



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Nordstrom, Inc.
DOCKET NO.: 10-33290.001-C-3
PARCEL NO.: 07-13-200-033-0000

The parties of record before the Property Tax Appeal Board are Nordstrom, Inc., the appellant, by attorney Terrence J. Griffin, of Eugene L. Griffin & Associates, Ltd. in Chicago; the Cook County Board of Review, by Assistant State's Attorney Cristin Duffy, of the Office of the Cook County State's Attorney; the Palatine Twp. H.S.D. #211, and the Schaumburg C.C.S.D. #54, intervenors, both by attorney Michael J. Hernandez of Franczek Radelet P.C. in Chicago.

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

LAND: \$ 256,556
IMPR.: \$ 3,031,307
TOTAL: \$ 3,287,863

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 2010 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 an 82,098 square foot pad site improved with a three-story, single-tenant, anchor department store of masonry construction with 202,330 square feet of building area, which was constructed in 1995 and remodeled in 2009. The subject is located in Woodfield Mall, which is a super-regional shopping mall in Schaumburg, Schaumburg Township, Cook County.

At the commencement of the hearing, the Board found that the 2010, 2011, and 2012 appeals involve common issues of law and fact and that a consolidation of these appeals for hearing purposes would not prejudice the rights of the parties. Therefore, pursuant to Section 1910.78 of

the Official Rules of the Property Tax Appeal Board, the Board consolidated docket numbers 10-33290.001-C-3, 11-30413.001-C-3, and 12-34159.001-C-3 solely for hearing purposes, while noting that distinct decisions would be rendered for each appeal year. 86 Ill.Admin.Code § 1910.78.

THE APPELLANT’S APPRAISAL AND TESTIMONY OF JOHN C. MUNDIE, M.A.I.

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.

In support of the overvaluation argument, the appellant's pleadings included a copy of a summary report of a complete appraisal undertaken by appraisers, John C. Mundie, M.A.I. (“Mr. Mundie”) and Aaron M. Mundie (“Aaron”), both of Mundie & Company, Inc. (the “Mundie Appraisal”). The appellant began its case-in-chief by calling Mr. Mundie as an expert witness. Mr. Mundie testified that he is the owner of Mundie & Company, Inc., is an Illinois certified general real estate appraiser, and holds the M.A.I. designation from the Appraisal Institute. He further testified that he has been an appraiser for over 40 years, and has appraised more than 50 properties that are single-tenant anchor department stores. He stated he has previously been qualified as an expert in several courts and administrative agencies, including the Illinois Property Tax Appeal Board. After *voir dire* of Mr. Mundie, counsel for the appellant offered Mr. Mundie as an expert in real estate valuation. The Board accepted Mr. Mundie as an expert in real estate valuation without objection from the board of review or the intervenors; however, the board of review reserved the right to question Mr. Mundie regarding his qualifications during cross-examination.

The Mundie Appraisal was identified for the record as Appellant’s Exhibit #1. The Mundie Appraisal addressed all three of the traditional approaches to value, while opining an estimated market value of \$11,100,000 as of the effective date of January 1, 2010.

Mr. Mundie testified that he inspected the interior and exterior of the subject on February 12, 2011. Mr. Mundie described the subject property and its environs, including that the subject’s site contained 82,098 square feet with a land-to-building ratio of 0.41 to 1, and an actual age of 15 years. Furthermore, the subject property is improved with a three-story, masonry, commercial, retail building with 202,330 square feet of building area. The structure is an owner-occupied, single-tenant, anchor department store attached to a super-regional shopping mall, and is zoned B5. The appraiser testified that the subject is directly adjacent to a two-level parking deck, but that he did not believe the parking deck was part of the pad site. Mr. Mundie stated that the purpose of the report was to estimate the “as-is” fee simple market value for the subject as of January 1, 2010, and that the intended use was for *ad valorem* real estate tax assessment purposes.

Highest and Best Use

Mr. Mundie testified that the real estate market, as of January 1, 2010, had just experienced a severe downturn that was probably the worst downturn since the Great Depression. Thus, Mr. Mundie concluded that the subject’s highest and best use as vacant would be to hold the property

for future development. Mr. Mundie also concluded that the subject's highest and best use as improved was continued use as an anchor department store facility.

The Cost Approach

The initial step under the cost approach was to estimate the value of the land. In doing so, Mr. Mundie stated that he used an assumed land-to-building ratio of 3.0 to 1.0 because there are cross-easements and adequate parking for the subject property. The appraiser testified that a land-to-building ratio of 3.0 to 1 is fairly consistent in the marketplace and would be required by anchor department store occupants. Mr. Mundie testified he considered four land sales of commercial properties that had similar highest and best uses. These properties sold from September 2009 to September 2010 for prices ranging from \$7.29 to \$21.22 per square foot. After making pertinent adjustments, Mr. Mundie stabilized the subject's land value at \$11.00 per square foot, or \$6,675,000, rounded.

Using the Marshall Valuation Service for a type "A/B-Average" anchor department store, the appraiser estimated the reproduction cost new to be \$22,310,977. In establishing a rate of depreciation, Mr. Mundie testified that he analyzed four sales of properties included in the sales comparison approach. This analysis indicated an annual rate of depreciation between 2.77% and 4.52%. Mr. Mundie testified that based on this analysis, he estimated the subject property's average annual rate of depreciation to be 3.75%, which is a total depreciation of 55.0% based on the subject's actual age of 15 years. The appraiser also found an additional 20.0% depreciation due to external obsolescence, for total depreciation from all causes of 75.0%. Thus, the depreciated value of the improvements was estimated to be \$5,577,744. Adding the land value resulted in a final value estimate under the cost approach of \$12,250,000, rounded.

The Income Approach

Under the income approach, Mr. Mundie testified he reviewed the leases of four rental comparables of anchor department stores in regional or super-regional malls to determine the market rent for the subject, and that these comparables all have a similar highest and best use to that of the subject. These rental comparables ranged in size from 80,535 to 179,860 square feet, and have lease rates of \$3.92 to \$6.00 per square foot of building area. Mr. Mundie described the rental comparables, and testified that he had previously appraised all four of them.

In his testimony, the appellant's appraiser explained that rents for anchor department stores are always based on a percentage of retail sales. Based on the rental comparables and information from the Dollars and Cents of Shopping Centers: 2008, Mr. Mundie estimated the subject would have a percentage rent of 2.25% of retail sales. This estimate is greater than the 2.00% median rate of percentage rent for national department stores found in the Dollars and Cents of Shopping Centers: 2008 study.

Mr. Mundie next analyzed the subject's retail sales, as well as the retail sales of the other four single-tenant anchor department stores in Woodfield Mall. According to Mr. Mundie, the subject's gross sales per square foot increased every year between 2002 and 2007, going from \$286.86 to \$361.14 in sales per square foot. However, the subject's retail sales rate declined in 2008 to \$317.78, and declined again in 2009 to \$313.45. He stated that, while the subject's retail

sales have historically been higher, Nordstrom's "is somewhat unique in terms of their marketing and so forth," and this factor caused him to stabilize the sales rate at the lower rate of \$250.00 per square foot. This sales rate was still above the sales rates of the other four anchor department stores at Woodfield Mall, which ranged from \$80.00 to \$175.00 per square foot in 2009. Mr. Mundie also checked his analysis against Dollars and Cents of Shopping Centers: 2008, which showed that, for 63 owned national chain department stores, the median retail sales rate was \$162.91 per square foot. Thus, the subject's annual gross sales projection was calculated to be \$50,500,000, rounded.

Mr. Mundie then applied the subject's annual gross sales projection to the percentage rent figure to arrive at a net annual income for the subject of \$1,136,250, or \$5.60 per square foot of building area. Vacancy and collection losses were estimated to be 3.0%, reserves for replacement were estimated to be 2.5%, and management fees were estimated to be \$0.10 per square foot. Therefore, the stabilized net annual income was estimated at \$1,054,275.

Mr. Mundie then utilized the "band of investment" technique and the "direct" method to determine the subject's capitalization rate. For the "band of investment" technique, Mr. Mundie assumed a 70.0% loan to value ratio, a 7.0% interest rate, a 20-year amortization period, and an equity dividend of 10.0% to arrive at a capitalization rate of 9.5%, rounded. For the "direct" method, Mr. Mundie estimated the net rental incomes for three of the comparable sales found in the sales comparison approach, and used the actual net rental income for Sale Comparable #1. The estimated/actual net rental incomes of these comparables were then divided by the purchase prices to establish a range of capitalization rates from 7.8% to 11.0%. The appraiser stated that he gave more weight to the "direct" method because it included more factual information regarding the anchor department store market, and, thus, he stabilized the subject's capitalization rate at 9.5%. Capitalizing the stabilized net annual income of \$1,054,375 by the capitalization rate of 9.5%, Mr. Mundie arrived at a total value for the subject under the income approach to value of \$11,100,000, rounded.

The Sales Comparison Approach

Mr. Mundie next testified that he used four comparable sales of properties that had a similar highest and best use as the subject. Three of the comparables were located in the Chicago Metropolitan area, and one was located in Springfield, Illinois. Mr. Mundie described each of the four comparables. The properties range in building size from 147,896 to 245,720 square feet, and sold from July 2001 to April 2006 for prices ranging from \$4,200,000 to \$9,000,000, or from \$28.40 to \$43.69 per square foot of building area, including land. The properties ranged in age from 21 to 35 years and in land to building ratio from 2.88:1 to 3.23:1. Mr. Mundie stated that all of the comparables are single-tenant anchor department stores, and that three are attached to super-regional malls, while the fourth is attached to a regional mall. Additionally, three of the sale comparables are former locations of Montgomery Ward stores.

Mr. Mundie also testified regarding the details of these transactions. The purchaser of Comparable Sale #1 was the owner of the mall, and it was the sale of a leased-fee estate. Sale Comparables #2 and #3 were both the subsequent sale of the properties after being sold out of the bankruptcy of the prior owner, Montgomery Ward. Sale Comparable #4 was the initial sale of the property following the bankruptcy of the seller, Montgomery Ward. Mr. Mundie stated

that, even though this sale was the initial sale out of bankruptcy, he considered it to be an arm's-length transaction because it was acquired through an auction with an open bidding process, in which four or five other potential buyers were vying for the property. Mr. Mundie stated that he obtained the details of this sale after speaking with someone on the "ownership-purchaser side," but that he could not remember this individual's name.

Mr. Mundie also testified that he made certain adjustments to these comparables for date of sale, market appeal/location, age/condition, and number of floors. The appraiser testified that he also made a downward adjustment to Sale Comparable #1 for "investment sale" to account for the transaction being the sale of a leased-fee estate. Additionally, the comparables' sale conditions, zoning, building size, and land to building ratios were considered, but the appraiser concluded that no adjustments were warranted for these factors. The witness testified that, overall, he made no adjustment to Sale Comparable #1, and adjusted the remaining sale comparables upward. After applying these adjustments, Mr. Mundie concluded that the subject's market value under the sales comparison approach to value was \$55.00 per square foot of building area, or \$11,125,000, rounded.

Reconciliation and Final Estimate of Value

In reconciling the three approaches to value used, Mr. Mundie testified that he gave minimal consideration to the cost approach, and considerable and equal weight to the income and sales comparison approaches. After reconciling the three approaches to value, Mr. Mundie concluded that the subject's market value as of January 1, 2010 was \$11,100,000. Finally, the witness testified that his opinion of value would not differ if the effective date was January 1, 2011 or January 1, 2012.

Cross-Examination

Under cross-examination by the county, Mr. Mundie stated that Aaron Mundie is his son, and that at the time the report was prepared, Aaron did not hold the M.A.I. designation from the Appraisal Institute. Mr. Mundie further stated that he and Aaron prepared the report together, but that he had final say in approving its contents.

Mr. Mundie next testified that, prior to completing this appraisal, he had previously appraised the subject property in the past. The assistant state's attorney ("ASA") then tendered a copy of the Uniform Standards of Professional Appraisal Practice, 2010-2011 Edition ("USPAP"), which was marked as Board of Review Exhibit #3, and proceeded to question the witness regarding his compliance with various USPAP provisions. The ASA specifically referenced lines 231 through 236 of page U-8 of the USPAP, which requires the report to disclose whether the appraiser had appraised the property within the previous three years. Mr. Mundie stated that it was his understanding, based on his attendance at courses discussing USPAP, that this ethics rule only applies if the current client is different than the previous client; and that, based on this interpretation of the rule, he did not believe he was required, under USPAP, to make such a disclosure in the report. Mr. Mundie also stated that, while he relied on those previous appraisals in preparing this report, he did not have them in the file that he brought to the hearing. Mr. Mundie stated that USPAP requires appraisers to keep their files for seven years.

Mr. Mundie stated that he and Aaron inspected the subject property, and took photographs of the exterior, which were included in the report; but that no photographs of the interior were taken. Mr. Mundie further testified that he did not pull the permits for the remodel of the subject in 2009, that the appellant did not provide him with the cost of this remodel, and that, in any case, the cost of the remodel was not important in his analysis.

The witness also testified that he has appraised two other Nordstrom properties in the Chicago Metropolitan area on several occasions, and that, while he couldn't recall the exact number, he has appraised Nordstrom properties approximately nine times.

Mr. Mundie stated that three of the sale comparables were former Montgomery Ward stores, and that Montgomery Ward had gone through bankruptcy proceedings. The ASA then tendered a copy of In re Montgomery Ward, LLC, et al, 634 F.3d 732 (3d Cir. 2011), and requested that the Board take judicial notice of this federal appellate court decision. Over objection from the appellant, the Board took judicial notice of this decision, but only for the limited purpose of establishing the date of Montgomery Ward's bankruptcy. The copy of the decision was marked as Board of Review's Exhibit #1. In the recitation of facts, the court in Montgomery Ward stated that Montgomery Ward filed for Chapter 11 bankruptcy twice: once in 1997 and once in 2001. Id. at 735. Mr. Mundie continued his testimony by stating that the bankruptcy proceedings required Montgomery Ward to liquidate its assets. He also reiterated his previous testimony made during direct examination regarding the conditions of the transactions for Sale Comparables #2, #3, and #4. Mr. Mundie also testified that at the time he prepared the report, he did not keep the names of sources he spoke with, including his source for Sale Comparable #4.

The appraiser stated that the purchaser in Sale Comparable #2 was the mall owner, and that he believed that this was an arm's-length transaction. He further testified that he spoke with Robert Long regarding the transaction, who is employed by the mall-purchaser.

Under cross-examination from the intervenors, Mr. Mundie testified that he did not have a supervisory role in preparing the appraisal.¹

Mr. Mundie also testified that all of the appraisals he completed for Nordstrom stores were for *ad valorem* real estate tax purposes, and that all of the final conclusions of value in those appraisals would have supported a reduction in the assessments for those Nordstrom properties.

¹ During this line of questioning, counsel for the intervenors believed that Mr. Mundie testified during the county's cross-examination that he had a supervisory role in preparing the report. However, during the intervenor's cross-examination, Mr. Mundie stated that he had not acted in a supervisory role. The intervenors then asked Mr. Mundie how he would proceed *if* he had acted in a supervisory role, and the appellant objected based on speculation. The record was re-read to ascertain whether Mr. Mundie had testified as such. Finding the witness's previous testimony ambiguous on this point, the Board reserved ruling on the objection, and allowed the intervenors to inquire about Mr. Mundie's speculative role as a supervisor within the scope of an offer of proof. Now, in ruling on the appellant's objection, the Board finds that Mr. Mundie did not testify that he acted in a supervisory role in preparing this appraisal, and, thus, the objection is sustained as being speculative. The witness's testimony reveals that he worked collaboratively with Aaron in preparing the report, had the final say in the contents of the report, and, most importantly, conducted the research and inspections. The testimony elicited during the intervenors' offer of proof is thereby preserved for the record, but is given no consideration in this decision.

Mr. Mundie testified about the area around Woodfield Mall, and stated that property values in the area were increasing until the onset of the recession. He stated that, in his opinion, that trend will “resurface within the relatively near term.”

The witness then testified regarding the land sale comparables that were used in valuing the subject’s land. In particular, Mr. Mundie stated that Land Sale Comparable #2 is zoned O3, which is an office district and allows for hotels and some retail establishments. Counsel for the intervenors sought to refresh the witness’s recollection by providing a copy of Section 9-7-3 of Schaumburg’s zoning ordinance, which describes the lawful uses for land and buildings in an area zoned O3. The copy of the ordinance was marked as Intervenor’s Exhibit #1. After reviewing the zoning ordinance, Mr. Mundie maintained that retail establishments are allowed in areas zoned O3.

Mr. Mundie stated that he relied on the CoStar listing for Land Sale Comparable #2. Counsel for the intervenors sought to refresh the witness’s recollection on this point by presenting a copy of the CoStar listing for this comparable, which was marked as Intervenor’s Exhibit #2. After reviewing the CoStar listing, Mr. Mundie admitted that some of the information in his report was not the same as the information in the CoStar listing.

With regard to Land Sale Comparable #4, Mr. Mundie stated that he also reviewed the CoStar listing for this comparable, but that he did not recall if the listing stated that the improvement upon the property had an asbestos contamination that significantly reduced the sale price. Counsel for the intervenors provided the witness with a copy of the CoStar listing for Land Sale Comparable #4 to refresh his recollection, and this document was marked as Intervenor’s Exhibit #3. After reviewing this CoStar listing, Mr. Mundie admitted that, according to the listing, the improvement did have an asbestos contamination, and that he did not include this information in his report.

Mr. Mundie testified that in the cost approach, he used the report’s sale comparables to ascertain the market-derived depreciation of the subject, but that all of the sale comparables are older than the subject. To determine the sale comparables’ land values, Mr. Mundie testified that he used their land assessments and consulted appraisals he completed within the area around the comparables.

Next, Mr. Mundie testified regarding the rental comparables he used in the income approach to value. He also testified that he completed an appraisal for the subject for 2013, which included the subject’s retail sales per square foot for 2010, 2011, and 2012, but that he could not recall the exact figures. Counsel for the intervenors provided the witness with a copy of his appraisal of the subject with an effective date of January 1, 2013 to refresh his recollection, and this document was marked as Intervenor’s Exhibit #4. Mr. Mundie testified that the 2013 appraisal for the subject stated that its retail sales per square foot was \$364.00 in 2010, \$378.00 in 2011, and \$394.00 in 2012. Mr. Mundie testified that, in the Mundie Appraisal, he stabilized the subject’s retail sales per square foot at \$250.00, and that he checked this figure against the Dollars and Cents of Shopping Centers: 2008 study.

Mr. Mundie next testified that he did not know the retail sales for the inline stores, the traffic counts, or the demographics for the malls where the sale comparables were located. Mr. Mundie

also reiterated his testimony regarding the sale conditions for Sale Comparable #4. The witness also testified regarding the adjustments made to his sale comparables.

Re-Direct

On redirect, Mr. Mundie testified that Sale Comparables #2 and #3 were not sold out of bankruptcy, and that these properties have a similar highest and best use. The appraiser also stated that single tenant anchor department stores routinely remodel their stores every five to seven years as a course of business; and, because of this fact, he did not believe that 2009 remodel of the subject was significant in his analysis. Additionally, Mr. Mundie stated that remodeling an anchor department store does not increase its overall value.

Mr. Mundie stated that an auction and an open bidding process are synonymous terms in his professional opinion, and that Sale Comparable #4 was sold through an open bidding process.

The witness also testified that the retail sales at inline stores, traffic counts, and demographics for the malls of the rental comparables and the malls of the sale comparables were irrelevant factors in his professional opinion; and, therefore, these factors were not included in his analysis.

Mr. Mundie also testified that, while Nordstrom's retail sales per square foot is higher than other anchor department stores, his assignment was to appraise the property in fee simple as though it were vacant and offered for sale or lease. The fact that Nordstrom is the current occupant is not relevant. Moreover, the witness stated that, in his expert opinion, it would be highly unlikely for another anchor department store (other than Nordstrom) to attain the same level of retail sales.

Based on this evidence, the appellant requested the subject's assessment reflect the appraised value of \$11,100,000 for each of the years under appeal.

BOARD OF REVIEW'S EVIDENCE

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$4,046,599 was disclosed. This assessment reflects a fair market value of \$16,186,396 or \$80.00 per square foot of building area, land included, when applying the 2010 statutory level of assessment for commercial property under the Cook County Real Property Assessment Classification Ordinance of 25.00%.

In support of this market value, the notes included raw sales information on seven properties suggested as comparable to the subject. These properties range in size from 138,212 to 217,953 square feet of building area. They sold between January 2005 and December 2008 for prices ranging from \$16,500,000 to \$38,050,500, or from \$81.71 to \$219.70 per square foot of building area.

At the hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions. At the request of the assistant state's attorney, and without objection from the appellant or the intervenors, the "Board of Review Notes on Appeal" were admitted into evidence and marked as Board of Review Exhibit #2. As a result of its analysis, the board of review requested confirmation of the subject's assessment.

THE INTERVENORS' APPRAISAL AND TESTIMONY OF LORRAINE M. APIECIONEK, M.A.I.

The intervenors argue that the subject's assessment as determined by the board of review should be maintained.²

In support of the subject's assessment, the intervenors' pleadings included a copy of a summary report of a complete appraisal undertaken by appraiser, Lorraine M. Apiecionek, M.A.I. ("Ms. Apiecionek") of L.M. Apiecionek & Associates (the "Apiecionek Appraisal"). The intervenors began their case-in-chief by calling Ms. Apiecionek as an expert witness. Ms. Apiecionek testified that she has been self-employed at L.M. Apiecionek & Associates for over thirty years, is an Illinois certified general real estate appraiser, and holds the M.A.I. designation from the Appraisal Institute. She further testified that she has appraised more than 600 properties that are retail or department stores. She stated she has previously been qualified as an expert in several courts and administrative agencies, including the Illinois Property Tax Appeal Board. After *voir dire* of Ms. Apiecionek, counsel for the intervenors offered Ms. Apiecionek as an expert in real estate valuation. The Board accepted Ms. Apiecionek as an expert in real estate valuation without objection from the appellant or the board of review; however, the appellant reserved the right to question Ms. Apiecionek regarding her qualifications during cross-examination.

The Apiecionek Appraisal was identified for the record as Intervenor's Exhibit #5. The Apiecionek Appraisal addressed the income and sales comparison approaches to value, while opining an estimated market value of \$16,200,000 as of the effective date of January 1, 2010. The Apiecionek Appraisal also included a land valuation section. Ms. Apiecionek testified that the report was prepared consistent with the standards of USPAP.

Ms. Apiecionek testified that she inspected the interior and exterior of the subject on September 24, 2013. Ms. Apiecionek described the subject property and its environs, including that the subject is improved with a three-story anchor department store with 202,330 square feet of building area, and is attached to Woodfield Mall, which is a super-regional shopping mall. The appraiser testified that Woodfield Mall has 2.2 million square feet of building area and five anchor department stores. Additionally, it is the number one regional mall in the Chicago Metropolitan area with over 27 million visitors annually, and is one of the top ten malls nationwide. Woodfield Mall is approximately 96.0% to 97.0% leased, with 300 inline stores that have retail sales averaging \$485.00 per square foot, including 30 stores that surpass \$1,000.00 per square foot. Ms. Apiecionek further testified regarding the demographics and traffic patterns surrounding Woodfield Mall. She stated that all of this information was relevant in her analysis.

² The Board notes that the intervenors' Brief and Evidence in Support of Intervention (the "Brief") is inconsistent on this point. The Brief requests that the subject's assessment be increased (on page 1), be maintained (pages 2 and 5), and at least be maintained (page 3). The Brief's conclusion is on page 5, and requests that the Board "*maintain* the present assessment while denying the requested reduction" (emphasis in original). The Board takes the intervenors' request for relief in the Brief's conclusion at face value, despite its apparent contradiction with other requests for relief scattered throughout the document. Thus, the intervenors did not request that the subject's assessment be increased, but only that it be maintained.

Highest and Best Use

Ms. Apiecioneck testified that the subject's highest and best use as vacant would be to develop it for large-scale commercial use. Ms. Apiecioneck also concluded that the subject's highest and best use as improved was continued use as an anchor department store facility.

Land Valuation

Ms. Apiecioneck did not undertake a complete cost approach, as she testified that market participants do not rely on the cost approach. However, the report did include an analysis that valued the land. In doing so, Ms. Apiecioneck stated that she used an assumed land-to-building ratio of 3.0 to 1 because there are cross-easements and adequate parking for the subject property. The appraiser testified that a land-to-building ratio of 3.0 to 1 is fairly consistent in the marketplace. Ms. Apiecioneck testified she considered five land sales of commercial properties that had similar highest and best uses. These properties sold from May 2005 to September 2010 for prices ranging from \$14.99 to \$22.96 per square foot. After making pertinent adjustments, Ms. Apiecioneck stabilized the subject's land value at \$16.00 per square foot, or \$9,700,000, rounded.

The Sales Comparison Approach

Ms. Apiecioneck next testified that she used six comparable sales of properties to estimate a value for the subject under the sales comparison approach to value. All six of the comparables were located in the Chicago Metropolitan area. Ms. Apiecioneck described each of the six comparables. The properties range in building size from 76,427 to 145,605 square feet. Sale Comparables #2 through #6 sold from February 2006 to May 2010 for prices ranging from \$4,073,542 to \$8,981,000, or from \$46.01 to \$78.78 per square foot of building area, including land. Sale Comparable #1 was the sale of a leasehold interest in the improvement only that sold for \$8,200,000, or \$73.15 per square foot of building area, excluding land, which the appraiser adjusted to \$14,400,000, or \$128.46 per square foot of building area, including land. The properties ranged in age from 9 to 29 years and in land to building ratio from 2.31:1 to 4.86:1, with Sale Comparable #1 having an assumed land to building ratio of 3.26:1. Sale Comparables #1 and #5 are attached to super-regional shopping malls. Ms. Apiecioneck stated that not all of the comparables are single-tenant anchor department stores, because, in her professional opinion, improvements that contain anchor department stores can have various uses. She further testified as to some examples of former anchor department store facilities being converted to other uses, such as being used as a Value City or Dollar General.

Ms. Apiecioneck also testified regarding the details of these transactions. Comparable Sale #1 was the sale of a leasehold estate of the improvement, while the property is also subject to a separate ground lease. Sale Comparable #2 was vacant at the time of sale, and was formerly a furniture store. Sale Comparable #3 was also vacant at the time of sale, and was purchased for use as a furniture store. This comparable also received a sales tax rebate. Sale Comparable #4 was purchased by JC Penney, but, due to economic reasons, was never developed into one of its stores. Sale Comparable #5 was a leased-fee sale, and the purchaser was the owner of the mall. Sale Comparable #6 was a leased-fee sale, wherein the lessee purchased the property from the lessor with two years remaining on the lease. Ms. Apiecioneck clarified that despite their similar

names, the seller, Mart Acquisitions, and the purchaser, Wal-Mart Real Estate Business Trust, were separate entities.

Ms. Apiecioneck also testified that she made certain adjustments to these comparables for property rights/financing, condition of sale, time, location, size, design, parking, and functional utility. The witness testified that, overall, she made no adjustment to Sale Comparable #6, and adjusted the remaining sale comparables upward. After applying these adjustments, Ms. Apiecioneck concluded that the subject's market value under the sales comparison approach to value was \$80.00 per square foot of building area, or \$16,200,000, rounded.

The Income Approach

Under the income approach, Ms. Apiecioneck analyzed the subject's retail sales. In relying on the Mundie Appraisal, Ms. Apiecioneck testified that the subject's retail sales per square foot averaged \$325.13 from 2002 through 2009. Ms. Apiecioneck then consulted Dollars and Cents of Shopping Centers: 2008, which showed that the median retail sales per square foot for department stores in super-regional malls was \$163.99, with the top two-percent and top ten-percent being \$348.56 and \$256.11, respectively. After considering the information in Dollars and Cents of Shopping Centers: 2008 and the subject's actual retail sales, Ms. Apiecioneck stabilized the subject's retail sales per square foot at \$315.00. The appraiser also consulted Dollars and Cents of Shopping Centers: 2008 to ascertain an applicable percentage rent rate, which was determined to be 2.25%, with the reported median being 2.00%. Thus, the subject's rent was calculated to be \$7.09 per square foot, or \$1,434,014. The rent per square foot was within the range reported for the top two-percent and top ten-percent as reported in Dollars and Cents of Shopping Centers: 2008.

Next, Ms. Apiecioneck testified she reviewed the leases of eight rental comparables to check whether the market rent for the subject as previously determined was accurate. These rental comparables were all located in the Chicago Metropolitan area, and ranged in size from 50,000 to 160,895 square feet, and have lease rates of \$5.00 to \$9.21 per square foot of building area as of 2010. The appraiser testified that she made adjustments to these comparables for location, size, and date of the lease. Based on this analysis, Ms. Apiecioneck concluded that a rental rate of \$7.05 per square foot was an appropriate market rent for the subject.

Ms. Apiecioneck then made the following deductions from the subject's annual market rent of \$1,434,014. Vacancy and collection losses were estimated to be 3.0%, reserves for replacement were estimated to be \$0.50 per square foot, and management fees were estimated to be 2.0%. Therefore, the net operating income was estimated at \$1,262,009.

Ms. Apiecioneck then utilized the "direct" method and the "band of investment" technique to determine the subject's capitalization rate. For the "direct" method, Ms. Apiecioneck looked to the PriceWaterhouseCooper (2010, Q1) survey, a national survey, and the RERC Investor Survey (2010, Q1), a Chicago market survey. The PriceWaterhouseCooper (2010, Q1) survey showed a range of 7.0% to 10.0%, with an average of 8.86%, while the RERC Investor Survey (2010, Q1) showed a range of 7.0% to 11.0%, with an average of 8.6%. After looking at the capitalization rates for Sale Comparables #1, #5, and #6, and finding that the subject's level of risk is low, Ms. Apiecioneck found the subject's capitalization rate under the "direct" method to

be 7.5%. For the “band of investment” technique, Ms. Apiecioneck assumed a 75.0% loan to value ratio, a 6.0% interest rate, a 25-year amortization period, and an equity dividend of 6.96% to arrive at a capitalization rate of 7.5%, rounded. The appraiser stabilized the subject’s capitalization rate at 7.5%. Capitalizing the stabilized net operating income of \$1,262,009 by the capitalization rate of 7.5%, Ms. Apiecioneck arrived at a total value for the subject under the income approach to value of \$16,800,000, rounded.

Reconciliation and Final Estimate of Value

In reconciling the two approaches to value used, Ms. Apiecioneck testified that she gave significant weight to sales comparison approach to value, and found that the income approach to value supported her conclusion under the sales comparison approach. After reconciling the two approaches to value, Ms. Apiecioneck concluded that the subject’s market value as of January 1, 2010 was \$16,200,000. Finally, the witness testified that her opinion of value would be the same, if not more, if the effective date was January 1, 2011 or January 1, 2012.

Cross-Examination

Under cross-examination by the county, Ms. Apiecioneck testified that her report discloses that she has not appraised the subject in the three years preceding the report’s effective date, and that such a disclosure is required by USPAP.

Under cross-examination by the appellant, Ms. Apiecioneck testified that she has completed over one dozen appraisals of six different anchor department stores located in regional or super-regional malls, and that the first of these appraisals was completed in 2006. Two of these appraisals were for the department stores, and the remaining four were for taxing districts.

Ms. Apiecioneck stated that the retail portion of the economy was beginning to recover from the recession during the latter part of 2009, including the report’s effective date of January 1, 2010; however, she also stated that unemployment, net lease rates and retail sales (included the retail sales at the subject and the four other anchor department store at Woodfield Mall) declined, while vacancy rates increased in the Chicago Metropolitan area through 2009, and that this information was included in the report.

The appraiser also testified that she completed an appraisal for the subject with an effective date of January 1, 2014, but could not recall her final conclusion of value in that appraisal. Counsel for the appellant sought to refresh the witness’s recollection by providing a copy of that summary appraisal report, which was marked as Appellant’s Exhibit #2. Ms. Apiecioneck then testified that her opinion of value for the subject as of January 1, 2014 was lower than the estimate of value in the Apiecioneck Appraisal (which has an effective date of January 1, 2010).

Ms. Apiecioneck also testified that, according to her conclusion as to the subject’s highest and best use as improved, stores like Value City and Dollar General are not likely to occupy the subject.

Next, Ms. Apiecioneck testified regarding the locations and zoning restrictions for the land sale comparables. She also testified that none of the land sale comparables were single-tenant anchor

department stores, that none were attached to regional or super-regional malls, and that most of them had subsequently been improved with freestanding stores.

Ms. Apiecionek then testified regarding the sale comparables, including their descriptions, uses, and sale conditions, most of which was also elicited during direct examination. The witness testified that Comparable Sales #2, #3, #4, and #6 were not multi-level, single-tenant, anchor department stores attached to regional or super-regional malls. Ms. Apiecionek also stated that Sale Comparable #6 was not exposed to the open market prior to the sale, and that Comparable Sale #1 was the sale of a leasehold estate in the improvement only.

The witness then testified that she prepared the report independently. She further stated that the information she received regarding Sale Comparable #1 came from several sources, including Susan Enright ("Ms. Enright"), and that she then verified the information. Upon questioning from the appellant's counsel, Ms. Apiecionek testified that pages 33 and 34 of the Apiecionek Appraisal were "copied word for word" from an appraisal report completed by Ms. Enright, and that this text was "possibly" verbatim. Counsel for the appellant sought to refresh the witness's recollection by providing a copy of Ms. Enright's summary appraisal report for the Nordstrom in Skokie, Illinois with an effective date of January 1, 2010 (the "Enright Appraisal"), which was marked as Appellant's Exhibit #3. Counsel for the appellant then questioned Ms. Apiecionek regarding her statement that she prepared the Apiecionek Appraisal independently by showing her a copy of the Enright Appraisal; however the intervenors objected based on relevancy. The Board sustained the objection, but allowed the appellant to present an offer of proof as to how Ms. Apiecionek prepared her report, which showed that a large portion of pages 33 and 34 of the Apiecionek Appraisal were verbatim to pages 37 and 38 of the Enright Appraisal.

Next, the appraiser stated that Comparable Sale #5 was a leased fee sale of a multi-level, single-tenant, anchor department store attached to a super-regional mall, that the purchaser was the mall owner, and that, according to the Cook County Assessor's records, its improvement size was 145,605 square feet. Ms. Apiecionek stated that she reviewed the CoStar listing for Sale Comparable #5. Counsel for the appellant questioned the witness's recollection on this point by presenting a copy of the CoStar listing for this comparable, which was marked as Appellant's Exhibit #4. After reviewing the CoStar listing, Ms. Apiecionek stated that the CoStar listing's improvement size was different than the improvement size contained in the report.

Ms. Apiecionek then testified as to the adjustments made to the sale comparables. She stated that she used an assumed land to building ratio of 3.0:1, and also made adjustments to the sale comparables because they were not adjacent to a parking deck like the subject. The appraiser further testified that, after adjustments, she concluded that the subject's market value per square foot was higher than the unadjusted range for the sale comparables.

With regard to the income approach, Ms. Apiecionek testified that, while the retail sales figures for the other anchor department stores at Woodfield Mall were available, she did not include these figures in her analysis. The witness further testified that, using the 2009 average of retail sales for the subject and the other four anchor department stores included in the Mundie Appraisal, the retail sales would range from \$165.34 to \$172.34. These figures are 90.0% and 83.0% lower, respectively, than the reconciled retail sales per square foot for the subject of \$315.00 found in her report. Moreover, the reconciled retail sales per square foot for the subject

of \$315.00 was 93.0% higher than the national average and 23.0% higher than the top ten found in Dollars and Cents of Shopping Centers: 2008.

Ms. Apiecioneck testified that none of the rental comparables were single-tenant, multi-level, anchor department stores with over 200,000 square feet of building area nor attached to a regional or super-regional mall. The witness further testified that the capitalization rate used in the income approach was lower than the average rates reported in the surveys that were consulted. The capitalization rate used was also higher than the cap rate for Sale Comparable #5, which is the only single-tenant anchor department store attached to a super-regional mall that was used in the analysis.

Re-Direct

During re-direct, Ms. Apiecioneck stated that all of the rental comparables were department stores, and that she made adjustments to all of them in her analysis. Ms. Apiecioneck further testified that Woodfield Mall is one of the top performing malls in the country, and that the investment risk is lower there for anchor department stores. Thus, the appraiser used a lowed capitalization rate to account for the lower level of risk. Ms. Apiecioneck further stated that the subject's retail sales per square foot increased every year between 2010 and 2012, with an average of \$379.00 per square foot during that time period.

Ms. Apiecioneck also stated that the information regarding Sale Comparable #1 came from George Good, who is a broker with CB Richard Ellis, and Ms. Enright.

Based on this evidence, the intervenors requested the subject's assessment be maintained for tax year 2010.

THE APPELLANT'S APPRAISAL REVIEW AND TESTIMONY OF GARY A BATTUELLO, M.A.I.

In rebuttal, the appellant's pleadings included a copy of a desk review on the Apiecioneck Appraisal undertaken by appraiser, Gary M. Battuello, M.A.I. ("Mr. Battuello") of Ramsland & Vigen, Inc. (the "Battuello Review"). The appellant began its rebuttal by calling Mr. Battuello as an expert witness. Mr. Battuello testified that he has been employed at Ramsland & Vigen since 1981, is an Illinois certified general real estate appraiser, and holds both the M.A.I. and AR-GRS designations from the Appraisal Institute. He further testified that he has authored two publications for the Appraisal Journal, has appraised approximately 75 properties that are anchor department stores, and has completed 100 to 150 appraisal reviews. He stated he has previously been qualified as an expert in several courts and administrative agencies, including the Illinois Property Tax Appeal Board. After *voir dire* of Mr. Battuello, counsel for the appellant offered Mr. Battuello as an expert in real estate valuation, theory, and practice. The intervenors conducted additional *voir dire* of the witness, which revealed that he received his Illinois appraiser's license in June 2011. The intervenors then objected to Mr. Battuello's credentials as an expert, as he wasn't licensed as of the date of value of the Apiecioneck Appraisal. The Board overruled this objection as the witness was licensed in Illinois at the time the Battuello Review was completed, and accepted Mr. Battuello as an expert in real estate valuation, theory, and practice. The Battuello Review was identified for the record as Appellant's Exhibit #5.

As to the subject's highest and best use, Mr. Battuello testified that the subject is not readily adaptable to be repurposed for some use other than as an anchor department store. He further stated that freestanding stores have more flexibility than anchor department stores in terms of use, repurposing, and even demolishing the improvements altogether. The witness also stated that the cost approach would not commonly be used in appraising an anchor department store.

Mr. Battuello testified that the sales comparison approach in the Apiecionek Appraisal included data and adjustments that were not appropriate, complete, or accurate, and, therefore, the results were not reliable. In particular, the expert stated that Sale Comparable #1 represents the sale of a leased-fee interest in the building only, and that large adjustments were needed to account for the land value. With regards to Sale Comparables #2 and #3, Mr. Battuello testified that these properties had freestanding improvements, which have far more uses and potential purchasers than an anchor department store attached to a super-regional mall. Sale Comparable #4 was not the sale of an anchor department store, and also had a higher land to building ratio. Moreover, this property was purchased by JC Penney, but it was never operated as an anchor department store. Mr. Battuello also testified that Sale Comparable #6 was not an arm's-length transaction, because it was purchased by the tenant, and also that this property was a freestanding store. Mr. Battuello testified that freestanding stores are not generally considered substitute properties for anchor department stores.

The witness testified that some of the adjustments to the sale comparables were questionable. In particular, Mr. Battuello found that using an assumed land to building ratio in conjunction with an adjustment for being attached to a parking deck was a "double adjustment."

With regards to the income approach, Mr. Battuello testified that a potential purchaser will look to what that purchaser can generate in retail sales per square foot at the subject's location, and not necessarily what Nordstrom is able to generate. He stated that Nordstrom and Sears would be outliers on the high and low ends, respectively, of the market. Thus, an average of the anchor department stores at the subject's location would typically be employed in determining the subject's retail sales per square foot, and not the actual retail sales of the subject, as it is an outlier.

Mr. Battuello also testified that the data relied upon in determining the capitalization rate is unreliable. In particular, Mr. Battuello stated that the mortgage market as of January 1, 2010 was "broken," rendering the "band of investment" technique unreliable. Additionally, Mr. Battuello testified that the "direct" method was unreliable because the capitalization rates extracted from Sale Comparable #1 was determined using a leased-fee sale of only the improvement. Furthermore, reliance on the PriceWaterhouseCooper (2010, Q1) survey and the RERC Investor Survey (2010, Q1) was not well placed because these surveys do not address the subject's market.

The witness also stated that, in the decade preceding January 1, 2010, market activity for the anchor department store market came from consolidations, mergers, and regulatory sales. This observation contrasts the statements in the Apiecionek Appraisal, which stated that market activity came from sale-leasebacks, options in lease agreements, and bankruptcies.

Cross-Examination

During cross-examination from the county, Mr. Battuello stated that every year he completes approximately three to five review appraisals for properties in the Chicago Metropolitan area. He further testified regarding the comparability of other malls in the area to Woodfield Mall. Moreover, Mr. Battuello stated that if a property retains its use after a sale, money is still expanded to “rebrand” the property for the new user, including whether another department store purchased and occupied a property that was previously used as an anchor department store.

During cross-examination from the intervenors, Mr. Battuello testified that his criticisms of the Apiecioneck Appraisal would apply to the Mundie Appraisal if it had the same alleged deficiencies. Mr. Battuello further stated that distressed properties can be used as rental or sale comparables in an appraisal if used with caution, but that it is probably better to not use such comparables. The witness also testified that he did not look to the retail sales per square foot of the subject for 2010, 2011, and 2012.

Re-Direct

During re-direct, Mr. Battuello stated that the retail sales per square foot of the subject for 2010, 2011, and 2012 would not be relevant for an appraisal with an effective date of January 1, 2010.

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 (3d 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 2010, the Board considered the Mundie Appraisal, the “Board of Review Notes on Appeal,” the Apiecioneck Appraisal, the Battuello Review, as well as the testimony from all witnesses to determine the best evidence of the subject's market value.

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.

Mr. Mundie, Ms. Apiecioneck, and Mr. Battuello all agreed that the cost approach to value would not be useful in determining the fair market value of an anchor department store. The Board agrees, and therefore, no weight was given to the cost approach found in the Mundie Appraisal.

As to the Mundie Appraisal and the Apiecionek Appraisal, the Board accorded diminished weight in varying ways and degrees to the income and sales comparison approaches in those reports. The Board finds that both appraisals lack sufficient evidence to support their respective conclusions under both of these approaches to value. However, the Board also finds that, using the credible evidence provided in these two appraisals, the Board can craft an appropriate conclusion of value.

The Mundie Appraisal gave the income approach equal consideration with the sales comparison approach, while the Apiecionek Appraisal accorded the income approach secondary consideration. The appraisers agreed that the subject's percentage rent factor is 2.25%. However, they varied widely on the subject's retail sales per square foot amount that should be applied to this percentage rent factor.

The Mundie Appraisal concluded that the subject's retail sales were \$250.00 per square foot. In reaching this conclusion, the Mundie Appraisal analyzed the actual retail sales for the subject as well as the other four anchor department stores at Woodfield Mall. The figure was then checked against the results published in Dollars and Cents of Shopping Centers: 2008.

The Apiecionek Appraisal concluded that the subject's retail sales were \$315.00 per square foot. In reaching this conclusion, the Apiecionek Appraisal analyzed the actual retail sales for only the subject. The figure was then checked against the results published in Dollars and Cents of Shopping Centers: 2008. The Apiecionek Appraisal states that "the weighted sales average of the mall anchor stores is the best evidence of the fee simple market rent potential of the subject anchor," but that "[t]he appraiser was not able to ascertain store sales at Woodfield Mall." However, at hearing, Ms. Apiecionek testified that these figures were, in fact, available to her, and that she chose not to include them in her report.

For its part, the Battuello Review states that "[t]he aggregate anchor store retail sales volumes . . . could have been used to estimate a market rent for the [subject] using a reasonable factor (percent) against some stabilized and reasonable sale volume anticipated to be achieved by a potential anchor occupant at the Woodfield Mall."

In short, the appraisers and the review appraiser all agree that the method for determining the subject's retail sales is to look at the retail sales of the subject *and* the other anchor department stores at Woodfield Mall. However, only one appraisal, namely, the Mundie Appraisal, actually employed that method. Ms. Apiecionek testified at hearing that she had the opportunity to ascertain to retail sales of the other four anchor department stores, but chose not to do so. Such a voluntary omission diminishes the credibility of the Apiecionek Appraisal on this point. As such, the Board gave the Mundie Appraisal more weight, which stabilized the subject's retail sales per square foot at \$250.00.

However, the Board also finds that the subject is attached to Woodfield Mall, and that ample testimony was given regarding the superior aspects of the mall. Mr. Mundie testified that Woodfield Mall is considered a good quality shopping center in a very active retail area. Ms. Apiecionek testified that Woodfield Mall is the number one mall within the Chicago Metropolitan area, and is within the top ten in the United States. Furthermore, she testified that it

is a popular tourist destination with approximately 27 million visitors annually. Because of its popularity, Woodfield Mall has almost no vacancies, with 97% to 98% of the retail space leased.

The Dollars and Cents of Shopping Centers: 2008 study relied upon by both appraisers states that the retail sales for the top ten percent of owned national chain department stores in super-regional malls is \$249.38 per square foot. This figure is nearly identical to the Mundie Appraisal's conclusion. However, the Board finds that a slight adjustment for the superiority of Woodfield Mall is applicable, and that the subject's retail sales is properly stabilized at \$267.00 per square foot.

Using the subject's undisputed improvement size of 202,330 square feet and undisputed percentage rent of 2.25% per square foot results in an annual potential gross income for the subject of \$1,215,497, or \$6.01 per square foot.

The Board finds this potential gross income is supported by the evidence and testimony in the record. The parties submitted a total of 12 rental comparables that had rental rates ranging from \$3.92 to \$8.92 per square foot. The Board finds that Rental Comparables #1 and #4 in the Mundie Appraisal, and Rental Comparables #2 and #4 in the Apiecionek Appraisal were most similar to the subject. In particular, these comparables were all anchor department stores in regional or super regional malls within the Chicago Metropolitan area. The remaining rental comparables were given diminished weight because they were either freestanding stores, attached to a "power center" or "lifestyle center," or were located outside the Chicago Metropolitan area. The most similar comparables had rents ranging from \$3.92 to \$8.12 per square foot. The Board's finding that the subject's rent is \$6.01 falls squarely in this range.

Moreover, the Dollars and Cents of Shopping Centers: 2008 study states that the rent per square foot for the top ten percent of owned national chain department stores in super-regional malls is \$5.86 per square foot. As discussed above, the Board finds that the subject is located in the top ten percent due to Woodfield Mall's superiority. Thus, the Board finds that the Dollars and Cents of Shopping Centers: 2008 study supports the finding that the subject's rent is \$6.01 per square foot.

The appraisers agreed that a nominal 3.0% deduction should be applied to account for vacancy and collection losses. Applying this factor results in an effective gross income of \$1,179,032. The appraisers nearly agreed on the applicable management fee, which the Board finds should be 2.25%. The parties differed on the reserves for replacement, but the Board finds the Mundie Appraisal persuasive on this matter; and, thus, finds that the reserves for replacement is properly set at \$0.10 per square foot. Thus, the Board finds that the subject's net operating income is \$1,132,271.

The appraisers did not agree on the capitalization rate that should be applied to the subject's net operating income. The Mundie Appraisal concluded the capitalization rate should be 9.5%, while the Apiecionek Appraisal concluded the capitalization rate should be 7.5%. Both appraisers utilized the "band of investment" technique and the "direct" or "market derived" technique, which extracted a capitalization rate from the comparables used in the respective sales comparison approaches. The Apiecionek Appraisal also utilized market surveys.

The Board accords little weight to the “band of investment” analyses done by the appraisers. As Mr. Battuello testified, the mortgage market as of January 1, 2010 was “broken.” His report further states that “[m]ortgage and equity rates were quite dispersed at this time with real estate and financial markets still in turmoil and not yet stabilized following the 2008-2009 collapse.” Thus, this technique was given no weight in the Board’s analysis because, based on market conditions as of January 1, 2010, it yields unreliable results.

The Board also accords little weight to the market surveys used in the Apiecioneck Appraisal. As Ms. Apiecioneck testified, the PriceWaterhouseCooper (2010, Q1) survey looked at national net lease markets. Additionally, according to Ms. Apiecioneck, the RERC Investor Survey (2010, Q1) takes into account all retail tenants at regional malls, including the inline tenants. As such, the Board finds reliance on such broad surveys misplaced when looking to the limited anchor department store market, and, therefore, accords them little weight.

Under the “direct” or “market derived” method of establishing a capitalization rate, the parties used a total of seven recent sales. The Mundie Appraisal utilized all four of the sale comparables found in that report, while the Apiecioneck Appraisal utilized Sale Comparables #1, #5, and #6 found in that report. The Board notes that Sale Comparable #1 in the Mundie Appraisal and Sale Comparable #5 in the Apiecioneck Appraisal are the same sale. These comparables had capitalization rates that ranged from 5.6% to 11.0%. The Board finds Sale Comparables #1 and #2 in the Mundie Appraisal and Sale Comparables #5 and #6 in the Apiecioneck Appraisal most similar to the subject in ascertaining an appropriate capitalization rate. These comparables had capitalization rates ranging from 5.6% to 9.7%. The Board gave particular emphasis to Sale Comparable #1 in the Mundie Appraisal \ Sale Comparable #5 in the Apiecioneck Appraisal, as this was the sale of a leased fee interest in which the actual net rental income could be derived, and it was an anchor department store attached to a super-regional mall. This comparable had a capitalization rate of 7.8%, and the Board finds this figure is within the range of the remaining similar comparables.

Thus, the Board concludes that the subject’s net operating income is \$1,132,271 and its capitalization rate is 7.8%, which yields a total market value under the income approach to value of \$14,516,295.

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

The Board shall place primary emphasis on the ten sale comparables used by the appraisers. Overall, the Board accorded diminished weight to Sale Comparables #1 and #4 in the Mundie Appraisal, and all of the comparable sales in the Apiecioneck Appraisal. Sale Comparable #1 in the Mundie Appraisal \ Sale Comparable #5 in the Apiecioneck Appraisal was given diminished

weight because this was a leased fee sale that sold differing property rights. Sale Comparable #1 in the Apiecioneck Appraisal was given diminished weight for the same reason, as this was a leased fee sale of the improvement only, and large adjustments were necessary to account for the separate ground lease that was not part of the transaction. Moreover, Ms. Apiecioneck admitted that this portion of her report was “copied word for word” and was “possibly” verbatim from the Enright Appraisal.³ Thus, the Board finds that Ms. Apiecioneck’s research and analysis was not her own with regard to this sale comparable, and the appraiser who did conduct the analysis (namely, Ms. Enright) was not present to testify. As such, Comparable Sale #1 was given no weight in the Board’s analysis. Sale Comparable #6 in the Apiecioneck Appraisal was also given diminished weight for the same reason. Additionally, this property was purchased by the lessee so that it could be remodeled into a larger retail store, indicating that it may not be an arm’s-length transaction.

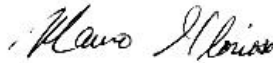
Sale Comparable #4 in the Mundie Appraisal was given diminished weight because this was a sale out of bankruptcy that was sold at an auction, and the conditions of this sale could not be verified by the appellant’s appraiser. While Mr. Mundie explained that he spoke with an individual involved to verify the arm’s-length nature of the transaction, he was unable to recall that individual’s name at hearing, and seemed uncertain as to this individual’s role in the transaction. He further testified that he currently records the names of sources he speaks with, but did not do so at the time he spoke with this individual. Thus, it appears that even Mr. Mundie agrees that the name and role of this individual is important, since he changed his internal office procedures to account for this omission. While an unnamed source used to verify the conditions of a sale comparable used in an appraisal may not necessarily be detrimental to the veracity of that sale, the Board finds this omission, coupled with the circumspet sale conditions (i.e., the seller was in bankruptcy proceedings), negates the probative value of Sale Comparable #4 in the Mundie Appraisal. Therefore, this sale was given diminished weight in the Board’s analysis.

Sale Comparables #2, #3, and #4 in the Apiecioneck Appraisal were given less weight because they were the sales of freestanding properties or are attached to a “power center” and therefore, as sold, have a different highest and best use than the subject. Sale Comparable #2 was used by the seller as a furniture store, and the buyer planned to use it as an office building. Sale Comparable #3 was used by the seller as a home remodeling store, and the buyer planned to use it as a furniture store. Sale Comparable #4 was used by the seller as a “big box” retail store, and the buyer planned to use it as a department store. It is undisputed that the subject is a single-tenant anchor department store attached to a super-regional mall. None of these three comparables meet that same criteria, and, in fact, only Sale Comparable #4 was intended for use as a department store (although such use never materialized). Thus, these comparables were given diminished weight in the Board’s analysis.

³ The Board notes that Ms. Apiecioneck testified that her analysis of Sale Comparable #1 was “copied word for word” and was “possibly” verbatim from the Enright Appraisal, and then, after this testimony, the intervenors objected to the continuation of this line of questioning based on relevancy, which the Board sustained. As such, while Ms. Apiecioneck’s testimony regarding the exact duplication of the text was made during an offer of proof, she did testify as to the similarity (and possibly “verbatim” character) of her analysis and Ms. Enright’s analysis of Comparable Sale #1 during cross-examination and outside the scope of the offer of proof.

Therefore, the Board placed most weight on Sale Comparables #2 and #3 in the Mundie Appraisal. These sales contained single-tenant, anchor department stores attached to super-regional malls, which is the same usage as the subject property. Sale Comparables #2 and #3 had building sizes of 254,720 and 147,896 square feet, and sold in January 2003 and September 2003 for unadjusted prices of \$35.33 and \$28.40 per square foot, respectively. In contrast, the subject's market value accorded by the board of review was \$80.00 per square foot. After making adjustments for pertinent factors, not the least of which is location, physical attributes, age, and building size, the Board finds that the subject property had a market value of \$13,151,450 as of the assessment date at issue. Since market value has been established, the 2010 level of assessment for class 5, commercial property under the Cook County Real Property Assessment Classification Ordinance of 25% shall apply. 86 Ill.Admin.Code § 1910.50(c)(2).

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



Chairman



Member



Member



Acting Member



Acting Member


DISSENTING: _____

CERTIFICATION

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: _____

May 19, 2017



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.