FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Lord & Taylor - Old Orchard
DOCKET NO.: 07-24173.001-C-3
PARCEL NO.: 10-09-411-074-0000

The parties of record before the Property Tax Appeal Board are Lord & Taylor - Old Orchard, the appellant, by attorney Gregory J. Lafakis and attorney Ellen Berkshire, of Verros, Lafakis & Berkshire, P.C. in Chicago; the Cook County Board of Review by assistant state's attorney Benjamin Bilton with the Cook County State's Attorney's office in Chicago; and the Niles Twp HSD 219, the intervenor, by attorney Michael J. Hernandez and attorney Scott Metcalf of Franczek Radelet P.C. in Chicago.

Based on the facts and exhibits presented, 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:

LAND:	$ 424,456
IMPR.:	$2,256,534
TOTAL:	$2,680,990

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 2007 tax year. The Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of 72,064 square feet of land improved with a two-story, single-tenant, anchor department store of masonry construction located in a super-regional shopping mall. The retail store contains 121,642 square feet of building area and is owner-occupied. This store was constructed in 1995.

At the commencement of this hearing, the Board finds that the 2007 and 2008 appeals involve common issues of law and fact and a consolidation of these appeals for hearing purposes does not prejudice the rights of the parties. Therefore, pursuant to Section 1910.78 of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code 1910.78), the Board consolidated the above appeals solely for hearing purposes, while noting that distinct decisions would be rendered for each appeal year.

As to the basis of this appeal, the appellant argued that the fair market value of the subject is not accurately reflected in its assessed value.

As to the overvaluation argument, the appellant's pleadings included a copy of a summary report of a complete appraisal undertaken by appraiser, Joseph Ryan. The Ryan appraisal addressed two of the three traditional approaches to value, while opining an estimated market value of $6,100,000 as of the effective date of January 1, 2007. This appraisal was identified for the record as Appellant's Exhibit #1.

Ryan was offered as an expert in real estate valuation of anchor department stores and in the valuation of the subject property without objection from the board of review. After voicing their objection, the intervenors requested additional voir dire as well as requested judicial notice regarding the Board’s decision relating to a Von Maur property, specifically docket #05-23287-C-3. During additional voir dire, the appellant also requested that the Board take judicial notice of the Board’s decision regarding the subject property in tax year 2005, specifically docket #05-20938-C-3, in which the same intervenors accepted Mr. Ryan as an expert witness.

Ryan testified that he has been an appraiser for over 28 years after beginning his work career with the Cook County Assessor's Office in 1980. He indicated that he holds the designation of Member of the Appraisal Institute (MAI) as well as real estate appraisal licenses in Illinois, Indiana and Michigan. In addition, he stated that he was the director of technical review and responsible for the entire assessment process within Cook County. Further, Ryan stated that as of the date of this appraisal of the subject property he had completed hundreds of appraisals of anchor department stores associated with regional malls. After voir dire, the Board accepted Ryan as an expert in the valuation of anchor department stores as well as the subject, over the intervenor's objection.

Ryan stated that he undertook an interior and exterior inspection of the subject in August of 2007. In addition, Ryan testified that he continued to review the subject and opine a market value for the subject in subsequent appraisals with effective dates in 2009, 2010 and 2013. He stated that there have been neither significant physical changes to the subject nor changes to the subject's market for similar properties from January 1, 2007 to January 1, 2008.

The appraisal stated that the majority of the building is utilized as open retail sales area. He indicated that the purpose of his appraisal is to estimate the market value of the fee simple estate of the subject property and that the subject is a newer, anchor tenant in a desirable shopping center. He testified that Old Orchard Mall is one of the top ten core retail markets in the Chicago area, specifically sixth.

As to the subject's area and market, Ryan added that there has been a market trend away from department stores to big-box retail stores. Ryan testified that due to the effects of new trends in retailing, the Chicago retail market has undergone significant changes in the past years and that from a real estate standpoint, the increased competition from large superstores, power centers, and free-standing, big box stores will most likely cause an unstable period for closely held specialty stores which are experiencing a decline in sales volume. He explained that power centers contain non-traditional anchor store tenants, while category killers are retailers that sell only one product line. As to the subject's mall, he stated that there are three other anchor department stores located in the subject's mall.

Ryan further explained that this subject property's market area is really the retail market on a national or regional basis due to the fact that this property is an anchor department store. Ryan then testified that the subject’s site contained 72,000 square feet and an overall effective age of approximately 10 years. The subject property is improved with a two-story, masonry, anchor department store building with 121,642 square feet. The structure is an owner-occupied, single-tenant, anchor department store attached to a super-regional shopping mall. He stated that the subject is an anchor tenant in a desirable shopping center. He also added that his appraisal report conforms to the standards set forth in the Uniform Standards of Professional Appraisal Practice (USPAP).

As to the subject's history, Ryan stated that the property transferred in 2006 but that this sale was part of a bulk transfer where National Realty Development Corporation purchased all of the Lord & Taylor stores, inventory, and other intangible assets. Therefore, this sale was not considered an arm's length transaction.

Ryan testified that the cost approach was inapplicable because his research did not uncover any sales of anchor mall pad sites in the subject's local area. He stated that there is a special relationship between anchor department stores and the developers of malls while stating that the retail industry thinks that an anchor department store generates traffic with developers requiring traffic to enhance the value of their inline stores. Moreover, his appraisal and testimony indicated that market participants in the retail industry do not rely on the cost approach in making investment decisions.

As to the highest and best use analysis, Ryan testified that the property's highest and best use as if vacant was for development of a similar commercial, retail structure, while its highest and best use as improved was its current use as an anchor-type, commercial retail building.

The Ryan appraisal addressed two of the three traditional approaches to value in developing the subject's market value estimate. The income approach reflected a value of $6,100,000, rounded, and the sales comparison approach indicated a value of $6,100,000, rounded. In reconciling these approaches to value, Ryan placed primary reliance on the sales comparison approach, although the income approach yielded the same value, to reflect his final value of $6,100,000 for the subject.

Under the sales comparison approach, Ryan testified he analyzed 13 sales of similar properties located in the Midwest. The properties are anchor department stores located in Illinois, Michigan, Colorado and Ohio. The properties consist of anchor department store buildings in regional malls. Ryan testified that he used sales within the Midwest because, after discussions with representatives in the department store field, there are three markets for department stores: the East Coast, the West Coast, and between the Appalachians and the Rocky Mountains. He opined it was easier to make adjustments to anchor department stores because they have similar characteristics than different types of stores in closer proximity to the subject.

Based upon the grid analysis identified on page 59 of the Ryan appraisal, the comparables ranged in building size from 94,341 to 254,720 square feet of building area and in land size from 56,192 to 755,330 square feet. They ranged in land-to-building ratio from 0.27:1 to 3.65:1 and ranged in improvement age from 5 to 30 years. The comparables sold from January 2000 to April 2006, for prices ranging from $2,750,000 to $10,215,000, or from $20.09 to $50.07 per square foot of building area, including land. Ryan described each sale in detail. He testified that, although sales #3 and #4 were bankruptcy sales, he spoke to the parties involved with the sales and determined them to be at market. He further testified that sale #13 was a leased fee sale.

Ryan also stated that he verified the terms and conditions of each of the sales by speaking to a party involved in each transaction. Moreover, he indicated that his comparable sales were anchor department stores associated with a regional or a super-regional mall. He opined that only another anchor department store is comparable to the subject due to the characteristics of size, age, condition and usage. He stated that no adjustments were made for land-to-building ratio as parking is considered inherent in an anchor department store, therefore, no adjustment is required.

Ryan further testified that after making adjustments as reflected on his grid analysis on page 67 of the appraisal, he arrived at an adjusted sale range of $48.00 to $52.00 per square foot of building area, including land, and reconciled the subject at $50.00 per square foot of building area, including land, which reflects an estimated market value for the subject of $6,100,000, rounded.

Under the income approach, Ryan testified he analyzed seven comparables located in Illinois, Kentucky, Ohio, and Michigan. Ryan testified the comparables range in size from 93,957 to 297,000 square feet. The commencement dates on the leases ranged from 2000 to 2007 with lease terms from 5 to 30 years. Comparable #7 was listed for lease at $3.00 per square foot, with no offers in the last three years. The remaining comparables' rents ranged from $2.00 to $4.58 per square foot, triple net, with four comparables using rent based on 1.0% or 2.5% of sales. Ryan testified after consideration of the data and adjustments for age, condition, utility and location, he estimated rent for the subject of $5.00 net per square foot, as even the newer comparables needed upward overall adjustments.

In addition, Ryan's appraisal indicated that he reviewed the actual sales of the subject and stabilized the sales at $100.00 per square foot. Actual sales for the subject ranged from $98.04 per square foot in 2006 to a high of $175.53 in 1999. Ryan testified that he reviewed *Dollars & Cents of Shopping Centers-2006* to estimate a lease for the subject based upon gross median sales for department stores and national chain department stores in super-regional malls. The appraisal indicated that the subject store with sales per square foot of $100.00 has lower than typical sales per square foot than the median sales for the national department stores ($156.03 to $174.86) and is below the low end of the range for Midwest department stores ($111.23 to $178.31). He also estimated a percentage of rent ranging from 1.5% to 3.0% of gross sales, which indicates an estimated market rent of $1.50 to $3.00 per square foot on a net basis. This is below the median rent for national department stores, which ranges from $3.22 to $3.47 per square foot, as well as the Midwest rent which ranges from $3.29 to $4.17 per square foot. As the estimated market rent derived from a percentage of sales was below the range of regional rent comparables, Ryan placed more weight on the rent derived from the market rent comparables and estimated a market rent of $5.00 per square foot of building area on a net lease basis.

The appraisal estimated the potential gross income (PGI) at $608,210. Ryan testified he estimated vacancy and collection loss (V&C) of 1.0%. Deducting V&C resulted in an effective gross income (EGI) of $602,128 for the subject. Ryan testified he allocated expenses at $0.19 per square foot or 3.8% of PGI. The estimated expenses were deducted from the EGI resulting in a net operating income (NOI) of $579,016 for the subject.

To estimate the capitalization rate, Ryan testified he reviewed *Korpacz Investor Survey*, First Quarter, 2007 for malls which had an estimate of 6.00% to 9.00%. He opined that the subject would be at the high end of the range due to the fact that anchor stores by themselves have more risks than regional malls due to their size and limited number of potential users. The appraisal also indicated the band of investment technique was also reviewed. Ryan testified he estimated a capitalization rate of 9.5%, which was supported by comparable sale #13. Dividing the NOI of $579,016 by the appraiser's total capitalization rate of 9.5% resulted in an indicated value for the subject of $6,100,000, rounded.

In reconciling the two approaches to value, Ryan testified he accorded primary weight to the sales comparison approach to value as the subject is an owner occupied, single-tenant anchor department store with no rental history. The appraiser testified he considered the income capitalization approach to value as the sales and income approaches yielded the same result. Therefore, he concluded a final estimate of value for the subject of $6,100,000. Ryan testified that there was no significant change in value for the subject between January 1, 2007 and January 1, 2008.

Under the intevenor's cross examination, Ryan testified he had inspected all the sales comparables on multiple occasions and that he verified the sales transactions with representatives of the buyers or sellers of these properties.

As to Ryan's improved sales, he testified that sale #1 was a leased fee sale of a building approximately 40 years older than the subject. He added that Frandor Shopping Center was not a Class A mall.

As to sale #2, Ryan was shown a copy of Intervenor's Exhibit #2 which were printouts wherein this sale is identified as a sale-leaseback transaction. Ryan further testified that he made no adjustments for market conditions or size of the property.

As to sales #3 and #4, Ryan stated that he was aware that these sales were part of a bankruptcy transaction. He also stated that in relation to a bankruptcy sale, one has to determine whether there was proper exposure to the market and if the sale met the criteria for an arm's length transaction, which he believes was the case in these sales. He also indicated he made no adjustments for market conditions, location, or size of the properties.

As to sale #5, Ryan testified that this sale involved the mall owner's purchase of the property but, in his opinion, this did not indicate a different highest and best use of the property. He also testified that no adjustments were made for conditions of sale.

As to sale #6, Ryan was shown a copy of Intervenor's Exhibits #3 and #4, which consisted of data from previous Ryan appraisals of Lord & Taylor properties that yielded a different sale price per square foot due to differing methodologies used for capitalizing sale #6's ground lease. Ryan testified that he represented that there was a different sales price for this same sale in prior appraisals. Additionally, no adjustments were made for market conditions.

As to sale #7, Ryan testified that this property was sold in conjunction with sale #6. He added that no adjustments were made for location, conditions of sale, market conditions, or size of the property.

As to sale #8, Ryan testified that he made no adjustments for market conditions even though this sale occurred four years prior to the valuation date.

As to sale #9, Ryan testified that this mall was struggling with a vacancy problem and the mall was already undergoing a redevelopment plan at the time of sale. He further testified that this property specifically was vacant at the time of sale and that no broker was involved in this sale transaction.

As to sale #10, Ryan could not confirm whether this Lord & Taylor store had closed prior to the sale date. He testified that he made no adjustments for conditions of sale, and that he considered Colorado to be part of the Midwest for department store purposes.

As to sale #11, Ryan could not confirm whether this Lord & Taylor store had closed prior to the sale date.

As to sale #12, Ryan testified that Lord & Taylor did occupy this space prior to the sale, and no adjustments were made for market conditions.

As to sale #13, Ryan testified that he made no locational adjustments.

He was then asked to review a copy of Intervenor's Exhibit #3, which consisted of his prior appraisal of Lord & Taylor at Old Orchard, specifically his adjustment chart on page 67. He testified that he made different adjustments for location, size of building, market conditions and land-to-building ratio in 2004 and 2007 for the identical sale comparables as compared to the subject property.

As to the rental comparables, Ryan testified that rental comparables #1 and #2 are not located at super-regional malls and that he made no adjustments for market conditions to any of his rental comparables.

Ryan was also shown a copy of his 2007 appraisal of the Macy's store at Old Orchard, marked as Intervenor's Exhibit #5. He testified he stabilized the per square foot sales of the Macy's store at $200.00 per square foot, but chose not to include any adjustment to Lord & Taylor's sales per square foot to account for better performance of another anchor department store at the same mall, even though he acknowledged market participants look at the performance of all anchor department stores when making real estate purchase decisions.

Next, Mr. Ryan was handed Intervenor's Exhibit #6, the *Korpacz* report he used to develop his capitalization rate. Ryan testified that he was unsure which classification Old Orchard Mall would fall into because he was unaware of the mall's inline retail sales per square foot value. Ryan further testified that he *assumed* the sales of the mall were higher on a per square foot basis than that of the subject.

Finally, Mr. Ryan was again directed to page 90 of Intervenor's Exhibit #5, his 2007 appraisal of Macy's at Old Orchard. He testified that Macy's contains 430,000 square feet of area and was valued by him as of January 1, 2007, at $24,500,000 or approximately $57.50 per square foot. He further testified that he is aware of the general rule in appraisal practice that the larger the property, the lower the unit of value.

The board of review adopted the intervenor's multiple questions posed of Ryan but also noted that the current client for the subject property, Mr. Mason, was also the representative who verified Ryan's sale data for comparables #6, #7, #10 and #12, as confirmed by Ryan's testimony.

On re-direct, Ryan explained that the differences in his data and adjustments between his 2004 and 2007 appraisals of Lord & Taylor Old Orchard were due to: being three years smarter; his gaining more exposure and more research on the department store market; and his expansion of his base of people with whom he has traded data. He also testified that he improved his ground lease methodology between those time periods.

On re-cross examination, Ryan testified that the building size, location, and land-to-building ratios of his sales comparables had not changed from 2004 to 2007.

Lastly, upon questioning by the Administrative Law Judge, Ryan indicated that over 90 percent of Lord & Taylor at Old Orchard is comprised of retail sales floor area. He also testified that he believed market conditions were the same for the year 2000 as in the year 2007 for department store properties.

The board of review submitted its "Board of Review-Notes on Appeal" wherein the subject's total assessment of $3,201,008 was disclosed. This assessment reflects a fair market value of $8,423,705 when the Cook County Real Property Assessment Classification Ordinance level of assessment of 38% for Class 5A commercial property is applied. In support of this market value, the board of review submitted a memorandum by Ralph F. DiFebo, Jr. stating comparable sales indicate an unadjusted range from $69.76 to $133.94 per square foot of building area, including land. The memorandum indicates that these comparables were not adjusted for any market conditions. The board of review also included: an aerial view of the subject property; the subject's property record card; a grid listing the assessed market value per square foot of 12 anchor department stores located throughout Cook County, Illinois; and a list of seven big-box or anchor department stores across the continental United States indicating their sale price per square foot derived from sales occurring from 2004 through 2007. The analyst also attached a descriptive printout for those seven sales. At hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions. As a result of its analysis, the board requested confirmation of the subject's assessment.

In support of the intervenor's position, the intervenor submitted
a complete, summary appraisal of the subject prepared by Brian Aronson with an effective date of January 1, 2007 and an estimated market value of $9,165,000, which was marked as Intervenor's Exhibit #1. Mr. Aronson's testified that: he holds the MAI designation; has been an appraiser since 1991; the majority of his work is in the Chicago metropolitan area; 90 percent of his 800 to 1,100 appraisals have been for commercial properties; he has previously appraised anchor department stores, super-regional malls and other retail properties; and he has testified as an expert before the Property Tax Appeal Board and other similar forums. Accordingly, the Board accepted Mr. Aronson as an expert witness in appraisal valuation, including that of anchor department stores.

Aronson's appraisal developed two of the three traditional approaches to value as well as a land value. The income approach estimated a value of $9,165,000, while the sales comparison approach estimated a value of $9,060,000. Initially, Aronson testified regarding various typographical errors contained in his report, however, he indicated none would materially affect his opinion. He stated that his land value estimate for the subject was $3,965,000.

He also testified that the purpose of his assignment was to prepare an opinion of value of the fee simple interest in the subject property. His appraisal noted that he personally inspected the property on January 8, 2010. It also stated that as of the valuation date, the subject was one of four anchor department stores in the Old Orchard Shopping Center. Aronson further testified, and his appraisal indicated, that based on *Korpacz*, the International Council of Shopping Centers statistical information regarding sales productivity of non-anchor tenants in U.S. malls as of year-end 2006, interviews with Westfield Old Orchard Mall's ownership, and the reported sales per square foot of the other three anchor department stores in Old Orchard, the subject is part of an A+ quality super-regional mall. The subject was identified as being situated on a pad site in this mall, with access obtained via the mall's ring road. As to parking, the appraisal stated that the subject does not have on-site vehicle parking; however, the subject reportedly had use of the adjacent surface parking areas and parking decks through an agreement with the mall owner. Overall, the appraisal stated that the subject's site is well suited for its current use.

As to the subject's improvements, Aronson's appraisal stated that the subject is a typical department store with two entrances for customers. The building's finish was considered very good, while consisting of a variety of attractive and high-quality surfaces. Aronson concluded that the building was in good condition relative to its age. An effective age of 8 years was estimated with a total life of 45 years and a remaining economic life of 37 years. The improvement contained 121,642 square feet of building area sited on 72,064 square feet of land.

As to the highest and best use analysis, Aronson testified that the property's highest and best use, as if vacant, was for retail development, while its highest and best use, as improved, was its current use as an anchor department store retail building.

Aronson noted that typical buyers of this property type would rarely consider a cost approach; therefore, he developed a land value for the subject using four land sales. None of these sales included pad sites for super or regional mall campuses. They ranged in size from 73,353 to 473,550 square feet and in an unadjusted value from $31.63 to $60.33 per square foot. As to his land comparables, he stated that he considered these sales based on their proximity to the subject as well as their similar site sizes. He concluded a land value for the subject of $55.00 per square foot or $3,965,000, rounded, based upon 72,064 square feet of land.

Under the income approach, Aronson utilized five rental properties identified as anchor stores which ranged in rental area from 102,314 to 160,895 square feet and in base rent from $3.92 to $8.69 per square foot.

As to rentals #1 and #2, Aronson testified that they are both Carson Pirie Scott stores located in Class A quality malls in the Chicago metropolitan market. Rental #1 contains 160,895 square feet, while rental #2 contains 124,000 square feet.

As to rental #3, Aronson testified that this is a Carson Pirie Scott store located in a lifestyle center known as Streets of Woodfield, adjacent to Woodfield Mall. He indicated that although it is not located in a super-regional mall, it is Class A quality and similar in size to the subject property.

As to rental #4, this is a JCPenney located in Stratford Square Mall, a super-regional mall located in the Chicago metropolitan area. This is a Class B quality mall in an inferior location, but similar in building size to the subject property.

Rental #5 was comprised of two units in Lincolnwood Town Center, a Class C+ quality mall. The first unit is a Carson Pirie Scott store similar in size to the subject property, while the second unit is a Kohl's department store of approximately 102,000 square feet. Aronson testified that the subject's historical gross sales per square foot of leasable area are substantially lower and underperforming relative to these two properties which are located in this C+ quality mall.

Aronson further testified that he reviewed gross sales as part of his analysis. He referred to the chart on page 73 of his appraisal which indicates the subject's historical gross sales per square foot are substantially below market compared to its peer anchor department stores located in the Old Orchard Mall.

Aronson testified that he also reviewed *Dollars and Cents of Shopping Centers, 2008* to assist in determining his market rental conclusion. After making adjustments to his comparables, considering the other three anchor department stores gross sales per square foot, and reviewing survey data, Aronson estimated a market rent for the subject at $7.00 per square foot, or $851,494. He indicated that market data based on a stated price per square foot of gross area is considered more reliable than rent based on a percentage of gross sales revenue per square foot.

The appraisal also refers to the *Chicago Retail Market Index Brief,* Fourth Quarter, 2006, published by CB Richard Ellis relating to North Suburban submarkets of malls reflecting vacancy rates of 6.5%. However, Aronson stabilized a vacancy rate for the subject of 5% resulting in an EGI of $808,919. He estimated operating expenses include management fees, replacement reserves and real estate taxes at $44,551. Deducting expenses resulted in a NOI of $764,368.

In determining the appropriate capitalization rate (CAP rate), Aronson testified that he used the direct capitalization method through analysis of his improved sale comparables. His appraisal indicated that one of his comparable sales had available income data. Additional sales data indicated the CAP rates ranged from 7.76% to 8.66%. He also reviewed *Korpacz Real Estate Investor Survey*, First Quarter, 2007, which had a range from 5.50% to 9.50% and an average of 6.89% for national regional malls, and a range of 5.00% to 7.00% with an average of 5.92% for Class A+ quality malls. Aronson indicated that the subject is considered to be a Class A+ building-quality property in a desirable location with market appeal, therefore, he opined that a CAP rate of 8.0% was reasonable. NOI was then capitalized by this rate to reflect a market value estimate under the income approach of $9,165,000, rounded, for the subject.

Under the sales comparison approach, Aronson utilized three sale comparables located in Illinois. Only sale #1 was an anchor department store, while sales #2 and #3 were single-tenant retail buildings. Sale #1 was identical to the appellant's sale #13 in the Ryan appraisal. Aronson testified that location is one of the primary factors in obtaining suggested comparables because to consider sales of properties in states other than Illinois has limited relevance.

The suggested comparables sold from April 2004 to January 2008 for prices ranging from $5,800,000 to $9,200,000 or from $46.29

to $63.65 per square foot of building area, including land. They ranged: in land size from 338,026 to 442,134 square feet; in net rentable area from 91,124 to 188,000 square feet of building area; and in land-to-building ratio from 1.80:1 to 4.85:1. Pages 91 through 103 within the Aronson appraisal provided relevant details of each sale.

Aronson testified as to each improved sale, as follows: sale #1 is a JCPenney anchor store in Stratford Square Mall, a Class B quality mall. This sale reflects a leased fee transfer.

Sale #2 is a one-story masonry and metal-paneled single tenant retail building. It is part of the Orland Square Mall campus but is not easily accessible or connected to the super-regional mall. This property is also reflective of a leased fee transfer. It was leased to John M. Smyth's Homemakers, however, income/expense information was unavailable.

As to sale #3, Aronson testified that this property is a former Walmart facility located in Crystal Court Shopping Center. The buyer was JCPenney. Aronson further testified that he considered this property based on the buyer's intended use to operate it as a department store.

After making adjustments for various factors of comparison, Aronson testified he determined a value for the subject of $74.50 per square foot of building area which yields an estimate of value for the subject under the sales comparison approach of $9,060,000, rounded.

In reconciling the various approaches, Aronson testified he gave heavy emphasis to the income approach due to the quality of the limited sales data. Therefore, he estimated a value for the subject property as of January 1, 2007 at $9,165,000. He testified that his opinion of value would not differ as of January 1, 2008.

Under cross-examination by the appellant, Aronson testified as to his land value analysis. He further testified to the importance of location in considering his sale comparables.

As to Aronson's improved sales, he testified that he did not consider sales outside of the Chicago metropolitan market area although he was aware of them. As to sales #1 and #2, he reiterated that these were leased fee sales. Additionally, Aronson further testified that sale #2 was a furniture store in a mall outlot. As to sale #3, Aronson testified that this was a discount department store in a power center and was sold fee simple. Aronson also confirmed that none of his sale comparables were located in a mall comparable to the quality of the Old Orchard Mall, where the subject is located.

As to his rental comparables, Aronson testified that rentals #1, #2 and #3 are inferior in location and mall quality. He clarified that he considered the rent per square foot from the rental properties to be a better and more reliable indication of market rent because it excludes business value based on the sales per square foot derivations.

Overall, Aronson testified that as limited comparable improved sales existed in the subject's marketplace, he considered the sales comparison approach but placed greater emphasis on the income approach to value.

In rebuttal, the appellant submitted a desk review of the intervenor's Aronson appraisal, prepared by Gary Battuello, which was marked and identified for the record as Appellant's Exhibit #2. Mr. Battuello was called as a witness at hearing. He testified that he has been a full-time real estate appraiser since 1981, while also holding the designation of MAI. He stated that he is a certified real estate appraiser in Minnesota, Wisconsin, and Illinois with temporary permits issued for assignments outside of these jurisdictions. He indicated that he is familiar with anchor department stores, while conducting from 50 to 100 review appraisals. He testified that the vast majority of these reviews relate to anchor department stores in Cook County. Battuello was offered as an expert in the valuation of anchor department stores and as a review appraiser of the same type of properties without objection from the board of review. The intervenor's attorney objected but did not pose any additional voir dire questions. Over the intervenor's objection as to the offer of Battuello as an expert in the valuation of anchor department stores, solely, Battuello was accepted by the Board as an expert in the valuation of anchor department stores as well as an expert in undertaking assignments as a review appraiser of anchor department stores.

Regarding Aronson's land sale comparables, Battuello testified that none of them were intended for use as an anchor department store or large scale retail.

As to Aronson's rental properties, Battuello stated that rental #1 was part of a portfolio of properties done as a sale-leaseback by Caron Pirie Scott and was not an arm's-length negotiated lease. Rental #3 is an anchor store in a lifestyle center and not a regional or super-regional center. He further testified that two rentals comprise rental #5: the Carson Pirie Scott lease is the original build-to-suit lease while the Kohl's is a much more recent arm's-length lease which should be adjusted for a large, up-front payment to the tenant. They are both located in a C+ rated mall. In addition, he indicated that Aronson considered a retail sales analysis using a 3% factor against an estimated $225 per square foot in sales, which is beyond any of the data presented. He also used market data of capitalization rates for shopping centers, not anchor department stores, as three of the four centers Aronson lists are inline space. However, Battuello points out that the subject is neither a regional mall nor a leased property, but an owner-occupied, anchor department store located in an enclosed super-regional mall.

Battuello did admit that Aronson had good information regarding the anchor stores' sales in Old Orchard Mall. He stated that even if you consider Lord & Taylor to be under-performing, and excluding super-performer Nordstrom, $200 per square foot in sales would be an appropriate value for Old Orchard Mall.

As to the sales comparison approach, Battuello's report indicated that Aronson's sale #1 (identical to the Appellant's sale #13), is a leased-fee interest in an anchor department store with different property rights than the subject. He testified that sale #2 is an outlot rather than an attached anchor. As to sale #3, it is a free-standing, discount department store with a land-to-building ratio of approximately 5:1.

In addition, Battuello stated that Aronson's adjustments are done on a qualitative basis, rather than a quantitative basis as he failed to include an adjustment grid. Battuello further testified that all of Aronson's comparables were inferior to the subject. As Aronson did not have any sales that were superior to the subject, his methodology for making upward adjustments was not reliable.

Overall, Battuello stated that Aronson's income approach uses an unsupported market rent and capitalization rate and the sales comparison approach was based on unreliable adjustments, while testifying credibly on all areas.

Under cross-examination by the intervenor, Battuello stated that Aronson used proper appraisal methodology. He also answered various questions about the need for adjustments on non-identical properties.

On re-direct by the appellant, Battuello indicated that Aronson made 40% to 60% adjustments to his sale prices, which was substantial in his opinion.

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. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002); 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 appellant met this burden of proof and a reduction in the subject's assessment is warranted.

In determining the fair market value of the subject property for tax year 2007, the Board examined the parties' two appraisal reports, the appraisal review report, and testimony as well as the board of review's written evidence submission.

The Board finds the board of review's witness was not present or called to testify about their qualifications, identify their work, testify about the contents of the evidence, the conclusions or be cross-examined by the parties and the Board. Without the ability to observe the demeanor of this individual during the course of testimony, the Board gives the evidence from the board of review no weight.

The Board then reviewed the two appraisals, appraisal review report and testimony from all witnesses to determine the best evidence of the subject's market value.

Initially, the Board accords minimal weight to the Aronson appraisal and testimony. Specifically, Aronson's appraisal identifies his assignment as appraising the fee simple property rights of the subject; however, his improved sales contained contrasting property rights and highest and best uses. Aronson's sale #1 (identical to the Appellant's sale #13), is a leased-fee interest in an anchor department store with different property rights than the subject. Sale #2 is an outlot rather than an attached anchor, while sale #3 is a free-standing, discount department store with a land-to-building ratio of approximately 5:1. Additionally, he illustrated his adjustments in a vaguely qualitative approach versus a quantitative approach.

Moreover, the Board notes that Aronson gave the most emphasis in his value conclusion to the income approach. The Board finds that in Aronson's income approach he applied vacancy and capitalization rates unsupported by market data. The market data for vacancy rates ranged from 6.5% for the North Suburbs Market to 7.2% for the entire market; however, Aronson applied a 5% vacancy rate to the subject. Aronson used one of his sale comparables and its respective NOI to indicate a CAP rate of 8.13%; however, this property was a leased fee transfer with different property rights than that of the subject. Overall, the Board finds Aronson's analysis flawed and lacking in credibility.

In contrast, the Board finds credible Ryan's explanation for the absence of considering the cost approach to value based upon industry standards that buyers and sellers of properties such as the subject would not look to this approach. Ryan credibly testified that he accorded primary weight to the sales comparison approach to value for the income approach is speculative in application to an owner-occupied, single-tenant, anchor department store. Further, the Board finds persuasive Ryan's testimony that buyers and sellers of large anchor department stores in regional and super-regional malls deal on a national market; thereby, Ryan chose comparables sited both in Illinois and in other states while obtaining comparables with similar highest and best uses.

However, Ryan testified he previously stabilized the per square foot sales of the Macy's store at Old Orchard at $200.00 per square foot, but chose not to include any adjustment to Lord & Taylor's retail sales per square foot value to account for better performance of another anchor department store at the same mall, even though he acknowledged market participants look at the performance of all anchor department stores when making real estate purchase decisions.

Moreover, Ryan testified that he made different adjustments for location, size of building, market conditions and land-to-building ratios in 2004 and 2007 for the identical sale comparables as compared to the subject property. He further testified that the building size, location, and land-to-building ratios of his sales comparables had not changed from 2004 to

2007. Notwithstanding, when questioned by the Administrative Law Judge, Ryan testified that he believed market conditions were the same for the year 2000 as in the year 2007 for department store properties, which contradicts his differing prior adjustments. This calls into question the final value conclusion opined by Ryan for the subject property as of the valuation date.

The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207 (2nd Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989). Therefore, the Board will give this approach the most weight and analyze the best sale comparables.

The Board finds the best evidence of market value was the unadjusted sale comparables contained in the appellant's appraisal. Sales #1, #2 and #13 were discounted due to their being lease-fee and sale-leaseback transactions with varying property interests from the subject. Sales #6 and #7 were also accorded less weight as they were sold in conjunction with each other, with sale #6 having a ground lease with a questionable market value. Ryan did testify that although sales #3 and #4 were part of a bankruptcy transaction, he determined there was proper exposure to the market and indicated the sales met the criteria for arm's length transactions. See Calumet Transfer, LLC v. Prop. Tax Appeal Bd., 401 Ill. App. 3d 652 (1st Dist. 2010). Additionally, the remaining sale comparables were given significant weight in the Board's analysis.

These comparables have unadjusted sales prices ranging from $20.09 to $50.07 per square foot of building area, including land. The subject property's assessed value equates to a market value of $69.25 per square foot of building area, including land, which is above the unadjusted range of comparables. The Board notes, however, that based on undisputed testimony of the appraisers, the subject property is a newer building located in a desirable location in a Class A+ rated mall. Therefore, after considering all the evidence including the experts' testimony and written documentation as well as the adjustments necessary to the unadjusted sales values, the Board finds that the subject property should have a market value of $58.00 per square foot of above grade building area including land, which is slightly higher than the best comparables contained in the record. Since the market value has been determined, the Cook County Real Property Assessment Classification Ordinance level of assessments of 38% for Class 5a commercial property shall apply. Based on this analysis, the Board finds that the market value for the subject property as of the assessment date of January 1, 2007 was $7,055,236, and therefore, a reduction is warranted.

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

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: April 24, 2015

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.