

At a Term of the Court held  
in and for the County of  
Schuyler at the Courthouse,  
105 Ninth St, Unit 35,  
Watkins Glen, NY on the  
10<sup>th</sup> day of August, 2017.

**Present: Hon. Dennis J. Morris, Acting JSC**

**STATE OF NEW YORK: COUNTY OF SCHUYLER  
SUPREME COURT**

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In the Matter of the Application for Review  
under Art. 7 of the Real Property Tax Law by  
**Wal-Mart Real Estate Business Trust,**  
Petitioner

RECEIVED  
2017 AUG 11 AM 9:02  
SCHUYLER COUNTY CLERK

**Order To Show Cause**  
Index No. 16-134

-v-

Subject Property:  
515 E. Fourth Street, Town of Dix  
Village of Watkins Glen  
County of Schuyler  
Tax Map No. 65.14-2-6.11

**The Board Of Assessment Review For The  
Town Of Dix, The Assessor For The Town  
Of Dix and the Town of Dix, New York, et al**  
Respondents.

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Upon the Notice of Petition and Petition dated July 5, 2016, the  
annexed Affirmation of Steven J. Getman, dated August 9, 2017 the  
Exhibits annexed thereto and all proceedings had herein, **let the  
petitioner, Wal-Mart Real Estate Business Trust, show cause** at  
the Schuyler County Courthouse, Watkins Glen, New York, on

*Date of Motion: September 22, 2017*

*Time of Motion: 3:00 p.m.*

or as soon thereafter as the parties can be heard why an order should  
not be granted, pursuant to 22 NYCRR 202.59 (c), CPLR 408 and other  
applicable authority:

1. compelling disclosure of material and necessary information;
2. granting an extension of time to complete an audit of the  
petitioner's books and records for the tax years under review, for

- the purpose of substantiating petitioner's statement of income and expenses;
3. extending the time to complete and exchange the appraisals in this matter;
  4. together with such other and further relief as the court may deem just and proper.

**And it is hereby Ordered**, that, good and sufficient reason appearing therefor, that respondents' time to complete the audit pursuant to 22 NYCRR 202.59 (c) is hereby tolled pending a final decision on this motion;


**And it is hereby Ordered**, that, good and sufficient reason appearing therefor, that both parties' exchange date for appraisals is hereby tolled pending a final decision on this motion;

**And it is hereby Ordered**, that, good and sufficient reason appearing therefor, let service of this order and the papers upon which the same is granted, mailed to petitioner **on or before August 25**, 2017, be deemed good and sufficient service.

**And it is hereby Ordered** that, pursuant to CPLR 2214(b), all answering papers and any notice of cross-motion, with supporting papers, if any, shall be served by petitioner upon the attorneys for the respondents at least seven days prior to the time set for the hearing of this motion.

Dated: August 10, 2017  
Watkins Glen, New York

**Enter**

  
\_\_\_\_\_  
Hon. Dennis J. Morris,  
Acting JSC

To: Clerk of the Court  
Schuyler County Supreme and County Court  
105 Ninth St, Unit 35  
Watkins Glen NY 14891

Wayne D. Wisbaum, Esq.  
Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
Attorney for Petitioner

Steven J. Getman  
Schuyler County Attorney  
105 Ninth St, Unit 5  
Watkins Glen, NY 14891  
607.535.8121  
Co-counsel for respondents

Robert L. Halpin, Esq.  
The Halpin Firm  
4588 State Rt 224  
Montour Falls, NY 14865  
607.594.3786  
Co-counsel for respondents

**STATE OF NEW YORK: COUNTY OF SCHUYLER  
SUPREME COURT**

---

In the Matter of the Application for Review  
under Art. 7 of the Real Property Tax Law by  
**Wal-Mart Real Estate Business Trust,**  
Petitioner

**Attorney Affirmation in  
Support of Motion**  
Index No. 16-134

-v-

Subject Property:  
515 E. Fourth Street, Town of  
Dix  
Village of Watkins Glen  
County of Schuyler  
Tax Map No. 65.14-2-6.11

**The Board of Assessment Review for the  
Town of Dix, the Assessor for the Town  
of Dix and the Town of Dix, New York, et al.**  
Respondents.

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**Steven J. Getman, an attorney, duly licensed to practice in the  
courts of this state, hereby affirms the following under penalty  
of perjury (CPLR 2106):**

1. I am Schuyler County Attorney and co-counsel for the respondents herein. I make this affidavit in support of respondents' motion, pursuant to 22 NYCRR 202.59 (c) and CPLR 408 for an order: compelling disclosure of material and necessary information; granting an extension of time to complete an audit of the petitioner's books and records for the tax years under review, for the purpose of substantiating petitioner's statement of income and expenses; tolling the time to complete and exchange the appraisals in this matter; together with such other and further relief as the court may deem just and proper.
2. The following is based upon affirmant's personal knowledge, and upon information and belief. As to the source of affirmant's information and the grounds for my belief, same consists of communications with employees for respondents the Town of Dix

and the County of Schuyler, a review of the statutes, case law and other authority cited herein, a review of regularly kept business records of the Town of Dix and County of Schuyler and the following exhibits, annexed hereto, incorporated by reference and made a part hereof:

- Exhibit a) Notice of Petition and Petition, dated July 5, 2016 (true copy);
- Exhibit b) Answer, dated September 16, 2016 (true copy);
- Exhibit c) Statement pursuant to 22 NYCRR 202.59 (true copy);
- Exhibit d) Request for audit, dated May 9, 2017 (true copy);
- Exhibit e) Scheduling Order (true copy);
- Exhibit f) Email dated June 29, 2017 (true copy);
- Exhibit g) Petitioner's proposed confidentiality agreement (true copy);
- Exhibit h) Email dated July 20, 2017 (true copy);
- Exhibit i) Respondents' proposed confidentiality agreement (true copy);
- Exhibit j) Letter dated July 28, 2017 (true copy);
- Exhibit k) Affidavit of Brian LaFountain with attachments
- Exhibit l) Affidavit of Jeffrey James with attachments.

3. The above captioned matter was commenced by the filing on July 26, 2016 and service of a Notice of Petition and Petition. Respondents served and filed an Answer on or about September 16, 2016.
4. Petitioner timely served a 22 NYCRR 202.59(b) statement of income and expenses on or about March 16, 2017.
5. Respondents timely served their demand for audit, pursuant to 22 NYCRR 202.59 (c) on or about May 9, 2017. Such audit seeks an audit of the petitioner's books and records for the tax years under review for the purpose of substantiating petitioner's statement of income and expenses.
6. Pursuant to 22 NYCRR 202.59 (c), such audit must be completed within 120 days after the request has been made unless the court, upon good cause shown, extends the time for the audit. Therefore, absent court order, the respondents are currently required to have this audit completed no later than Wednesday, September 6, 2017.

7. The current scheduling order provides that the exchange date for appraisals shall be no later than November 1, 2017.
8. The Town of Dix, on behalf of all respondents herein, has retained the Bonadio Group (“Bonadio”), having offices at 171 Sully's Trail, Pittsford, NY 14534 to complete the audit described above.
9. Upon information and belief, in order to complete this audit, Bonadio will require petitioner’s books and records necessary to verify the petitioner’s profit and loss statement previously served herein, including but not limited to, invoices, contracts, leases balance sheets, asset depreciation schedules and similarly regularly kept business records of petitioner herein, together with a contact person or persons on behalf of petitioner with whom Bonadio can communicate for the purposes of obtaining such necessary information. Upon further information and belief, these materials and information are necessary for completion of the audit in accordance with generally accepted accounting principles and generally accepted auditing standards.
10. The Town of Dix, on behalf of all respondents herein, has retained Jeffrey S. James, a New York State certified real estate appraiser (New York General Certified – Certificate # 46000043019), employed with Midland Appraisal Associates, Inc. Real Estate Counseling & Appraisal Services (“Midland”), having offices at 349 W. Commercial St., Suite 2290, East Rochester, NY 14445 to complete any/all necessary appraisal reports intended to be used at the trial, pursuant to 22 NYCRR 202.59 and related authority.
11. Upon information and belief, Midland requires Bonadio to complete and share the results of its audit with Midland, in order to prepare those appraisal reports to be exchanged and/or filed pursuant to 22 NYCRR 202.59 (g).
12. As of today’s date, neither affirmant, co-counsel, Bonadio nor Midland have received the materials necessary to complete the above-described audit, beyond the initial profit and loss statement.
13. Upon information and belief, the petitioner is conditioning disclosure of these necessary materials upon the execution of a “confidentiality agreement,” under which the materials would be

shown and seen only by the co-counsel for the respondents, and by the Town of Dix Appraiser and, further, that such information, including gross sales figures, may not be made a part of, or in any way be referenced in, any appraisal report, or in or at the trial of this matter.

14. Upon information and belief, the level of confidentiality demanded by petitioner effectively renders such information and materials useless for the purposes of pretrial discovery, appraisal and/or auditing in this matter.
15. Respondents have submitted a proposed counter-agreement that attempts to balance the desire of petitioner for its information to remain confidential, with the needs of the respondents to share such information with their appraisers and auditors and to refer to same as necessary in the trial-ready appraisal reports. A true copy of this counter-agreement (“stipulation of confidentiality”) is annexed hereto, as noted above. As noted therein, respondents do not object to protections of confidential information that would prevent public access to confidential data, such as filing documents under seal and/or as “trade secrets.”
16. As of today’s date, petitioner has not supplied the necessary information, executed the respondents’ proposed confidentiality or responded to such proposal in any way. As a result, petitioner is currently preventing respondents from completing the audit.
17. Upon information and belief, it will take at least four (4) weeks after receipt of all necessary information from petitioner for Bonadio to complete its audit, depending on the information received and the timing of same. Upon further information and belief, as noted above, a completed audit is necessary for a proper trial-ready appraisal.
18. As noted above, the deadline for completing the audit is currently September 6, 2017. That date is less than one month away. Therefore, due to the petitioner’s failure to supply the books and records necessary to verify its profit and loss statement previously served herein, the respondents’ are unable to complete the audit within the current deadline.
19. Upon information and belief:

- a) Discovery in RPTL Article 7 proceedings is governed by CPLR 408, pursuant to which trial courts have broad discretion in directing the disclosure of material and necessary information (*Wendy's Restaurants, LLC v Assessor, Town of Henrietta*, 74 AD3d 1916 [2010], *see, also Greens at Washingtonville, Ltd. v Town of Blooming Grove*, 98 AD3d 1118 [2012]). This includes profit and loss statements, balance sheets, asset depreciation schedules, and gross and net sales revenues for pertinent years as such materials will assist respondents in their preparation for trial (*Wendy's, supra*).
- b) Insofar as the subject property contains a freestanding department store building, the court may include in its income approach a percentage of gross sales (*White Plains Properties Corp. v. Tax Assessor of City of White Plains*, 50 N.Y.2d 839 [1980]).
- c) While petitioner may maintain that comparable sales are the proper measure of value in this matter, “without a detailed understanding of the income and expenses of the proposed comparable sales, there is no factual basis for concluding that the sales are in fact comparable to the subject property” (*Fifty-Sixty Saginaw Realty, LLC v Assessor of Town of Henrietta*, 19 Misc 3d 1143(A) [2007], *aff'd*, 52 AD3d 1275 [2008]).
- d) Furthermore, petitioner’s 22 NYCRR 202.59(b) statement sets forth that a portion of the petitioner’s revenue is derived from rental income. One of the necessary factors to review in the audit, and resulting appraisal, would be whether such rent is charged at fair market value. If rent is unrealistically low (5 Op.Counsel SBEA No. 62) or charged “without regard to the marketplace” (*John P. Burke Apartments, Inc. v Howe*, 98 AD2d 595 [1984], such rental rates may be disregarded (*Techniplex III v Town and Vil. of E. Rochester*, 125 AD3d 1412 [2015]). Similarly, where a landlord and tenant are business affiliates or a property is owner-operated or where there is any indication of collusion, a rent arrangement should be of



little, if any, guidance to sound appraisal for taxation purposes. *Merrick Holding Corp. v Bd. of Assessors of Nassau County*, 45 NY2d 538 [1978].

e) Upon information and belief: Petitioner herein is a Real Estate Business Trust. The purpose of such real estate trust is that a separate Wal-Mart subsidiary pays rent to the Real Estate Business Trust, which is primarily owned by another Wal-Mart subsidiary, allowing such rental income to stay within the company (Jennifer Stonecipher, *From One Pocket to the Other: The Abuse of Real Estate Investment Trusts Deductions*, 72 Mo. L. Rev. [2007]; Jesse Drucker, "Wal-Mart Cuts Taxes by Paying Rent to Itself," *Wall Street Journal*, Feb. 1, 2007). As such, a full audit is necessary to determine whether the rental income is fair market value or should be disregarded as the result collusion or self-dealing (*Techniplex III, supra*). Further, given the apparent self-dealing at issue, the question of gross sales data becomes all the more relevant to value herein.

20. Respondents' auditor and appraiser have each provided affidavits setting forth that the documents and records sought are relevant, material and/or necessary to this action.

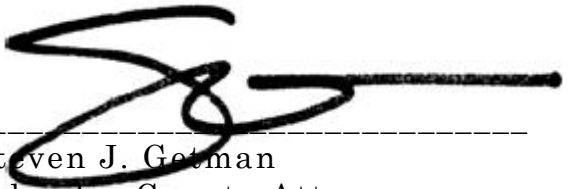
21. For the reasons above, respondents are proceeding herein by Order to Show Cause, and request that the court toll the deadline for completing the audit and, as necessary, exchanging appraisals until the final decision on this motion.

22. It is respectfully submitted that the relief herein is justified and proper. The facts stated above, given the circumstances and the imminent deadline to complete the required audit, demonstrate that counsel for respondents adequately conferred with adversary in good faith to resolve the issues herein (N.Y.Ct.Rules, § 202.7).

23. The above is true to the best of my knowledge, information and belief.

**Wherefore, your affirmant requests this court issue an order in accordance with the above.**

Dated: Watkins Glen, NY  
August 9, 2017



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Steven J. Getman  
Schuyler County Attorney  
105 Ninth St, Unit 5  
Watkins Glen, NY 14891  
607.535.8121  
Co-counsel for respondents

To: Chief Clerk  
Supreme and County Courts  
Schuyler County Courthouse  
105 Ninth St, Unit 35  
Watkins Glen, NY 14891

Robert L. Halpin, Esq.  
The Halpin Firm  
4588 State Rt 224  
Montour Falls, NY 14865  
607.594.3786  
Co-counsel for respondents

Wayne D. Wisbaum, Esq., Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
Attorney for Petitioners

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF SCHUYLER

IN THE MATTER OF THE APPLICATION FOR REVIEW  
UNDER ARTICLE 7 OF THE REAL PROPERTY TAX  
LAW OF A TAX ASSESSMENT BY WAL-MART  
REAL ESTATE BUSINESS TRUST

Petitioner,

-vs.-

THE BOARD OF ASSESSMENT REVIEW FOR  
THE TOWN OF DIX, THE ASSESSOR OF THE  
TOWN OF DIX and THE TOWN OF DIX,  
NEW YORK

Respondents,

For Review of the Assessment of Certain Real Property  
known as 515 E Fourth Street in the said Town of  
Dix for the Tax Year 2016-17.

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AUG 3 2016  
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Index No. 16-134

NOTICE OF PETITION

Justice Assigned:

*Hon. Richard W. Rich Jr.*

2016 JUL -7 AM 11:47  
SCHUYLER COUNTY COURTS

2016 JUL -6 PM 3:33  
SCHUYLER COUNTY CLERK

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SIRS:

PLEASE TAKE NOTICE, that upon the petition of WAL-MART REAL ESTATE BUSINESS TRUST, verified the 5<sup>th</sup> day of July, 2016, a copy of which is hereto annexed, an application will be made at a Special Term of the Supreme Court, to be held at the Schuyler County Courthouse at Poughkeepsie, New York, on the 23rd day of September, 2016, at 1:30 PM in the forenoon, or on such other date and time as specified by the Court, for the review, under Article 7 of the Real Property Tax Law of the State of New York, of a certain assessment of \$11,700,000 for the 2016-17 Town of Dix Tax Year, of certain real property of the petitioner located at and known as 515 E Fourth Street (SBL #65.14-2-6.11) in the Town of Dix, County of Schuyler and State of New York, to the end that all proceedings, decisions and actions in the matter of the said assessment of said real property may be reviewed and the said

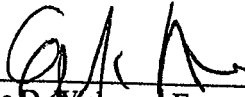
EXHIBIT  
A

assessment corrected, modified or vacated on the merits by such court, and that such further and/or other relief will be applied for, as may be just and proper in the premises.

Dated: July 5, 2016

KAVINOKY COOK LLP

By:

  
Wayne D. Wisbaum, Esq.  
Attorneys for Petitioner  
Office and Post Office Address  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
Telephone (716) 845-6000

TO: The Board of Assessment Review  
for the Town of Dix, The  
Assessor of the Town of Dix  
and the Town of Dix, New York

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF SCHUYLER

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IN THE MATTER OF THE APPLICATION FOR REVIEW  
UNDER ARTICLE 7 OF THE REAL PROPERTY TAX  
LAW OF A TAX ASSESSMENT BY WAL-MART REAL  
ESTATE BUSINESS TRUST

Petitioner,

-vs.-

THE BOARD OF ASSESSMENT REVIEW FOR THE  
TOWN OF DIX; THE ASSESSOR OF THE TOWN OF  
DIX and THE TOWN OF DIX, NEW YORK

Respondents,

For Review of the Assessment of Certain Real Property  
known as 515 E. Fourth Street in the said Town of Dix  
for the Tax Year 2016-17.

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PETITION  
SCHUYLER COUNTY CLERK

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The petition of WAL-MART REAL ESTATE BUSINESS TRUST respectfully  
shows:

FIRST: That petitioner, Wal-Mart Real Estate Business Trust, now  
is, and at all times hereinafter mentioned was, the owner of certain real property located at and  
known as 515 E Fourth Street (SBL #65.14-2-6.11), Town of Dix, New York. A

SECOND: That the above named respondent Assessor and respondent  
Board of Assessment Review are and at all times hereinafter mentioned were, the officers of the  
Town of Dix, New York, charged by law with making the assessments herein complained of. BA

THIRD: That prior to March 1, 2016 respondents proceeded to take  
up and consider the taxable property and names of all the persons taxable with respect thereto,  
and to assess all real property in said Town not exempt from taxation; and made, prepared and  
completed the assessment rolls of the said Town of Dix for the 2016-17 Town of Dix Tax Year,  
deposited them in the Town of Dix Assessor's Office in Town Hall, and caused a notice to be  
published in the official newspaper of said Town, and to be otherwise posted, which notice A

contained the statement that the said rolls might be seen and examined by any person from and including the 1st day of May, 2016 to and including the 24th day of May, 2016.

FOURTH: That the assessment on said assessment rolls of the subject real property, situated in the said Town of Dix, New York as the same appeared thereon after the completion thereof on May 1, 2016 was as follows:

Value of Land	\$	7
Total	\$	11,700,000

FIFTH: That thereafter, and in accordance with law, petitioner prepared its written protest, under oath and filed the same with the said respondents, complaining that the said assessment was incorrect and protesting against the same, and asking for a reduction of such assessment against said real property. The said protest was received by and filed with, said respondents within the period appointed for the making of complaints. Such protest is hereby incorporated in this petition by reference thereto with the same force and effect as though set forth at length, a copy thereof being attached hereto as Exhibit A.

SIXTH: That thereafter and on or about the 1st day of July, 2016, respondents caused a notice to be published in the official newspaper of the Town of Dix and to be otherwise posted, that said assessment rolls had been finally completed and that the rolls had been filed and were open to public inspection and might be inspected at any time on or after the 1st day of July, 2016.

A  
OFFICE  
"PAPER"  
IS "LUTHEWIS"  
GLEN  
REV. "

SEVENTH: That the final assessment of your petitioner's real property made by respondents, as the same appears on the finally completed assessment rolls of the Town of Dix is as follows:

Value of Land	\$	1,400,000	0%
Total	\$	11,700,000	

AID

EIGHTH: That the valuation and assessment of said real property, made as aforesaid, is erroneous by reason of over-valuation. The assessment of real property in

the Town of Dix is at a rate not exceeding seventy-five and 00/100 percent (75%) of true value. While the said real property is assessed as aforesaid at a sum of \$11,700,000 the real property is actually of a true, full value which does not exceed the sum of \$7,500,000 and the assessed value should be \$5,625,000. The extent of such assessed over-valuation is \$6,075,000.

NINTH: That the said assessment of said property is unequal with other property in the Town of Dix in that the assessment has been made at a higher proportionate valuation than the assessments of other property on the said assessment rolls, as alleged in paragraph EIGHTH above; and the assessment of such real property generally on the same assessment rolls is at a rate not exceeding seventy-five and 00/100 percent (75%) of true value. Such inequality exists not only in specific instances, but generally throughout the assessment rolls of said Town of Dix and petitioner specifies, as instances of such inequality, all the other real properties assessed upon the same assessment rolls. D

TENTH: That the said assessment of your petitioner's property is illegal in that petitioner's real property is not assessed on one common and general principle of valuation applied by the respondents in assessing generally the real property appearing upon the same assessment rolls. D

ELEVENTH: That by reason of the foregoing, the petitioner is aggrieved and will be injured thereby and suffer loss and will be required to pay taxes in a greater amount than if said assessment had been lawfully, correctly and properly made. D


TWELFTH: That thirty (30) days have not elapsed since the final completion and filing of the said assessment rolls referred to above. A

THIRTEENTH: That no previous or other application has been made to this or any other court for the relief herein sought. SA

WHEREFORE, your petitioner prays that this Court review all the proceedings, decisions and actions had and taken herein by the said respondents; that the errors made by the respondents as aforesaid be reviewed and corrected on the merits; that a reassessment of said real

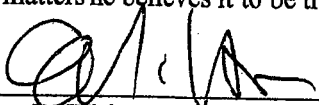
property of the petitioner and the correction and reduction of said assessment be made; and that this Court grant to the petitioner such other and further relief as may be just and proper, together with the costs and disbursements of this proceeding.

WAL-MART REAL ESTATE  
BUSINESS TRUST

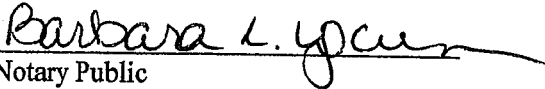
By   
Wayne D. Wisbaum, Agent

STATE OF NEW YORK )  
                                  ) SS.:  
COUNTY OF ERIE     )

Wayne D. Wisbaum, being duly sworn, deposes and says that he is the Agent of the petitioner in the above entitled action; that he has read the foregoing Petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

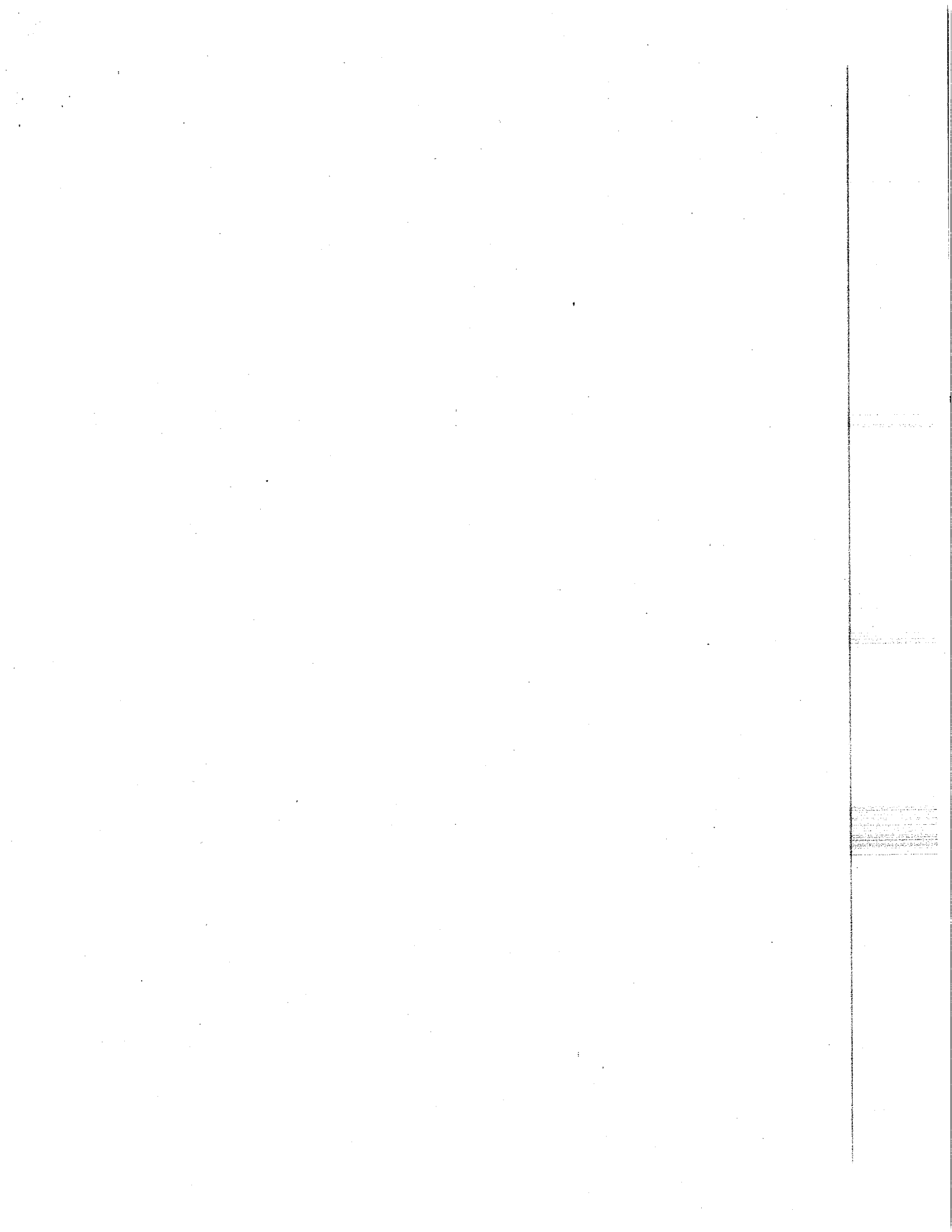
  
Wayne D. Wisbaum

Sworn to before me this  
5<sup>th</sup> day of July, 2016.

  
Notary Public

BARBARA L. YOCUM  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 11/4/18







NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE  
OFFICE OF REAL PROPERTY TAX SERVICES

RP-524 (3/09)

COMPLAINT ON REAL PROPERTY ASSESSMENT FOR 2016-17

BEFORE THE BOARD OF ASSESSMENT REVIEW FOR Town of Dix  
(city, town, village or county)

**PART ONE: GENERAL INFORMATION**

(General information and instructions for completing this form are contained in form RP-524-Ins)

1. Name and telephone no. of owner(s)

Wal-Mart Real Estate Business Trust

Day No. ( ) \_\_\_\_\_

Evening No. ( ) \_\_\_\_\_

E-mail address (optional) \_\_\_\_\_

2. Mailing address of owner(s)

c/o Kavinoky Cook LLP

Wayne D. Wisbaum, Esq., of Counsel

726 Exchange Street, Suite 800

Buffalo, New York 14210

3. Name, address and telephone no. of representative of owner, if representative is filing application.

(If applicable, complete Part Four on page 4.) \_\_\_\_\_

Kavinoky Cook LLP, Wayne D. Wisbaum, Esq., of Counsel

726 Exchange Street, Suite 800, Buffalo, New York 14210 (716) 845-6000

4. Location of property

Street address 515 E Fourth Street

Village (if any) Watkins Glen

City/Town Town of Dix

County Schuyler

School District Watkins Glen School District

5. Property identification (see tax bill or assessment roll)

Tax map number or section/block/lot SBL# 65.14-2-6.11

Type of property:  Residence  Farm  Vacant land  
 Commercial  Industrial  Other

Description: \_\_\_\_\_

6. Assessed value appearing on the assessment roll:

Land \$ 1,400,000 Total \$ 11,700,000

7. Property owner's estimate of market value of property as of valuation date (see instructions) \$ 7,500,000

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MAY 23 2016

*Nicki Lynn*  
Assessor

**PART TWO: INFORMATION NECESSARY TO DETERMINE VALUE OF PROPERTY**  
(If additional explanation or documentation is necessary, please attach)

Information to support the value of property claimed in Part One, item 7 (complete one or more):

- N/A 1.  Purchase price of property: ..... \$ \_\_\_\_\_
- a. Date of purchase: \_\_\_\_\_
- b. Terms:  Cash       Contract       Other (explain) \_\_\_\_\_
- c. Relationship between seller and purchaser (parent-child, in-laws, siblings, etc.): \_\_\_\_\_
- d. Personal property, if any, included in purchase price (furniture, livestock, etc.; attach list and sales tax receipt): \_\_\_\_\_

- N/A 2.  Property has been recently offered for sale (attach copy of listing agreement, if any):
- When and for how long: \_\_\_\_\_
- How offered: \_\_\_\_\_ Asking price: \$ \_\_\_\_\_

- N/A 3.  Property has been recently appraised (attach copy): When: \_\_\_\_\_ By Whom: \_\_\_\_\_
- Purpose of appraisal: \_\_\_\_\_ Appraised value: \$ \_\_\_\_\_

- N/A 4.  Description of any buildings or improvements located on the property, including year of construction and present condition: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

- N/A 5.  Buildings have been recently remodeled, constructed or additional improvements made:
- Cost: \$ \_\_\_\_\_
- Date Started: \_\_\_\_\_ Date Completed: \_\_\_\_\_
- Complainant should submit construction cost details where available.

6.  Property is income producing (e.g., leased or rented), commercial or industrial property and the complainant is prepared to present detailed information about the property including rental income, operating expenses, sales volume and income statements.

7.  Additional supporting documentation (check if attached). See attached "Tax Assessment Complaint".

**PART THREE: GROUNDS FOR COMPLAINT**

**A. UNEQUAL ASSESSMENT (Complete items 1-4)**

1. The assessment is unequal for the following reason: (check a or b)
  - a.  The assessed value is at a higher percentage of value than the assessed value of other real property on the assessment roll.
  - b.  The assessed value of real property improved by a one, two or three family residence is at a higher percentage of full (market) value than the assessed value of other residential property on the assessment roll or at a higher percentage of full (market) value than the assessed value of all real property on the assessment roll.
2. The complainant believes this property should be assessed at 75 % of full value based on one or more of the following (check one or more): State equalization rate reduced by reason of lag time in establishing the new state equalization rate.
  - a.  The latest State equalization rate for the city, town or village in which the property is located is 100 %.
  - b.  The latest residential assessment ratio established for the city, town or village in which the residential property is located. Enter latest residential assessment ratio only if property is improved by a one, two or three family residence \_\_\_\_\_ %.
  - c.  Statement of the assessor or other local official that property has been assessed at \_\_\_\_\_ %.
  - d.  Other (explain on attached sheet). See attached "Tax Assessment Complaint".
3. Value of property from Part one #7 ..... \$ 7,500,000
4. Complainant believes the assessment should be reduced to..... \$ 5,625,000

**B. EXCESSIVE ASSESSMENT (Check one or more)**

The assessment is excessive for the following reason(s):

1.  The assessed value exceeds the full value of the property.
  - a. Assessed value of property..... \$ 11,700,000
  - b. Complainant believes that assessment should be reduced to full value of (Part one #7)..... \$ 5,625,000
  - c. Attach list of parcels upon which complainant relies for objection, if applicable. Such inequality exists not only in specific instances, but generally throughout the assessment rolls and applicant specifies, as instances of such inequality, all other properties assessed upon the same assessment roll.
2.  The taxable assessed value is excessive because of the denial of all or portion of a partial exemption.
  - a. Specify exemption (e.g., senior citizens, veterans, school tax relief [STAR]) \_\_\_\_\_
  - b. Amount of exemption claimed..... \$ \_\_\_\_\_
  - c. Amount granted, if any:..... \$ \_\_\_\_\_
  - d. If application for exemption was filed, attach copy of application to this complaint.
3.  Improper calculation of transition assessment. (Applicable only in approved assessing unit which has adopted transition assessments.)
  - a. Transition assessment..... \$ \_\_\_\_\_
  - b. Transition assessment claimed..... \$ \_\_\_\_\_

**C. UNLAWFUL ASSESSMENT (Check one or more)**

The assessment is unlawful for the following reason(s):

1.  Property is wholly exempt. (Specify exemption (e.g., nonprofit organization)) \_\_\_\_\_
2.  Property is entirely outside the boundaries of the city, town, village, school district or special district in which it is designated as being located.
3.  Property has been assessed and entered on the assessment roll by a person or body without the authority to make the entry.
4.  Property cannot be identified from description or tax map number on the assessment roll.
5.  Property is special franchise property, the assessment of which exceeds the final assessment thereof as determined by the State Board of Real Property Services. (Attach copy of State Board certificate.)
6.  Applicant's property is not assessed on one common and general principle of valuation applied by the assessor in assessing generally the property appearing on the same assessment roll.

**D. MISCLASSIFICATION (Check one)**

The property is misclassified for the following reason (relevant only in approved assessing unit which establish homestead and non-homestead tax rates):

- Class designation on the assessment roll: \_\_\_\_\_
1.  Complainant believes class designation should be \_\_\_\_\_
2.  The assessed value is improperly allocated between homestead and non-homestead real property.

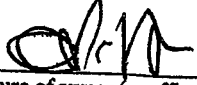
Allocation of assessed value on assessment roll

	<u>Claimed allocation</u>
Homestead.....\$ _____	_____
Non-homestead.....\$ _____	_____

**PART FOUR: DESIGNATION OF REPRESENTATIVE TO MAKE COMPLAINT**

I, Wayne D. Wisbaum, as Agent of the complainant (or officer thereof) hereby designate Kavinokv Cook LLP, Wayne D. Wisbaum, Esq., of Counsel to act as my representative in any and all proceedings before the board of assessment review of the city/town/village/county of Town of Dix for purposes of reviewing the assessment of my real property as it appears on the 2016-17 (year) tentative assessment roll of such assessing unit.

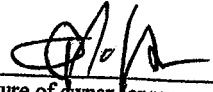
May 20, 2016  
Date

  
Signature of owner (or officer thereof)  
Wayne D. Wisbaum, Agent

**PART FIVE: CERTIFICATION**

I certify that all statements made on this application are true and correct to the best of my knowledge and belief, and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the Penal Law relevant to the making and filing of false instruments.

May 20, 2016  
Date

  
Signature of owner (or representative)  
Wayne D. Wisbaum, Agent

**PART SIX: STIPULATION**

The complainant (or complainant's representative) and assessor (or assessor designated by a majority of the board of assessors) whose signatures appear below stipulate that the following assessed value is to be applied to the above described property on the \_\_\_\_\_ (year) assessment roll: Land \$ \_\_\_\_\_ Total \$ \_\_\_\_\_

(Check box if stipulation approves exemption indicated in Part Three, section B.2. or C.1.)

Complainant or representative \_\_\_\_\_

Assessor \_\_\_\_\_

Date \_\_\_\_\_

**SPACE BELOW FOR USE OF BOARD OF ASSESSMENT REVIEW**

**Disposition**

- Unequal assessment
- Unlawful assessment
- Ratification of stipulated assessment
- Excessive assessment
- Misclassification
- No change in assessment

Reason: \_\_\_\_\_

**Vote on Complaint**

- All concur
- All concur except: \_\_\_\_\_

Name _____	<input type="checkbox"/> against	<input type="checkbox"/> abstain	<input type="checkbox"/> absent
Name _____	<input type="checkbox"/> against	<input type="checkbox"/> abstain	<input type="checkbox"/> absent

	<u>Tentative assessment</u>	<u>Claimed assessment</u>	<u>Decision by Board of Assessment Review</u>
--	-----------------------------	---------------------------	---

Total assessment	\$ _____	\$ _____	\$ _____
Transition assessment (if any)	\$ _____	\$ _____	\$ _____
Exempt amount	\$ _____	\$ _____	\$ _____
Taxable assessment	\$ _____	\$ _____	\$ _____
Class designation and allocation of assessed value (if any):			
Homestead	\$ _____	\$ _____	\$ _____
Non-homestead	\$ _____	\$ _____	\$ _____
Date notification mailed to complainant	_____		

TAX ASSESSMENT COMPLAINT

TO: THE HONORABLE BOARD OF ASSESSORS  
OF THE TOWN OF DIX, NEW YORK

The complaint of WAL-MART REAL ESTATE BUSINESS TRUST, hereinafter sometimes referred to as the complainant, respectfully shows:

1. The complainant, Wal-Mart Real Estate Business Trust, is the owner of real property and improvements located at and known as 515 E Fourth Street (SBL #65.14-2-6.11), Dix, New York.

2. The proposed assessment of said property for the 2016-17 Town of Dix Tax Year is as follows:

Land	\$
Total	\$ 11,700,000

3. The complainant objects to and protests against the aforesaid proposed assessment and respectfully submits that the property is assessed for more than it is worth; that the assessable value of the property as of March 1, 2016 did not exceed \$7,500,000.

4. The complainant submits that the assessment roll is illegal, incorrect and erroneous because it has not been prepared in accordance with the laws and statutes, if any, made and provided for such cases.

5. The complainant submits that the said assessment roll is illegal, incorrect and erroneous because a large amount of property which should be assessed thereon is entirely omitted therefrom, but the aforesaid premises of the complainant is included therein.

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MAY 23 2016

6. The complainant submits that the said assessment roll is illegal, incorrect and erroneous because the valuation placed on said property is excessive and greater than the true value of the same.

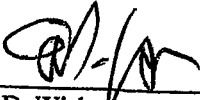
7. The complainant submits that the aforesaid assessment roll is illegal, incorrect and erroneous in that it has been made at a higher proportionate percentage of true value than the assessment generally made on other properties on the same roll made by the same officers. The complainant will submit specific instances of such inequality with other property upon the same roll, including adjoining and comparable properties. The complainant submits that the assessment on its said property is unequal with the basis of assessments and the actual assessments on adjoining and other comparable properties. The complainant further submits that the assessment on its said property has been fixed in a prejudicial and unequal manner in comparison with assessments on other types of property in the Town of Dix and State of New York, such as residential and other commercial properties, all other assessments on the roll being unequal with the assessments against the complainant's said property.

8. The full, fair and true market value of the complainant's property assessed as real property on May 1, 2016, did not exceed \$7,500,000. The assessment on the complainant's said property should be equalized to the assessment of other property upon the roll and as so equalized, assessed at not more than \$5,625,000. Said property has been overassessed, by reason of inequality, the sum of \$6,075,000.

9. The undersigned represents that he is the Agent of the complainant, and as such Agent does hereby respectfully request that the assessed value of the premises for

the year 2016-17 be fixed at \$5,625,000.

WAL-MART REAL ESTATE BUSINESS  
TRUST

By:   
Wayne D. Wisbaum, Agent

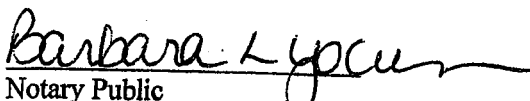
STATE OF NEW YORK)  
COUNTY OF ERIE ) ss:  
CITY OF BUFFALO )

Wayne D. Wisbaum, being duly sworn, deposes and says that he is the Agent of Wal-Mart Real Estate Business Trust., that he has read said application subscribed by him and knows the contents thereof; that the same is, and all statements therein contained are, true and correct.

I certify that all statements made on this application are true and correct to the best of my knowledge and belief and I understand that making of willful false statements of material fact herein will subject me to provisions of penal law relevant to making and filing of false instruments.

  
Wayne D. Wisbaum, Agent

Sworn to before me this  
20<sup>th</sup> day of May, 2016.

  
Notary Public  
BARBARA L. YOCUM  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 11/4/18



AUTHORIZATION

Pursuant to Real Property Tax Law Sections 524 and 706, the undersigned DOES HEREBY authorize Kavinoky Cook LLP, Wayne D. Wisbaum and Scott C. Becker, of Counsel, to act as agents, representatives and attorneys-in-fact for the purposes of instituting and pursuing administrative or judicial proceedings in the 2016-17 tax year and for each tax year hereafter, for the review and reduction of the tax assessments fixed upon the below real property, to be fully described in the Complaint on Real Property Assessment filed pursuant to Article 5 of the Real Property Tax Law of the State of New York or in the Notice and Petition to be served under Articles 15 and 7 of the Real Property Tax Law of the State of New York. More particularly, but not exclusively, said attorneys are authorized to prepare, verify and file a Complaint on Real Property Assessment and Notice and Petition for such proceeding, and to do all other things necessary and proper for the perfection and pursuit of same.

IN WITNESS WHEREOF, the undersigned has executed the foregoing Authorization as of the 16th day of May 2016.

Wal-Mart Real Estate Business Trust

By: Beth Carson

Subject Parcel:

Town of Dix  
515 E Fourth Street  
SBL #65.14-2-6.11



NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE  
OFFICE OF REAL PROPERTY TAX SERVICES

NOTICE OF DETERMINATION OF BOARD OF ASSESSMENT REVIEW

For TOWN OF DIX  
(city, town village or county)

15.14-2-6.11

Tax map section/block/lot #

515 E FOURTH ST  
WATKINS GLEN, NY 14891

Location of property if different than  
address of Complainant

WALMART REAL ESTATE  
60 KAVINOKY COOK LLP W. WISBAUM  
1726 EXCHANGE ST ST 800  
BUFFALO NY 14210

Name and address of Complainant

The tentative assessed value of \$ 11,700,000 for this property:

- a.  has been reduced to an assessed value of Land \$ \_\_\_\_\_ Total \$ \_\_\_\_\_
- if this box is checked, assessment has been reduced to amount claimed in complaint
- b.  has not been reduced

Your complaint was based upon a contention that your assessment should be changed because of the following:

- Assessed Valuation
- Exemption
- Classification
- Other

The Board of Assessment Review has made this determination for reason set forth below:

a. The current full market value of your property was determined to be \$ 11,700,000

- (1) The proof of value you presented was adequate to support reduction granted.
- (2) The proof of value you presented was inadequate because \_\_\_\_\_
  - i. the supporting data was insufficient
  - ii. sales were not comparable to your property
  - iii. the written appraisal was incomplete
  - iv. the income and expense statement was incomplete (income producing property)
  - v. the construction cost details were incomplete.

b. The uniform percentage of value applicable in this assessing unit is \_\_\_\_\_

- (1) The proof of assessment ratio that you presented was adequate to support reduction granted.
- (2) The proof of assessment ratio that you presented was inadequate because:
  - i. insufficient evidence was used in calculating an assessment ratio
  - ii. sufficient evidence was presented by the assessor to refute the residential assessment ratio (RAR) or the State equalization rate
  - iii. the State ratios are inapplicable due to revaluation
  - iv. the ratio that you presented was not the correct residential assessment ratio (RAR)
  - v. the rate that you presented was not the correct State equalization rate.

c. The physical characteristics and inventory of your property were determined to be:

- (1) correct
- (2) incorrect.

cont.

**Assessed Valuation (cont.)**

The correct inventory should indicate the following: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Exemption**

The taxable assessed value was determined to be \$ \_\_\_\_\_  
 (1) Your request for exemption has been granted in the amount of \$ \_\_\_\_\_  
 (2) Your request for an exemption was denied because you do not qualify for that exemption.

**Classification**

a. The property class designation was determined to be:  
 (1) correct  
 (2) incorrect because:  
 i. the class designation should be homestead  
 ii. the class designation should be non-homestead  
b. The property class allocation was determined to be:  
 (1) correct  
 (2) incorrect because:  
the class designation should be allocated homestead in the amount of \$ \_\_\_\_\_  
and non-homestead in the amount of \$ \_\_\_\_\_

**Dismissal**

Your complaint has been dismissed because of your (or your representative's) willful neglect or refusal to attend this board's hearing or to be examined concerning your complaint or to answer questions relevant to your complaint. Where the court finds that a dismissal is warranted, no assessment reduction can be granted.

**Additional Factors**

Factors in addition to or other than those listed that affected the determination were:  
\_\_\_\_\_  
\_\_\_\_\_

If you are dissatisfied with the determination of the Board of Assessment Review, you may seek judicial review of your assessment pursuant to Article 7 of the Real Property Tax Law (RPTL).

If you are the owner of one, two or three family residential structure and reside at such residence, or, if you are the owner of unimproved property which is not of sufficient size as determined by your assessing unit to contain a one, two or three family residential structure, you may seek small claims assessment review pursuant to Title I-A of Article 7 of the RPTL. Petitions for judicial review must be filed within thirty (30) days of the last date allowed by law for the filing of the final assessment roll for your assessing unit, or the published notice of such filing, whichever is later. Petition forms for Small Claims Assessment Review may be obtained from the County Clerk's Office.

**Vote on complaint**

All concur  
 All concur except: (name) \_\_\_\_\_  
(name) \_\_\_\_\_  
 against  abstain  absent  
 against  abstain  absent

6-16-16  
Date

J.L. Mawsi  
Chairperson, Board of Assessment Review (Signature)

**STATE OF NEW YORK: COUNTY OF SCHUYLER  
SUPREME COURT**

RECEIVED  
SCHUYLER MULTI COURTS  
2016 SEP 16 PM 2:40

In the Matter of the Application for Review under Art. 7  
of the Real Property Tax Law by  
WAL-MART REAL ESTATE BUSINESS TRUST,  
Petitioners

**VERIFIED ANSWER**  
Index No. 16-134

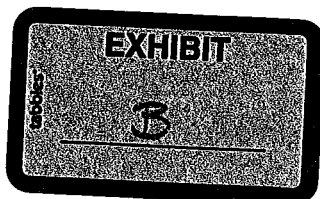
-v-

Subject Property:  
515 E. Fourth Street, Town of Dix  
Village of Watkins Glen  
County of Schuyler  
Tax Map No. 65.14-2-6.11

THE BOARD OF ASSESSMENT REVIEW FOR THE  
TOWN OF DIX, THE ASSESSOR FOR THE TOWN  
OF DIX and THE TOWN OF DIX, NEW YORK,  
Respondents.

Respondents, THE BOARD OF ASSESSMENT REVIEW FOR THE TOWN OF DIX, THE  
ASSESSOR FOR THE TOWN, OF DIX and THE TOWN OF DIX, NEW YORK, by and  
through their attorneys, Robert L. Halpin, Esq. and Steven J. Getman, Esq., as and for their  
answer to the Petition herein allege as follows that, upon information and belief:

1. Respondents admit the allegations of Pars. "First," "Second," "Third," "Sixth,"  
"Twelfth" and "Thirteenth," of the Petition.
2. Respondents admit the allegations of Par. "Fourth" partially as follows: Admit that the  
said property has been assessed by respondents who are duly constituted assessing  
authorities of the Town of Dix for the tax year in question and admit that said assessment  
produced a total assessed value of Eleven Million, Seven Hundred Thousand Dollars  
(\$11,700,00.00). Respondents otherwise deny.
3. Respondents admit the allegations of Par. "Fifth" partially as follows: Admit that the  
petitioner caused to be filed with respondents a notice of protest and application for  
revision of property tax assessments and that respondents denied the application.  
Respondents otherwise deny. To the extent that the petition incorporates by reference a  
certain "Exhibit A," respondents admit that Petitioners have annexed same and that it is a  
true copy of the Complaint on Real Property Assessment for 2016-2017 filed before the  
Board of Assessment Review for the Town of Dix for the subject property herein,  
together with a true copy of the Notice of Determination of the Board of Assessment  
Review for the Town of Dix dated June 16, 2016.



4. Respondents admit the allegations of Par. "Seventh" partially as follows: Admit that the said property has been finally assessed by respondents who are duly constituted assessing authorities of the Town of Dix for the tax year in question and admit that said assessment produced a total assessed value of \$11,700,000.00. Respondents otherwise deny.
5. Respondents deny each and every other allegation of the petition not specifically admitted above.

AS AND FOR AN AFFIRMATIVE DEFENSE

6. Respondents reallege and ratify each of the above numbered paragraphs as if set forth more fully herein.
7. The petition fails to state a cause of action and/or is objectionable in point of law, and should be dismissed.

AS AND FOR AN AFFIRMATIVE DEFENSE

8. Respondents reallege and ratify each of the above numbered paragraphs as if set forth more fully herein.
9. Respondents allege that the assessment roll was duly prepared by the town assessor and in conformance with and in the manner and form required by law, and further allege that the assessment prepared was an accurate, correct, and legal assessment.
10. Respondents allege that the assessment roll for the Town of Dix was duly completed and a certified copy was filed in the office of the Town Clerk on or about the 1 day of July, 2016 and a notice of a completed assessment roll was published in the town's official newspaper, the *Watkins Glen Observer*, and posted pursuant to Real Property Tax Law § 516 on the 1 day of July 2016.
11. Respondents incorporate herein and make a part of this answer with the same extent as if set forth herein, the assessment roll of the Town of Dix, for 2016 and the whole thereof including the affidavits and certificates thereto attached and also the written complaint of the petitioners certified May 20, 2016 and presented to us in connection with the petitioner's protest of such assessment and also the Notice of Determination of the Board of Assessment Review for the Town of Dix dated June 16, 2016.
12. Upon information and belief, pursuant to applicable New York State law: Once the tax roll is completed, it is presumed to be accurate and free of error; if a taxpayer contends otherwise the burden is on the taxpayer to demonstrate that fact to the assessors. A challenger has the burden of proving they are erroneous by clear and convincing evidence.
13. Petitioners failed to make a prima facie showing by sufficient evidence that the assessment is erroneous, necessary to rebut the presumption of validity and their petition

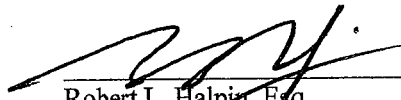
must be dismissed. Petitioners submitted no proof of value before the Board of Assessment Review.

14. Upon information and belief, the petitioner, or its agent or representative, did willfully neglect or refuse to attend the hearing of the respondent Board of Assessment Review and be so examined and/or to answer any question put to same relevant to the complaint or assessment.

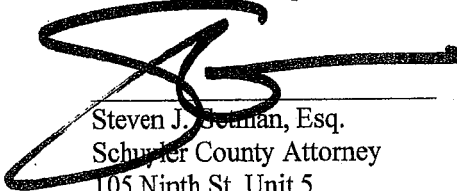
**WHEREFORE, respondents respectfully demand judgement dismissing the petition herein, together with costs and such other and further relief as to the court might be just and proper.**

Dated: Watkins Glen, New York

Sept 16, 2016.



Robert L. Halpin, Esq.  
The Halpin Firm  
4588 State Rt 224  
Montour Falls, NY 14865  
607.594.3786  
Co-counsel for respondents



Steven J. Bettman, Esq.  
Schuyler County Attorney  
105 Ninth St, Unit 5  
Watkins Glen, NY 14891  
607.535.8121  
Co-counsel for respondents

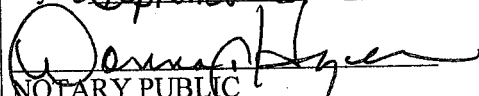
**VERIFICATION**

STATE OF NEW YORK }  
COUNTY OF SCHUYLER } SS.:

VICKI FLYNN, being duly sworn, deposes and says that: I am the Assessor for the Town of Dix, an officer of the respondent herein, that I have read the foregoing document and know the contents thereof; that the same is true to deponent's own knowledge except as to those matters alleged to be upon information and belief and as to those matters I believe it to be true. The grounds for my belief are the results of my review of the regularly kept business records of the Town of Dix.

  
VICKI FLYNN

Sworn to before me this 15<sup>th</sup>  
day of September, 2016.

  
NOTARY PUBLIC

**DONNA J. HYER**  
Notary Public, State of New York  
Schuyler County #7024450  
My Commission Expires 10/31/2018

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK }  
COUNTY OF SCHUYLER } ss.:

VICKIE PERAZZINI, being duly sworn, deposes and says that:

1. Deponent is not a party to this action, is over 18 years of age and d/b/a WATKINS GLEN, NEW YORK.

2. On 9/16, 2016, deponent served the within documents upon  
Wayne D. Wisbaum, Esq.  
Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
Attorney for Petitioners

and upon interested parties:

Sam Schimizzi, Mayor,  
Village of Watkins Glen  
303 N. Franklin Street  
Watkins Glen, NY

Tom Phillips, Superintendent,  
Watkins Glen Central School District  
303 Twelfth Street.  
Watkins Glen, NY 1489

3. Upon information and belief, each said address is the address designated by said person for that purpose.

4. Service was made by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

  
VICKIE PERAZZINI

Sworn to before me this 16<sup>th</sup> day of  
September, 2016.

  
NOTARY PUBLIC

**DONNA J. HYER**  
Notary Public, State of New York  
Schuyler County #7024450  
My Commission Expires 10/31/2018



STATE OF NEW YORK  
SUPREME COURT : COUNTY OF SCHUYLER

---

IN THE MATTER OF THE APPLICATION OF  
WAL-MART REAL ESTATE BUSINESS TRUST

Petitioner,

Statement Pursuant to  
22 N.Y.C.R.R. 202.59(b)

-vs.-

Index No.: 2016-134

THE BOARD OF ASSESSMENT REVIEW FOR THE  
TOWN OF DIX, THE ASSESSOR OF THE TOWN  
OF DIX; and THE TOWN OF DIX, NEW YORK

Tax Year: 2016-17

Respondents.

For a Review of a Tax Assessment under  
Article 7 of the Real Property Tax Law.

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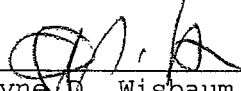
Pursuant to Uniform Court Rules §202.59(b), attached is  
Petitioner's certified Statement of Income and Expense.

Dated: Buffalo, New York

KAVINOKY COOK LLP

March 16, 2017

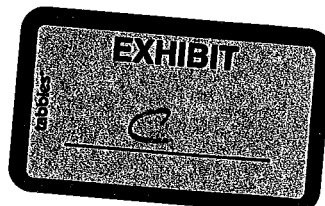
By:

  
Wayne D. Wisbaum, Esq.  
Attorneys for Petitioner  
726 Exchange Street, Suite 800  
Buffalo, New York 14210

TO: Robert L. Halpin, Esq.  
The Halpin Firm  
4588 State Route 224  
Montour Falls, New York 14865

Steven J. Getman, Esq.  
Schuyler County Attorney  
105 Ninth St, Unit 5  
Watkins Glen, New York 14891

04067/33438/506439.1



**#3221 WATKNS GLEN, NY**

	YTD12 FY16 ACTUAL Status Banner LegalEnt Dept US.03221 WATKII CT.Tot	YTD12 FY15 ACTUAL Status Banner LegalEnt Dept US.03221 WATKII CT.Tot
Other Store Supplies_5201080	103.94	9.28
Supply Costs_502.000	235,357.64	237,202.85
Equipment Rental_502.100	20,927.07	18,822.22
Floor Maintenance_5401006	1,396.61	3.13
Dock Maintenance & Repairs_5401007	521.10	1,004.40
Parking Lot Maintenance_5401009	0	47,064.64
Electrical Maintenance_5401018	8,547.73	14,533.52
Plumbing Maintenance_5401024	17,775.51	20,095.89
Snow Removal_5401042	64,794.19	64,784.88
Pest Control_5401048	4,966.51	4,235.16
Exterior Building Repairs_5401049	0	7,734.25
Interior Building Maintenance and Repairs_5401050	0	0
Door Maintenance_5401054	11,056.19	9,382.47
Other Maintenance and Repair_5401078	309.73	3,783.49
Maintenance & Repairs_504.100	516,581.39	434,104.37
Property Insurance_5602000	15,328.32	15,121.68
Real Estate Taxes_5605001	350,009.76	381,264.00
Trash Removal Expense_5502010	12,927.29	13,991.82
Telephone Expense_5502020	19,052.62	15,300.00
Electric Service_5502050	346,910.87	408,870.69
Legal Fees_5302030	80.86	0
Security Services_5302070	8,953.26	7,811.28
Other Outside Services_5302090	5,428.51	5,457.59
Outside Services_5302000	64,268.78	64,114.19
Management Fee Expense_5804046	1,065,757.63	862,292.26
Advertising Expense_5301000	177,315.65	145,600.28
<b>TOTAL</b>	<b>2,948,371.16</b>	<b>2,782,584.34</b>

Smart Style - Regis Corporation

Lease	Tenant	Invoice Date	Gross Amount	G/L Offset	Remark
35814	48833	1/1/2014	\$3,013.00	INCS	TT Rent Income-Store
35814	48833	2/1/2014	\$3,013.00	INCS	TT Rent Income-Store
35814	48833	3/1/2014	\$3,013.00	INCS	TT Rent Income-Store
35814	48833	4/1/2014	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	5/1/2014	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	6/1/2014	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	7/1/2014	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	8/1/2014	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	9/1/2014	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	10/1/2014	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	11/1/2014	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	12/1/2014	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	1/1/2015	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	2/1/2015	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	3/1/2015	\$3,103.39	INCS	TT Rent Income-Store
35814	48833	4/1/2015	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	5/1/2015	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	6/1/2015	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	7/1/2015	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	8/1/2015	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	9/1/2015	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	10/1/2015	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	11/1/2015	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	12/1/2015	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	1/1/2016	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	2/1/2016	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	3/1/2016	\$3,196.49	INCS	TT Rent Income-Store
35814	48833	4/1/2016	\$3,292.39	INCS	TT Rent Income-Store
35814	48833	5/1/2016	\$3,292.39	INCS	TT Rent Income-Store
35814	48833	6/1/2016	\$3,292.39	INCS	TT Rent Income-Store
35814	48833	7/1/2016	\$3,292.39	INCS	TT Rent Income-Store
35814	48833	8/1/2016	\$3,292.39	INCS	TT Rent Income-Store
35814	48833	9/1/2016	\$3,292.39	INCS	TT Rent Income-Store
35814	48833	10/1/2016	\$3,292.39	INCS	TT Rent Income-Store
35814	48833	11/1/2016	\$3,292.39	INCS	TT Rent Income-Store
35814	48833	12/1/2016	\$3,292.39	INCS	TT Rent Income-Store
35814	48833	1/1/2017	\$3,292.39	INCS	TT Rent Income-Store
35814	48833	2/1/2017	\$3,292.39	INCS	TT Rent Income-Store

\$120,853.85

Da-VI Nails - David Tuong & VI Tuong Cao - Term 7/22/2009 - 1/31/2015

Lease	Tenant	Invoice Date	Gross Amount	G/L Offset	Remark
59510	2601504	1/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	2/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	3/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	4/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	5/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	6/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	7/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	8/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	9/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	10/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	11/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	12/1/2014	\$1,470.00	INCS	TT Rent Income-Store
59510	2601504	1/1/2015	\$1,470.00	INCS	TT Rent Income-Store

**\$19,110.00**

McDonalds Corporation

Lease	Tenant	Invoice Date	Gross Amount	G/L Offset	Remark
36526	31694	1/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2014	\$30.21	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	1/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	2/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	2/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	2/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	2/1/2014	\$407.35	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	2/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	2/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	3/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2014	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2014	\$13.76	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	3/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	4/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2014	\$473.90	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	4/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	5/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2014	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2014	\$705.70	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2014	(\$705.18)	BFPR	BF Percentage Rent
36526	31694	5/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	5/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	6/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2014	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2014	\$242.32	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	6/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	7/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2014	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2014	\$1,161.77	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	7/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	8/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2014	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2014	\$1,396.78	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	8/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	9/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2014	\$351.34	BFPR	Overage Calculation (Bkpt, Sal

Lease	Tenant	Invoice Date	Gross Amount	G/L Offset	Remark
36526	31694	9/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	9/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	10/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2014	\$544.41	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	10/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	11/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2014	\$166.63	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	11/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	12/1/2014	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2014	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2014	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2014	\$652.74	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2014	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	12/1/2014	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	1/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2015	\$478.76	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	1/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	1/1/2015	(\$250.00)	UTRS	TT Utility Reimb-Store
36526	31694	2/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	2/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	2/1/2015	\$543.91	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	2/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	2/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	2/1/2015	(\$250.00)	UTRS	TT Utility Reimb-Store
36526	31694	3/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2015	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2015	\$401.49	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	3/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	4/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2015	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2015	\$100.66	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	4/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	5/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2015	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2015	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2015	\$167.86	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	5/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	6/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2015	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2015	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2015	\$1,655.13	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	6/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	7/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal

Lease	Tenant	Invoice Date	Gross Amount	G/L Offset	Remark
36526	31694	7/1/2015	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2015	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2015	\$985.31	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	7/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	8/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2015	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2015	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2015	\$1,095.05	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	8/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	9/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2015	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2015	\$548.11	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	9/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	10/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2015	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2015	\$632.30	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	10/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	11/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2015	\$749.97	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	11/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	11/1/2015	(\$250.00)	UTRS	TT Utility Reimb-Store
36526	31694	12/1/2015	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2015	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2015	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2015	\$380.74	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2015	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	12/1/2015	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	1/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2016	\$375.12	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	1/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	1/1/2016	(\$250.00)	UTRS	TT Utility Reimb-Store
36526	31694	2/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	2/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	2/1/2016	\$577.37	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	2/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	2/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	2/1/2016	(\$250.00)	UTRS	TT Utility Reimb-Store
36526	31694	3/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2016	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2016	\$248.22	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	3/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	3/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	4/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2016	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2016	\$122.73	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	4/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	4/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store

Lease	Tenant	Invoice Date	Gross Amount	G/L Offset	Remark
36526	31694	5/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2016	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2016	\$463.41	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	5/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	5/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	6/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2016	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2016	\$692.50	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	6/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	6/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	7/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2016	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2016	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2016	\$975.71	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	7/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	7/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	8/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2016	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2016	\$833.33	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2016	\$454.99	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	8/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	8/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	9/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2016	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2016	\$505.46	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	9/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	9/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	10/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2016	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2016	\$424.51	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	10/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	10/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	11/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2016	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2016	\$372.35	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	11/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	11/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	12/1/2016	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2016	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2016	\$750.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2016	\$747.15	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	12/1/2016	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	12/1/2016	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	1/1/2017	\$510.00	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2017	\$1,131.67	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2017	\$490.53	BFPR	Overage Calculation (Bkpt, Sal
36526	31694	1/1/2017	\$125.00	TCMS	TT CAM Reimb-Store
36526	31694	1/1/2017	\$1,500.00	UTRS	TT Utility Reimb-Store
36526	31694	1/1/2017	(\$250.00)	UTRS	TT Utility Reimb-Store

\$171,414.49



**GAMEPLAY**

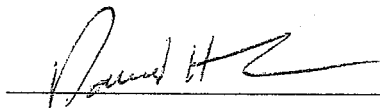
Commissions paid for the past 3 years

			2016	2015	2014
3221	Watkins Glen	NY	\$ 7,266.22	\$ 7,822.85	\$ 7,920.47

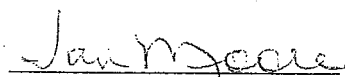
**VERIFICATION**

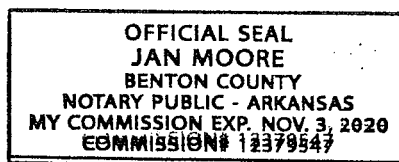
STATE OF ARKANSAS    )  
  )ss.:  
COUNTY OF BENTON    )

David LeVan, being duly sworn deposes and says that he is the Senior Director of Property Tax of the petitioner; that he has read the foregoing income and expense statement and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be upon information and belief, and as to those matters he believes it to be true.



Sworn to before me this  
16<sup>th</sup> day of February, 2017.

  
Notary Public



Town of Dix:  
515 E Fourth St/SBL #65.14-2-6.11



Steven J. Getman  
*County Attorney*

Kristin E. Hazlitt  
*Assistant County Attorney*

Olesya K. Vernyi-Kellogg  
*Assistant County Attorney*

Office of  
**COUNTY ATTORNEY**  
of  
**SCHUYLER COUNTY**



105 Ninth Street, Unit 5  
Watkins Glen, NY 14891

Phone: (607) 535-8121  
Fax: (607) 535-8123

May 9, 2017

Wayne D. Wisbaum, Esq.,  
Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210

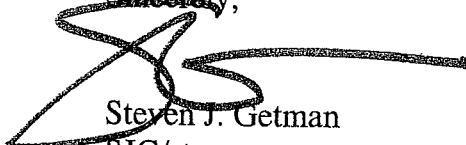
RE: Matter of Wal-Mart Real Estate Business Trust v Town of Dix, et al  
Schuyler County Index No. 16-134

Dear Wayne:

Please find enclosed respondents' 'Request for Audit,' pursuant to 22  
NYCRR 202.59(c) in the above proceeding.

If you have any questions, or require anything further, please do not hesitate  
to contact me. Thank you for your courtesy and kindness in this matter.

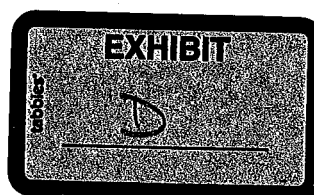
Sincerely,



Steven J. Getman  
SJG/st

cc: Robert Halpin, Esq.

COPY



**STATE OF NEW YORK: COUNTY OF SCHUYLER  
SUPREME COURT**

---

In the Matter of the Application for Review  
under Art. 7 of the Real Property Tax Law by  
**Wal-Mart Real Estate Business Trust,**  
Petitioners

**Request for Audit**  
**22 NYCRR 202.59(c)**  
Index No. 16-134

-v-

Subject Property:  
515 E. Fourth Street, Town of Dix  
Village of Watkins Glen  
County of Schuyler  
Tax Map No. 65.14-2-6.11

**The Board Of Assessment Review For The  
Town Of Dix, The Assessor For The Town  
Of Dix And The Town Of Dix, New York,**  
Respondents.

---

**To: Wayne D. Wisbaum, Esq., Kavinoky Cook LLP**  
**726 Exchange Street, Suite 800**  
**Buffalo, New York 14210**  
**Attorney for Petitioners**

**Please take Notice** that the respondents, for the purpose of substantiating petitioner's statement of income and expenses, requests in writing an audit of the petitioner's books and records for the tax years under review.

**Please take further Notice** that, where an audit is requested and the petitioner fails to furnish its books and records within a reasonable time after receipt of the request, or otherwise unreasonably impedes or delays the audit, the court, on motion of the respondent, may dismiss the petition or petitions or make such other order as the interest of justice requires.

Dated: May 9, 2017

S/Steven J. Getman, Esq.  
Schuyler County Attorney  
105 Ninth St, Unit 5  
Watkins Glen, NY 14891  
607.535.8121  
Co-counsel for respondents

S/Robert L. Halpin, Esq.  
The Halpin Firm  
4588 State Rt 224  
Montour Falls, NY 14865  
607.594.3786  
Co-counsel for respondents

**AFFIDAVIT OF SERVICE BY MAIL**

**STATE OF NEW YORK }  
COUNTY OF SCHUYLER } ss.:**

VICKIE PERAZZINI, being duly sworn, deposes and says that:

1. Deponent is not a party to this action, is over 18 years of age and d/b/a WATKINS GLEN, NEW YORK.

2. On May 9, 2017, deponent served the within documents upon

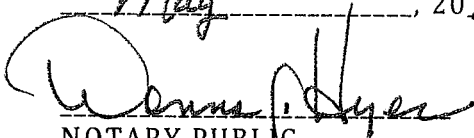
Wayne D. Wisbaum, Esq.  
Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
Attorney for Petitioners

3. Upon information and belief, each said address is the address designated by said person for that purpose.

4. Service was made by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

  
VICKIE PERAZZINI

Sworn to before me this 9<sup>th</sup> day of  
May, 2017.

  
NOTARY PUBLIC

**DONNA J. HYER**  
Notary Public, State of New York  
Schuyler County #7024450  
My Commission Expires 10/31/2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SCHUYLER

PRESIDING JUSTICE: Dennis J. Morris

---

IN THE MATTER OF THE APPLICATION OF WAL-MART  
REAL ESTATE BUSINESS TRUST

Petitioner,

TAX CERTIORARI

vs.

SCHEDULING ORDER

THE BOARD OF ASSESSMENT REVIEW FOR THE TOWN  
OF DIX, THE ASSESSOR OF THE TOWN OF DIX; AND  
THE TOWN OF DIX, NEW YORK

INDEX NO: 2016-134

Respondents.

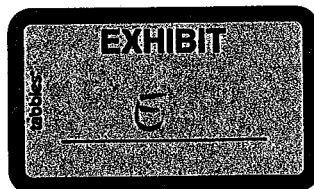
RJI NO: 2016-17

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Following a conference on June 23, 2017 at the Schuyler County Courthouse with appearances by J. Ryan White, Esq. on behalf of Wal-Mart Real Estate Business Trust, Steven J. Getman, Esq., on behalf of Schuyler County, and Robert Halpin, Esq. on behalf of the Town of Dix, the following schedule is imposed for this proceeding.

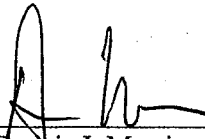
IT IS HEREBY ORDERED THAT:

1. The matter shall be calendared for trial to commence on or before April 1, 2018.
2. The exchange date for appraisals shall be no later than November 1, 2017
3. The petitioner anticipates the need for a Confidentiality/Non-Disclosure Agreement. The party seeking confidentiality shall promptly prepare and circulate a proposed agreement. The failure to promptly prepare and circulate a proposed agreement may result in a waiver of any claim of confidentiality. See 22 NYCRR § 216.1.
4. Motions *in Limine* shall be filed prior to January 1, 2018.



Failure to comply with any of these deadlines, rules or directives may result in the imposition of costs or sanctions or other action authorized by law.

DATED: 7-14-17

  
\_\_\_\_\_  
Hon. Dennis J. Morris Acting JSC

Distribution:

Original: Clerk, Supreme Court

Copies: J. Ryan White, Esq., Kavinoky Cook LLP, Attorney for Petitioner

✓ Steven J. Getman, Esq., Attorney for County of Schuyler

Robert Halpin, Esq., Attorney for the Town of Dix

**Steven Getman**

---

**From:** Barbara L. Yocum <byocum@kavinokycook.com>  
**Sent:** Thursday, June 29, 2017 3:17 PM  
**To:** rhalpin@thehalpinfirm.com; Steven Getman  
**Cc:** Ryan White; Scott C. Becker  
**Subject:** Wal-Mart v. Town of Dix  
**Attachments:** Confidentiality AgreementGross SalesTown of Dix.pdf

Dear Counselors,

Pursuant to the court conference on June 23, 2017, as requested attached is a confidentiality agreement to be signed by co-counsel and the appraiser. Kindly printout the agreement, sign it and return to me at the address listed below. Upon our receipt of the full executed confidentiality agreement, we will forward the gross sales relating to the 2016 proceeding.

Thank you.

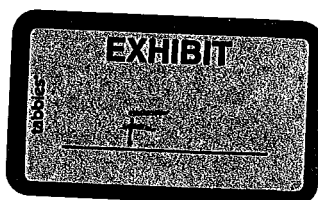
Barbara

Barbara L. Yocum  
Paralegal  
Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
(716) 845-6000 Tel.  
(716) 845-6474 Fax  
[byocum@Kavinokycook.com](mailto:byocum@Kavinokycook.com)



**CONFIDENTIALITY NOTICE:** This message has been sent by the law firm of Kavinoky Cook LLP. This message and attachments, if any, may include Privileged and/or Confidential Information. This message is intended only for the individual named in this message (or party responsible for delivery of the message to such person). If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is strictly prohibited. If you have received this in error, please notify me by e-mail or by calling 716-845-6000 and then kindly DESTROY this message and all attachments. Thank you.

**CIRCULAR 230 NOTICE:** To comply with certain U.S. Treasury regulations, we inform you that any federal tax advice contained in this message, including attachments, is not a covered opinion as described in Treasury Department Circular 230 and therefore cannot be relied upon to avoid any tax penalties or to support the promotion or marketing of any federal tax transaction.





CONFIDENTIALITY AGREEMENT

The gross sales figures Wal-Mart Real Estate Business Trust ("Wal-Mart") will be providing will be shown and seen only by the co-counsel for the Respondents, Steven J. Getman, Esq. and Robert L. Halpin, Esq., and by the Town of Dix Appraiser. However, the gross sales figures may not be made a part of, or in any way be referenced in, any appraisal report, or in or at the trial of this matter. I recognize and acknowledge that the gross sales figures are of a proprietary and confidential nature and are not to be copied or to be shown to anyone else besides those individuals mentioned herein; they are not to be retained at my office, or at any public official's office, which could subject them to FOIL review; and they are to be returned to Wal-Mart's counsel, uncopied and intact, when the individuals mentioned herein are finished with their review of same, in all events within thirty (30) days upon receipt of the gross sales figures.

This confidentiality agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

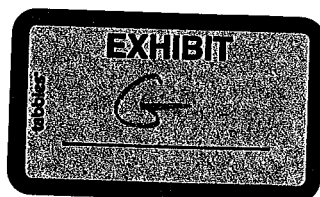
Dated: June \_\_\_\_\_, 2017

BY: \_\_\_\_\_  
Steven J. Getman, Esq.

BY: \_\_\_\_\_  
(Appraiser)

BY: \_\_\_\_\_  
Robert L. Halpin, Esq.

04067/33438/512302.1



**Steven Getman**

---

**From:** Steven Getman  
**Sent:** Thursday, July 20, 2017 1:59 PM  
**To:** 'Barbara L. Yocum'; rhalpin@thehalpinfirm.com; Robert Halpin  
**Cc:** Ryan White; Scott C. Becker  
**Subject:** RE: Wal-Mart v. Town of Dix  
**Attachments:** stipluation confidentiality draft 2017 07 19.pdf

Thank you for your email.

We have reviewed petitioner's proposed confidentiality agreement and have revised it as per the attached.

Please review and advise as to any proposed changes.

If the revised agreement is acceptable, please have counsel for petitioner execute same and return to my office for counter-signatures.

In addition, our auditor has requested a point of contract at the Watkins Glen Wal-Mart store for information regarding the profit and loss materials previously transmitted. Kindly please advise of same at your earliest convenience.

If your office has any questions, please advise.  
Thank you.

\*\*\*\*

Steven J. Getman  
Schuyler County Attorney  
607.535.8121  
105 Ninth St, Unit 5  
Watkins Glen, NY 14891

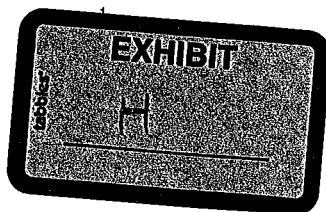
\*\*\*\*CONFIDENTIAL ATTORNEY COMMUNICATION\*\*\*\*

The foregoing message and information contained therein is being sent by an attorney, is privileged and confidential information, and is intended ONLY for the use of the individual or entity named above. If the reader of this message is not the intended recipient, PLEASE TAKE NOTICE that any dissemination, distribution or copying of this information is strictly prohibited. If you have received this communication in error, please immediately notify this office by telephone, return the original message to us by the US Postal Service and delete any and all copies of this document. Service by electronic means not accepted.

From: Barbara L. Yocum [mailto:byocum@kavinokycook.com]  
Sent: Thursday, June 29, 2017 3:17 PM  
To: rhalpin@thehalpinfirm.com; Steven Getman  
Cc: Ryan White; Scott C. Becker  
Subject: Wal-Mart v. Town of Dix

Dear Counselors,

Pursuant to the court conference on June 23, 2017, as requested attached is a confidentiality agreement to be signed by co-counsel and the appraiser. Kindly printout the agreement, sign it and return to me at the address listed below. Upon



our receipt of the full executed confidentiality agreement, we will forward the gross sales relating to the 2016 proceeding.

Thank you.

Barbara

Barbara L. Yocum  
Paralegal  
Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
(716) 845-6000 Tel.  
(716) 845-6474 Fax  
[byocum@Kavinokycook.com](mailto:byocum@Kavinokycook.com)

CONFIDENTIALITY NOTICE: This message has been sent by the law firm of Kavinoky Cook LLP. This message and attachments, if any, may include Privileged and/or Confidential Information. This message is intended only for the individual named in this message (or party responsible for delivery of the message to such person). If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is strictly prohibited. If you have received this in error, please notify me by e-mail or by calling 716-845-6000 and then kindly DESTROY this message and all attachments. Thank you. CIRCULAR 230 NOTICE: To comply with certain U.S. Treasury regulations, we inform you that any federal tax advice contained in this message, including attachments, is not a covered opinion as described in Treasury Department Circular 230 and therefore cannot be relied upon to avoid any tax penalties or to support the promotion or marketing of any federal tax transaction.

**STATE OF NEW YORK: COUNTY OF SCHUYLER  
SUPREME COURT**

In the Matter of the Application for Review under Art. 7  
of the Real Property Tax Law by  
WAL-MART REAL ESTATE BUSINESS TRUST,  
Petitioners

**Stipulation of confidentiality**  
Index No. 16-134

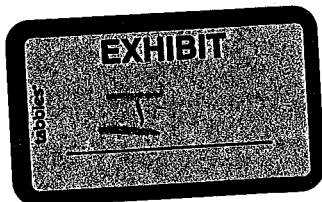
-v-

Subject Property:  
515 E. Fourth Street, Town of Dix  
Village of Watkins Glen  
County of Schuyler  
Tax Map No. 65.14-2-6.11

THE BOARD OF ASSESSMENT REVIEW FOR THE  
TOWN OF DIX, THE ASSESSOR FOR THE TOWN  
OF DIX and THE TOWN OF DIX, NEW YORK,  
Respondents.

**It is hereby stipulated and agreed** by and between the undersigned attorneys for petitioners Wal-Mart Real Estate Business Trust, and for respondents, Board of Assessment Review for the Town of Dix, the assessor for the Town of Dix, et al, and by and between the parties themselves, as follows:

1. This Stipulation shall apply to all information disclosed, whether formally or informally, during the course of the above-captioned litigation, including, but not limited to, information disclosed during discovery, motion or conference; in any pleading, document, affidavit, brief, motion paper, transcript, or other writing; and in testimony given in a deposition or hearing related to the following "Litigation Materials": gross sales figures of Wal-Mart Real Estate investment Trust, Wal-Mart Stores, Inc. and/or its subsidiaries now doing, or having done business at the property subject to this litigation, 515 E. Fourth St, Town of Dix, SBL No. 65.14—2-6.11("the subject property"), for the tax year(s) in issue ("the gross sales figures" or "the Litigation Materials").
2. Petitioners may in good faith designate as "Confidential" those portions of Litigation Materials being produced or disclosed that contain proprietary or confidential information not to be used for purposes other than this lawsuit. It is the intention of petitioners to designate as "Confidential" the aforesaid gross sales figures ("Litigation Materials").
3. Petitioners may designate such documents or such tangible Litigation Materials as "Confidential" by stamping or writing the word "Confidential" on the document or other such Litigation Materials at or before production or disclosure.



4. Litigation Materials designated as "Confidential" in accordance with the procedures outlined above and all copies thereof shall be maintained in confidence by the person to whom such materials are produced or disclosed shall not be disclosed to any person except:
  - a. The Court and Court personnel;
  - b. Counsel of record to the parties in this litigation, and the legal associates, and clerical or other support staff who are employed by such counsel and are assisting such counsel in the litigation;
  - c. Court reporters who record deposition or other testimony in this litigation; and
  - d. Experts formally retained by parties or their counsel for this litigation, including, but not limited to, appraisers, accountants, auditors; and
  - e. Public officers and/or employees of the respondents herein assisting with or directing such litigation on behalf of respondents, except that in no event shall such materials be copied or made part of any public record.
5. Respondents and their counsel and any other person obtaining information from such Litigation Materials designated "Confidential" shall maintain such information as confidential and shall use such information solely for the purpose of preparing for and conducting the above-captioned litigation, including any appraisal reports, and neither Litigation Materials designated "Confidential" nor the contents thereof shall be disclosed to anyone nor used for any other purposes, including for any business, commercial, or competitive purposes. Respondents and their counsel shall designate such Litigation Materials "trade secrets" and/or otherwise exempt from disclosure under the provisions of Article 6 of the Public Officers Law of the State of New York ("Freedom of Information Law" or "FOIL").
6. Before giving any expert access to such Litigation Materials, respondents' counsel shall provide such expert with a copy of this Stipulation and shall obtain from such expert a written and signed Certification wherein such expert shall state that he or she agrees to be bound by the terms of this Stipulation. The counsel of record who has retained the expert shall retain the Certification until the conclusion of the litigation. At any time, counsel for petitioners may request copies of any or all such Certifications. Any such request for copies of Certifications shall be complied with promptly by respondents' counsel of record.
7. Nothing in this Stipulation shall prevent petitioners from disclosing such of its own Confidential Information as it deems appropriate.
8. If Litigation Materials designated "Confidential," or quotes from or references to such materials, are to be included in papers filed with or otherwise disclosed to the Court, such papers shall be labelled "Confidential" and shall be filed in a sealed envelope and kept under seal and not disclosed to any person unless ordered by this Court.

9. If any person, including a party, in possession of Litigation Materials designated "Confidential" receives a subpoena (from anyone else) or request for documents under FOIL seeking production or other disclosure of the confidential materials, such person shall immediately give written notice to counsel for the person who designated the materials "Confidential," stating that confidential material is sought and enclosing a copy of the subpoena or FOIL request. Where possible, at least three (3) days' notice before production or other disclosure should be given. In no event shall production or disclosure be made before notice is given.

10. Within sixty (60) days of the conclusion of this litigation, all Litigation Materials designated "Confidential" and all copies or notes made therefrom shall be delivered to counsel for petitioners, unless such matter is appealed, in which case, all provisions of this stipulation shall remain in full force and effect during the pendency of any such appeal(s).

11. By this Stipulation, the parties do not waive any right to object to any discovery or disclosure request or to seek any protective order on any grounds.

12. Either party may, if so advised, ask the Court to "so order" this Stipulation.

Dated: Watkins Glen, New York  
July 20, 2017

---

Wayne D. Wisbaum, Esq.,  
Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
Attorney for Petitioners

---

Robert L. Halpin, Esq.  
The Halpin Firm  
4588 State Rt 224  
Montour Falls, NY 14865  
607.594.3786  
Co-counsel for respondents

---

Steven J. Getman, Esq.  
Schuyler County Attorney  
105 Ninth St, Unit 5  
Watkins Glen, NY 14891  
607.535.8121  
Co-counsel for respondents



Steven J. Getman  
*County Attorney*

Kristin E. Hazlitt  
*Assistant County Attorney*

Olesya K. Vernyi-Kellogg  
*Assistant County Attorney*

Office of  
**COUNTY ATTORNEY**  
of  
**SCHUYLER COUNTY**



105 Ninth Street, Unit 5  
Watkins Glen, NY 14891

Phone: (607) 535-8121  
Fax: (607) 535-8123

July 28, 2017

Wayne D. Wisbaum, Esq.  
Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210

RE: Matter of Wal-Mart Real Estate Business Trust v Town of Dix, et al  
Schuyler County Index No. 16-134

Dear Wayne:

I am writing to follow up on my email to your office (copy enclosed) of July 20.

Kindly please advise as to the status of the draft "stipulation of confidentiality" prepared and submitted by counsel for respondents (copy enclosed).

Please get back to Rob Halpin and myself with your thoughts on this matter at your earliest convenience. If you have any questions, or require anything further, please do not hesitate to contact me. Thank you for your courtesy and kindness in this matter.

Sincerely,

*FILE COPY*  
Steven J. Getman  
SJG/st

cc: Robert Halpin, Esq.  
Thomas Bloodgood  
Vicki Flynn



**STATE OF NEW YORK: COUNTY OF SCHUYLER  
SUPREME COURT**

---

In the Matter of the Application for Review  
under Art. 7 of the Real Property Tax Law by  
**Wal-Mart Real Estate Business Trust,**  
Petitioners

**Affidavit in Support of Motion**  
Index No. 16-134

-v-

Subject Property:  
515 E. Fourth Street, Town of Dix  
Village of Watkins Glen  
County of Schuyler  
Tax Map No. 65.14-2-6.11

**The Board Of Assessment Review For The  
Town Of Dix, The Assessor For The Town  
Of Dix And The Town Of Dix, New York,**  
Respondents.

---

**State of New York, County of Ontario }SS.:**

**Brian S. Lafountain, being duly sworn, deposes and says that:**

1. I am Brian S. Lafountain CPA, CFE, a Partner of the Bonadio Group ("Bonadio"), having offices at 171 Sully's Trail, Pittsford, NY 14534. I make this affidavit in support of respondents' motion, pursuant to 22 NYCRR 202.59 (c) and CPLR 408 for an order granting an extension of time to complete an audit of the petitioners' books and records for the tax years under review, for the purpose of substantiating petitioners' statement of income and expenses and compelling disclosure of material and necessary information, together with such other and further relief as the court may deem just and proper.
2. Bonadio has been retained by respondent Town of Dix, on behalf of all respondents herein, to complete the audit described above.
3. In order to complete this audit, Bonadio will require petitioner's books and records necessary to verify the petitioner's profit and loss statement previously served herein, including but not limited to, invoices, contracts, leases balance sheets, asset depreciation schedules and similarly regularly kept business records of petitioners herein, together with a contact person or persons on behalf of petitioners with whom Bonadio can communicate for the purposes of obtaining such necessary information. In my professional opinion, based upon my education, training and experience, these materials and information

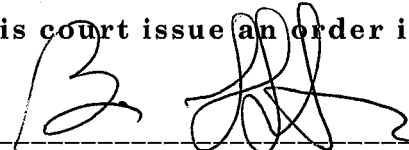





are absolutely necessary to completion of the audit in accordance with generally accepted accounting principles and generally accepted auditing standards.

4. As of the date of this affidavit, Bonadio has not yet received any of the necessary materials, beyond the initial profit and loss statement. Upon information and belief, the source of same being the draft "confidentiality agreement" proffered by the petitioners (copy attached), the petitioners have not yet supplied these materials, having insisted on them remaining confidential to the extent that they will be shown and seen only by the co-counsel for the Respondents, Steven J. Getman, Esq. and Robert L. Halpin, Esq., and by the Town of Dix Appraiser and, further, that such information, including gross sales figures, may not be made a part of, or in any way be referenced in, any appraisal report, or in or at the trial of this matter.
5. It is my professional opinion and belief, based upon my education, training and experience, that the level of confidentiality demanded by petitioners effectively renders such information and materials useless for the purposes of pretrial discovery, appraisal and/or auditing in this matter.
6. Without having seen such materials, it is difficult to determine how long it will take to complete the audit of an entity such as the petitioners'. However, I estimate conservatively that it would take approximately four (4) weeks, depending on the information received and the timing of same.
7. The above is true to the best of my knowledge, information and belief.

Wherefore, your deponent requests this court issue an order in accordance with the above.

  
\_\_\_\_\_  
Brian S. Lafountain CPA, CFE

Sworn to before me this 7<sup>th</sup>  
Day of August, 2017.

  
\_\_\_\_\_  
Notary Public

**LEA ANN GAMMIERO**  
Notary Public in the State of New York  
Monroe County  
Commission Expires May 31, 2019

CONFIDENTIALITY AGREEMENT

The gross sales figures Wal-Mart Real Estate Business Trust ("Wal-Mart") will be providing will be shown and seen only by the co-counsel for the Respondents, Steven J. Getman, Esq. and Robert L. Halpin, Esq., and by the Town of Dix Appraiser. However, the gross sales figures may not be made a part of, or in any way be referenced in, any appraisal report, or in or at the trial of this matter. I recognize and acknowledge that the gross sales figures are of a proprietary and confidential nature and are not to be copied or to be shown to anyone else besides those individuals mentioned herein; they are not to be retained at my office, or at any public official's office, which could subject them to FOIL review; and they are to be returned to Wal-Mart's counsel, uncopied and intact, when the individuals mentioned herein are finished with their review of same, in all events within thirty (30) days upon receipt of the gross sales figures.

This confidentiality agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Dated: June \_\_\_\_\_, 2017

BY: \_\_\_\_\_  
Steven J. Getman, Esq.

BY: \_\_\_\_\_  
(Appraiser)

BY: \_\_\_\_\_  
Robert L. Halpin, Esq.

**STATE OF NEW YORK: COUNTY OF SCHUYLER  
SUPREME COURT**

In the Matter of the Application for Review  
under Art. 7 of the Real Property Tax Law by  
**Wal-Mart Real Estate Business Trust,**  
Petitioners

**Affidavit in Support of Motion**  
Index No. 16-134

-v-

Subject Property:  
515 E. Fourth Street, Town of Dix  
Village of Watkins Glen  
County of Schuyler  
Tax Map No. 65.14-2-6.11

**The Board Of Assessment Review For The  
Town Of Dix, The Assessor For The Town  
Of Dix And The Town Of Dix, New York,**  
Respondents.

State of New York, County of Monroe }SS.:

**Jeffrey S. James, being duly sworn, deposes and says that:**

1. I am Jeffrey S. James, a New York State certified real estate appraiser (New York General Certified - Certificate # 46000043019), employed with MIDLAND APPRAISAL ASSOCIATES, INC. REAL ESTATE COUNSELING & APPRAISAL SERVICES ("Midland"), having offices at 349 W. Commercial St., Suite 2290, East Rochester, NY 14445. I make this affidavit in support of respondents' motion, pursuant to 22 NYCRR 202.59 (c) and CPLR 408, for an order granting an extension of time to complete an audit of the petitioners' books and records for the tax years under review, for the purpose of substantiating petitioners' statement of income and expenses and compelling disclosure of material and necessary information, together with such other and further relief as the court may deem just and proper.
2. Midland has been retained by respondent Town of Dix, on behalf of all respondents herein, to complete any/all necessary appraisal reports intended to be used at the trial, pursuant to 22 NYCRR 202.59 and related authority. Upon information and belief, the source of same being communications with counsel for respondents, the Bonadio Group ("Bonadio") has been retained by respondent Town of Dix, on behalf of all respondents herein, to complete an audit of the petitioners' books and records for the tax years under review, for the purpose of substantiating petitioners' statement of income and


**EXHIBIT**

**L**

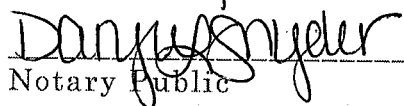
expenses, pursuant to 22 NYCRR 202.59 (c). It is anticipated by Midland that the results of such audit would necessarily affect the final appraisal report prepared by this office, as the subject property herein is a commercial property.

3. Upon information and belief, the source of same being communications with counsel for respondents and a review of correspondence from counsel for petitioners, including a draft confidentiality agreement proffered by counsel for the petitioners (copies attached):
  - a. Petitioners are conditioning disclosure of materials necessary for Bonadio to complete its audit ("base materials") upon execution of the aforementioned confidentiality agreement.
  - b. The proposed agreement demands these base materials remain confidential to the extent that they will be shown and seen only by the co-counsel for the Respondents, Steven J. Getman, Esq. and Robert L. Halpin, Esq., and by the Town of Dix Appraiser and, further, that such information, including gross sales figures, may not be made a part of, or in any way be referenced in, any appraisal report, or in or at the trial of this matter.
4. It is my professional opinion and belief, based upon my education, training and experience, that the level of confidentiality demanded by petitioners effectively renders the audit information and base materials useless for the purposes of pretrial discovery and for the completion of Midland's professional appraisal. If Midland cannot refer to the audit or the base materials in its appraisal, our appraisal report would be ultimately useless as it will be required to omit material and necessary information, as described above.
5. I would suggest, instead, that a proper course of action would be to file any/all such materials under seal. Midland will, of course, abide by all orders or stipulations of confidentiality and prevent disclosure to the public.
6. The above is true to the best of my knowledge, information and belief.

Wherefore, your deponent requests this court issue an order in accordance with the above.

  
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Jeffrey S. James

Sworn to before me this 7<sup>th</sup>  
Day of August, 2017.

  
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Notary Public

Daryl L Snyder  
Notary Public, State of New York  
Qualified in Yates County  
No. 01SN6249379  
Commission Expires October 3, 2019

## Steven Getman

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**From:** Barbara L. Yocum <byocum@kavinokycook.com>  
**Sent:** Thursday, June 29, 2017 3:17 PM  
**To:** rhalpin@thehalpinfirm.com; Steven Getman  
**Cc:** Ryan White; Scott C. Becker  
**Subject:** Wal-Mart v. Town of Dix  
**Attachments:** Confidentiality AgreementGross SalesTown of Dix.pdf

Dear Counselors,

Pursuant to the court conference on June 23, 2017, as requested attached is a confidentiality agreement to be signed by co-counsel and the appraiser. Kindly printout the agreement, sign it and return to me at the address listed below. Upon our receipt of the full executed confidentiality agreement, we will forward the gross sales relating to the 2016 proceeding.

Thank you.

Barbara

Barbara L. Yocum  
Paralegal  
Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
(716) 845-6000 Tel.  
(716) 845-6474 Fax  
[byocum@Kavinokycook.com](mailto:byocum@Kavinokycook.com)



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Dated: June \_\_\_\_\_, 2017

BY: \_\_\_\_\_  
Steven J. Getman, Esq.

BY: \_\_\_\_\_  
(Appraiser)

BY: \_\_\_\_\_  
Robert L. Halpin, Esq.