



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

APPELLANT: Sears, Roebuck & Company
DOCKET NO.: 11-29144.001-C-3
PARCEL NO.: 27-10-301-008-0000

The parties of record before the Property Tax Appeal Board are Sears, Roebuck & Company, the appellant(s), by attorney Patrick C. Doody, of the Law Offices of Patrick C. Doody in Chicago; the Cook County Board of Review by Cook County Assistant State's Attorney Cristin Duffy; the Five Taxing Districts, intervenors, by attorney Mallory A. Milluzzi of Klein Thorpe & Jenkins Ltd. 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: \$1,508,161
IMPR.: \$1,260,113
TOTAL: \$2,768,274

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 2011 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 is located on a 710,000 square foot, irregularly shaped lot and it contains a two-story, single-tenant, anchor department store, with an attached auto center, built in 1975 with a land-to-building ratio of 3.53:1. The retail department store is one of the anchor stores located in the Orland Square Mall. The property is located in Orland Township, Cook County, and is a class 5 property under the Cook County Real Property Assessment Classification Ordinance.

At the commencement of this hearing, Assistant State's Attorney, Cristin Duffy, moved to exclude any witnesses. The appellant objected to excluding review appraisers during the opposing parties' appraisers' testimony. The appellant argued that review appraisers may be

needed to assist in formulating questions for cross examination. The intervenors moved to either have all witnesses excluded or all witnesses allowed. Upon due consideration of the parties' positions, the Board granted the State Attorney's motion in part and denied in part. Therefore, the value appraisers were excluded, but review appraisers were allowed to be present during the testimony of opposing parties' appraisers'.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal completed by Joseph M. Ryan (Ryan) estimating the subject property had a market value of \$7,550,000 as of January 1, 2011. Based on Ryan's appraisal, the appellant requested a reduction in the subject's assessed value to \$1,887,500.

Ryan testified that he holds the designations of Member of the Appraisal Institute (MAI) and is a member of the Institute of Property Taxation (IPT). He also testified that he has appraised in excess of 100 properties similar to the subject and has qualified as an expert witness before the Board, zoning boards, and Circuit Courts for multiple counties. Ryan was offered as an expert in real estate theory and practice and with no objections by opposing counsels was accepted as such by the Board.

Ryan testified that he performed an interior and exterior inspection of the subject property on September 28, 2011. The purpose of his report was to estimate the market value of the fee simple estate of the subject property for ad valorem taxation. In his analysis, Ryan utilized two of the three traditional approaches to value and found that the current use is the subject's highest and best use. In the alternative, Ryan found that the highest and best use for the subject property as vacant would be commercial use that meets the sequential test of physically possible, legally permissible, economically viable, and maximally productive. Ryan testified that he did not utilize the cost approach because market participants do not rely on this approach and because he could not find any comparable land sales of sites for anchor department stores on the open market. He also testified that anchor department stores are only comparable to other anchor department stores.

In his income approach to value, Ryan stated that he examined only anchor department stores attached to a regional or super-regional mall. Those rental comparables ranged from \$2.00 to \$6.60 and were located primarily in the Midwest. After adjustments, Ryan determined that the gross rent for the subject is \$4 per square foot of building area. After deducting vacancy, collection loss, and net operating costs, Ryan arrived at a net operating income of \$759,000. Using a 10% capitalization rate, he reached an opinion of value for the subject property of \$7,600,000. Ryan testified that he did not look at malls when establishing the cap rate for the subject because the value generated at a mall comes from the inline stores and not the anchor department stores. Instead, Ryan testified that he based his capitalization rate on the sale of the JCPenney store at the Stratford Square Mall, which he used as sale comparable #5 and which was internally viewed as \$4.50 per square foot, and other investment market surveys that had a similar price per square foot values. He also testified that he looked at free standing stores, and their cap rates supported the 10% overall capitalization rate for the subject property.

Under the sales comparison approach, Ryan stated that he also used only anchor department stores. Ryan's reasoning for comparing only anchor department store to other anchor department stores was because their synergy of being attached to the mall is unique. He also stated that he

set his search criteria between the Appalachians and the Rockies because anchor department stores are marketed “regionally if not nationally.” Ryan testified that he confirmed each of his suggested sales comparables with a party to the transaction. He also listed in his report the adjustments he made for condition of sale, market conditions, location, land-to-building ratio, building size, auto center, and age and condition. Based on the sales comparables approach, he reached a conclusion of value for the subject of \$37.50 per square foot or a total of \$7,550,000.

On cross examination, Ryan testified that he obtained his sales comparables through CoStar and industry sources. He could not recall the search criteria utilized in CoStar, but testified that he looked nationwide and then narrowed his search between the Appalachians and the Rockies. In addition, Ryan testified that he visited all of his sales comparables. Ryan testified that sales comparables #1 and #2 in his report were sales of anchors that were subsequently demolished when no tenant was found. Sale #3 was similarly converted after the sale from an anchor department store to a multi-tenant use after no tenant was found. As far as sale comparable #5 in his report, Ryan testified that he listed the sale per square foot as \$43.58 per square foot of building area based solely on a representation by a JCPenny executive that the store’s actual square footage was 153,366 square feet.

Upon questioning by counsel for the intervenor, Ryan testified that anchor stores in regional or super-regional malls are not limited to only department stores. Intervenor’s counsel introduced in evidence a current printout from the International Council of Shopping Center’s, U.S Shopping-Center Classification and Typical Characteristics chart, admitted as Intervenor’s Exhibit #1, showing that under the category of typical types of anchors different merchants is stated without further explanation. This one-page Exhibit also states a disclaimer as to the accuracy and reliability of the information in this report.

Ryan also testified on cross that sale comparable #8 in his report was not advertised on the open market other than the mall owner “let[ing] it be known that the property was for sale” and Von Maur subsequently purchasing it. Ryan also testified that this is a common practice in the industry. On redirect, Ryan testified that he did not include the 2005 and 2011 sales of the Neiman Marcus store in Oak Brook as comparables because the first sale was of the ground lease itself and the second was of the improvements. He also testified that neither sale was marketed and in his opinion did not meet the definition of fee simple as employed in his report, or Illinois case law.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$3,347,091. The subject's assessment reflects a market value of \$13,388,364 or \$66.50 per square foot of building area, including land, when applying the 2011 statutory level of assessments for class 5 property under the Cook County Real Property Assessment Classification Ordinance of 25%.

Before presenting their case in chief, the board of review moved for a directed finding, which was denied by the Board. In support of its contention of the correct assessment, the board of review submitted information on five suggested sales comparables. Those properties sold from March, 2007 to September, 2011 and ranged from \$107.72 to \$221.43 per square foot of building area. The board of review resting on the written evidence argued that although their comparables

were freestanding retail buildings, after proper adjustments they are nevertheless relevant comparables in geographic location and time of sale.

In rebuttal to the board of review's case in chief, appellant's counsel argued that the board of review's comparables should be given no weight because the person who originally prepared the report was not present for purposes of cross examination. In addition, counsel argued that the board of review's own transmittal letter states that it is not evidence of value or an appraisal.

The five intervenors submitted an appraisal prepared by Dale J. Kleszynski (Kleszynski). Kleszynski testified that he holds the MAI and SRA designations as awarded by the Appraisal Institute. He is the president and chief appraiser of Associated Property Counselors. Kleszynski testified that he has been an instructor for both the Appraisal Institute as well as the Appraisal Foundation. In the past five years, Kleszynski testified that he has performed at least ten appraisals of anchor stores attached to a regional or super-regional malls and has qualified as an expert witness before numerous tribunals including Circuit Court of Cook County and the Board. Kleszynski was offered as an expert in real estate theory and practice and after no objections by opposing counsel was accepted as such by the Board.

On direct, Kleszynski testified that in completing his appraisal, he inspected the property and reviewed the LaSalle appraisal report prepared by Ryan. Kleszynski's inspection of the subject was limited to the public areas of both the exterior and interior. As part of his appraisal, Kleszynski also reached an opinion as to the highest and best use of the subject both as vacant and as improved. As to improved use of the property, Kleszynski stated that the current use is the highest and best use. Alternatively, he stated that the best use as vacant would be development for retail application.

In his appraisal, Kleszynski stated that he utilized both the income approach to value as well as the sales comparison approach to value. Additionally, he completed an analysis estimating the value of the land as vacant. For this purpose, Kleszynski used five suggested land sale comparables that sold between January, 2008 and December, 2011 for prices ranging from \$8.06 to \$24.10 per square foot. Kleszynski testified that he verified each of those suggested sales comparables with a party to the transaction, transfer documents, or information available through publications. After pertinent adjustments, Kleszynski reached a conclusion of value of \$12 per square foot of land for a total of \$8,515,000. Finally, Kleszynski testified that he considered those land sales pertinent because they were large commercial sites in or near the community where the subject property was located.

In his income approach to value, Kleszynski examined retail space in the Orland Park area, including within the Orland Square Mall. Kleszynski reviewed six rental comparables that ranged from \$8.17 to \$12.50 per square foot of building area. Out of the six comparables, Kleszynski testified that four would be considered anchor type stores but none are attached to a regional mall. In addition, Kleszynski stated that he considers anchor department stores in regional malls to be similar to power centers and neighborhood centers because they all serve a similar function. After adjustments, particularly for the much larger size of the subject, Kleszynski concluded the fair market rent for the property to be \$7.50 per square foot of building area, resulting in a potential gross income of \$1,510,042. Looking at a three-mile radius, Kleszynski found the applicable vacancy rate for properties similar to the subject to be 5%. After

deducting operating expenses, vacancy, and collection loss, Kleszynski found the Net Operating Income (NOI) to be \$1,211,751.

In determining his capitalization rate, Kleszynski used multiple sources. First, he looked to the capitalization rates of the sales comparables, which ranged from 7.01% to 9.42%, and compared that with the Pricewaterhouse National Investor Survey for regional malls which for 2011's first quarter ranged in capitalization rates from 5% to 10.5%, with an average of 7.5%. Finally, Kleszynski applied a simple band of investment technique to calculate the debt and equity for a property and calculate the risk associated with such property. After adjustments, Kleszynski reached an overall capitalization rate of 8.80% which resulted in an opinion of value for the subject of \$13,750,000.

Under the sales comparison approach, Kleszynski used data on five suggested sale comparables. Kleszynski testified that he confirmed each of his suggested sale comparables with a party to the transaction and/or public records. Comparables #1, #2, and #3, were leased fee sales, but Kleszynski testified that sometimes leased fee sales can be identical to fee simple sales. He also stated that he did not limit his comparables to department stores, but included other large spaces due to the changing nature of the retail market. Kleszynski used sales ranging in sale date from April, 2006 to January, 2011 and in price from \$40.68 to \$73.15 per square foot of building area. Based on the sales comparison approach, Kleszynski reached a conclusion of value for the subject of \$13.75 per square foot or a total of \$14,100,000.

On cross examination, Kleszynski testified that his suggested sale comparables met the principle of substitution for a property like the subject. He also testified that none of his rental or sales comparables have an attached auto centers and no specific adjustments were made for the lack thereof. However, Kleszynski testified that the lack of an attached auto center was taken into account by him nevertheless. Kleszynski also testified that the economics of power centers and freestanding stores are not the same as they are for anchor department stores in a regional or super-regional mall. In addition, Kleszynski testified that his suggested sale comparables did not require a specific adjustment to account for the different type of interest being transferred because no adjustment was needed to reflect a large difference between the market and the actual rents.

In addition to the Ryan appraisal, the appellant submitted a summary appraisal report prepared by Gary Battuello (Battuello), who is the principal owner and managing partner of Ramsland & Vigen. Battuello testified that he holds the MAI designation as well as the AI-GRS designation of the Appraisal Institute. He stated that he began his practice as an appraiser 36-years-ago and has general appraisal licenses in Illinois, Minnesota, and Wisconsin. Battuello testified that he has appeared before tribunals in all three states where he is licensed and has prepared appraisal reports for approximately 75-80 anchor department stores similar to the subject. In addition, he prepared reviews for a similar number of anchor department stores.

Without objections from the other parties as to Battuello's qualifications, he was offered and accepted as an expert in real estate appraisal theory and practice and review appraisals by the Board. He stated that the scope of his assignment was to review the appraisal prepared by Kleszynski for the quality of the data, completeness, accuracy, and relevance of the data analysis

given the property type. He testified that the Associated report prepared by Kleszynski contained all of the elements necessary for a complete document.

Also without objections from the opposing parties, counsel for the appellant introduced into evidence Exhibit #2, identified for the record as a handout prepared by the Appraisal Institute on the Common Errors and Issues in the Appraisal Report. Battuello testified that this supplemental handout was given out as part of the USPAP course between 2007 and 2015. The handout was prepared by the Associated Property Counselors and was the effective document as of January 1, 2011.

Under examination, Battuello stated that one of the common errors listed in Exhibit #2 is analyzing rent comparables without considering the size of the demised spaces in either the comparables or the subject. In this case, Battuello stated that only one of Kleszynski's rental comparables was at least 50 percent of the size of the subject. Battuello also stated that Kleszynski relied upon large freestanding sites along commercial corridors in formulating his land value estimates. Battuello stated this approach was incorrect because large freestanding sites are distinct from anchor stores, like the subject. Battuello argued that large freestanding sites have greater exposure to commercial corridors as well as rectangular shapes all of which allows for more flexibility in use and independence of identity. Anchor stores, on the other hand, are integrated and designed to be operated in tandem with the mall itself. As a result, Battuello testified, there is a more limited number of buyers or renters in the marketplace for anchor store sites.

In examining Kleszynski's income approach, Battuello found that there were issues with the estimated market rent and the capitalization rate utilized to reach a conclusion of value. More specifically, Battuello pointed out that only three of Kleszynski's rent comparables were actual rental agreements, whereas the other three were only offerings. Battuello testified that rental offerings are not a reliable indication of rent, but merely an upper limit to what the actual rent might be. As far as the three actual rental agreements, Battuello testified that they were not from an anchor store in a regional or super-regional mall, but rather from a power center, neighborhood anchor store, and freestanding department store. Battuello reiterated that power centers, neighborhood anchor store, and freestanding stores are different from regional and super-regional malls physically, in integration of operation, and flexibility of tenants.

In examining Kleszynski's sale comparison approach, Battuello's overall conclusion was that the data utilized by Kleszynski was neither relevant nor credible. More specifically, Battuello testified that Kleszynski's first three sales were not fee simple, but rather leased fee sales. Battuello testified that the relevance and reliability are questionable when comparing leased fee versus fee simple sales. Battuello also testified that Kleszynski's sale comparable #3, #4, and #5 are freestanding stores rather than anchor stores, and #4 and #5 are substantially newer than the subject. Finally, Battuello testified that land value estimate by Kleszynski is not applicable in this case because the subject is not in a freestanding commercial corridor of land as are the land comparables.

On cross, Battuello testified that he did not do a physical inspection of the subject property or the comparables. He testified that he was limited to a desk review, which entails examining the appraisal performed by the other appraiser. Furthermore, Battuello stated that there is some

flexibility for crossover between market participants in anchor stores and freestanding stores. Finally, he testified that depending on the mall's operating agreement an anchor store could be redeveloped for multi-tenant use.

Conclusion of Law

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

Within these appeals, various evidence submissions were submitted as well as testimony of numerous experts in the field of real estate appraisal. These experts either expounded on their work product or were called upon to rebut and review the validity and reasonableness of other evidence submitted by the parties.

In determining the fair market value of the subject property for tax year 2011, the Board closely examined the reports prepared by Ryan, Kleszynski, and Battuello. The Board accords little weight to the board of review's evidence submission for it lacked the preparer's testimony concerning her qualifications, the methodology regarding data used therein, and her conclusions.

The Board then looks to the remaining evidence that comprises of the Ryan appraisal and testimony submitted by the appellant; and the intervenors' evidence encompassing the Kleszynski appraisal and testimony; and Battuello's review appraisal and testimony. The Board further finds that the intervenors' evidence reflects a market value opinion of either \$13,750,000 or \$14,100,000 which are both just slightly above the current assessed value of \$13,388,364. Based on this evidence, the intervenors' requested that the subject's assessment be maintained.

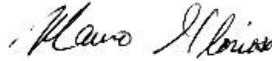
The Board gives no weight to Kleszynski's land sales as not similar to the subject as a mall pad site. Moreover, the Board finds that the experts agreed that the cost approach is less than applicable to a large, aged, owner-occupied anchor department store. Ryan did not develop a land value. The Board gives no weight to the intervenors' argument that Ryan's failure to provide a separate value for the land discredits his analysis. Bd. of Ed. of Ridgeland SD No. 122 v. PTAB, 2012 IL App (1st) 110461. In Ridgeland School District, the court held that the appraiser's "failure to follow the cost approach and provide a value for the land was not fatal." *Id.*

As to the income approach, the Board finds this application less than relevant to an owner-occupied anchor department store. The record contains contradictory information about the size and lease terms of the sale of JCPenny at Stratford Square Mall, which Ryan used to compute his cap rate. The Board gives diminished weight to most of Ryan's 15 rental comparable properties because the rental data is very dated, some of the rentals were percentage-only, and some were subject to a ground lease. The Kleszynski appraisal used either rental offerings or rental data unrelated to anchor department stores. For these reasons, the Board gives little weight to the income approach.

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 consider the raw sales data from all parties.

As to the parties 18 comparable sales, the Board finds the appellant's sales comparables #1, #2, #6 and #8, and the intervenors' comparables sales #4 and #5 to be similar and most probative in determining the subject's market value. These properties sold for prices ranging from \$20.09 to \$60.31 per square foot of building area. In comparison, the subject assessment value reflects a market value of \$66.50 per square foot of building area, which is above the range. After adjustments to the comparables for pertinent factors, the Board finds that the subject's improvement was overvalued and a reduction in the subject's market value is justified.

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. Pursuant to Section 1910.50(b) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(b)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.



Chairman



Acting Member

Member



Member



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: November 21, 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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

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