anchor department store cases around the State.

38. Mr. Kenney has appraised two department stores at Mayfair, Boston Store and Macy's, and has significant information about the property. He also testified at the 2013 Board of Review as to the general market for regional and superregional malls.

39. Mr. Kenney provided Mr. Miner with sales information, earnings calls information and other materials for the Board of Review. He provided half of the sales used by Mr. Miner in the sales comparison approach and the CW appraisal.

40. The CW financing appraisal, commissioned by GGP following a prior bankruptcy, set the value of Mayfair at $449.5 Million.

41. The CW appraisal was based on a $29.2 Million NOI and a 6.5 percent cap rate.

42. The CW appraisal had ARGUS lease information for every lease at Mayfair. Mr. Miner felt the actual income and expenses were the best information and relied heavily upon them in reevaluating his income analysis. Mr. Miner also reviewed the CW sales comparables and data sheets.

43. While Mr. Miner determined a Tier 3 income approach, pursuant to the *Markarian* hierarchy, would produce the most reliable results, he also performed additional analyses of Mayfair with the more detailed information he was provided for the Board of Review.

44. Mr. Miner considered Tier 1 sale information regarding the allocation from the GGP bankruptcy. CW was hired to do an allocation that restated the value of the assets coming out of bankruptcy, as reported to the SEC and the public.

45. The Tier 1 fair value acquisition was $469.9 Million, based on $436 Million in tangible property and $33 Million in intangibles due to market value of leases. This evaluation was based on a leased fee value.

46. Mr. Miner also performed a Tier 2 sales comparison approach at the Board of Review, using comparable sales from the CW appraisal and Mr. Kenney. Mr. Miner relied upon

the CW data sheets for the sales information, which he stated are reliable and relied upon in the appraisal industry.

47. Mr. Miner adjusted for the presence or absence of anchor stores for the comparables and derived the cap rates from sales using the actual income and sale prices.

48. Mr. Miner also adjusted the sales for various categories and the impact of the market using his experience and judgment. For example, he adjusted anchors for lower rent, such as the rent paid by Macy's at Mayfair.

49. Mr. Miner considered the comparables' land to building ratio, age, quality, condition, date of sale, leased fee/fee simple interest, overall rate, NOI per square foot, occupancy, price per square foot, and in-line sales per square foot sold.

50. Mr. Miner's sales comparison approach indicated a value of $452.5 Million.

51. Mr. Miner also performed an initial cost approach, at the request of GGP, using the Marshall Valuation Services cost service. He used the land value provided by GGP but considered other data.

52. The cost approach is generally not utilized alone to value a mall, but can be used by appraisers as a test of reasonableness. Rather, market participants give priority to the income approach when appraising malls. Notably, several of Mayfair's experts rely on the cost approach in their valuations even though their experts agree the income approach is most reliable.

53. Ultimately, both Mr. Miner and Mr. Kenney concluded the cost approach was an unreliable method to assess Mayfair.

54. Mr. Miner also reviewed a GGP earnings call regarding the refinance of an existing GGP loan; assets were undergoing redevelopment where they expected a big pickup in income. Mayfair was refinanced and GGP had a plan to invest up to $70 Million to expand.

55. Mr. Miner reviewed a GGP Nordstrom project approval request package that described the improvements to the mall property and an expected return of 5 percent on a $73 Million investment.

56. However, while Mr. Miner reviewed documents related to the Nordstrom deal, they were not relevant to his final conclusion as no deal had been finalized and no construction had commenced as of the 2013 date of valuation.

57. Mr. Miner also reviewed documents prepared by Deloitte & Touche regarding asset allocation and fair value for accounting purposes. D&T determined a value of $417 Million using a direct capitalization approach. NOI of $27.1 Million was capitalized at 6.5 percent to reach a value of $417 Million.

58. Mr. Miner based his final value on the income approach, which he determined to be the most reliable method to value Mayfair. It was based on the actual income and expenses provided at the Board of review.

59. Ultimately, Mr. Miner's income analysis, as well as his appraisals using the other Tier approaches, supported a value higher than $400 Million for Mayfair.

60. However, at the time the 2013 assessment was initially completed, Mr. Miner conservatively set the value at $400 Million because he had not received all the relevant information from GGP.

61. Mr. Miner's extensive income approach assessment, supported by his analyses under the other Tier approaches, was conducted in accordance with the rules and procedures laid out in the WPAM.

62. After Mr. Miner left his position to become the Assessment Commissioner for the City of Milwaukee, the City hired a new assessor, Shannon Krause. Ms. Krause has worked as an

assessor for 31 years. Ms. Krause started as the Statutory Assessor in July of 2014, and remains the Assessor today.

63. Ms. Krause set the assessment of Mayfair for 2014. There was no Board hearing in 2014. She reviewed the 2013 assessment analysis and GGP's income and incremental expenses for that year.

64. Ms. Krause requested and reviewed updated income and expenses from GGP as part of her analysis for the 2014 assessment.

65. At the time of the 2014 assessment, the Nordstrom land sale had not occurred and Ms. Krause did not have the letter of intent. No construction had started on the Nordstrom expansion as of the January 1, 2014 valuation date.

66. Ms. Krause continued the practice of valuing the property on a single parcel, agreeing it was a single economic unit.

67. Ms. Krause also relied on the income approach for the 2014 assessment.

68. The information obtained by Ms. Krause also indicated Mayfair was a Class A mall. As such, Ms. Krause used the base cap rates for a Class A mall from PWC, at 5.92 percent.

69. Mr. Kenny also similarly provided Ms. Krause with earnings call information as he had done with Mr. Miner.

70. Based upon this information and analysis, Ms. Krause carried the $400 million assessment forward for 2014.

71. Ms. Krause's 2014 assessment of Mayfair was conducted pursuant to the rules and procedures laid out in the WPAM.

72. Ms. Krause also utilized the income approach for the 2015 assessment.

73. Ms. Krause did not deduct the Nordstrom expansion cost, concluding it was both an improvement and an enhancement with an expected return.

74. In 2015, Ms. Krause adjusted the assessment to add approximately 5%, or $21 million to the assessment, to take into account the partial construction that had commenced, reconfiguring and adding additional retail space and a parking garage, in order to prepare the property for the new Nordstrom department store.

75. Ms. Krause partially relied on GGP's representations to their investors, which she felt were a good indicator.

76. Based on her analysis, Ms. Krause set the value of Mayfair at $421,008,500 for 2015.

77. Ms. Krause's 2015 assessment of Mayfair, which used the actual income and expense information from GGP, complied with the rules and procedures of the WPAM.

78. Notably, Mr. Kenney also performed independent appraisals for Mayfair for the years of 2013-2015, which he performed between 2015 and 2016.

79. Mr. Kenney also concluded the highest and best use of Mayfair was continued use as a superregional mall.

80. In his analysis, Mr. Kenney also consulted the Directory of Major Malls ("DMM"), which provides information on mall retail sales and is generally consulted and relied upon by appraisers.

81. Accordingly to the DMM, retail sales at Mayfair are approximately $600 per square foot, Brookfield Square is $385, Southridge is $426, and Bayshore is $360. The DMM also classifies Mayfair as a superregional mall.

82. Mr. Kenney, like Mr. Miner and Ms. Krause, relied on the income approach to value Mayfair and determined the cost approach was not applicable. He utilized two different income approach methods, Discounted Cash Flow and Direct Capitalization.

83. Mr. Kenney also checked his results with a Tier 2 sales comparison analysis, where he used 20 comparable properties and adjusted them appropriately. Mr. Kenney evaluated one A+ mall, seven A malls, and twelve B+ malls in his sales comparison analysis.

84. Mr. Kenney also utilized ARGUS lease information for his appraisal, which calculates the actual amounts of rental income and reimbursements received during the year.

85. Mr. Kenney used the actual Macy's contract rent since it was below market value. Other than Macy's, he determined the current leases at Mayfair reflect market rent.

86. Mr. Kenney also determined Mayfair is a Class A mall and relied on the PWC Investor Survey in setting the appropriate cap rate. He also considered that a high concentration of malls owned by GGP are Class A malls.

87. Mr. Kenney also considered the "loan to value" ratio stated in the CW financing appraisal. The CW appraisal states a loan to value ratio of 75 percent. Mr. Kenney stated banks will not provide loans for the full value of a property. Rather, banks will typically provide loans between 70-75 percent of a property's value. Since Mayfair has a $347.8 Million market value mortgage at 75 percent, Mr. Kenney determined a reasonable valuation would be $463.8 Million at the time of the CW appraisal.

88. Mr. Kenney's value conclusions under his Direct Capitalization income approach were $464.5 Million for 2013, $463.5 Million for 2014, and $496 Million for 2015.

89. Mr. Kenney's value conclusions under his Discounted Cash Flow income approach were $443 Million for 2013, $426 Million for 2014, and $500 Million for 2015.

90. After deducting for capital expenses, Mr. Kenney's conclusions of value under his sales comparison approach were $405 Million for 2013, $500 Million for 2014, and $552 Million for 2015.

91. Both of Mr. Kenney's income analyses and his sales comparison analysis were conducted consistently with the rules and procedures laid out in the WPAM.

92. Mr. Kenney's appraisals, which were conducted with substantially more detailed information than was available to either Mr. Miner or Ms. Krause, establish the assessments set by the City assessors were not excessive for the years of 2013-2015.

## III. The opinions of Mayfair's experts are not reliable and do not constitute significant contrary evidence.

93. The City's expert, William Miller, in addition to conducting his own appraisals of Mayfair for the years 2013-2015, conducted a review of the studies and appraisals performed by Mayfair's experts. While Mr. Miller does not hold an appraisal license in Wisconsin, he is an MAI candidate at the Appraisal Institute. Accordingly, he is competent to offer opinions in his appraisals and has the qualifications and experience to appraise complex commercial properties and property rights.

94. Mr. Miller's testimony and conclusions are both reliable and credible and will be referenced throughout.

95. Mayfair's expert, Peter Korpacz, performed cap rate study using a Direct Capitalization income analysis and a sales comparison analysis.

96. Mr. Korpacz concluded in step 1 of his analysis, based on the level of retail sales per square foot, that Mayfair was a Class A mall in 2013 and a Class B+ mall in 2014 and 2015. However, based on other more subjective factors in step 2, such as age of the mall, occupancy, a

number of temporary tenants, weak trade area demographics, and non-retail use, Mr. Korpacz downgraded Mayfair to a low-end Class B+ mall for 2013-2015.

97. Mr. Korpacz's determination of the applicable cap rate for each year was based on the Class B+ rating and use of Class B sales data.

98. Mr. Korpacz's cap rate conclusions were in line with B and B+ malls at 7.4-7.6 percent.

99. Although Mr. Korpacz used PWC sales classifications in his classification analysis, he improperly excluded Apple Store sales from his analysis. PWC, Greenstreet Advisors, and mall owner financials do not exclude Apple Store sales. Greenstreet Advisors is a reputable source generally relied upon by appraisers.

100. Mr. Korpacz did not adjust his sales for leased fee versus fee simple because that distinction does not drive the cap rate. Buyers do not distinguish between leased fee and fee simple cap rates. Leases are among the "bundle of sticks" an owner of a property like Mayfair possesses and have value when being sold and appraised. The City's assessors and experts agree with this determination.

101. Notably, Mr. Korpacz agreed earnings calls were an acceptable source of information regarding a specific property and determination of cap rates.

102. Mr. Korpacz also agreed the cost approach is not useful to value a regional or superregional mall and it is not considered by the market.

103. Mr. Korpacz used 20 comparable sales in the sales comparison portion of his cap rate study.

104. Mr. Korpacz's comparison properties were not substantially similar to Mayfair.

105. For 2013, Mr. Korpacz had 2 malls he classified as Class A, but both had lower sales than Mayfair and would be classified lower than A based on retail sales per square foot. However, subjective factors caused Mr. Korpacz to increase the classification to A.

106. For example, Mr. Korpacz adjusted a B+ mall upward based on being the dominant mall in the area and having low occupancy cost, but the mall is in a low-population area and its occupancy is typical of a B mall.

107. Mr. Korpacz only upgraded his comparable malls in his step 2 subjective analysis; he did not downgrade. However, he did downgrade Mayfair in his step 2 subjective analysis.

108. For example, Mr. Korpacz downgraded Mayfair for weak household growth, but Mayfair is located in a mature community with strong demographics and this was not a viable reason to downgrade the mall.

109. For 2014, Mr. Korpacz had only one comparable property classified as an A mall. The rest were B+ Class malls and had significantly less sales per square foot than Mayfair.

110. In addition, the comparable sale in North Dakota had one-third the in-line store space of Mayfair and the nearby population was only five percent that of Mayfair. The Green Acres property also was only 20 percent in-line space, which is significantly lower than Mayfair.

111. For 2015, Mr. Korpacz's comparable sales did not include any Class A malls. There was only one B+ mall included. The sales had average sales per square foot of $361 versus $491 for Mayfair.

112. Even if Mr. Korpacz's conclusion that Mayfair was a B+ mall was correct, which it is not, his analysis should have included malls that properly bracketed his estimated value, evaluating a sufficient number of A malls on the high end and B malls on the low end. Mr. Korpacz failed to do this.

113. Mr. Korpacz's sale comparables were also dissimilar to Mayfair in terms of trade area: five were larger, but fifteen were smaller; eight of the twenty served a trade area under 500,000 people, which is less than half of Mayfair. For example, Mt. Shasta has 150,000 in a 15-mile radius compared to Mayfair's 1.27 Million. Mr. Miller opined that small market malls are not competitive with Mayfair and cannot reasonably be used as comparables.

114. Ultimately, Mr. Korpacz's methodology study is not an appraisal since it does not reach a conclusion of value. Rather, it is a consulting report.

115. Mr. Miller opined that the Korpacz cap rate study is not credible, not complete, and does not lead to reasonable conclusions.

116. Based on the evidence presented and expert testimony, Mr. Korpacz's classification of Mayfair as a low-end Class B+ mall is in error. Accordingly, his cap rate study is not reliable.

117. Furthermore, Mr. Korpacz's sales comparison analysis did not use comparable properties which reasonably bracketed Mayfair's value and he did not appropriately adjust said properties. Accordingly, his sales comparison analysis in the cap rate study is not reliable.

118. Mayfair's other expert, Paul Bakken, prepared an appraisal of Mayfair for 2013-2015.

119. Mr. Bakken prepared an appraisal for the Board of Review in 2013, which was a review of the CW financing appraisal.

120. Although Mr. Bakken concluded the CW appraisal was supported and reliable, he converted the CW appraisal from a leased fee value to a fee simple value.

121. However, Mr. Bakken notably agreed sales of operating mall are always valued leased fee simple. Malls only sell in fee simple when dead and vacant. He agreed vacant malls are not comparable to Mayfair.

122. Mr. Bakken also raised the cap rate and vacancy rate of the CW appraisal based on his judgment, not mathematical analysis.

123. Mr. Bakken concluded a value of $290 Million for Mayfair by adjusting the CW value of $450 Million.

124. Mr. Bakken included taxes as an expense, but his NOI of $2.5 Million to $4 Million was substantially lower than the GGP actual income.

125. Mr. Miller noted that Mr. Bakken treats tax reimbursements as capped, which is incorrect. Rather, GGP's actual income and expenses show tax reimbursements increased with taxes.

126. Notably, Mr. Bakken used the same cap rate for all three years, 2013-2015. All of the surveys and other experts concluded that the cap rates declined over time, resulting in higher valuation.

127. Mr. Bakken stated he usually relies on the income analysis and does not typically perform a sales comparison approach for a regional mall. He agreed the income approach is the most reliable for this type of property. However, he also conducted a sales comparison approach for Mayfair because he believes there is a preference for sales comparison approaches under Wisconsin assessment law.

128. Mr. Bakken's sales comparison approach analyzed the 20 sales from the Korpacz cap rate study.

129. For his 2013 sales comparison analysis, Mr. Bakken reached a conclusion of value of $338.7 Million, and then subtracted $64.8 Million for future capital expenses, including Nordstrom, reaching a value of $261.2 Million.

130. Mr. Bakken's sales comparison approach concludes a value of $375 per square foot, which is less than the $430-470 per square foot that the actual income of Mayfair indicates through trend line analysis.

131. Only one of Mr. Bakken's comparable sales falls above $375 per square foot, adjusted or unadjusted.

132. Mr. Bakken's Direct Capitalization approach concluded a value of $275 Million. He reconciled these two approaches to arrive at $280 Million.

133. Mr. Miller opined that Mr. Bakken's income approach relied upon cap rates from sales that were not reasonably comparable to Mayfair and is not reliable.

134. Mr. Bakken's first appraisal for 2013-2014 reached values of $285 Million and $305 Million, respectively.

135. Mr. Bakken's current opinion of value for 2013 is $280 Million, for 2014 is $300 Million, and for 2015 is $325 Million.

136. However, Mr. Bakken believed Mr. Korpacz's 20 sales were not reliable for use in a sales comparison analysis. Mr. Miller similarly opined that Mr. Bakken's sales comparison approach was based on sales that were not reasonably comparable to Mayfair and is not reliable.

137. For example, Mr. Bakken used insider sales where GGP bought out a partner's interest, portfolio sales, and sales with assumption of debt, none of which are typically reliable indications of value.

138. Furthermore, Mr. Bakken relied on Mr. Korpacz for verification of the comparable sales. Mr. Bakken has no analysis or market data to support his adjustments.

139. Mr. Bakken gave his sales comparison approach very low weight. Accordingly, it is not reliable.

140. Mr. Bakken believed contracting with Nordstrom was a defensive move and he deducted capital expenses for the Nordstrom expansion from his Direct Capitalization conclusion.

141. Despite this decision to subtract the Nordstrom development costs from his valuation, Mr. Bakken acknowledged the Nordstrom project approval budget showed a calculated ROI of 5 percent. He further agreed Nordstrom has benefitted Mayfair and resulted in an increase in income.

142. Bakken also performed a cost approach to value Mayfair. He concluded a land value of $7.50 per square foot, assuming vacant land.

143. However, even Mr. Korpacz agrees the cost approach is an unreliable indication of value for a mall property.

144. The Court finds Mr. Bakken's conclusions of value are not reliable and his testimony is not credible.

145. The City's expert, Dr. Thomas Hamilton, specifically reviewed Mr. Bakken's appraisal and Mr. Korpacz's cap rate study, while also considering the CW appraisal.

146. Dr. Hamilton has a PhD and MS in real estate and urban land economics. His thesis was on mass appraisal modeling. He is currently employed at Roosevelt University and teaches graduate courses in real estate. Dr. Hamilton holds the MAI designation and also teaches all four advanced level Appraisal Institute courses for the MAI designation.

147. Dr. Hamilton, like Mr. Miller, agreed Mr. Korpacz cap rate study was not an appraisal because it did not provide an opinion of value.

148. Dr. Hamilton also concluded the cap rate study contained a significant quantity of high vacancy properties, properties with a low number and proportion of in-line tenants, properties with significantly less than $400 per square foot in-line sales, and related party transactions.

149. The properties also had substantially lower retail sales. For comparison, Mayfair's retail sales of $592 per square foot, including the Apple Store, are higher than all 20 of Mr. Korpacz's comparables. Excluding Apple sales, Mayfair's sales are $490-500 per square foot, which is still higher than 19 of Mr. Korpacz's 20 sales; only Green Acres is higher at $528 per square foot. Therefore, Dr. Hamilton concluded none of the properties used in the Korpacz cap rate study were comparable to Mayfair.

150. Dr. Hamilton further concluded Mr. Korpacz inappropriately used subjective determinations for his adjustments and conclusions, rather than quantitative measures. Mr. Korpacz looked at sales data for the first step, but he did not use mathematical analysis in the second step to adjust mall class. Accordingly, he determined Mr. Korpacz's cap rate conclusion was not credibly supported.

151. Dr. Hamilton testified that it would be inappropriate to exclude Apple Store sales from a valuation analysis. Apple Stores have a clear effect on valuation, driving both a lower cap rate and higher retail sales.

152. Dr. Hamilton further testified that an appraisal should reflect the status of the comparable properties on the date of the valuation. Otherwise, the resulting bracket of appraised values will be a forecast rather than a prediction of the sale price of a property.

153. Dr. Hamilton performed his own cap rate analysis using 28 sales he selected from the appraisals in this case. The sales were based on having sufficient in-line mall space and a minimum sales level per square foot in order to be comparable to Mayfair. He also did not include buybacks because he determined they are not market value transactions.

154. From his analysis of the 28 sales and a complementary parametric regression analysis, Dr. Hamilton concluded there was a 95 percent chance the cap rate for Mayfair should be between 5.42 and 6.12 percent, distinctly lower than those proffered by Mayfair's experts.

155. Dr. Hamilton stated Mr. Bakken used the same 20 comparable properties as Mr. Korpacz. He opined that 17 of those 20 properties should not have been used because they are not comparable to Mayfair. Dr. Hamilton also determined Mr. Bakken's appraisal adjustment grid has inconsistent application of adjustments. Therefore, he concluded both Mr. Korpacz and Mr. Bakken's analyses are not reliable.

156. Dr. Hamilton also stated that Mr. Bakken converted the CW appraisal to a fee simple value from a lease fee simple valuation and that Wisconsin law instead requires that you use a lease fee evaluation when conducting an assessment. Notably, Mr. Korpacz agreed lease fee is the appropriate value consideration and it is what the market evaluates.

157. Dr. Hamilton also noted that Mr. Bakken's use of the cost approach was inconsistent. Mr. Bakken's initial 2013 appraisal states the cost approach is not considered due to the age of the property and a high amount of accrued depreciation. However, his later appraisal includes a cost approach. This logic is highly inconsistent.

158. Dr. Hamilton further concluded Mr. Bakken's handling of property taxes was improper. Mr. Bakken accounted for an increase in taxes but did not account for any change in reimbursements.

159. Dr. Hamilton also took issue with Mr. Bakken's loading of the cap rate. Dr. Hamilton states the cap rate is only properly loaded with the portion of taxes paid by the owner. Mr. Bakken added 100 percent of taxes to the cap rate when 50 percent or more was paid by the tenants. Mr. Bakken's improper loading of the cap rate overstated the cap rate, which in turn reduced the value of Mayfair.

160. In regard to Nordstrom, Dr. Hamilton opined that the deduction of the approximately $70 Million Nordstrom redevelopment cost does not recognize any potential change in revenue. Dr. Hamilton similarly references GGP's SEC filings for 2013-2014, which show an expected ROI of 6-8 percent.

161. Mr. Bakken deducted $64.8 Million for Nordstrom in 2013, $61.9 Million in 2014, and $29 Million in 2015. Dr. Hamilton stated these deductions were improper.

162. Overall, Dr. Hamilton concluded there were too many significant errors in Mr. Bakken's appraisal development process to accept the concluded results as anything but invalid, unreliable, and not credible.

163. The Court finds Dr. Hamilton's testimony and conclusions credible and his analysis reliable.

164. James Harkin prepared a replacement cost study for Mayfair.

165. Mr. Harkin is not an appraiser; however, he is familiar with mall classification and agrees Mayfair is a Class A mall. He opined that Nordstrom would not locate a new store at a mall unless it is a premier mall.

166. Mr. Harkin is not qualified to appraise a mall or estimate the construction cost of a mall.

167. Mr. Harkin's final replacement cost design removed 450,000 square feet of the existing mall space and the estimate represented a "dark shell" level of finish, while Mayfair is fully built out.

168. Mr. Harkin's first two cost estimates were in excess of $200 Million and the final estimate was less than $200 Million.

169. Ultimately, a replacement cost study is an unreliable indicator of value for a property like Mayfair and Mr. Harkin's opinions are not credible.

170. Richard Marchitelli also performed appraisal analyses for Mayfair.

171. Mr. Marchitelli also appraised Mayfair as a single economic unit, not legal or tax parcels.

172. Mr. Marchitelli concluded that Mayfair was a Class A-/B+ for all three years and was a superregional mall. He analyzed mall classification based on retail sales, foregoing the subjective analysis. However, Mr. Miller states Mr. Bakken's initial report classified Mayfair as a Class A mall.

173. Mr. Marchitelli similarly opined that the income approach generated the most reliable results and is given priority by the market.

174. Mr. Marchitelli performed an income analysis using Direct Capitalization.

175. However, Mr. Marchitelli does not use actual income. Rather, he estimated income using an occupancy cost limit of 15 percent. He did not deduct for property taxes as an expense, but capitalized into a value using an effective tax rate.

176. Mr. Marchitelli agreed that if the rent at Mayfair is at market levels, the fee simple value is the same as the lease fee value.

177. However, Mr. Marchitelli looked at gross rent, which Mr. Miller testified does not accurately reflect the income at the mall and is inconsistent with how the mall was leased and evaluated by the market.

178. Mr. Marchitelli also understated the rent for Macy's and AMC by failing to do a correct adjustment for real estate tax reimbursement as a component of rent.

179. Mr. Marchitelli's method results in a substantially understated income, impacting the value by $41.7-66.7 Million when capitalized using his cap rate conclusions.

180. Mr. Marchitelli concluded an NOI of $31.6 Million and applied a 7.5 percent cap rate to reach a value of $320.1 Million after loading the cap rate. His final value conclusion for 2013 was $317.5 Million after adjusting for the McCormick and Schmick building assessed as personal property.

181. Mr. Marchitelli subtracted capital expenses of $11.9 Million and $64.8 Million from his initial conclusion of $317.5 Million, for a final conclusion of value of $240.8 Million.

182. Mr. Marchitelli used the same methodology for the 2014 and 2015 tax years and concluded a value of $251 Million and $315 Million, respectively. He concluded a loaded cap rate of 9.53 percent for 2015.

183. Mr. Marchitelli corrected an error in his analysis during his testimony, recalculating the capital expense deductions to apply only to the value of the mall. His corrected values for 2013-2015 were $242 Million, $251.1 Million, and $314.6 Million, respectively.

184. Mr. Marchitelli performed two prior appraisals of Mayfair for 2013 and 2014. His 2013 opinion of value started at $280 Million, increased to $333 Million, and ended at $317.5 Million, before deducting capital expenses. His 2014 value went from $322 Million to $318.9 Million.

185. Mr. Marchitelli's final 2013-14 value increase was $9.1 Million. His final 2014-15 value increase was $63.5 Million.

186. Mr. Marchitelli disagreed with the WPAM's direction regarding the application of a cap rate derived from market sales to contract rent, arguing it should be applied instead to market rent. He applied the cap rate to the market rent of the subject. However, he is generally unfamiliar with the WPAM and the *Bonstores* decision.

187. Mr. Marchitelli also analyzed 20 comparable sales, many of which were from Mr. Korpacz, but he did not rely on the sales comparison approach because he states market participants do not rely on it.

188. Mr. Miller states Mr. Marchitelli's appraisal uses a preponderance of B malls. Mr. Marchitelli used a relative comparison/bracketing technique, but did not properly follow the technique. He did not rank or described the comparables as superior or inferior to the subject. He simply arrives at a conclusion. It cannot be determined if his results are reliable or describe only an upper and lower limit, since no opinion of relative comparison is made.

189. The Korpacz cap rate study was foundational for many of Mr. Marchitelli's conclusions. However, Mr. Miller states the Korpacz cap rate study is not credible, not complete, and does not lead to reasonable conclusions. As stated, the 20 sales do not reflect the market for Mayfair.

190. Mr. Miller's trend analysis of Mr. Marchitelli's comparable sales indicates the analysis is highly flawed. Only one of Mr. Marchitelli's sales falls within the trend lines and none exceed or bracket the lines. Mr. Miller concludes Mr. Marchitelli's sales are not comparable.

191. Conversely, Mr. Miller's trend analysis of the CW financing appraisal shows a range of $530-565 per square foot with 98 percent accuracy. He concludes it is good data with a linear relationship.

192. A similar trend analysis of Mr. Kenney's comparables yields a value range of $525-560 per square foot with 95 percent accuracy, and also a very strong confidence level.

193. Ultimately, Mr. Marchitelli valued Mayfair several times, each time producing substantially different appraised values. Mr. Miller also noted the substantial range of value opinions proffered by Mr. Marchitelli and Mr. Bakken, which differed by 4 to 73 percent.

194. In addition, other appraisers from Mr. Marchitelli's firm, Cushman & Wakefield, were responsible for the CW appraisal relied upon by many of the experts. Notably, the CW appraisal set the value of Mayfair at approximately $450 Million, significantly higher than any of his appraisals and much closer to the valuations conducted by the City's experts.

195. The Court finds Mr. Marchitelli's conclusions of value are not reliable and his testimony is not credible.

196. Mr. Miller stated the conclusion of GGP's experts that Nordstrom was defensive, not to boost performance but to maintain existing performance, is inaccurate. It was inappropriate to deduct the costs of the Nordstrom expansion. GGP was expanding the mall for a new anchor and intended to make a return on investment, and did make a return, through a boost in current operating performance.

197. Mr. Miller's conclusion is supported by the GGP Nordstrom pro forma, prepared in November of 2014. The pro forma is inconsistent with the conclusion that Mayfair was a defensive move.

198. The pro forma was the basis for GGP SEC filings and representations of an expected ROI at a range of 6-8 percent. GGP considered the construction costs when calculating the ROI.

199. The pro forma also used a substantially lower cap rate than those used by Mayfair's experts, with an exit cap rate of 5.7 percent that implies a cap rate of 5.2 percent. A rate of 5.2 percent corresponds with Class A to A+ classification per Greenstreet.

200. The pro forma was the primary document Mr. Miller relied upon to determine not to deduct the Nordstrom expansion costs from his value conclusion. He stated it is not appropriate to deduct costs without considering benefits.

201. Not only was deduction of the Nordstrom development costs inappropriate because it is an improvement to the property, but it specifically was improper for Mr. Bakken and Mr. Marchitelli to deduct those as capital expenses for their 2013 and 2014 assessments because no binding agreement had been entered between GGP and Nordstrom. This is why both Mr. Miner and Ms. Krause did not include such information in their analysis for those years.

202. Mr. Miller noted that Mayfair has Nordstrom and Apple and is a two-story superregional mall, all of which point to a higher value. He opined that the comparables used by the Plaintiff's experts were inferior, had weaker markets, 65 percent were one-story malls, 90 percent were without an Apple Store, and 95 percent were without both Apple and Nordstrom.

203. Mr. Miller also reviewed the Nordstrom budget, generated by GGP. The budget showed an increase in NOI of $3.2-4.8 Million and GGP expected and was budgeting for an increase in income and profit.

204. As for Mr. Miller's own appraisal, he conducted an analysis of highest and best use, he performed a sales comparison and income approach, and concluded rents at Mayfair were at market levels.

205. Mr. Miller concluded Mayfair was a Class A mall, relying in part on the Greenstreet Advisors criteria, which was referenced in the CW appraisal.

206. Mr. Miller concluded Mayfair was a Class A mall under the PWC whether or not Apple Store sales were included.

207. Mr. Miller analyzed actual income and expenses and he capitalized the 2012 income at 6.68 percent, resulting in a value of $443.9 Million.

208. Mr. Miller performed a similar income analysis for 2014 and 2015, reaching values of $460 Million and $475 Million, respectively.

209. Mr. Miller's sales comparison approach followed the methodology of the CW financing appraisal, and he used eight comparable sales from that appraisal. He reconciled his values to conclude a value of $440 Million for 2013 and 2014. He deducted $16.5 Million for the non-retail components and concluded a value for the mall of $425 Million. For 2015, he reconciled to a value of $475 Million for the mall.

210. The Court finds the conclusions and analyses of Mayfair's experts do not constitute significant contrary evidence to counter the presumption that the subject property was justly and equitably assessed.

211. The Court further finds that Mayfair's experts used flawed methodologies in their analyses and appraisals and this led to conclusions of value that are not credible.

212. The Court finds the appraisals and conclusions of the City's assessors and experts more credible, reliable, and persuasive than those proffered by Mayfair's experts.

213. The Court similarly finds that Mayfair's experts merely provide flawed alternative methodologies to value Mayfair. None of Mayfair's experts have established Mayfair was incorrectly or excessively assessed by the City.

## CONCLUSIONS OF LAW

214. The present action requires a de novo trial to the court. Wis. Stat. § 74.37; *Metropolitan Associates v. City of Milwaukee,* 2011 WI 20, ¶¶ 48-59, 332 Wis. 2d 85, 796 N.W.2d 717.

215. "The circuit court, as the trier of fact, is the ultimate arbiter of the weight and credibility of the evidence and of any reasonable inferences drawn from that evidence." *Bonstores Realty One, LLC v. City of Wauwatosa*, 2013 WI App 131, ¶ 10, 351 Wis. 2d 439, 448, 839 N.W.2d 893, 898.

### I. Mayfair has not rebutted the presumption of correctness afforded to the City's assessments; therefore, the Court must dismiss Mayfair's tax assessment challenge.

216. The City's assessments are presumed to be correct and the Plaintiff bears the burden in its case-in-chief of overcoming the presumption of correctness. *Walgreen Co. v. City of Madison*, 2008 WI 80, ¶ 17, 311 Wis. 2d 158, 752 N.W.2d 687. *See* Wis. Stat. § 70.49(2).

217. "If by any reasonable view of the evidence the assessment is valid, it must be upheld." *Clear Channel Outdoor, Inc. v. City of Milwaukee*, 2017 WI App 15, ¶ 4, 374 Wis. 2d 348, 893 N.W.2d 24 (citing *Bonstores*, 2013 WI App 131, ¶ 5).

218. In order to rebut the presumption of correctness, a taxpayer must present more than contrary evidence; it must "present sufficient evidence to persuade the circuit court that [the assessed value] is probably not the fair market value of the property." *Bonstores*, 2013 WI App 131, ¶ 10.

219. Failure to provide sufficient persuasive evidence to rebut the presumption that the assessment represents fair market value entitles the taxing district to judgment based on the statutory presumption. *Id.*, ¶ 10.

220. Pursuant to Wis. Stat. § 70.32(1), "Real property shall be valued by the assessor in the manner specified in the WPAM provided under s. 73.03(2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale."

221. The Court concludes Mr. Miner and Ms. Krause set their assessments based on the best information that they could practicably obtain.

222. The Wisconsin Supreme Court has "interpreted Wis. Stat. § 70.32(1) to set forth a hierarchical valuation methodology for single-property appraisal," which is known as the *Markarian* hierarchy. *Metropolitan Associates v. City of Milwaukee*, 2018 WI 4, ¶ 31, 379 Wis. 2d 141, 905 N.W.2d 784 (citing *State ex rel. Markarian v. City of Cudahy*, 46 Wis. 2d 683, 686 (1970)). "The best information of a property's fair market value is an arm's-length sale of the subject property." *Id.*, ¶ 32. "Examination of a recent arm's-length sale is known as a 'tier 1' analysis." *Id.* "If there is no recent sale of the subject property, the appraiser moves to tier 2, examining recent, arm's-length sales of reasonably comparable properties (the "sales comparison approach")." *Id.*, ¶ 33. "When both tier 1 and tier 2 are unavailable, an assessor then moves to tier 3." *Id.*, ¶ 34. "Both the income approach, which seeks to capture the amount of income the property will generate over its useful life, and the cost approach, which seeks to measure the cost to replace the property, fit under the umbrella of tier 3 analysis." *Id.*

223. The Court finds that because there was not a recent arm's-length sale of the property, the City's assessors may have properly relied on other assessment techniques.

224. A tier 3, Direct Capitalization income approach is an appropriate method of valuation for a shopping mall property when no recent arm's-length transaction exists. *See State ex rel. N/S Assocs. by JMB Grp. Tr. IV v. Bd. of Review of Vill. of Greendale*, 164 Wis. 2d 31, 57, 473 N.W.2d 554, 564 (Ct. App. 1991).

225. Wis. Stat. § 70.23(2) permits an assessor to enter multiple parcels as one on the assessment rolls when the property is so improved or occupied with buildings as to be practically incapable of separate valuation.

226. The Court finds Mr. Miner and Ms. Krause's decision to assess Mayfair as one indivisible unit is supported by Wisconsin law.

227. An appraisal of a shopping mall obtained for funding is admissible evidence as a statement of a party opponent. *N/S Assocs.*, 164 Wis. 2d at 57; *Rollie Johnson Plumbing & Heating Service, Inc. v. State Dept. of Transp. (Division of Highways)*, 70 Wis. 2d 787, 793-94, 235 N.W.2d 528, 532 (1975) (the trial court found that "an appraisal made in connection with the actual lending of money by a bank may be sufficiently probative of property value to be admissible").

228. The Court finds that Mayfair's financing appraisal conducted by CW, indicating a value of $450 million, at a minimum supports that the City's assessed values were not excessive.

229. The Court finds Mr. Miner's 2013 assessment of Mayfair, using the Direct Capitalization income approach reinforced by his sales comparison analysis, followed applicable Wisconsin assessment law and the WPAM.

230. The Court finds Ms. Krause's 2014-2015 assessments of Mayfair, using the Direct Capitalization income approach and the actual income of GGP for the years at issue, followed applicable Wisconsin assessment law and the WPAM.

231. The Court also finds Mayfair has failed to establish the City Assessors violated Wisconsin law or the WPAM or that the assessments are excessive.

## II. Mayfair has failed to provide significant contrary evidence that Mayfair Mall's 2013-2015 assessments were excessive.

232. If unable to show that the assessor did not follow Wisconsin assessment law in setting the assessment, Mayfair may rebut the presumption of correctness attendant to the City's assessment only if it presents "significant contrary evidence." *Bonstores*, 351 Wis. 2d 439, ¶ 5. Specifically, Mayfair must "produce evidence that it is more probable than not that the assessed value is not correct." *Id*., ¶ 9. However, "the presumption (that the City assessed value is correct) does not disappear simply because contrary evidence exists." *Id*. Stated another way, "the Presumption is not 'overcome' just because contrary evidence (even 'substantial' contrary evidence) is presented." *Id*., ¶ 6.

233. Furthermore, the valuation conducted by a taxpayer's expert which is not made in accordance with the WPAM cannot constitute significant contrary evidence to rebut the statutory presumption in favor of the City's assessment. *Allright Properties, Inc. v. City of Milwaukee*, 2009 WI App 46, ¶ 16, 317 Wis. 2d 228, 767 N.W.2d 567.

234. The testimony and opinions of Mr. Korpacz, Mr. Bakken, Mr. Harkin, and Mr. Marcitelli do not constitute evidence that is "more probable than not that the assessed value is not correct." *See id*, ¶ 9.

235. Mr. Korpacz is not credible. He did not come to a final conclusion of value and erred in his mall classification analysis, downgrading Mayfair based on only subjective factors while all relevant appraisal surveys, and other experts, conclude Mayfair is a Class A mall.

236. Furthermore, the comparable sales relied on in Mr. Korpacz's cap study are not comparable or reliable for a multitude of reasons. His study failed to follow the WPAM. Accordingly, his analysis does not constitute significant contrary evidence.

237. Mr. Bakken is not credible. His decision to alter the CW appraisal from a leased fee value is not supported by Wisconsin law or his own testimony. He also erred when setting the cap rate. Furthermore, he agrees his sales comparison approach is not reliable and places little weight on it.

238. Mr. Bakken's decision to subtract the Nordstrom development costs from his appraisals is not supported by his own testimony and the evidence in the record. He also failed to follow the WPAM when conducting his appraisals. Accordingly, his analysis does not constitute significant contrary evidence.

239. Mr. Harkin performed only a cost replacement analysis of Mayfair, which is not a reliable method to evaluate Mayfair. Furthermore, he is not an appraiser and his testimony is neither reliable nor credible. Accordingly, his analysis does not constitute significant contrary evidence.

240. Mr. Marchitelli failed to use actual income in his appraisal, in violation of the WPAM. His multitude of appraisals produced a significant range of value conclusions, which are neither reliable nor credible. In addition, he identified errors in his own analysis while testifying.

241. Mr. Marchitelli's sales comparison analysis, which substantially relied on the properties in Mr. Korpacz's study, was not conducted according to the WPAM and is neither reliable nor credible. Accordingly, his analysis does not constitute significant contrary evidence.

242. The Court finds Mayfair failed to provide significant contrary evidence and has not rebutted the presumption of correctness attendant to the City's assessments.

243. Therefore, based on the statutory presumption, the Court concludes the 2013-2015 assessments of Mayfair mall were conducted justly and equitably and were not excessive.

## CONCLUSION

244. Based on the findings and conclusions stated herein, the Court concludes Mayfair has failed to rebut the presumption of correctness attendant to the City's assessments.

245. The Court also concludes the City's assessments for 2013-2015 were not excessive.

246. The Court enters judgment in favor of the City.

**THIS IS A FINAL ORDER OF THE COURT FOR THE PURPOSES OF APPEAL**