FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Macy's
DOCKET NO.: 09-30776.001-C-3
PARCEL NO.: 07-13-200-005-0000

The parties of record before the Property Tax Appeal Board are Macy's, the appellant(s), by attorney Ellen G. Berkshire, of Verros, Lafakis & Berkshire, P.C. in Chicago; the Cook County Board of Review by assistant state's attorneys Benjamin Bilton and Christopher Shouldice with the Cook County State's Attorney's office in Chicago; the Palatine Twsp. HSD 211, and Schaumburg CCSD #54, intervenors, by attorney Michael J. Hernandez 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:	$ 3,022,196
IMPR.:	$ 2,673,529
TOTAL:	$ 5,695,725

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 2009 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 967,103 square feet of land improved with a three-story, single-tenant, anchor department store of masonry construction, located in a super-regional shopping mall commonly known as Woodfield Mall in Schaumburg, Illinois. The retail store contains 325,470 square feet of building area and is owner-occupied. This store was originally constructed in 1971, with a major renovation in 1995. There is also a two- and three-level parking deck with 490 parking spaces and an elevator attached to the main improvement.

At the commencement of this hearing, the Board finds that the 2007, 2008 and 2009 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 $18,000,000 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. 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 on June 9, 2008. 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 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, 2009. He also testified that he has appraised the Lord & Taylor and Sears stores in the Woodfield Mall as well.

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 in good condition given its age and utility in a desirable shopping center. He testified that Woodfield Mall is one of the top core retail markets in the Chicago area, specifically second, behind Fox Valley Mall.

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 four 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 irregular site contained 967,000 square feet and an overall effective age of approximately 25 years. The subject property is improved with a three-story, masonry, anchor department store building with 325,470 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 there were no deeds or transfer declarations filed on this property within a relative time period.

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 $18,000,000, rounded, and the sales comparison approach indicated a value of $17,900,000, rounded. In reconciling these approaches to value, Ryan placed primary reliance on the sales comparison approach to reflect his final value of $18,000,000 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 61 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. Additionally, his testimony indicated sale #6 was purchased subject to a land lease. 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 70 of the appraisal, he arrived at an adjusted sale range of $50.00 to $55.00 per square foot of building area, including land, and reconciled the subject at $55.00 per square foot of building area, including land, which reflects an estimated market value for the subject of $17,900,000, 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 $5.50 net per square foot, as even the newer comparables needed upward overall adjustments, including the Penney's store in Stratford Square, which he testified was the most comparable lease, location and age.

In addition, Ryan's appraisal indicated that he reviewed the actual sales of the subject and stabilized the sales at $200.00 per square foot. Actual sales for the subject ranged from $195.18 per square foot in 2007 to a high of $253.86 in 2001. 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 $5.50 per square foot of building area on a net lease basis.

The appraisal estimated the potential gross income (PGI) at $1,790,085. Ryan testified he estimated vacancy and collection loss (V&C) of 1.0%. Deducting V&C resulted in an effective gross income (EGI) of $1,772,184 for the subject. Ryan testified he allocated expenses at $0.19 per square foot or 3.5% of PGI. The estimated expenses were deducted from the EGI resulting in a net operating income (NOI) of $1,710,345 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 $18,000,000, 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 similar results. Therefore, he concluded a final estimate of value for the subject of $18,000,000. Ryan testified that there was no significant change in value for the subject between January 1, 2007 and January 1, 2009.

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. He further testified that Frandor Shopping Center has a gross leasable area of 450,000 square feet, while Woodfield Mall has a gross leasable area of over 2.3 million square feet.

As to sale #2, Ryan identified this as a "non-traditional" 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, land-to-building ration, 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 or market conditions.

As to sale #6, Ryan was shown a copy of Intervenor's Exhibit #2, which consisted of data from a previous Ryan appraisal of Lord & Taylor at Woodfield 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 three years and three months 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, but thought that it had. He testified that he made no adjustments for conditions of sale or location, and that he considered Colorado to be part of the Midwest for department store purposes.

As to sales #11 and #12, Ryan could not confirm whether these Lord & Taylor stores had closed prior to the sale date. No adjustments were made for market conditions.

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

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.

Next, Mr. Ryan testified that the subject’s sales per square foot, at $200.00, is above the range of anchor department stores as published by the Urban Land Institute. Ryan further noted that on page 84 of his appraisal he used reported capitalization rates for C+ to B+ regional malls, although Woodfield Mall is an A or A+ mall. Ryan added that a lower capitalization rate would yield a higher market value conclusion.

The board of review adopted the intervenor's multiple questions posed of Ryan but also noted that his adjustment chart on page 70 of his appraisal was not accurate for several sale comparables, however, he indicated the narrative portion of the appraisal was accurate. Ryan stated the same held true for his adjustment chart on page 77 listing his rental comparables.

On re-direct, Ryan explained there is no significance as to what the retail sales volume of the inline stores is to the valuation of the subject property. He further indicated that there is also no significance to whether the subject is located in a regional versus a super-regional mall. Finally, Ryan concluded that the narrative portion of his appraisal was accurate and based on market observations, although the charts contained qualitative errors.

The board of review submitted its "Board of Review-Notes on Appeal" wherein the subject's total assessment of $7,037,186 was disclosed. This assessment reflects a fair market value of $28,148,744 when the Cook County Real Property Assessment Classification Ordinance level of assessment of 25% for Class 5 commercial property is applied. In support of this market value, the board of review submitted a memorandum by Aaron Bilton stating comparable sales indicate an unadjusted range from $56.59 to $172.76 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; and a list of five commercial or industrial properties located in the subject's vicinity. The analyst also attached a descriptive printout for those five 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 Lorraine M. Apiecionek with an effective date of January 1, 2007 and an estimated market value of $26,200,000, which was marked as Intervenor's Exhibit #1. Ms. Apiecionek's testified that: she holds the MAI designation; she has been self-employed for 20 years; she was previously employed as a commercial loan officer and ran a mortgage banking operation; she is a state certified general appraiser licensed in Illinois and Wisconsin; she maintains many professional affiliations; of 1,000 appraisals

she has prepared, 600 have been for retail or department stores; and she has testified as an expert before the Property Tax Appeal Board and other similar forums. Accordingly, the Board accepted Ms. Apiecionek as an expert witness in the field of real estate appraisal and practice.

Apiecionek's appraisal developed two of the three traditional approaches to value as well as a land value. The income approach estimated a value of $26,200,000, while the sales comparison approach estimated a value of $24,400,000. She also opined a land value of $16,400,000. Initially, Apiecionek reiterated Ryan's description of the subject property, adding that the mall is also a major tourist attraction. She testified that between 2002 and 2006, Schaumburg: showed positive employment growth; showed growth in sales of 11%; and is considered a commercial hub with 10 million square feet of retail space, 11 million square feet of office space, and 12 million square feet of industrial space. Schaumburg also has a well-performing convention center that is owned by the Village. She further stated that in July 2004 the subject property transferred for an allocated consideration of $19,500,000, or $59.91 per square foot. This sale was part of a bulk/portfolio sale involving 62 Marshall Field stores, 3 distribution centers and $600 million of Marshall Field's credit card receivables.

Apiecionek's appraisal noted that the purpose of her assignment was to prepare an opinion of value of the fee simple interest in the subject property. She testified that she personally inspected the property on May 30, 2006 and on March 9, 2010, and that as of the valuation date, the subject was one of five anchor department stores in Woodfield Mall. Her appraisal indicated that the subject is an irregular-shaped interior site containing 967,103 square feet. There is approximately 830,000 square feet of asphalt paved parking and driveway areas. In addition, a two-and part three-level (with elevator) parking garage can accommodate 490 automobiles. Overall, the appraisal stated that the subject's site is well suited for its current use.

As to the subject's improvements, Apiecionek's appraisal stated that the subject site is improved with a two-story, plus lower level, department store containing a gross building area of 325,470 square feet. It was constructed in 1971 and renovated in 1995, with an effective age of 20 years. The facility has good exposure within the Woodfield Mall shopping center, and appears to be well maintained with no significant items of deferred maintenance. Apiecionek concluded that the building was in good condition relative to its age, and well-designed for anchor tenant use.

As to the highest and best use analysis, Apiecionek testified that the property's highest and best use, as if vacant, was for a large commercial development, while its highest and best use, as improved, was its current use as a commercial department store.

Apiecionek then developed a land value for the subject using four land sales, and testified that this sets up the premise for the highest and best use. None of these sales included pad sites for super or regional mall campuses. They ranged in size from 281,179 to 806,731 square feet and in an unadjusted value from $11.16 to $17.91 per square foot. As to her land comparables, she stated that she considered these sales based on their proximity to the subject as well as their similar site sizes. She concluded a land value for the subject of $17.00 per square foot or $16,400,000, rounded, based upon 967,103 square feet of land.

Under the sales comparison approach, Apiecionek utilized three sale comparables located in Illinois. Only sale #2 was an anchor department store, while sales #2 and #3 were single-tenant retail buildings. Sale #2 was identical to the appellant's sale #13 in the Ryan appraisal. Apiecionek 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 March 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 4.86:1. Pages 43 through 46 within the Apiecionek appraisal provided relevant details of each sale.

Apiecionek testified as to each improved sale, as follows: sale #1
is a former Walmart facility located in Crystal Court Shopping Center. The buyer was JCPenney. Apiecionek further testified that she considered this property based on the buyer's intended use to operate it as a department store.

Sale #2 is a JCPenney anchor store in Stratford Square Mall, a Class B quality mall. This sale reflects a leased fee transfer.

As to sale #3, Apiecionek described it as 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.

After making adjustments for various factors of comparison, Apiecionek testified she determined a value for the subject of $75.00 per square foot of building area which yields an estimate of value for the subject under the sales comparison approach of $24,400,000, rounded.

Under the income approach, Apiecionek utilized six rental properties, four of which are identified as anchor stores. They ranged in rental area from 109,000 to 179,860 square feet and in base rent from $5.65 to $8.20 per square foot on a triple net basis.

As to rentals #1 and #2, Apiecionek 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 144,426 square feet.

As to rental #3, Apiecionek testified that this is a Steve & Barry’s department store located in South Bend, Indiana. She indicated that it contains 120,000 square feet and is located next to a mall.

As to rental #4, this is a Kohl’s located in Schaumburg, near Woodfield Mall. It contains 109,000 square feet of building area.

Rental #5 is a Bergner’s located in Peoria, Illinois, containing 179,860 square feet of building area. It is an anchor department store within a lifestyle center.

Rental #6 is a Carson Pirie Scott store located in Lincoln Town Center in Lincolnwood, Illinois. It is a two-story anchor department store within a 423,000 square foot enclosed regional mall. It contains 118,000 square feet of building area.

Apiecionek further testified that she reviewed gross sales as part of her analysis, as this is the most prominent way that department stores are valued for their leases. She referred to the chart on page 54 of her appraisal which indicates the subject's historical gross sales per square foot, noting they are below market compared to the subject’s peer anchor department stores as reported by *Dollars and Cents of Shopping Centers, 2008*.

After making adjustments to her comparables for lease dates and location, and reviewing survey data, Apiecionek estimated a market rent for the subject at 3% of estimated gross sales, or $7.07 per square foot, yielding a potential base rent, annualized, of $2,301,301.

The appraisal also refers to the *Chicago Retail Market Index Brief,* Fourth Quarter, 2006, published by CB Richard Ellis relating to the Northwest Suburban submarkets of malls reflecting vacancy rates of 7.5%. However, Apiecionek stabilized a vacancy rate for the subject of 2% resulting in an EGI of $2,255,275. She indicated this was due to Woodfield Mall’s 98% occupancy rate. She estimated operating expenses include management fees, replacement reserves and real estate taxes at $162,553. Deducting expenses resulted in a NOI of $2,092,722.

In determining the appropriate capitalization rate (CAP rate), Apiecionek testified that she used the direct capitalization method through analysis of her improved sale comparables. Her appraisal indicated that one of her comparable sales had available income data. Additionally, The *RERC Investor Survey, Winter 2007 (Regional Mall-Chicago Market*) data indicated the CAP rates ranged from 5.5% to 9.0%, with an average rate of 7.3%. She also reviewed *Price Waterhouse Cooper*, First Quarter, 2007, which had a range from 6.0% to 10.0% and an average of 7.65% for national regional malls. Apiecionek indicated that the subject is considered to reflect a level of risk at the low to mid-range of these investment-quality properties, therefore, she 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 $26,200,000, rounded, for the subject.

In reconciling the various approaches, Apiecionek testified she gave heavy emphasis to the income approach due to the quality of the limited sales data. Therefore, she estimated a value for the subject property as of January 1, 2007 at $26,200,000. She testified that her opinion of value would not differ as of January 1, 2008 or January 1, 2009.

As a final note, Ms. Apiecionek testified that: she did not agree with the criticisms contained in the review appraisal; her appraisal contained a certification statement; and she requested a timely inspection of the subject property.

Under cross-examination by the appellant, Apiecionek testified as to her land value analysis, indicating the land valuation is for a vacant piece of property that could be developed. She further testified to the importance of location in considering her sale comparables.

As to Apiecionek's improved sales, she testified that she did not consider sales outside of the Chicago metropolitan market area, and probably would not even if she were aware of them. As to sale #1, she testified this was not an anchor department store in a regional mall, but a free-standing discount department store in a power center. As to sale #2, it is located in DuPage county which has a lower effective tax rate than Cook county, where the subject is located. As to sale #3, Apiecionek testified that this was a furniture store with some warehousing components, and was much smaller in size than the subject. Additionally, it was a partially leased-fee sale. Apiecionek also confirmed that all sales were adjusted upward.

As to her rental comparables, Apiecionek testified that all of the rentals are smaller in building size than the subject. Additionally, rentals #2 and #5 were new construction at the time of the lease commencement. Further testimony indicated only rental #3 had a proximate lease commencement date to the valuation date.

Overall, Apiecionek testified that she believed that the subject's assessment is excessive based on her value conclusion.

In rebuttal, the appellant submitted a desk review of the intervenor’s Apiecionek appraisal, prepared by Gary Battuello, which was marked and identified for the record as Appellant’s Exhibit #3. The appellant had submitted a review of the board of review’s work prepared by Ralph DiFebo, marked as Appellant’s Exhibit #2 during the hearing. This review report was strictly applicable to the 2007 tax year, however, as it was not filed in the 2009 case.

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 intervenors' attorney objected but did not pose any additional voir dire questions. Over the intervenors' 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 Apiecionek's land sale comparables, Battuello testified that none of them were intended for use as an anchor department store. Additionally, only one was in close proximity to the subject.

As to Apiecionek’s income approach, Battuello testified that Apiecionek’s estimate of market rent was based upon $235.00 per square foot in retail sales despite a declining pattern. This was then converted into rent at 3% of sales volume, which is at the high end of the range. Additionally, the capitalization rate was based upon published information for different property types than the subject. Furthermore, Apiecionek relied on surveyed rates for regional mall transactions, which includes the highly-valued inline space.

As to the sales comparison approach, Battuello's report indicated that Apiecionek used only three sale comparables, which he considered to be a limited number for a commercial appraisal report. Sale #1 is a free-standing store with a large land-to–building ratio. He testified that sale #2 (identical to the Appellant's sale #13) is much smaller than the subject but is a traditional anchor department store. As to sale #3, it is a free-standing, outlot anchor, meaning it is not attached to the mall. It was improperly adjusted as a bankruptcy sale.

In addition, Battuello stated that Apiecionek's adjustments are done on a qualitative basis, rather than a quantitative basis as she failed to include an adjustment grid. Battuello further testified that all of Apiecionek's comparables were inferior to the subject. As Apiecionek did not have any sales that were superior to the subject, her methodology for making upward adjustments to $75.00 per square foot was not reliable.

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

Under cross-examination, Mr. Hernandez questioned Battuello on: USPAP violations; location adjustments for sale comparables; and the close proximity of Apiecionek's rental comparables in relation to the subject.

On re-cross examination, the intervenors tendered and confirmed that the Intervenor's Exhibit #2, an appraisal completed by Ryan as of January 1, 2004 of the Lord & Taylor at Woodfield, which used a different methodology to capitalize the ground lease for sale comparable #6, was admitted into evidence.

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 2009, 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 notes that both appraisers indicate that the subject property is overvalued. However, the Board accords minimal weight to the Apiecionek appraisal and testimony. Specifically, Apiecionek's appraisal identifies her assignment as appraising the fee simple property rights of the subject; however, her improved sales contained contrasting property rights and highest and best uses. Apiecionek's sale #2 (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 #3 is an outlot rather than an attached anchor, while sale #1 is a free-standing, discount department store with a land-to-building ratio of approximately 4.86:1. Additionally, she illustrated her adjustments in a vaguely qualitative approach versus a quantitative approach.

Moreover, the Board notes that Apiecionek gave the most emphasis in her value conclusion to the income approach, even though the subject is an owner-occupied, anchor department store. The Board finds that in Apiecionek's income approach she applied capitalization rates unsupported by market data. Apiecionek used one of her sale comparables and its respective NOI to indicate a CAP rate of 7.92%; however, this property was a leased fee transfer with different property rights than that of the subject. Apiecionek also relied on surveyed rates for regional mall transactions, which includes the highly-valued inline space. Overall, the Board finds Apiecionek'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 that he made few adjustments for location, size of building, market conditions and land-to-building ratios to his sale comparables as compared to the subject property. He further testified that his methodology for capitalizing the identical sale comparable #6's ground lease changed from 2004 to 2007. Additionally, his narrative explaining his adjustments regarding his sales did not match his qualitative chart contained in his appraisal. Finally, the circumstances regarding the property rights transferred and conditions of sale for his sale comparables were not detailed in his written appraisal, but only revealed during his testimony. 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. 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 $86.49 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 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 $70.00 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 25% for Class 5 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, 2009 was $22,782,900, 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

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: July 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.