

#6 Variance Appl.

§ Item #4 submitted 3/2/2020

(13.55+/- acres of developable commercial land) Main Street and Griswold Street, Glastonbury, CT 06033; Prepared by Adam J. Hardej, Jr., MAI, President & Chief Appraiser BAAR REALTY ADVISORS; BAAR File No: 07-16-0398. (“Appraisal”).

*Attached hereto as Exhibit C.*

- g. The Shoppes at Avalon Investment Summary and Opinion of Value dated January 18, 2019. (Upon which the Preliminary Plan of Reorganization by the Debtor will be based). (“Plan”). *Attached hereto as Exhibit D.*

#### **GENERAL BACKGROUND OF CHAPTER 11 REORGANIZATION**

4. The Debtor’s primary asset of 13.5459 Surveyed Acres of real property (entitled the “The Shoppes at Avalon” or “property”) located in Glastonbury, Connecticut shown on the Survey Map prepared by Dutton & Johnston, LLC, Land Surveyors & Civil Engineers, attached hereto as Exhibit E and further described as follows:

- a. 131 Griswold Street, Glastonbury, Connecticut a parcel of land with improvements thereon of 3.3904 acres identified on the Glastonbury Land Records at Volume 404 and Page 1080.
- b. #N2B Griswold Street, Glastonbury, Connecticut a parcel of

vacant land of 1.8576 acres identified on the Glastonbury Land Records at Volume 102 and Page 237.

- c. #E8A Main Street, Glastonbury, Connecticut a parcel of land with improvements thereon of 4.9493 acres identified on the Glastonbury Land Records at Volume 920 and Page 209.
- d. Area Subject to Lease in Favor of John Alan Sakon known as #2980 Main Street, Glastonbury, Connecticut being a parcel of land of 2.5597 acres identified on the Glastonbury Land Records at Volume 1245 Page 177.
- e. Together with all rights and easements as shown in said aforementioned survey which can be found hereto in Exhibit E.

5. The assembled properties known as *The Shoppes at Avalon* received Special Permit Approvals by the Glastonbury Town Plan and Zoning Commission on April 4, 2013, again on March 17, 2015, again on November 25, 2015, again on April 4, 2017 and again on February 6, 2018 “***authorizing the construction and operation of the Shoppes at Avalon Phases I and II – 94,640 square feet of retail and restaurant uses...***”.

- a. That said approvals provided that no certificate of occupancy for the 94,640 square feet of construction would issue “*until the House Street/Harris Street/Griswold Street intersection improvements as*

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well as the Main street corridor traffic signal coordination improvements between Welles Street and Putnam Boulevard are operational.” (hereinafter “**Town Road Improvements**”).

- b. That in the 2012-2013 Annual Report of the Town of Glastonbury, Stewart Beckett III Chairman, Glastonbury Town Council announced the Town Road Improvements would be completed in 2014.

This will combine with the scheduled reconstruction in 2014 of the House/ Harris/Griswold St. intersection to greatly decrease traffic congestion in our entire downtown corridor.

- c. That in the 2013-2014 Annual Report of the Town of Glastonbury, Stewart Beckett III Chairman, Glastonbury Town Council announced the Town Road Improvements “will be completed during the 2015 season.”

and now, construction. We anticipate construction will be completed during the 2015 season.

- d. That actual construction on the Town Road Improvements did not commence until 2016 and the provision that no certificate of occupancy for the 94,640 square feet of construction would issue until the Town Road Improvements was not removed as a condition of approval of *The Shoppes at Avalon* until April 4,

# 4.2

2017.

- e. That the debtor, in good faith, did rely upon the representations of the town to his detriment. And by its actions, the creditor town of Glastonbury sought to inversely condemn the debtor's property by levying excessive taxes upon the property while denying any productive use of the property. Further, this is a pattern of action within the town whereby over 100 acres of commercial lands have been taken by the town for back taxes while granting permits with conditions outside the control of the landowner and within control of the town and when the landowner cannot make a productive use of his property, taking the property for back taxes.

6. In addition to its claim of reliance, the defenant will show by uncontested evidence that the Glastonbury zoning regulations provide no uses as of right in the zone, so there was no alternative uses to which the properties could generate income in the interim. Mr. Mark Branse Esq. was an expert witness in zoning law called by the plaintiff in the matters CV05-4006620-S and CV05-4003783-S.<sup>1</sup> In direct questioning,

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<sup>1</sup> Mark Branse, Esq., was recognized as an expert witness in zoning law by the court without objection by the defendants. Mr. Branse testified that he was the former Assistant Town Manager for Planning and Community Development for the Town of Glastonbury; the former Town Planner for the Town of Glastonbury; and the former Director of Community Development for the Town of Glastonbury. Mr. Branse then testified that he left the employ of the town to become a practicing attorney and served as counsel to the Glastonbury Redevelopment Agency; served as a member of the Glastonbury Redevelopment Agency; and served on the Glastonbury Town Plan and Zoning Commission as a commissioner for seven years. In his law practice, Mr. Branse testified he has represented the towns of Andover, Cromwell, Middlefield, Westbrook,

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Mr. Branse provided the following testimony:<sup>2</sup>

a. 

12	Q	Mr. Branse, what can you do with this property, under
13		the regulations, without a special permit?
14	A	Nothing.
15	Q	Nothing?
16	A	Nothing.

i. Exhibit F - Transcript Page 38

b. 

9	Q	Okay. And in your expert opinion, is it possible that
10		the commission may deem it appropriate not to approve any use
11		on this property requiring a special permit in the foreseeable
12		future?
13	A	It is possible.
14	Q	And they certainly would have the legal authority to do
15		that?
16	A	Yes, they would.

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Old Saybrook, Old Lyme, East Haddam, Enfield, Oxford, Willington, Eastford, Bolton, and Scotland in the areas of land use law; and was also past Chairman of the Planning and Zoning Section of the Connecticut Bar Association; and regularly teaches courses in Land Use Law for the Connecticut Bar Association.

<sup>2</sup> See Transcript, Testimony Mark Branse; Sakon v. Town of Glastonbury. CV05-4006620-S and CV05-4003783-S (Attached hereto as Exhibit F).

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- c.
- |    |   |  |
|----|---|--|
| 9  | Q | Is there any other of those 20 municipalities that have        |
| 10 |   | such restrictive zoning regulations as this one?               |
| 11 | A | I've never seen -- I've never seen one where arguably          |
| 12 |   | there are no special, no uses permitted as of right or at best |
| 13 |   | a farm and a park as permitted as of right. All the            |
| 14 |   | regulations allow something as of right.                       |
| 15 | Q | What can a landowner do with this property?                    |
| 16 | A | Keep applying for special permits.                             |
| 17 | Q | And hope the town changes its mind?                            |
| 18 | A | Hope that you can present something that they will --          |
| 19 |   | are willing to approve.  |

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- d.
- |    |   |  |
|----|---|--|
| 8  | Q | Okay. Now you've testified that you had worked on the          |
| 9  |   | development of the regulations --                              |
| 10 | A | That's correct.  |
| 11 | Q | -- that now include the Plan Travel Zone. And what was,        |
| 12 |   | do you recall what the Plan and Zoning Commission's            |
| 13 |   | intention -- well, was with respect to those regulations?      |
| 14 | A | With respect to the Plan Travel Zone regulations?              |
| 15 | Q | Yes.   |
| 16 | A | Yes, I do.   |
| 17 | Q | And what was its intention?                                    |
| 18 | A | Its intention was to effectively prevent development in        |
| 19 |   | the entire Plan Travel Zone area in order to allow the         |
| 20 |   | Glastonbury Redevelopment Project, which was approved in 1969, |
| 21 |   | to proceed without competition from the north part of the      |
| 22 |   | town. That is, I fear, the truthful answer to your question.   |
| -- |   |  |

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13 THE COURT: Well, let me just ask a follow-up.  
14 Mr. Branse, did I understand you that the -- understand  
15 you to say that the planned travel regulation was  
16 designed to prevent a development of property that  
17 would be in competition with some other planned  
18 development?  
19 THE WITNESS: Yes, Your Honor, you understood me  
20 correctly. That's the truthful answer, I'm afraid.  
21 THE COURT: It sounds like some constitutional  
22 issues involved, but apparently nobody raised them.  
23 THE WITNESS: No, they didn't.

e.

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f. Since the presentation of this uncontested evidence and testimony as to the use of the police power to discriminate and prevent development in favor of other developments, the town of Glastonbury has made no effort to correct or revise its use of the Special Permit Process.

7. When debtor made clear his intentions to bring claims against the town of Glastonbury for inverse condemnation of his properties and a 42 U.S.C. § 1983 Civil Rights action, the town of Glastonbury retaliated by falsely arresting the debtor five times. In his prior 63 years, the debtor had no criminal record. The town of Glastonbury Police Department then falsely arrested the debtor on 11 felonies and 3 misdemeanors. See Summary Arrest Sheet attached hereto as Exhibit G. The debtor was facing a total of 126.75 years in prison:

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- a. The town of Glastonbury arrested the debtor and issued a Protective Order prohibiting the debtor from returning to this Glastonbury Home.
- b. The town of Glastonbury Police stood by while parties illegally and without color of law broke into the offices of the debtor in his own Glastonbury Office building, entered said offices, committed burglary and other assorted felonies and removed the debtor's entire possessions from the town. The Glastonbury Police refused to investigate or prosecute these felonies.
- c. On March 17, 2019, before the Appellate Court of the State of Connecticut, the debtor made the claim "that the town of Glastonbury and its police department was corrupt and he knew were the bodies were buried *literally*." The debtor asked the court to use its powers to convene a grand jury investigation.
- d. On March 28, 2019, while participating in Memorial day bicycle rally with 70 + other bicyclists, a Dodge Durango Truck, driven by a sworn officer of the town of Glastonbury, came up upon the debtor from the rear, and ran the debtor off the road. The debtor suffered severe injuries.
- e. The town of Glastonbury Police Department not only refused to



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arrest or tickets the driver of the truck; on April 28, 2018 the town of Glastonbury arrested the debtor for Breach of Peace (for saying that truck hit me!) and False Statement (for saying that truck hit me!).

f. That these actions by the creditor town of Glastonbury have been divisive to prevent the debtor from bringing the inverse condemnation claims and discrimination claims arising out of the Branse Testimony.

8. That in 2008, the debtor planned to demolish a 12,000 square foot commercial building located at 131 Griswold Street to make way for a development of a higher and better use.

a. That in 2008, a 250+ member congregation known as the New Life Christian Fellowship of Connecticut, Inc. approved the debtor to use his building as a church as they had lost their home after 20 years of residency in Glastonbury.

b. That Sakon, a minister in his own right, agreed to lend his building to be used as a church.

c. That Sakon agreed to lease the building to New Life, which had been rented in the prior year for \$16,000 a month NNN, for the token sum of \$3,875 per month to partially cover out of pocket

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operating expenses.

- d. That Sakon did apply for and was granted a use variance to allow the property to be used as a place of worship in the Planned Travel Zone due to the hardship that there is a lack of available space for worship for growing congregations in the town of Glastonbury. Said variance is attached hereto as Exhibit H.
- e. That despite the change of use of the property to a church, which is a tax-exempt use under the law, the town of Glastonbury refused to recognize the change of use and continued to tax the property consistent with its prior use as a commercial retail building.
- f. That from 2008 to the present time, the only approved use in zoning of 131 Griswold Street is as a place of worship.
- g. That the actions of the town of Glastonbury are devised to take the property the debtor by inverse condemnation.
- h. That the debtor intends to take a tax appeals and a 42 U.S.C. § 1983 Civil Rights action, against the town of Glastonbury for placing a tax upon a place of worship which is exempt from taxation under Connecticut and Federal Law.
- i. That the current debt the town of Glastonbury claims in this bankruptcy proceeding is primarily the taxes imposed upon a place

H 4.9

of worship.

9. That in the Spring of 2016, the debtor did “*commence substantial construction*” pursuant to Section 12.7 of the Glastonbury Building-Zone Regulations for the sole purpose of preserving the validity of his Special Permits into perpetuity. And further, the debtor openly and in full view of the public highway continued construction activities on the property from 2016 to the present 2019 construction season without complaint, obstruction or hindrance from the Glastonbury Zoning Enforcement Officer.

- a. That on July 26, 2016, Century Capital Partners LLC did offer debtor a Letter of Intent to finance construction for *the Shoppes at Avalon*. Attached hereto as Exhibit I.
- b. October 6, 2016, debtor did receive a commitment letter from Century Capital Partners LLC for a mortgage in the amount of \$3,400,000. Attached hereto as Exhibit I.
- c. That as a direct result of the nine felony arrests of the debtor by the town of Glastonbury on August 23, 2016 and the felony larceny arrest of the debtor by the town of Glastonbury on October 2, 2016, the debtor lost his commitment with Century to refinance his properties. The debtor has subsequently been found innocent of all claims made in these ten felony arrests. Prior to August 2016,

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debtor had no criminal record.

- d. That on April 17, 2019, K.G.A.K. Financial Group, Inc. (“KGAK”) issued a Letter of Intent to provide *The Shoppes at Avalon* \$4,800,000 in financing subject to an appraisal and confirmation that the Special Permits were current. Attached hereto as Exhibit J.
- e. That KGAK commissioned Adam J. Hardej, Jr. to prepare an appraisal of the property. Said appraisal entitled: Restricted Appraisal Report of an Entitled Land Development (13.55+/- acres of developable commercial land) Main Street and Griswold Street, Glastonbury, CT 06033; Prepared by Adam J. Hardej, Jr., MAI, President & Chief Appraiser BAAR REALTY ADVISORS; BAAR File No: 07-16-0398. (“Appraisal”). *Attached hereto as Exhibit C.*
- f. That on August 30, 2019, KGAK issued a commitment letter to the debtor to proceed with the funding with a projected closing date of September 3<sup>rd</sup>, 2019. Attached hereto as Exhibit J.
- g. That on or about September 2019, John Mullen the Town Planner of Glastonbury contacted Alan Levine of KGAK and advised him that the permits for *The Shoppes at Avalon* were no longer valid.

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That Mr. Mullen had no legal authority to render such an opinion and Mr. Mullen acted outside his duties as the Glastonbury Town Planner. Further that Mr. Mullen conveyed hearsay conversations he had with Zoning Enforcement Officer Peter R. Carey to Mr. Levine. To date, Mr. Carey has neither confirmed nor denied these conversations and has taken no enforcement action for the construction activities of the debtor on the site.

- h. The debtor contacted Mr. Mullen and demanded a retraction, but Mr. Mullen and the town of Glastonbury took no action. Attached hereto as Exhibit K.
- i. That the creditor town of Glastonbury has actively frustrated and undermined the reorganization of the Chapter 11 estate.

10. That said appraisal was ordered by and prepared for K.G.A.K. Financial Group, Inc. in anticipation of a funding take-out financing in the amount of \$4.8 million to remove the instant case from Chapter 11 Bankruptcy.

- a. That on November 27, 2019, KGAK did issue a confirmation letter that if the Special Permits for the project were in good standing, they would be willing to go forward with the funding the the take-out loan in bankruptcy. Attached hereto as Exhibit H.
- b. That on the creditor, town of Glastonbury, made slanderous

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statements to the underwriter of KGAK claiming the Special Permits for *The Shoppes at Avalon* had expired despite the fact that actual construction has commenced.

- c. That the debtor has appealed the actions of the town staff to the Glastonbury Zoning Board of Appeals and said action is pending.

### LAW AND ARGUMENT

The main thrust of the movant's argument is the claim that the Lease had terminated pre-petition. In fact, the movant claims his position is "unequivocally" (sic). If looked at in the context of the underlying lawsuit and the Stipulation, the representations of the movant cannot be justified.

The movant offers no *admissible* evidence that the Lease has terminated. First, the movant has presented to this court many documents (of its own making) that as *parol evidence* cannot be considered by this court. The Stipulation is the written contract of settlement that is intended to be the complete and final expression of the parties' 2019 agreement to modify the lease.

The only relevant documents are the Lease, the Assignment, the Complaint, the Answer and Special Defenses and the Stipulation entered into by the parties. The appraisal submitted by the debtor, is also relevant to defeat the absurd claim