FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Federated Retail Holdings, Inc.
DOCKET NO.: 06-29494.001-C-3 through 06-29494.006-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Federated Retail Holdings, Inc., the appellant, by attorneys Ellen G. Berkshire and Peter Verros, of Verros, Lafakis & Berkshire, P.C. in Chicago; the Cook County Board of Review by assistant state's attorney John Coyne with the Cook County State's Attorneys office in Chicago; and the Chicago Board of Education, intervenor, by attorney Ares G. Dalianis of Franczek Radelet P.C. in Chicago, as well as the City of Chicago, intervenor, by attorney Richard Danaher of City of Chicago Department of Law in Chicago.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds ***A Reduction*** in the assessment of the property as established by the **Cook** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
06-29494.001-C-3	17-10-308-001-0000	3,337,065	1,416,735	$4,753,800
06-29494.002-C-3	17-10-308-002-0000	2,108,430	796,670	$2,905,100
06-29494.003-C-3	17-10-308-003-0000	3,904,215	1,641,885	$5,546,100
06-29494.004-C-3	17-10-308-004-0000	2,872,942	1,088,558	$3,961,500
06-29494.005-C-3	17-10-308-005-0000	3,846,930	1,699,170	$5,546,100
06-29494.006-C-3	17-10-308-006-0000	2,643,232	1,054,168	$3,697,400

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Cook County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2006 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of a part 9-story and part 15-story, commercial building comprising an entire city block within the City of Chicago. The subject building contains a limestone, granite, and terra cotta exterior construction and is used as an owner-occupied, flagship department store with supporting office space that was built from 1893 through 1915 as a consolidation of five separate buildings. The subject has a full basement as well as partial second and third sub-basements. The subject also has 33 elevators, four pairs of escalators, one single escalator and a sprinkler system that covers 100% of the building. Although the parties dispute the specific land and improvement sizes, the parties agreed that the subject's site is approximately 131,000 square feet with an improvement size exceeding 1,500,000 square feet of building area.

The subject was operated as Marshall Field's until late 2006, when it was rebranded as a Macy's store. The building is accorded both Chicago and National landmark status; therefore, the improvements are historic and cannot be torn down. It is located at 111 North State Street, Chicago, South Chicago Township, Cook County. The property is classified as a class 5-97 special commercial structure under the Cook County Real Property Assessment Classification Ordinance and is to be assessed at 38% of market value.

At the commencement of the hearing, the Board identified three procedural issues which were resolved without objection from the parties. Thereafter, the board of review as well as the two intervenors jointly moved for an exclusion of witnesses. Upon consideration of the parties' positions including the appellant's position that the experts would not assist in the preparation of cross-examination, the Board granted the motion to exclude witnesses.

The appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant first calls a fact witness, Mr. Ralph Hughes. Hughes testified that he has been employed by Macy's or its prior ownership for 22 and one-half years with various job titles including vice president/general manager of stores and vice president of government affairs for Macy's Incorporated. He stated that in 2006 he was vice president of stores which meant he supervised earnings at the subject store as well as driving sales at the subject location. In addition, he previously was director of Marshall Field's stores in Texas, Ohio, and Michigan, while also holding similar positions within May Department Stores and Federated Department Stores. He stated that his 40 years of experience encompassed responsibility for driving sales, controlling expenses, human resource development, and essentially making a profit. Thereby, he stated that he was involved with planning decisions relating to the use of the subject property, both in 2006 as well as until this hearing date.

As to the subject, Hughes acknowledged that his office was located on the 9th floor of the subject property in 2006 and that the subject property had been used as a department store since the late 1800s. He testified that a store operator measures store performance by using comparable sales and earnings data to develop an earnings or sales per square foot, both in 2006 and at the date of hearing. In 2006, Hughes stated that Macy's had determined that the subject's performance was substandard to comparable stores, but that the sales were substantial. In addition, he testified that in 2006 that the subject's 10th floor was partially vacant, while floors 12 and 13 were vacant. As to the condition of these floors, Hughes testified that the 12th and 13th floors were in poor condition with challenging issues such as: flooring problems, walls, lighting, windows, and asbestos issues. Besides these issues, he indicated that there was on-going maintenance to the exterior of the building as well as the building's mechanicals.

Moreover, Hughes testified that he was involved with discussions in 2006 regarding the reuse of vacant areas of the building, but that there were no feasible options. Specifically, he stated that the first challenge to building renovation is vertical transportation. He stated that the subject is a tall building and that it is difficult to drive traffic up through the store. He also stated that sometime around 2003 there were discussions with a hotel operator to use the upper floors. However, he indicated that the outcome was that there wasn't enough real estate depth and that the building's floors were too deep to accommodate the hotel. Hughes also testified that he was aware that engineering studies were done regarding floor load capacity on the upper floors, but that he had no personal knowledge of those results.

Describing the subject building, Hughes stated that: the lowest floor is identified as 3-B, which is where the mechanicals and the boilers are located; floor 2-B is where the reserve stock and receiving is located; the lower level is where housewares and a food court area are located; floors 2 through 6 related to different retail merchandise; the 7^{th} floor contains mostly restaurants; the 8^{th} floor is where the furniture is located; the 9^{th} floor is furniture and offices; the 10^{th} floor was asset protection offices and storerooms; the 11^{th} floor was regional offices; the 12^{th} and 13^{th} floors were vacant; and the 14^{th} floor which is a partial floor was also vacant. He testified that the floor plate size on floors 1 through 10 are about 100,000 square feet, while the upper floors are a little smaller. Specifically, he stated that the original building built in 1893 caps off at the 10^{th} floor; therefore, the addition of the upper floors reflects a floor plate that is 30,000 square feet less than the lower floors. Moreover, he testified that the 13^{th} floor used to be the candy kitchen with many walls and lots of storage areas which had to be broken down to see the overall floor plan. He also stated that as of 2006, the 12^{th} and 13^{th} floors were not ready for an alternative use.

As to the subject's maintenance, Hughes testified that the building requires a high degree of maintenance including: general housekeeping; capital maintenance; exterior maintenance; and capital improvements. He detailed how the exterior of the building contains three surfaces with each surface requiring a different form of maintenance, while an example of capital improvements were the outside awnings surrounding the main floor. He also indicated that between 2002 and 2006, he had a budget of $5 million just for capital maintenance. He elaborated that the purposes of making capital improvements is to improve sales and earnings performance as well as to drive more customers into the building. Hughes also testified as to changes in the retail market in 2006, which included online sales and physical stores changing. Specifically, he stated that the look of physical stores changed into buildings with smaller foot plates and with fewer upper floors which are challenging to draw customers onto those floors.

As to subject staffing, Hughes testified that in 2006 there were approximately 80 to 90 employees necessary for the operation of the business and that they had to access their 11^{th} floor offices by using two banks of elevators. He stated further that in approximately 2003, Target Corporation undertook a work study relating to vertical traffic at the subject to determine how much time was spent trying to get from one floor to another within the building. He stated that the study reflected that 15% of worktime was spent traveling on elevators, which resulted in a change in budget allocation. Hughes also testified regarding deliveries to the subject as well as trash disposal, while indicating that the dock area becomes challenging because of its limited size and the amount of activity that it has.

As to the subject's landmark status, Hughes testified that with this status there are certain parts of the building that require approval from several different agencies to make any adjustments to the subject. In addition, he stated that in 2006 there was an easement agreement with the City of Chicago for a pedway which expired about that time. Since that time, he stated that Macy's has been working with the City's law department to obtain another easement agreement, but that these efforts were unsuccessful as of this hearing date.

Under cross-examination, Hughes testified that there were some third-party operators leasing space within the subject property, but that not all such operators were profitable. He also stated that he had no personal knowledge: as to the number of third-party operators in the Macy's Harold Square store in New York and/or their profitability; as to whether other Macy's stores have been accorded landmark status; as to whether any other Macy's store includes tenants that operate an office-type commercial activity; and as to the purchasing power of each employee at the store. Further, Hughes testified that the subject property's age and physical layout affect the property's profitability. In addition, as to the feasibility issue of upper floor renovation, Hughes stated that different initiatives were looked at, but that there were always issues of vertical transportation and access thereto as well as the amount of space that would be taken away from the main store operations to access the upper floors, the condition of the upper floors, and the work necessary to those floors, which were all cost prohibitive.

As to the subject's sales, Hughes testified that in 2005 they were approximately $200 million, but were significantly less in 2006. As to landmark status, he stated that this increases operating expenses. As to the condition of the subject's elevators, he stated that in 2006 that the freight elevators were old and in frequent need of repair and frequently out of service. He also stated that the floor plate size of the subject's upper floors impacts the reuse of those floors.

The appellant's second witness was Mr. Joseph Ryan. Ryan was the appellant's appraiser that prepared the subject's estimate of market value at $40,000,000 as of January 1, 2006. Ryan testified that he holds a real estate appraiser's license in the following states: Illinois, Indiana, Michigan, Wisconsin and Nebraska, while also holding the designation of Member of the Appraisal Institute (MAI) since June of 1992. He detailed a wide variety of properties that he has appraised in his career including department stores, shopping centers, office buildings and limited purpose properties as well as for a variety of purposes including ad valorem, eminent domain and financing. He stated that he has appraised hundreds of retail properties including over 100 department stores located within Chicago and the Midwest markets inclusive of other types of buildings located in the central business district of Chicago or the Loop area. In support of this statement, he detailed names and locations of multi-tenant retail facilities, hotels and office buildings within the subject's area. Ryan was offered as an expert in real estate appraisal, in valuation of department stores, and in valuation of property within the Chicago central business district. After additional voir dire regarding Ryan's appraisals relating to limited use properties and landmark properties, the Board accepted Ryan as an expert in real estate appraisal as well as an expert in the valuation of department stores.

Ryan testified that he estimated the fee simple market value of the subject for ad valorem purposes in his appraisal as of the January 1, 2006 lien date. He also indicated that for ad valorem purposes that the fee simple interest must be appraised. Ryan stated that he personally conducted an interior and exterior inspection of the subject property on March 31, 2007. Based upon public records, he determined that the subject's site contained slightly under 132,000 square feet or 131,925 square feet of land area and 1,943,009 square feet of building area. Thereafter, he testified in detail regarding the subject's immediate area, specifically, that there were older office buildings to the east and north, mixed use buildings to the south, and Block 37 to the west of the subject which was vacant in 2006. He elaborated on the various attempts by developers to develop a combination of hotel, office space, and retail space in this Block 37 area despite assistance from the City of Chicago. He stated that in late 2006 that the developer was having financial problems and that a new developer was being sought for this area. As to the relevance of Block 37 to the subject, Ryan testified in summary that Block 37 was a vacant parcel for 25 years beginning from 1989 through several developers and development attempts even though it was a blank canvas resulting in very little demand for additional retail or other use on this site, which is located directly across the street from the subject property. As to additional retailers within the subject's area of State Street in 2006, Ryan testified that Sears returned using a smaller store with off-price retailers and lower-end stores relocated along State Street. In addition, Ryan's appraisal and testimony indicated that the Sears store had a contract rent of $8.62 per square foot, which Sears's management indicated that the location's sales per square foot did not justify this rent. Moreover, he stated that in his discussions with an identified group of retailers that the main factor of a retailer's perspective regarding location is the sales per square foot.

As to the subject property, Ryan noted several areas in his appraisal with typographical errors, specifically page 69 that addresses the subject's retail sales. Ryan stated that the retail sales per square foot changed to $119.74 in 2004; to $117.91 in 2005; and to $105.90 in 2006.

In comparing the subject's sales to the market, he testified that retail trends from 1980 forward reflected that department stores were losing market share versus big-box stores and category-killer stores. He referenced the chart within his appraisal indicating that from 2001 through 2006 department stores lost 19 units, while big-box stores built 4,800 new units in that time span. In that same market, shopping centers were not being built, but power centers and leisure centers were overtaking shopping centers. He indicated that the market observation was that the consumer was changing buying habits, while shopping at stores that they could pull right up to selling a one-item line whether it was shoes, books, or linens. Therefore, he stated that the trend of development was away from department stores and moving to retail big box stores.

As to the subject's construction, Ryan testified that the subject was constructed in stages beginning in 1893 with an original building comprising 170,000 square feet with additions in 1902 of 480,000 square feet, in 1906 of 400,000 square feet, in 1907 of 375,000 square feet, in 1914 of 500,000 square feet, and in 1990 a 13,000 square foot enclosure of Holden Court which had been a dedicated street or alley which ran through the first level of the property and acquired by Marshall Field's. He stated that this form of construction limits the free flow of materials and people due to the uneven spacing of walls from one section of the upper floors to another. In newer construction, he stated that the wall columns would be spaced rather far apart to provide an open area from one wall to the other elevation, in contrast, the subject has small bay spans with columns that are close together because of the construction age.

As to the subject's description, Ryan testified that the subject's initial 9 floors are basically retail with the seventh floor comprising restaurants. The 10^{th} floor is office space, while the 11^{th} through 14^{th} floors were basically vacant space in 2006. He stated that the 13^{th} floor was previously used for the Frango Mint production which had been vacated prior to this 2006 valuation date. In addition, he indicated that as of his inspection date, the 13^{th} floor was uninhabitable, while the main usage of the 12^{th} & 13^{th} floors was for storage. Moreover, he described the number and location of elevators, escalators, atriums as well as the exterior of the building. Overall, he believed that approximately 15% of the subject building was vacant or about 305,000 square feet, while the 14th and 15th floors were not rentable due to the location of the mechanical penthouses thereon. Ryan elaborated on the lack of habitability stating that there was an absence of air conditioning and heating, with the biggest drawback to development being the uneven flooring.

Ryan testified that the average floor plate size for a department store ranged from 45,000 to 150,000 square feet, while with multi-story space the range would be from 47,000 to 115,000 square feet. He indicated that the subject contained 123,000 square feet of floor plate reflecting significant interior space without any window line which is not objectionable to retailers, but office or residential users require a window line. In addition, he stated that most office buildings have much smaller floor plates in order to maximize the window line which is considered a desirable element. Therefore, he stated that the floor plate size of the subject is much greater than other comparable properties located in the Central Loop or central business district properties. Specifically, he elaborated that optimal floor plates for office buildings would be from 20,000 to 26,000 square feet, while the only other retail properties that would compare to the subject would be either big-box stores or a one-story or two-story department store. He stated that his conclusion is that the optimal use of the subject property is as a department store.

As to the subject's building size, he stated that it comprised 1,943,000 square feet obtained from a chart supplied by Macy's which was included in his appraisal. He opined that the building was in good condition, while as to functional utility the only likely user would be a department store. As to the subject's area, he noted that there is only limited potential users because there are only so many department store chains; and around the 2006 tax year, most of the department stores had left the area while Carson's at that time was in the process of vacating State Street. As to the subject's layout, Ryan indicated that considering the large floor plates and multiple floors, this layout is only seen in department stores which has a limited pool of users. In addition, he stated that he was aware that the subject contains landmark status, which prohibits demolition so there would never be an underlying vacant land site. Moreover, he stated that the layout of five interconnected buildings and remaining walls required vertical transportation of employees and customers waiting for elevators because escalators did not service the upper floors.

As to the sale history of the subject, Ryan indicated that the subject was part of a transfer, first, when May Department stores bought the Marshall Field's chain; and second, in 2004 when Federated Stores bought the May Department Stores. Therefore, all the stores and inventory were part of the bulk purchases which he discussed in his appraisal and which he placed no weight upon.

As to the subject's use, Ryan testified that the property was designed to be a department store and has not served any other purpose. He stated that his discussions with management in 2006 indicated no variance from its department store usage. In addition, his stated that he explained in his appraisal that the subject suffers from functional obsolescence due to its sheer size. He indicated that the excess interior space, large floor plates and a lack of a window line are not desirable for either office or residential redevelopment. Moreover, if the subject were to be vacant and available for lease, he stated that there would be a significant increase in the State Street vacancy rate for retail space. He stated that the subject's highest and best use as vacant, would be for commercial development, while the highest and best use as improved would be the subject's continued use as an owner-occupied, department store because the improvements contributed to the value over and above the vacant land, if the land could be vacant. Ryan also testified that he did not complete a land value for the subject because Block 37 across the street sold in November, 2005, for $100 per square foot. He indicated that the subject and Block 37 share three frontages, with the subject's Wabash frontage considered inferior to Block 37's Dearborn street frontage; therefore, the land value at $100 per square foot was the top of the land value estimate. He indicated that it is commonplace for an appraiser to not develop a cost approach. Specifically for this subject, he stated that the underlying site would never be vacant and that market participants would be more concerned with sales generated at the site as opposed to the depreciated costs of a 100-year old building, as is the subject. Ryan also stated that the fact that Block 37 across the street from the subject had not been developed for 25 years inclusive of 2006, further supported his decision not to develop a cost approach. He elaborated that the most probable buyer of the subject would be an owner-user; therefore, he developed two of the three traditional approaches to value: the sales comparison and income approaches to value.

In the sales comparison approach to value, Ryan's appraisal uses 12 sale comparables of department stores located in Illinois, Michigan, Ohio and Colorado. Ryan testified that he accorded most weight to this approach to value, while considering factors such as: building design, use, floor plate size, as well as fee simple interest transfers. Thereafter, he stated that he made adjustments for location, size, age, and land-to-building ratios. As to geographic area, he testified that he reviewed how market participants define the subject's market area. He stated that the East Coast and West Coast are different markets than the subject's Midwest market which ranges from the Appalachians to the Rocky Mountains. He indicated that there are not many sales of department stores in comparison to office buildings, industrial buildings, and big-box buildings; therefore, he stated that he also considered sales in the department store submarket. Ryan stated that due to changes in consumer habits, department stores are only comparable to department stores. He asserted that in studying the subject's regional market, that department store sales since the 1990s have stayed consistent with a sales range from $20.00 to $50.00 per square foot.

Overall, Ryan's 12 sales sold from January, 2000, to July, 2005, for prices that ranged from $2,750,000 to $10,215,000 or from $25.45 to $50.00 per square foot. The sales contained a one-story to three-story, commercial building. They ranged: in age from 5 to 30 years; in building size from 94,341 to 254,720 square feet; in land area from 56,192 to 755,330 square feet of land; and in land-to-building ratio from 0.27:1 to 3.65:1. Ryan testified that he personally inspected each of the sales and verified that each was a fee simple sale.

As to his sales, Ryan testified that Sale #1 was a one-story, Sears store in Michigan that sold for approximately $25.00 per square feet with 196,000 square feet of building area. He explained his adjustments, while confirming that this location was also his rental comparable #7. He indicated that Sears negotiated the percentage lease at 1% of gross retail sales after the purchase.

He also stated that percentage leases were common within the department store submarket and that the retailer needs to look at occupancy costs and earnings per square foot at a store because a good location with a bad lease can lead to an unprofitable store.

Ryan stated that Sale #2 had the same highest and best use at the time of sale as that of the subject. This property was a Saks 5th Avenue Outlet department store located in Michigan that contained 94,000 square feet and sold for $29.15 per square foot. He stated that Sale #3 was a Von Maur department store in Michigan which contained 100,000 square feet with a 50,000 square foot floor plate and a sale price of $49.97 per square foot. Ryan indicated that Sale #4 was also a Von Maur department store located in Michigan which contained 150,000 square feet and a floor plate of 75,000 square feet with a sale price of $50.00 per square foot. He testified that Sale #3 and #4 were sold out of bankruptcy. Specifically, he indicated that the Jacobson regional department stores had filed for bankruptcy and that the judge had put the entire chain of stores up for auction. However, he stated that only individual stores were placed at auction within the department store industry and that his sources indicated that this auction was widely publicized to market participants with the result that Von Maur purchased these stores. He stated that at this time Von Maur was looking to expand and did not have locations in Michigan, while Ryan's verification of this sale indicated that it was at market value and the highest sales occurring in the region. He also stated that bankruptcy sales can be used by an appraiser when steps are taken to verify that the property meets the criteria for an arm's length sale.

Ryan testified that Sale #5 was a former Wards store location in Illinois that contained a total of 254,000 square feet with an 110,000 square foot floor plate and a sale price of $35.00 per square foot. He stated that he verified this sale with both the seller and the mall manager. He explained that this location was purchased by the mall management in order to find another anchor department store for that location. Moreover, he stated that the building was demolished two years later after not being able to locate another department store tenant.

As to Sale #6, Ryan stated this property was improved with a four-story, Kaufman's department store located in Ohio. He indicated that this property sold for an unadjusted price of $42.50 per square foot, but that the sale was subject to a land lease which he made adjustments for in his analysis. He noted that the building contains 201,000 square feet with 50,000 square foot floor plates. In adjusting this sale, he explained that he analyzed five land sales in downtown Columbus concluding a price for the subject of $60.00 per square foot resulting in an adjusted price of $8,551,520. He also indicated that he verified his land sales data with two MAI appraisers from that area.

As to Sale #7, Ryan testified that this property was a two-story, department store located in Ohio with a building size of 227,000 and an 113,500 square foot floor plate that sold for $45.00 per square foot. As to Sales #6 and #7, he stated that upon verifying the sale details his source indicated that each sale had been negotiated distinctly because the buyer had wanted to introduce their brand into a new market.

As to Sale #8, Ryan indicated that this property contained a building with 150,000 square feet and 75,000 square foot floor plates that sold for $28.00 per square foot. He stated that the location was purchased first by May Department stores which decided not be put in one of their retail lines at that location; thereby, eventually selling the location to the mall owner. Thereafter, the mall owner decided to use the space for multi-tenant use.

As to Sale #9, Ryan testified that this property was a former JC Penney store in Illinois containing 175,000 square feet which sold for $20.00 per square foot. He stated that upon verification of the sale's details he found that the reason behind the sale was the high property taxes at that location, because JC Penney built a store nearby where the property taxes were capped at $4.00 per square foot. In addition, he stated that the buyer of the location had wanted to place three retailers in the space as a one-story location with mall access, but that proved to be physically and financially impossible.

As to Sale #10, Ryan stated that this property was a three-story, Lord and Taylor store in a suburb outside of Denver, Colorado. This property contained 200,000 square feet with 67,000 square feet floor plates which sold for $35.00 per square foot. He indicated that the initial sale was to the mall owner, who resold it to a developer. The developer looked for an anchor tenant for the location for two years and then demolished the building in 2006 and reopened the space in 2008 as multi-tenant retail.

As to Sale #11, Ryan testified that this property was another anchor department store located in a suburb of Denver. The building was a two-story structure with 120,000 square feet that sold for $33.50 per square foot. He also indicated that even though this sale reflected the same highest and best use of the subject, that by 2008 this property had been renovated for multi-tenant space including: Forever 21, the Container Store and an electronics store.

Reflecting on sales #10 and #11, Ryan stated that having personally been in each of these locations which are high-end shopping centers that the idea in purchasing was not to tear down the building, but to place another anchor department store in each location generating traffic.

As to Sale #12, Ryan testified that the property contained a two-story, department store with 70,000 square foot floor plates and a sale price of $37.60 per square foot. He also stated that the initial purchaser in June, 2005, was the mall owner, who resold the property in July, 2005, to Von Maur, the latter of which was used in his analysis.

After describing each sale's details, Ryan also testified that each sale had been verified with a party to the sale, that he personally inspected each sale comparable, and that he made varying adjustments to each sale which he described in detail. Overall, Ryan stated that he considered the subject's location superior to the comparables, while also restating that department store chains generally view store performance on the basis of sales generated per square foot with underperforming stores placed for sale. He asserted that the subject's sales ranged from $100 to $120 per square foot which could be considered an underperforming store, while also noting that whether the department store is located in the suburbs or in an urban location, retail sales per square foot is reflective of the location's quality.

Ryan also indicated that the biggest disparity in comparing the subject to these sales was location and size; therefore, significant adjustments were made for these factors. In addition, looking at the subject's tremendous size, absence of parking, a 25-year vacancy across the street from the subject, the subject's retail sales as well as the subject's age in comparison to the comparables, he estimated that the subject's market value would be at the low end of the comparables' range at $20.00 per square foot of building area or $39,000,000, rounded.

The next approach to value developed by Ryan was the income approach, which he indicated was accorded secondary emphasis because the subject had been an owner-occupied, department store for over 100 years. In this approach, Ryan was to estimate the subject's market rent by viewing leases of department stores. Ryan utilized eight actual leases and one asking rental in his analysis resulting in a unit rental range between $2.00 and $8.62 per square foot of building area or from

1% to 2.5% of gross sales. These leases were all on a net basis resulting in the tenant paying for all operating expenses. Ryan stated that he verified the lease data with a lease representative, but that he had made no adjustments for location. His appraisal indicated: that the lease dates ranged from 1975 through 2003; that lease terms ranged from 5 to 35 years; and that lease sizes ranged from 93,957 to 237,281 square feet of building area.

Overall, Ryan testified that all of his rental comparables were department stores, while detailing his adjustments to each rental property. He stated that rental #3 was the Marshall Field's Water Tower Place location with a lease from 1975 at $7.17 per square foot and that rental #2 was the Lord & Taylor Water Tower Place location with a 2001 lease at $7.90 per square foot, which confirmed that the market was desirable for retailers on North Michigan Avenue in Chicago and that there was minimal change in lease terms over the years. He also stated that this data reflects that Michigan Avenue is a more desirable location than State Street. He indicated that the anomaly was rental #1 which is a Sears lease on State Street that he indicated was a business decision by Sears to have a presence on State Street at a higher rental rate until such time as the chain was able to get out of that lease.

Supporting his assertion regarding the lack of desirability with a State Street location, Ryan mentioned that his appraisal addresses that the Carsons store on State Street closed in March, 2007, due to low sales per square foot and high operating costs, while Carson sources indicated that they were looking into development of a department store in the Roosevelt Road commercial corridor located off of State Street. At the time that Carsons left the State Street location, there was a lease in place at a rate of $1.67 per square foot.

As a secondary rental analysis, Ryan testified that he consulted The Dollars & Cents of Shopping Centers, 2006, published by the Urban Land Institute, which surveys information as to the rentals and performances of anchor department stores. He stated that on a rental basis, it was common for department stores to prefer a percentage lease which secures their occupancy cost and protects their earnings per square foot. He also stated that his appraisal reflects the subject's history of sales per square foot that ranged from 2004 to 2006 from $132.87 to $129.43 per square foot, respectively. His appraisal stabilized the subject's sales at $115.00 per square foot. Viewing the survey data compiled by the Urban Land Institute in his appraisal, he stated which is generally relied upon by the retail industry, department stores in super-regional malls ranged in sales per square foot from $174.86 to $178.31 with the top 10% of sales identified at $283.39 and the regional median sales per square foot ranging from $156.03 to $111.23.

Based upon these analyzes, Ryan estimated the subject's market rent to be $2.25 per square foot for a potential gross income of $4,371,770. He stated that he used a market based vacancy and collection loss of 7.5% instead of the subject's actual vacancy at approximately 15%. Deducting that vacancy and collection loss of 7.5% resulted in an effective gross income of $4,043,887. He then deducted operating expenses resulting in a net operating income of $3,830,156. After developing the direct capitalization and band of investments methods while also referring to the Korpacz Real Estate Investor Survey, Third Quarter, 2005, he capitalized the subject's estimated annual net operating income by 9.5% reflecting a market value under the income approach of $40,300,000, rounded. In reconciling these two approaches to value, Ryan stated that his final value for the subject property as of January 1, 2006, was $40,000,000.

Under cross-examination, Ryan testified that the subject underwent a $100 million renovation in 1990 to convert the Holden Court space, while in 2003 approximately $40 million was spent in additional renovations. Ryan opined that the latter renovations was a type of rebranding of the department store.

As to the sale comparables, Ryan stated that Sears was leasing the location of Sale #1 prior to and after the sale in a multi-tenant power center with a 10-mile demographics of 310,000 people compared to the subject's retail trade area of 2.6 million people. He admitted that this sale would be considered a lease fee sale and that leased fee sales are just not comparable once the stated purpose of an appraisal is for ad valorem tax purposes. As to Sale #2, Ryan stated that he does rely on information from the CoStar Comps service in making his analysis. Upon review of BOE Exhibit #3, he indicated that this CoStar Comps printout stated that this sale's conditions were described as a sale leaseback, but that the printout also reflected a date of May 19, 2009 which was after Ryan's appraisal date. Further, he stated that he personally inspected this sale in 2006 at which time the outlet store building was occupying the property, which was later demolished in 2008.

Ryan also stated that the nature of second generation real estate is that the first owner no longer uses the property for a variety of reasons, such as: a bad business; a change of business plan; outgrowing the store; or the store being too big. He said that this tenet is applicable to all types of buildings including office and industrial buildings.

As to Sale #6, Ryan stated that he has used this sale property in other appraisal assignments. In viewing BOE Exhibits #4 and #5 which were portions of those other appraisal assignments, he testified that the adjusted sale price was listed as $6,395,000 or $31.81 per square foot, while in the subject's appraisal he listed a sale price of $8,551,520 or $42.53 per square foot. As to the contradiction, he stated that he had adjusted differently due to the ground lease in place. As to Sale #6 and #7, Ryan stated that he had not considered these to be a portfolio sale because they were separately negotiated with one not dependent on the other As to Sales #10, #11 and #12, Ryan stated that all three were Lord & Taylor properties and that Lord & Taylor was divesting from 25 to 50 underperforming properties during 2003 through 2005. In addition, as to Sale #11, Ryan indicated that by 2008 that this property had been converted to multi-tenant retail space. As to Sale #12, Ryan testified that this property had been previously owned by Lord & Taylor which was initially purchased by the mall owner, who then subsequently sold the property to Von Maur in 2005. Overall as to his sales, Ryan indicated that his prior testimony was that sales per square foot is a relevant factor in the retail industry, while admitting that he had not included this data for his sale comparables.

The intervenor submitted BOE Exhibit #7, which was a three-page exhibit reflecting four columns of data regarding the subject including: the calendar year; the subject's retail sales per square foot as reflected in the 2006 Ryan appraisal; the subject's retail sales per square foot as reflected in the 2009 Ryan appraisal; and the subject's retail sales per square foot as reflected in the 2012 Ryan appraisal. Upon review of this Exhibit, Ryan testified that he used a smaller building area in his 2009 and 2012 appraisal. Under direct examination, Ryan stated that there were a few typographical errors; while testifying to the corrected retail sales per square foot of $119.74 in 2004; $117.91 in 2005; and $105.90 in 2006. However, in Ryan's 2009 and 2012 appraisals the data for those same years indicated $118.40, $103.93 and $98.04 per square foot, respectively. In response, Ryan stated that the square footage of used area changed. As to a question regarding his duty as an appraiser to change incorrect data, Ryan responded that he did change it, while later responding that he would have to go back and review the 2009 and 2012 appraisals.

Under further cross examination, Ryan stated that the subject's other square footage supporting its retail space was approximately 35%, while the sale comparables ranged in similar area from 15% to 25%. He also indicated that due to the subject's vastly bigger size, that additional support square footage would be required; nevertheless, the subject continues to function without the use of additional office or storage space. In addition, Ryan detailed the various licensed tenants in the subject's lower level of retail space, which he confirmed are different than trying to obtain leased area tenants. Further, Ryan stated earlier that in the event of the subject's sale, there could be no way to know if the property could be redeveloped due to the landmark designation. However, he later testified that the Carsons store on State Street was located in the Sullivan building which was also accorded a landmark status and was redeveloped.

Under redirect examination, Ryan stated that Rule 1-1 of the Uniform Standards of Appraisal Practice requires that an appraiser update their education and evolve as appraisers when new information becomes available. He stated that this was the rationale behind his updated sale data reflected in BOE Exhibits #4 and #5 relating to his sale comparables. After consultation with other appraiser professionals including a professor who is the department head of land economics and real estate at the University of Wisconsin, he was informed about the correct methodology for dealing with a leased site, resulting in a subsequent unit price of $31.83 per square foot for this property.

On a procedural note at the beginning of the second day of hearings, there was a question regarding the certification page of the appellant's appraisal and the absence of this page on the intervernors' copies of the appellant's evidence. The Board accorded the appellant leave to submit an original signed copy of the certification page, which will be marked as Appellant's Hearing Exhibit #1.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $30,231,914. The subject's assessment reflects a market value of $79,557,668 or $43.13 per square foot of living area, including land, when applying the level of assessments for class 5, commercial property under the Cook County Real Property Assessment Classification Ordinance of 38%.

In support of its contention of the correct assessment, the board of review submitted copies of the subject's property record cards as well as a one-page document reflecting minimal, raw data on 15 sale properties. The board of review's memorandum stated that the subject's building contained 1,836,760 square feet. Moreover, the memorandum stated that the data was not intended to be an appraisal or an estimate of value and should not be construed as such. This memorandum indicated that the information provided therein had been collected from various sources that were assumed to be factual and reliable; however, it further indicated that the writer hereto had not verified the information or sources and did not warrant its accuracy. At hearing, the assistant state's attorney representing the board of review rested on this written evidence submission.

The intervenor, City of Chicago, called as its first witness, Mr. Michael MaRous, who initially testified about his educational background while also indicating that he had been a real estate appraiser for approximately 38 years and president of his own appraisal firm for 34 years. He stated that he holds the designations of a general real estate appraiser, a real estate broker, the SRA designation from the Society of Real Estate appraisers since 1979 and the MAI designation from the Appraisal Institute since 1980. In addition, he indicated that he was an invited member of the Counselors of Real Estate since 1999, which is a mixture of consultants, land use professionals, attorneys, appraisers, or financiers that are recognized as being at the top of their profession.

MaRous detailed a variety of purposes for his appraisals, including: ad valorem, condemnation, financing, marital dissolution, easements and redevelopment with a variety of clients including private developers, property owners, public bodies at the city and county level. As to the type of properties that he has appraised in his career, the list included: single-family residences, major headquarters, and acres of land with a couple thousand commercial properties ranging from individual stores, urban locations, regional malls, department stores, big-box stores, to multi-tenant retail locations. As to office buildings, MaRous stated that he had completed over a thousand office properties ranging from a small office to office properties with over a million square feet in suburban, urban and Chicago Business District (CBD) locations. Overall, he stated that 98% of his work has been within the Chicago area with assignments in approximately 30 states. As to anchor retail properties, he estimated that he completed approximately 10 appraisals. As to anchor properties, MaRous stated that retail is ever evolving with a department store defined as containing a mix of goods. He defined a big box store as evolving from a 50,000 square foot store like Best Buy to a 150,000 square foot store relating to home improvements or electronics. As to the subject's area, he stated that he has appraised two properties on North State Street and several properties on South State Street including: the Nordstrom Rack, parts of the Palmer House, parts of Block 37, the Sullivan building which was previously used by Carsons, and the office portion of the Venitor building. MaRous was offered as an expert appraisal witness for the valuation and appraisal of retail and commercial property without objection from the remaining parties to this appeal; therefore, the Board accepted MaRous as such an expert.

As to the subject property, MaRous testified that he undertook an appraisal of the subject with an effective date of January 1, 2006, which was identified for the record as City Exhibit #1. He stated that he personally inspected the subject in 2007, 2008, and 2009 as well as a full inspection in November, 2014 which was a floor-by-floor tour by representatives of the property owner. He indicated that he appraised the fee simple property rights of the subject. As to his development of the subject's highest and best use as vacant, he opined a use for commercial and office development with the potential of other uses allowed under the zoning ordinance. As to the subject's highest and best use as improved, he indicated the continued use for retail commercial use with office use in the upper floors. Referencing his comments within his appraisal, MaRous stated that he believed that the upper floors containing 445,000 square feet of basically former office support space were underutilized at the time. He indicated that he believed that the space should be updated to current market demand and to be continued for office use.

The MaRous appraisal in a general overview stated that the subject was a flagship department store and corporate headquarters including an entire floor used for food production. It stated that the current owner-occupant had reconfigured and modernized the retail portions of the building to meet its current demands; however, the majority of the former corporate headquarter portions of the building area not being utilized. The appraisal indicated that the subject's owner has marketed its dining facilities and 11th floor meeting rooms for business meetings and that portions of the remainder of the upper floors could be used or leased as office space, although this does not appear to be an ongoing effort by the owner. His appraisal indicated that the subject building contained 1,553,011 square feet of above grade gross building area.

As to the subject's marketability, the MaRous appraisal stated that the subject is a unique and historic structure with a prime retail location in a retail market he believed was experiencing a resurgence. The appraisal also stated that the nature of the retail industry makes it unlikely that the building would find another owner-occupant who would make use of both the flagship retail elements of the building and the office space. MaRous's appraisal referenced an example of the purchase and reconfiguration of other large buildings, citing the April, 2005, selection by the City of St. Louis in choosing Sherman Associates to renovate and redevelop the Syndicate Trust building which was as former department store converted into residential condominiums, apartments, and retail space. He reported that the developer was the winning RFP of three proposals, which paid the City of St. Louis $5.25 million for the vacant, boarded-up building containing 480,000 square feet. Another example of adaptive reuse referred to in the MaRous appraisal referred to the Vornado Realty Trust purchase of the former Filene's building in early 2006 for approximately $90,000,000, while the building was said to comprise an entire city block with 600,000 square feet of building area. There is also reference to adaptive reuse of department stores as a possible office building or hotel.

As to the subject's market value, MaRous estimated that value at $80,000,000 or $42.00 per square foot of gross building area. He described the subject's location while indicating that the foot traffic in and around the subject was over 50,000 pedestrians a day including usage of the subterranean pedway system. He testified that the subject has 1,450 feet of frontage on all four streets and four corners located within an urban high-rise area and great exposure from other office buildings as well as access to various modes of public transportation. MaRous stated that overall the subject's area was undergoing a massive revitalization with exposure to large numbers of people attending tourist attractions, colleges, or the theater. Therefore, he testified that the subject's location in the CBD lacks comparability to a suburban mall where there is only vehicular transportation as opposed to the foot traffic around the subject. He also indicated that the subject differed from a smaller metropolitan area due to diminished population and income levels. As to Block 37, he elaborated on the preliminary components of construction which were to occur at this location sometime after the lien date at issue. He indicated that there were restrictions on this redevelopment due to added costs to create underground rapid transit per the City's requirement as well as dealing with the ComEd electrical vault which was extremely problematic, while both created extraordinary additional construction costs.

As to nearby adaptive reuse, MaRous testified that he was personally aware of the Sullivan Center which he described as the rejuvenation of the Carson's store on South State Street. He indicated that after Carsons left the landmark location, the upper floors were redeveloped into office space with plans for small shops along Wabash and new redevelopment along State Street. He stated that a landmark status makes redevelopment more difficult and generally more expensive while limiting the ability to make additions, requiring careful development of the landmarked parts, and requiring more approvals. He indicated that there are very few other markets with similar dynamics and demand factors to the subject's area, which he referred to as a high street, other than: Fifth Avenue or Park Avenue in Manhattan, Greenwich Village, parts of San Francisco or Boston.

As to the trends and market conditions for single retail department stores in the Chicago Loop in the years leading up to January 1, 2006, MaRous testified that there was an evolution of retail and that those structures were declining. He believed that category killers were destroying the department stores such as Sears, J C Penney's, Goldblatt's or Woolworths who couldn't compete and became obsolete; thereby, going out of business. He stated that the subject's location on State Street was a high street where people wanted to be because its demand was on the rise. As to the subject's characteristics matching his market trends, he indicated that the subject is unique with retail, restaurant and banquet facilities which were a little bit old school. He said it was an old classic department store competing with modern retail. In addition, he stated that he was aware of the use of third-party retailers at the subject, which he considered being on top of market trends due to the niche users that were drawn into the subject's location. Moreover, MaRous speculated that if the subject were vacant in 2006 that there would be a variety of potential buyers, but that a department store operator could probably not be able to pay the market value as opposed to developers.

As to his appraisal, MaRous testified that he developed all three of the traditional approaches to value. He stated that the cost approach was not a value conclusion. His appraisal states that construction costs for a building of the subject's quality are difficult to estimate given the unusual quality of construction materials and finishes. As to the land value, he stated that this was done to properly do a highest and best use or in order to make sure that the land value is not higher than the value as improved. He indicated that the subject's site size was 131,295 square feet, which he determined was significantly bigger than his comparables. MaRous used five land sales that sold from September, 2003, through July, 2006, for prices that ranged from $473.39 to $944.37 per square foot. The land sizes ranged from 11,700 to 95,832 square feet. He stated that his land estimate was $54 million or approximately $415.00 per square foot, which he indicated was below the range of his five land sales. He explained that: sale #1 was a great residential site; sale #2 was a good residential site; sale #3 was a very good office site; sale #4 was a bad retail site but a good hotel site; and sale #5 was a good office site. He stated that he looked at the different characteristics of highest and best use, while being conservative due to the subject's landmark status which really limits the potential for the subject. He indicated that in developing this approach he merely subtracted the land value from his final value conclusion resulting in an improvement value of $26 million.

In the sales comparison approach to value, MaRous testified that he looked to location and demand by market participants to find five sale comparables. The sales occurred from March, 2004, to January, 2006, for prices that ranged from $1,350,000 to $71,900,000 or from $71.43 to $662.45 per square foot. The properties ranged: in building size from 54,000 to 579,778 square feet; in land area from 19,080 to 58,100 square feet of land; and in land-to-building ratio from 0.09:1 to 0.38:1, with land area not submitted for sale #4.

As to sale #1, MaRous stated that this was a leased fee sale of a retail building located south of the subject on State Street which was formerly a Toys R Us which had been re-tenanted with three units on a multi-level basis with a total of 54,000 square feet of building area. He indicated that this sale basically shows the dynamics of the location and the redevelopment of box space in modern retail tenants. As to sale #2, he testified that this was a multi-tenant commercial building located on Michigan Avenue containing 546,000 square feet of gross building area. He referred to this leased fee sale as a vertical mall requiring a major amount of redevelopment over its 17 years, while containing a high vacancy rate from 30% to 45% thereby requiring a lot of re-tenanting. As to sale #3, MaRous stated that this leased fee sale was of a multi-tenant, building located one block south of the subject inclusive of basement retail space as well as three floors of an adjacent building. As to sale #4, he testified that this building was built in the early 1900s, but had been gutted at the time of sale, while containing 212,000 square feet of building area. He indicated that there were distinct buyers: one for the retail space and a second for the office space, but that both sales occurred in May, 2004. As to sale #5, MaRous indicated that this was a leased fee sale of a vintage office building located within two blocks of the subject containing 579,778 square feet of building area on a 58,100 square foot site. He described it as a 22-story building with less than 5% of the building used as ground floor retail space. He explained that it is also on the National Register of Historic Places and ranged from 60 to 100 tenants at the time of sale.

MaRous testified that he also described in his appraisal a portfolio sale of a building that Sears had moved into as well as researching a former Filene's Basement building in Boston and discussing the Sullivan building's demolition costs and renovation to reconfigure and re-tenant the building. Under the sales comparison approach, MaRous stated that he accorded three different values to components of the subject that ranged from $50 to $55 per square foot, while totaling $81,500,000 or $42.00 per square foot using 1,553,011 square feet of building area.

As to the income approach to value, MaRous explained the income approach to value as an analysis of the subject property looking at competitive rental properties, taking into consideration the pluses and minuses of the location and the actual improvements, estimating a market rent, deducting market vacancy and expenses, and then capitalizing via a market capitalization rate. As to the subject, he elaborated that the subject was an iconic building used as a department store with significant supportive offices, tremendous window exposure, frontage in downtown Chicago, restaurant, cooking school and banquet facilities, which is nicely vintage but in need of modernization and upgrading. He also indicated that he looked at the third-party retailers totaling some 55,000 square feet of the subject's building. He opined that this usage showed a trend in modern retail development as well as a demand for the subject's space. Therefore, he stated that in developing this approach he used rental comparables that were downtown office retail leases because that is what the subject is; as well as older office spaces in similarly situated CBD locations.

The first set of rentals related to smaller retail spaces that ranged: in lease date from 1988 to 2005; in unit size from 666 to 45,904 square feet; in lease terms from 1 to 22 years; and in rents from $32.14 to $320.00 per square foot on either a net or gross basis. Overall, he stated that these were similar leases in the downtown market, all of which were located in multi-tenant buildings. In addition, some rentals were ground floor leases located in major office buildings.

The second set of rentals included four properties: with lease dates ranging from October, 1975, through May, 2002; in unit size from 138,171 to 250,363 square feet; and in base rent from $7.17 to $9.36 per square foot on a triple net basis. Overall, he stated that these were department store rental comps, but that there weren't many current leases of such large department stores which reflected the market trend. Overall, he stated that the first two rentals were both located in the Water Tower mall in downtown Chicago as well as the Bloomingdale's location and the Sears store on North State Street which were all multi-level stores. MaRous opined that this data indicated that ground floor retail rents are far more desirable and with the lowest vacancy.

Comparing these rents to the subject, he testified that he bifurcated values on a gross basis, with the main floor at $50.00 per square foot, the lower levels at $27.00 per square foot, and floors 2 through 9 at $18.00 per square foot. He stated that his lowest values were for the upper floors because above the 3rd floor, market demand significantly drops.

MaRous testified that he would characterize the subject's upper level office space as Class C or D space. His third set of rentals included 7 office spaces in older buildings that ranged: in lease date from 2005 to 2006; in unit size from 420 to 4,650 square feet; and in base rent from $10.00 to $22.50 per square foot on either a gross, semigross, or modified gross bases. As to Rental #1, he stated that this was another vintage building which he opined was an inferior location to the subject, while Rentals #2 through #5 were in older buildings. In addition, he indicated that Rentals #6 and #7 were of small storage space in the CBD. He also stated that he looked to space in the Sullivan Center which was the old Carson's building that had been redeveloped with modernized and reconfigured office space with actual rents from $24 to $27 per square foot after the work was completed. He opined that it was much better than the subject, but it was the same type of building or space. Therefore, he testified that his rent conclusion for office space was at $10.00 per square foot which was below the market range because the subject's space would have to be modernized. Vacancy and collection loss was estimated at 15% for retail area and 55% for office space. He elaborated that the 55% was so high because the subject's as-is office condition does not show well, so there would not be a demand in the market for this type of space. Further, he stated that his value for office space was below the market range.

He estimated an effective gross income of $25,300,878 for the subject. After referring to market sources, he estimated total expenses at $13,844,264. MaRous stated that market surveys reflected a capitalization rate from 8.22% to 8.67%, but he estimated a rate of 8.7% for the subject with a tax load of 5.76% resulting in loaded capitalization rate of 14.446%. Capitalizing the effective gross income reflected a market value of $79,200,000 for the subject. He testified that he used a significantly higher rate than that reflected in Korpacz due to the subject's great location and tremendous demand in the market, but that the subject is still an older, multi-story building so there would be more risk factors; therefore, he choose a rate above the market range.

In reconciliation, MaRous testified that he accorded more weight to the sales comparison approach, but that he felt that he had to lower the value to a more conservative number of $80,000,000 as of January 1, 2006.

Under cross examination, MaRous agreed that the subject was a flagship department store even though his appraisal identified the property as a flagship department store and office space. He stated that the subject was owner-occupied with quite a few subtenants even though his appraisal described the subject as owner-occupied. He also stated that as of the lien date that the upper level space was designed to support the store's operations and that the subject functions well as a department store with the subject's retail space remaining highly functional for its intended use.

He also stated that his appraisal indicated that in the Fall of 2005, there was a total of 986,000 square feet of specialty retail office space, while the subject's size has more retail space than the entire amount of specialty retail space found on State Street. He indicated that specialty retailers are different from department store retailers due to the latter's diverse product offering. As to the subject's 10th through 14th floors, MaRous stated that they were primarily office space that could be built out, but he opined that the space would be Class C or D space that would require renovation and updating that would not be profitable. He also testified that it was possible to redevelop these upper floors for a possible variety of uses, but he had no way of knowing without a specific plan what use or combination of uses could be accomplished for that would be speculation on his part. He admitted that he made references to the redevelopment of the Carsons building without including the details of the sale, its rental rate, or the fact that the City of Chicago provided $24,000,000 in TIF money for said redevelopment. He also stated that these potential redevelopments are in conflict with his highest and best use as improved.

As to the subject's size, MaRous testified that the distance from the center of the subject's ground floor as well as the 11th floor to the closest window line was 170 feet. He indicated that users of Class A, B or C office space prefer access to natural light via windows. MaRous references in his appraisal the sale of Block 37 prior to the 2006 lien date for a value of $100.00 per square foot, which was a vacant site located across the street from the subject property. In addition, as of the date of his appraisal, March of 2009, MaRous indicated that the proposed redevelopment of Block 37 had not been completed. As to the subject's upper floor plate size, he testified that there are no other hotel buildings in the Chicago area with that plate size. He also stated that the City of Chicago requires a window in each hotel room, while also confirming that he suggested potential uses without any conversion costs for consideration thereby inhibiting a determination of whether a potential use was economically feasible. Moreover, as to his appraisal's statements regarding the subject property's function, he stated that he referred to other successful, large multi-story, retail spaces in the downtown area, but that those spaces were all previously subdivided, multi-tenant spaces located on Chicago's Michigan Avenue. Further, as to his appraisal's reference to a St. Louis building's sale and redevelopment, he confirmed that the buyer paid $11.00 per square foot and was one of three developers that submitted proposals each for redevelopment of the 16-floor building with a floor plate size of approximately 30,000 square feet resulting in commercial development on the first floor and residential development on the upper floors. MaRous confirmed that the use of this building was in conflict with his appraisal's highest and best use as improved.

In development of his cost approach, MaRous testified that the subject's landmark status and its placement on the National Register of Historic Places makes it unlikely that this structure would ever be demolished. He also stated that his land value analysis assumed that the subject property was vacant and available for redevelopment; therefore, his land valuation assumes that the building is not on the site. As to the land value estimate, he stated that his land sales were located adjacent to and within view of the Chicago River or Lake Michigan, while containing significantly diminished site area in comparison to the subject. Moreover, he stated that: land sale #1 was not developed; land sale #2 was significantly smaller; land sale #3 included a letter of intent to occupy approximately 650,000 square feet of the building tendered prior to purchase; land sale #4 was the Trump Tower site where the seller was permitted to use the site from 2001 through 2004 and where the buying entity was partially owned by the seller; and land sale #5 included the commitment from Sidley Austin that they were to occupy approximately 500,000 square feet of the building tendered prior to the purchase. He also confirmed that none of the land sales were neither developed with a department store building or primarily for retail use nor comprise an entire city block. Moreover, he testified that his vacant land analysis assumed that there were no improvements on the subject's site, but nevertheless valued the site as vacant even though the site itself is not accorded landmark status.

In his estimate of income for the retail section of the property, MaRous testified that he assumed that over 1 million square feet of current retail space would probably be redeveloped and occupied by multiple users. He also indicated that he did not make any deductions for the costs of potentially breaking up the retail space. MaRous calculated the net rental rate for the retail portion of his income approach to value to be approximately from $8.00 and $9.00 per square foot, while his retail rentals ranged from $7.17 and $9.36 per square foot. As to the retail rentals, he confirmed that these rentals were all located in multi-tenant buildings and not in department stores, while rentals #1 through #7 were located along Michigan Avenue in Chicago which he indicated was a more desirable location than State Street. MaRous stated that: leases #1 and #2 represented 5% of the square footage in a Class C office building; the three leases in #3 represented from 10% to 15% of the building; the two leases in #4 represent inline stores at the Shops at North Bridge's vertical mall; leases #5 and #6 ranged in floor plate size from under 20,000 to under 40,000 square feet; lease #8 represents a floor plate size of 2,200 square feet in an office building with less than 15,000 square feet in total; lease #10 was a bank located within an office building; lease #11 was a AT&T store located in a student residence hall; leases #12, #13, and #15 were located in the same building with under 10% used for retail purposes; and the two leases in #16 contained either 666 or 826 square feet in an office building.

As to the subject's third-party users, MaRous stated that he had reviewed the documents relating to these users which were identified as licensing agreements.

As to the office leases in MaRous's appraisal, he stated that the aggregate size of all of his office leases ranged from 22,000 to 25,000 square feet which equated to 5% of the subject's square footage. He also stated that the buildings represented by leases #1 through #4 were very old office buildings, but he was not sure of each building's history.

As to the subject, MaRous indicated that there is neither direct access to the upper floors separate from the retail area nor direct vertical transportation to those upper floors. Moreover, he stated that only portions of the subject building's exterior was protected by landmark status and that anything visible from street elevation including structural columns and supports are protected by landmark status.

As part of MaRous's sales comparison approach, he included a narrative regarding the redevelopment of the former Filene's building and indicated that he knew of government involvement to complete this project, but did not know the extent of that government involvement.

As to MaRous's improved sales, he testified that all of the sales are leased fee interests with the exception of sale #4, while elaborating that sale #1 is a property that was a 100% occupied, multi-tenant building that contained three separate stores. As to sale #2, MaRous admitted that his appraisal indicated that this sale included large tenants such as Saks and Talbots; however at hearing, he could not recall whether Saks owned their own building or whether this sale only included the rights to the income from the Saks ground lease. In addition, he could not recall whether or not there were 45 tenants located within this building at the time of sale, but did recall that the vacancy rate ranged from 30% to 45% with a floor plate of approximately 45,000 square feet. As to sale #3, he testified that this sale only included a portion of the building which included five tenants with street access and separate entrances. As to sale #4, MaRous stated that this was his only improved sale that was fee simple in property rights transferred, while 90% of the building was office space with ground floor retail portions with separate entrances from the office area. At the time of this sale, he testified that the building had an 11,000 square foot floor plate and was essentially a shell with the former office area later converted to residential condominiums. As to sale #5, he testified that this property was an office building with retail units on the ground floor which contained from 60 to 100 tenants at the time of sale as well as a floor plate of approximately 20,000 square feet. MaRous testified that he had no personal knowledge of the leases in sales #1, #2, #3, and #5, while indicating that his unadjusted sale range was from $47.00 to $662.00 per square foot. He also stated that in his appraisal he just mentions an older, portfolio sale, which was not actually one of his sale comparables, but was a leased fee sale of three buildings.

On redirect examination, MaRous testified that it was common for there be to be TIF assistance on major iconic or special redevelopment projects.

As to the subject, MaRous reiterated that looking at the market trends on State Street with regard to single tenant department stores in the 2006 lien year that a major developer could properly integrate the demand and take advantage of the subject's location, but that market factors would have to be considered, such as: highest economic use, the highest present value, and a net rent compared to the cost to get the property in the condition as well as the quality of the tenancy. In addition, he stated that his appraisal does not include an analysis of the highest economic use for redevelopment of the property as of the 2006 lien date.

As to other sources of light at the subject, he testified that there are two light courts: one is five stories, while the second is 13 stories. In addition, he stated that there were two atirums: a three-story atrium for the Walnut Room and a 10-story atrium. On the issue of distance to natural light, he testified about certain office buildings with either a reasonable or significant distance to natural light. He defined reasonable as being from 60 to 80 feet and significant being over 100 feet.

In comparing the subject to a suburban anchor department store, MaRous stated that: the support office space would be approximately 3% of the overall building; the food court would not be in the building but in the central mall area; there would not be so much underutilized space; the building would be a dedicated store; and that if there were other retailers within their space, they wouldn't number 26 as in the subject's building.

As to his approaches to value, MaRous indicated that he addressed the issue of conversion costs as a general allocation that he considered in his overall value analysis. As to a possible adaptive reuse of the subject, he stated those would be the department store to modern retail and the upper floors to more modern office space. As to his income approach, he admitted that he developed a potential gross income(PGI) for retail space and another PGI for office space, but that his appraisal was not clear that the expenses were applicable to both PGIs because the expenses may vary in each of his designated spaces. As to his sales comparison approach, he indicated that he made a downward adjustment depending on whether the leases were signed or negotiated at or around the date of value for the variance in property rights of his sales which were leased fee versus the subject which is fee simple.

Procedurally at this point, the Board heard arguments on the appellant's Brief in Response to the Chicago Board of Education's Rebuttal Evidence as well as the submission of BOE's Exhibit, both of which dealt with portions of the Uniform Standards of Professional Appraisal Practice (USPAP) provisions and the application to the Dost Technical Review Appraisal submitted by the intervenors as rebuttal evidence. Upon due consideration of the parties' positions as well as a review of the documents at issue, the Board denied the appellant's request that certain portions of the Dost report be stricken while indicating that the Board ultimately determines the weight merited this evidence.

Thereafter, the intervenors called as their next witness, Mr. Eric Dost. Mr. Dost testified that he has been a commercial real estate appraiser for 29 years, while also holding the designation of MAI since 1993. He also indicated that he has been a state certified appraiser in five states. He stated that during his appraisal career that he has completed approximately 3,000 appraisals inclusive of 250 retail properties 25 of which related to department store properties and from 50 to 75 retail properties located within the Chicago. The intervenors offered Mr. Dost as an expert appraisal review witness without objections from the remaining parties; therefore, the Board accepted Mr. Dost as such.

Mr. Dost testified that the scope of his review assignment was to review the LaSalle Appraisal prepared by Mr. Ryan for completeness, accuracy, USPAP violations and to ensure that it had proper data, methodologies and analysis. The previously submitted Dost review was further identified for the record as Intervenors' Exhibit #1. Dost stated that he first reviewed the appraisal report and then conducted research using CoStar, the Internet, and public records relating to some of the various comparables within the report as well as the subject property. In addition, he stated that he conducted a physical inspection of the subject property.

Dost indicated that his observations of the report are as follows: that the subject is located in the CBD of Chicago; that 11 of Ryan's 12 sales were in suburban locations; that two of the sales were located in Chicago and were subsequently demolished; that there was no land valuation developed; that certain renovations to the subject were not included in the report; and that the capitalization rate was above market. He elaborated that a difference in CBD retail markets and suburban retail markets is the high density of people, while being served with a variety of public transit. Dost also noted that the report copy that he was supplied did not include a signed certification; however, upon Dost's review of the Board's signed file copy, Dost indicated that the certification page reflects a license expiration date of September 30, 2009, while the transmittal letter reflected a date of April 3, 2007. Dost also indicated that a certified real estate appraisal is licensed in a two-year cycle requiring an appraiser to take continuing education during that two-year period; therefore, he indicated that it did not make sense to have a license expiration date in September, 2009, with a report transmittal date of April, 2007.

As to Ryan's cost approach, Dost testified that his industry research reflected renovations to the subject in the 1990s as well as in 2003, totaling $165 million dollars, which would extend the life of an improvement, but that the Ryan report accorded the subject a remaining life of 10 years apparently not reflecting these renovations. He indicated that the subject had been a retail location for over 100 years with some office area on the upper floors, but that the Ryan report was unclear as to the particular square footage of the property devoted to retail use. He testified that in researching some properties in the CBD, mentioned in the Ryan report as other older buildings, that many were renovated or upgraded after 2006. As to the absence in Ryan's report of a land valuation, Dost stated that there was no reasoning in the Ryan report explaining its absence which could have supported Ryan's highest and best use as improved development. Moreover, Dost indicated that a land value is a test to make sure that the value as improved is not less than the value of the vacant land, which might indicate that the property was not operating at its highest and best use or that a change in use may be required. Overall on this point, Dost stated that he believed a land value determination was necessary for the report and that his research noted some land sales as of the 2006 lien date. However, the Dost review report indicated that this approach was not relevant for this subject.

As to Ryan's sales comparison approach, Dost testified that: Ryan's sale #1 is also Ryan's rental #7 and that the appraisal's data stating that the property was on a percentage rent only lease was a sign of distress while also indicating that the property sold as leased fee; Ryan's sale #2 was subsequently demolished and redeveloped; Ryan's sale #3 and #4 were part of a bankruptcy auction which according to Dost indicated a forced sale; to his understanding Ryan's sale #5 was purchased for redevelopment as a lifestyle center, while he indicated that this sale had a lower population density than the subject; his understanding of Ryan's sale #6 was that it was "a transfer of a lease or something like that" and was located in a declining mall that was demolished in 2009; Ryan's sale #6 and #7 were a bulk transaction; Ryan's sale #8 had a lower population density than the subject; Ryan's sale #9 was actually a land sale to demolish the property's mall, but he could not recall when or to what extent any demolition had occurred; and Ryan's sales #10, #11, and #12 were part of Lord & Taylor's divestiture of 32 underperforming stores beginning in 2003.

However, as to Ryan's sale #3 and #4, Dost admitted that he had not spoken to any party related to these sales. Moreover, Dost stated that general demographic information would be used by retailers and real estate investors in site analysis. In summary, Dost stated that he did not agree with Ryan's opinion that his sale comparables were superior to the subject property. Considering Ryan's approach, Dost concluded that Ryan's sales were not comparable, Ryan's analysis was flawed, and that the approach to value was unreliable.

As to Ryan's income approach to value, Dost testified that Ryan's rental comparables were poor while also primarily suburban. Specifically, he stated that only three of the rentals were located in the CBD, while one rental's lease was too old since it was from 1975. In addition, he stated that Ryan's capitalization rate analysis refers to market data for regional malls, which is not this subject property. Dost believed that market data for commercial net leased buildings or power center data would have been more appropriate. Overall, Dost testified that the deficiencies in the report cause it to be unreliable.

On cross-examination, Dost stated that an experienced appraiser can make adjustments to comparables for size and location. He also stated that a sale comparable used in an appraisal should have the same highest and best use as the subject property. As to the Sears store located on State Street, he indicated that he had no knowledge that this store was underperforming as of the 2006 tax year. He testified that the success or failure of retail development along State Street would be an indication of the strength of the market in general, while also confirming that Ryan periodically discusses the protracted development attempts at Block 37 which is located directly across the street from the subject. Upon questioning regarding the subject's renovations in the 1990s, Dost admitted that said renovations were those referenced in the Ryan appraisal relating to the enclosure of Holden Court which created 13,490 square feet. He also indicated that even though he located a mention of 2003 renovations at the subject, he was unable to verify this raw data, while Dost also agreed that any such renovations to a property would add value to the improvements. Moreover, Dost stated that these renovations did not change the use of the subject as a single-tenant, owner-occupied department store. He also stated that the development of the cost approach was not relevant for this subject property with the exception of the land value.

As to his observations of Ryan's sale comparables, Dost further testified: that sale #1 was also leased on a percentage of sales per square foot, which Ryan's appraisal indicated was higher than the subject's sales per square foot; that as to sale #2, #5, #6, and #10 that he had no personal knowledge of when each property had been demolished or what use the properties had been put to after the sale; that as to sale #3 and #4 that the bankruptcy sales were somewhat questionable, but did not delve into the details of the bankruptcy to verify any data; and that as to sale #9 that he had not verified any information that he had obtained from business articles. In summary, he stated that he did not talk directly to any party related to these sales regarding the transactions relied upon by Ryan, while acknowledging that all of Ryan's sale properties were built for retail department store usage and were used as such at the time of sale.

As to Ryan's income approach, Dost testified that Ryan's capitalization rate of 9.5% was within the market range for single-tenant, net leased properties.

On redirect examination, Dost testified that under USPAP standards, a review appraisal is not required to verify sales data with a party to the transaction.

In written rebuttal, the appellant timely submitted a desk review by Gary Battuello, MAI, of the intervenors' MaRous appraisal. The purpose of the review was to determine the adequacy of the appraisal process/report and the reasonableness/reliability of its conclusions and value estimate. The review identified the subject property as the former Marshall Field's flagship department store and corporate offices located on State Street in downtown Chicago with 1,237,365 square feet of retail space and 445,180 square feet of office space. The report's overview indicated that the MaRous appraisal's highest and best use development, as improved, concluded 'retail use for the lower floors and renovation of the upper floors'. Battuello opined that this conclusion assumed a single-tenant department store use for 1,237,365 square feet of retail space and called for the renovation of 445,180 square feet of office space on the upper floors without consideration for access, security, life or safety issues for this "office" tenancy, but which the intervenors' appraiser concludes are financially feasible.

As to the MaRous cost approach, Battuello indicates that the cost approach was not fully developed with an aggregate depreciation of 92%. As to the MaRous income approach, the review indicates the retail market rent estimates are inconsistent with the size and age of the structure or any historical retail sales performance at the subject, and that the office rent estimates result in a negative net rent that does not support the financial feasibility of the office space renovation. For these reasons, Battuello stated that the estimated market rent is not considered reasonable, and the highest and best use conclusion becomes suspect, especially for the office component. In addition, the overall capitalization rate was estimated using surveyed rates for strip mall properties and the band of investment rate technique, neither of which reflects a capitalization rate for a huge, old department store property.

As to the MaRous sales comparison approach, Battuello stated overall that: none of these sales represents a fee-simple, single-user, department store transaction; none of the sales has the scale or floor plate size of the subject property; and none of the sales represents a mix of single-use retail and headquarters office space present at the subject. Therefore, he indicated that the sales properties do not meet the principle of substitution as to use, scale, or property configuration. In addition, the adjustment process does not lead the reader to the value estimated in the sales comparison approach. Moreover, Battuello indicated that MaRous uses property conversions in other communities to justify his highest and best use and sales comparison conclusions. Furthermore, Battuello stated that the ultimate re-use of MaRous' properties is different than the concluded highest and best use of the Macy's property and that data is not supportive of the value conclusions. Thereby, Battuello concluded that the conclusions and value estimate are not appropriate, reasonable or reliable.

At hearing, Mr. Battuello was called as the appellant's rebuttal witness. He testified that he holds the designations of: real estate appraiser since 1981 in three states, the MAI designation and commercial appraisal designation from the Appraisal Institute as well as general review specialist designation from the Appraisal Institute. He stated that he has conducts approximately 150 review assignments with approximately 90 of those relating to retail properties and the remainder relating to extremely large, single-user, department store properties. Mr. Battuello was tendered as an expert in the field of real estate appraisal review without objection from the parties and was accepted as such by the Board.

The Battuello review was identified for the record as Appellant's Exhibit #2. He reiterated that the MaRous highest and best use conclusion was for retail space on the lower levels and renovation of the upper levels ultimately to office space. He testified that upon his reading of the MaRous appraisal, that the conversion of the subject's space to office space was not supported in any way. He stated that a number of things need to occur to make conversion possible, all of which were neither discussed nor costs imputed in the MaRous' process, while MaRous indicated that his appraisal was a self-contained real estate appraisal.

As to the cost approach, Battuello testified that his only comment was that the replacement cost estimates were summarized without any support information as to where those costs estimates were derived, which was typical. As to the MaRous income approach, Battuello reiterated his written comments, while also stating that retail sales performance which was absent in the MaRous approach is relied upon by buyers and sellers of these types of properties and can be used to estimate market rent as well as a check to determine the reasonableness of the other rent estimates. He further elaborated that the MaRous appraisal report estimates a rent for 1.237 million square feet which is the gross building area of the subject's retail portion. In addition, Battuello states that MaRous never disclosed in his report that the subject was to be converted to multi-tenant space or any other use other than single-tenant use, to the contrary, he stated that the MaRous report indicates that the subject is currently used in its entirety by its current owner-occupant with no indication of some other usage. Battuello was asked if his review assumptions would change if he were aware that MaRous clarified in testimony that his retail market rents were based upon an assumption of multi-tenancy. Battuello initially responded that this multi-tenant assumption would be a completely different use than the property's actual use. In addition, he stated that this conversion to multi-tenant use would alter the rentable area which would be significantly lower than the amount of gross square footage that would be used in a single-tenant rental situation. However, he pointed out again that there was no discussion of redevelopment of the subject into multi-tenancy, while also indicating that if there was a discussion of a redevelopment project that raises a host of issues for valuation including costs and timing of accomplishing the physical changes to the property. In the subject's case, Battuello stated that might include emptying the building, demolishing certain portions of it, then dividing the space into whatever the redevelopment scheme was and then conducting the actual construction. He stated what followed would be the absorption of all that space and an estimate of rent for all that re-renting of the space which are all done on a discounted cash flow basis using a yield capitalization process rather than a direct capitalization process. As to the MaRous office rental analysis, Battuello stated that MaRous suggests that the subject's office space should be converted or renovated and MaRous develops a rental stream for this, but he further indicated that this was not justified as financially feasible, but was MaRous's conclusion. Battuello looked to MaRous's income estimates and expenses included in the income approach and indicated that they reflect a negative rent. Overall as to the income approach, Battuello stated that MaRous's highest and best use conclusion was flawed.

As to the MaRous sales comparison approach, Battuello testified that the sale properties lacked comparability to the subject in the areas of size, use, age, and/or property rights. Because of these differences, he believed that the properties did not meet the principle of substitution and really should not have been used in the sales approach. In addition, Battuello stated that MaRous's appraisal used a variety of property conversions either in the South Loop of in other major metropolitan areas. He also stated that these conversions were unique to the building and developer in that locale and any conversion at the subject was speculative and contrary to the indicated highest and best use. Moreover, Battuello indicated that there was a disconnect between MaRous's chosen sale comparables and his highest and best use as improved conclusion which was imprecise. He indicated that MaRous's report treats the subject as a single-user, retail on the lower floors and there was nothing in the report reflecting that there was going to be any changes; therefore, the sale properties were not appropriate for the report as it was written. Further, he indicated that this highest and best use was imprecise, while not indicating the scale and kind of retail space.

At this point, Battuello's testimony concluded. Procedurally, at the inception of the hearing, the intervenors and board of review moved for exclusion of witnesses without objection from the appellant, which was granted by the Board. Battuello's testimony concluded when he attempted to testify regarding MaRous's variance in highest and best use during MaRous's testimony and Battuello's interpretation of this testimonial variance. Battuello stated that he had learned of this variance from appellant's attorneys after MaRous's testimony. After considering the parties' positions, the Board ruled that Battuello's prior testimony related to his written rebuttal and would not be stricken from the record, but that the Board would not entertain further testimony from Battuello who was then excused. Moreover, the Board ruled that the Battuello written review was timely submitted into evidence by the appellant and would not be stricken.

At the conclusion of the multi-day hearing, the parties embarked on closing arguments, while presenting courtesy copies of case law or documents referred to in those arguments. These copies were identified for the record as: Taxpayers Courtesy Copy (TCC) #1 through #7 as well as the Intervenors Courtesy Copy #1 through #3.

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the evidence demonstrated that a reduction in the subject's assessment is warranted.

Under a 'de novo' standard of review, the Board presided over multiple days of hearings including testimony from five witnesses, four of which were offered and accepted as real estate appraisal experts.

The Board accords the board of review's evidence no weight. The board of review failed to call a witness to testify regarding the limited, raw data submitted into evidence, while this evidence also specifically stated that the data was not intended to be an appraisal or an estimate of value and should not be construed as such.

The Board finds an initial issue in this appeal hinges on the underpinnings of the highest and best use concept as determined by both appraisers. The appellant's appraiser, Ryan, indicated that the subject's highest and best use as improved was the continuation of present use as an owner-occupied, department store along with credible supporting testimony. Specifically, Ryan testified that this subject had been operated as a department store for over 100 years and as a Marshall Field's department store until late 2006 when it was rebranded as a Macy's store. He indicated that a market observation was that the consumer was changing buying habits, while opting to shop at stores that they could pull right up to that sold a one-item line. Ryan described in detail the configuration of the subject with the commingling of several buildings, the enclosure of Holden Court which contained a dedicated street on the first floor all of which resulting in a form of construction, and small bay spans with columns close together, all of which he stated would limit the free flow of materials and people due to the uneven spacing of walls from one section of the upper floors to another. He stated in contrast that newer construction contains wall columns that would be spaced farther apart to provide an open area from one wall to the other. In addition, Ryan stated that approximately 15% of the subject's building was vacant or approximately 305,000 square feet with two floors being uninhabitable and the partial 14th and 15th floors not rentable due to the location of the mechanical penthouses thereon. Ryan credibly testified that the lack of habitability was the absence of air conditioning and heating as well as the uneven flooring due to the area previously being used to produce candy.

Ryan also testified that the average floor plate size for a department store ranged from 45,000 to 150,000 square feet, with multi-story space that ranged would be from 47,000 to 115,000 square feet. He indicated that the subject contained 123,000 square feet of floor plate reflecting significant interior space without any window line which is not objectionable to retailers, but that office or residential users would require a window line. In addition, he stated that most office buildings have much smaller floor plates in order to maximize the window line which is considered a desirable element. Therefore, he stated that the floor plate size of the subject is much greater than other comparable properties located in the Central Loop or CBD properties. He stated that his conclusion is that the optimal use of the subject property is as a department store.

As to the subject's area, Ryan noted that there is only limited potential users because there are only so many department store chains; and around the 2006 tax year, most of the department stores had left the area while Carson's at that time was in the process of vacating State Street. In addition, he stated that the layout of the subject's five interconnected buildings and remaining walls required vertical transportation of employees and customers waiting for elevators because escalators did not service the upper floors.

As to the subject's use, Ryan testified that the property was designed to be a department store and has not served any other purpose as of the 2015 hearing date. He stated that his discussions with management in 2006 indicated no variance from its department store usage. In addition, he stated that he explained in his appraisal that the subject suffers from functional obsolescence due to its sheer size. He indicated that the excess interior space, large floor plates and a lack of a window line are not desirable for either office or residential redevelopment. He stated that the subject's highest and best use as vacant, would be for commercial development, while the highest and best use as improved would be the subject's continued use as an owner-occupied, department store because the improvements contributed to the value over and above the vacant land, if the land could be vacant.

Further, the appellant's fact witness, Hughes, credibly testified at length regarding the subject's configuration and usage. He stated that in his position as vice president of stores in 2006, he was involved in planning discussions relating to the subject's use both in 2006 and as of the 2015 hearing date.

As to the subject, Hughes acknowledged that his office was located on the 9th floor of the subject property in 2006 and that the subject property had been used as a department store since the late 1800s. In addition, he testified that in 2006 that the subject's 10th floor was partially vacant, while floors 12 and 13 were vacant. As to the condition of these floors, Hughes testified that the 12th and 13th floors were in poor condition with challenging issues such as: flooring problems, walls, lighting, windows, and asbestos issues.

Moreover, Hughes testified that he was involved with discussions in 2006 regarding the reuse of vacant areas of the building, but that there were no feasible options. Specifically, he stated that the first challenge to building renovation is vertical transportation. He stated that the subject is a tall building and that it is difficult to drive traffic up through the store. He also stated that sometime around 2003 there were discussions with a hotel operator to use the upper floors. However, he indicated that the outcome was that the hotel operator indicated that the building's floors were too deep to accommodate the hotel.

Describing the subject building, Hughes stated that: the lowest floor is identified as 3-B, which is where the mechanicals and the boilers are located; floor 2-B is where the reserve stock and receiving is located; the lower level to the 6th floor is related to different retail merchandise; the 7th floor contains mostly restaurants; the 8th floor is where the furniture is located; the 9th floor is furniture and offices; the 10th floor was asset protection offices and storerooms; the 11th floor was regional offices; the 12th and 13th floors were vacant; and the 14th floor which is a partial floor was also vacant. Specifically, he stated that the original building built in 1893 caps off at the 10th floor; therefore, the addition of the upper floors reflects a floor plate that is 30,000 square feet less than the lower floors. Moreover, he testified that the 13th floor used to be the candy kitchen with many walls and lots of storage areas which had to be broken down to see the overall floor plan. He also stated that as of 2006, the 12th and 13th floors were not ready for an alternative use.

In addition, as to the feasibility issue of upper floor renovation, Hughes stated that different initiatives were looked at, but that there were always issues of vertical transportation and access thereto as well as the amount of space that would be taken away from the main store's operations to access the upper floors, the condition of the upper floors, and the work necessary to those floors, which were all cost prohibitive.

In contrast, MaRous's appraisal stated that the subject's highest and best use as improved was for retail use on the lower floors and renovation of the upper floors. MaRous testified that the subject was actually a flagship department store even though his appraisal identified the property as a flagship department store and office space. He also testified that as of the 2006 lien date that the upper level space was designed to support the store's operations and that the subject functions well as a department store with the subject's retail space remaining highly functional for its intended use. Thereafter, he testified that the subject's floors 10 through 14 were primarily office space that could be a Class C or D office space that would require renovation and updating which would not be profitable. He indicated that it was possible to redevelop these upper floors for a possible variety of uses, but that he had no way of knowing without a specific plan what use or combination of uses could be accomplished for that would be speculation on his part. Moreover, he testified that no other hotel buildings in the Chicago area contained a floor plate size as large as the subject's.

Further, the Board finds that MaRous's appraisal and testimony are contradictory on his highest and best use development. His appraisal is peppered with references to renovated properties located either in the South Loop or in other communities, while containing narrative stories of properties and also alluding to a speculative use for the subject property. Reviewing the MaRous appraisal, Battuello indicated that MaRous's repeated references to re-use properties were unique to the building and the developer in that respective locale and any conversion at the subject was speculative. At hearing, MaRous also testified that those re-use properties were not used as his comparables in the development of his approaches to value. Moreover on this issue, MaRous makes repeated references to the development of Block 37 located directly across from the subject. Then, he testifies that the preliminary components of construction were to occur sometime after the lien date at issue. However, the Board finds that the unrebutted testimony of the experts including MaRous is that Block 37 was vacant as of the 2006 lien date and developed as to the 2015 hearing date. Further, MaRous testified that the City of Chicago zoning required a window in each hotel room, while also confirming that he suggested potential uses for the subject without any conversion costs for consideration; thereby, inhibiting a determination of whether a potential use was economically feasible. Moreover, he testified that in looking at the different characteristics of highest and best use, he needed to be conservative due to the subject's landmark status which really limits the potential for the subject. Lastly, MaRous testified that the use of the subject building was in conflict with his appraisal's highest and best use as improved.

Highest and best use is the reasonable and probable use that supports the highest present value as of the date of the appraisal. For improved properties, the highest and best use is determined for the site, both as if vacant and as if improved. The latter analysis (as improved) assumes that the existing improvement will not be replaced, even though it may not be the best use of the site.

Indeed, construction of a new improvement should not be assumed unless the return from the new use more than covers demolition and construction costs. (Property Assessment Valuation, 2nd edition 1996, International Association of Assessing Officials, pages 31 through 33). The use must meet the following four criteria: physically possible, legally permissible, financially feasible, and most productive. Typically, the criteria should be considered sequentially because it would not matter if the property met the financial feasible test if the size of the property was not appropriate, or intended use legal. Id, page 32.

Therefore, the Board finds that the appellant's appraiser, Ryan's highest and best use as improved for the subject is supported by his appraisal and testimony as well as bolstered by the unrebutted testimony of Hughes. Specifically, the uncontradicted testimony indicated that the appellant had conducted not only discussions, but surveys and negotiations with a hotel operator to possibly develop some of the upper floor space of the subject. These possible attempts at re-use outlined by Ryan and Hughes were found to be physically impossible due to the subject's vast floor plate and building layout as well as its landmark status; questionable as to whether it was legally permissible under zoning requirements; and would to be financially unfeasible and less than productive. In contrast, the Board finds the intervenors' appraisal report and/or MaRous's testimony to be flawed regarding the subject's highest and best use as improved. The Board finds this appraiser's conclusions of highest and best use determination to be unpersuasive, contradictory and speculative while alluding to possible future renovation of the subject's upper floors into a multi-tenancy office or retail capacity without any supporting data or plan, while said re-use had not actually occurred as of the 2015 hearing date.

Further, the Board finds that the valuation date at issue in this appeal is January 1, 2006. As of this date, the Board finds that the subject was an aged, owner-occupied, flagship department store which was constructed in stages for this purpose while located in Chicago's Business District. Thus, the Board finds that the subject property should be valued as such. The Illinois Supreme Court's holding in State of Illinois v. Illinois Central Railroad, 27 Ill. 64 (1861) provides in valuation taxation cases, the inquiry should be, what is property worth to be used for the purposes for which it is constructed, and not for any other purpose to which it may be applied or converted, or for which it might be used.

The Board finds further guidance regarding a particular property's highest and best use in Application of Rosewell, 120 Ill.App.3d 369 (1st Dist.1983), where the court acknowledged that not every potential use could be the proper basis for assessment. The court held "values which are future in character may not be taken into consideration. . . where they are so elusive and difficult to ascertain that they have not affected the present market value of the property". Id.

Therefore, the Board looks to the issue of the subject's market value as of the January 1, 2006 lien date. As to the documentary evidence, the Board finds that all of the appraisal experts agree that the subject property is a unique, aged building with limitations on any reproduction or replacement of portions of the building due to the City and National landmark status accorded to this subject.

As an ancillary issue, the Board finds that each of the parties' evidence reflects a different square footage for this extremely large subject property. The Board finds that the best evidence of building size was submitted by Ryan reflecting 1,943,009 square feet. In addition, the Board further finds that this size is supported by the MaRous' opinion of 1,553,011 square feet of above grade gross building area. The Board finds that this unique subject property contains lower level retail and restaurant space accessible by a pedway, subway and above-ground bus transportation; therefore, this retail area should be included in the building's square footage determination for it is an income generating portion of the subject property.

As to the cost approach to value, the intervenors' appraiser, MaRous, used five land sales, while testifying that he chose conservatively due to the subject's landmark status which really limits the potential for the subject. He stated that he merely subtracted the land value from his final value conclusion resulting in an improvement value. He stated that the subject's placement on the National Register of Historic Places makes it unlikely that this structure would ever be demolished.

The appellant's appraiser, Ryan, testified that he did not complete a land value for the subject because Block 37 across the street sold in November, 2005, for $100 per square foot. He indicated that the subject and Block 37 share three frontages, with the subject's Wabash frontage considered inferior to Block 37's Dearborn street frontage; therefore, the land value at $100 per square foot was the top of the land value that could be attributed to the subject. He indicated that it is not uncommon for an appraiser to not develop a cost approach. Specifically for this subject, he stated that the underlying site would never be vacant and that market participants would be more concerned with sales generated at the site as opposed to the depreciated costs of a 100-year old building, as is the subject. Ryan also stated that the fact that Block 37 across the street from the subject had not been developed for 25 years inclusive of the 2006 lien year, further supported his decision not to develop a cost approach. He elaborated that the most probable buyer of the subject would be an owner-user; therefore, he developed two of the three traditional approaches to value: the sales comparison and income approaches to value. This is supported by the Dost testimony that the development of the cost approach was not relevant for this subject with the exception of the land value.

Based upon this analysis, the Board finds that the cost approach to value is less than relevant to the development of this subject's market value.

Both MaRous and Ryan developed an income approach to value for the subject property; however, neither appraiser accorded this approach primary weight. Ryan testified that he accorded secondary emphasis to this approach because the subject has been an owner-occupied, department store for over 100 years; therefore, he looked to department store leases, while verifying the lease data with a lease representative. In addition, he noted that his rentals #2 and #3 were aged leases reflecting that there was minimal change in lease terms over the years. Further, he consulted market data surveys as to obtain information on rentals and performances of anchor department stores.

Ryan utilized eight actual leases resulting in a unit rental range between $2.00 and $8.62 per square foot of building area or from 1% to 2.5% of gross sales. His appraisal indicated: that the lease dates ranged from 1975 through 2003; that lease terms ranged from 5 to 35 years; and that lease sizes ranged from 93,957 to 237,281 square feet of building area.

Overall, Ryan testified that all of his rental comparables were department stores, while detailing his adjustments to each rental property. He stated that rental #3 was the Marshall Field's Water Tower Place location with a lease from 1975 at $7.17 per square foot and that rental #2 was the

Lord & Taylor Water Tower Place location with a 2001 lease at $7.90 per square foot, which confirmed that the market was desirable for retailers on North Michigan Avenue in Chicago and that there was minimal change in lease terms over the years. Supporting his assertion regarding the lack of desirability with a State Street location, Ryan mentioned that his appraisal addresses that the Carsons store on State Street closed in March, 2007, due to low sales per square foot and high operating costs with a lease in place at a rate of $1.67 per square foot.

As a secondary rental analysis, Ryan testified that he consulted The Dollars & Cents of Shopping Centers, 2006, published by the Urban Land Institute, which surveys information as to the rentals and performances of anchor department stores. His appraisal stabilized the subject's sales at $115.00 per square foot. Viewing the survey data compiled by the Urban Land Institute in his appraisal, he stated which is generally relied upon by the retail industry, department stores in super-regional malls ranged in sales per square foot from $174.86 to $178.31 with the top 10% of sales identified at $283.39 and the regional median sales per square foot ranging from $156.03 to $111.23.

Based upon these analyzes, Ryan estimated the subject's market rent to be $2.25 per square foot for a potential gross income of $4,371,770. He stated that he used a market based vacancy and collection loss of 7.5% instead of the subject's actual vacancy at approximately 15%. Deducting that vacancy and collection loss of 7.5% resulted in an effective gross income of $4,043,887. He then deducted operating expenses resulting in a net operating income of $3,830,156. After developing the direct capitalization and band of investments methods while also referring to the Korpacz Real Estate Investor Survey, Third Quarter, 2005, he capitalized the subject's estimated annual net operating income by 9.5% reflecting a market value under the income approach of $40,300,000, rounded.

MaRous testified that the subject was an iconic building used as a department store with significant supportive offices, tremendous window exposure, frontage in downtown Chicago, restaurants, cooking school and banquet facilities which were nicely vintage, but in need of modernization and upgrading. He also indicated that he looked at third-party retailers totaling some 55,000 square feet of the subject's building area. He opined that this usage showed a trend in modern retail development as well as a demand for the subject's space. Therefore, he stated that in developing the income approach, he used rental comparables that were downtown office, retail leases because that is what the subject is; as well as older office spaces in similarly situated CBD locations. His first set of rentals were small retail spaces ranging from 666 to 45,904 square feet of downtown space located in multi-tenant buildings or ground floor leases located in major office buildings, but confirmed that they were not located in a department store. His second set of rentals were four department store rentals ranging in building size from 138,171 to 250,363. MaRous testified that his lowest values were for the upper floors because above the 3rd floor, market demand significantly drops. Moreover, he stated that there were no current leases of large department stores which reflected the market's trend. MaRous indicated that his third set of rentals were 7 office spaces located in older buildings that ranged from 460 to 4,650 square feet. In addition, he indicated that he would characterize the subject's upper level office space as Class C or D space. Further, he testified that he assumed that over 1 million square feet of current retail space would probably be redeveloped and occupied by multiple users, but he stated that he did not make any deductions for the costs of potentially breaking up the retail space.

Therefore, he testified that his rent conclusion for office space was at $10.00 per square foot which was below the market range because the subject's space would have to be modernized. Vacancy and collection loss was estimated at 15% for retail area and 55% for office space. He elaborated that the 55% was so high because the subject's as-is office condition does not show well, so there would not be a demand in the market for this type of space. Further, he stated that his value for office space was below the market range.

He estimated an effective gross income of $25,300,878 for the subject. After referring to market sources, he estimated total expenses at $13,844,264. MaRous stated that market surveys reflected a capitalization rate from 8.22% to 8.67%, but he estimated a rate of 8.7% for the subject with a tax load of 5.76% resulting in loaded capitalization rate of 14.446%. Capitalizing the subject effective gross income reflecting a market value of $79,200,000 for the subject. He testified that he used a significantly higher rate than that reflected in Korpacz due to the subject's great location and tremendous demand in the market, but that the subject is still an older, multi-story building so there would be more risk factors; therefore, he choose a rate above the market range.

The Board finds that the best evidence of income approach development for this subject property was the appellant's appraiser, Ryan's choice of more appropriate rental comparables as well as usage of market surveys to obtain a capitalization rate. The Board accorded diminished weight to the MaRous development of the income approach which contained inappropriate suggested comparables and/or an incompatible usage in direct contradiction to the subject's actual usage as of the 2006 lien date. Nevertheless, the appraisal experts agreed that the income approach to value was given secondary weight due to the unique characteristics of this 100-year old subject property, as an owner-occupied retail department store; therefore, so too will the Board give this approach diminished weight.

The courts have stated that where there is credible evidence of comparables sales, these sales are to be given significant weight as evidence of market value. In <u>Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App. 3d 207 (2nd Dist. 1979)</u>. The Court further held that significant relevance should not be placed on the cost approach or the income approach especially when there is market data available. <u>Id</u>. Moreover, in <u>Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9</u> (5th Dist. 1989), the Court held that of the three primary methods of evaluating property for purposes of real estate taxes, the preferred method is the sales comparison approach.

The Board shall place primary emphasis on the 17 sale comparables submitted by the appellant's and the intervenors' appraisers. Overall, the Board accorded diminished weight to appellant's sales #1, #3, #4, #6 and #7 as well as the intervenors' sales #1, #2, #3 and #5 due to the questionable nature of the sale transaction, the aged date of sale, and/or the variance in property rights conveyed which were leased fee instead of fee simple. Therefore, the Board placed most weight on appellant's sales #5, #8, #9, #10, #11 and #12 as well as the intervenors' sale #4. These sales contained single-tenant, retail department stores which is the same usage as the subject property and that ranged in building size from 22,316 to 254,720 square feet. They sold from January, 2003, to July, 2005, for unadjusted prices that ranged from $20.09 to $60.49 per square foot. In contrast, the subject is a 100-year old, retail department store with city and national landmark status containing 1,943,009 square feet with a valuation accorded by the assessor at $40.95 per square foot. After making adjustments for pertinent factors not the least of which is location, physical attributes, land size, floor plate size, building age, building size and landmark status, the

Board finds that the subject property had a market value of $69,500,000 as of the assessment date at issue. Since market value has been established, the 2006 level of assessment for class 5, commercial property under the Cook County Real Property Assessment Classification Ordinance of 38% shall apply. (86 Ill.Admin.Code §1910.50(c)(2)).

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

Chairman

Member

Member

Member

Acting Member

DISSENTING:

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: November 23, 2016

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.