



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

APPELLANT: Bloomingdale's
DOCKET NO.: 11-29457.001-C-3
PARCEL NO.: 10-09-411-081-0000

The parties of record before the Property Tax Appeal Board are Bloomingdale's, the appellant, by attorney Patrick C. Doody, of the Law Offices of Patrick C. Doody in Chicago; the Cook County Board of Review; the Niles Township High School District #219, intervenor, 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: \$ 369,380
IMPR.: \$2,903,077
TOTAL: \$3,272,457

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 consists of 95,324 square foot parcel of land improved with a three-story, single-tenant anchor department store of masonry construction attached to a regional shopping mall commonly known as Old Orchard Mall Shopping Center. The retail store, Bloomingdale's, contains approximately 206,139 square feet of building area. This store was constructed in 1995.

At the commencement of this hearing, the Board finds that these appeals involve common issues of law and fact and a consolidation of the 2010, 2011 and 2012 appeals, for hearing purposes, would not prejudice the rights of the parties. All parties to the appeal were in agreement of consolidation as well. Therefore, pursuant to Section 1910.78 of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code 1910.78), the Board consolidated the above appeals solely for hearing purposes, while noting that distinct decisions would be rendered in each appeal year.

The appellant, through counsel, appeared before the Property Tax Appeal Board arguing that the fair market value of the subject is not accurately reflected in its assessed value. In support of this argument, the appellant submitted a complete summary appraisal report. The appraisal has a valuation date of January 1, 2010. The appellant presented the testimony of the appraisal's author, Joseph M. Ryan of LaSalle Appraisal Group, Inc., in Chicago. *Voir dire* was conducted by the appellant's counsel confirming Ryan's credentials and his expertise as an appraiser. Therefore, the Board accepted Ryan as an expert witness in property valuation over the objections of the board of review and intervenor, reserving a determination of Ryan's credibility as a witness subject to cross-examination.

Ryan testified he conducted a complete interior and exterior inspection of the subject property on April 7, 2010. Ryan testified that 2010 was the general assessment year for the subject's township. In 2011 and 2012 the county did not reassess the township.

The witness described the subject property and its environs. Ryan testified that there are three other anchor stores within the mall. He testified that the subject's land is commonly known as an anchor pad site and that the land to building ratio is 0.46:1. Ryan provided a description of the improvement and testified that the subject's highest and best use as improved is the continuation of its current use.

To estimate a total market value for the subject of \$9,275,000 as of January 1, 2010, Ryan employed two of the three approaches to value: the income capitalization approach and the sales comparison approach to value.

Under the income approach, Ryan testified he analyzed 15 anchor department store rental comparables located across the United States. The properties consisted of department store buildings in regional malls. Ryan testified that the subject property is owner-occupied.

The comparables ranged in size from 93,957 to 196,470 square feet. The commencement dates on the leases ranged from 1981 to 2008, with rents ranging from \$2.00 to \$6.60 per square foot, triple net, or 1% to 2.5% of gross sales. Ryan testified he compared and contrasted these properties to the subject to estimate rent of \$4.75 per square foot net for the subject.

Ryan tested this rent amount by reviewing *Dollars & Cents of Shopping Centers, 2008* and estimated sales revenue at \$160.00 per square foot for the subject with an estimated rent of 1.5% to 3.0% of retail sales. The appraisal placed more weight on the market rents and stabilized rent for the subject at \$4.75 per square foot of building area, on a triple net basis.

The appraisal estimated the potential gross income (PGI) of \$979,160. Ryan testified he estimated vacancy and collection loss (V&C) of 1.0% resulting in an effective gross income (EGI) of \$969,368 for the subject. Ryan testified he allocated expenses for insurance, management and replacement reserves at \$.21 per square foot, or \$43,289. The estimated expenses were deducted from the EGI resulting in a net operating income (NOI) of \$926,079 for the subject.

To estimate the capitalization rate, Ryan testified he developed a capitalization rate using the direct capitalization technique at 10.00%. This involves the extraction of an overall rate from recent sales of competitive properties. He relied on his sale #5 from his sales comparison approach, which was

a leased-fee sale. He utilized freestanding retail properties from the *Realty Rates Investor Survey (1st Q 2008/2009/2010)*, where the range was from 6.15% to 13.2%, with an average of 10%. Ryan also considered the Band of Investment technique, referring to the investor survey *Realty Rates*. He surmised that a 14% return on capital would be required to attract potential investors, indicating a 9.87% overall capitalization rate. Ryan then reconciled both approaches and concluded a 10.0% overall capitalization rate. Dividing the NOI by the appraiser's total capitalization rate resulted in an indicated value for the subject of \$9,260,000, rounded.

To estimate a value for the subject through the sales comparison approach, the appraiser analyzed eight sales of similar properties located mainly in the Midwest area. The properties are located in Illinois, Colorado, Georgia, Indiana and Ohio. His search was expanded nationally due to the lack of anchor department store sales.

The comparables range in building size from 118,142 to 201,000 square feet of building area and in land size from 348,480 to 579,348 square feet. The comparables have land-to-building ratios ranging from 2.38:1 to 3.76:1 and range in age from 5 to 30 years old. The comparables sold from June 2004 to December 2010 for prices ranging from \$1,000,000 to \$8,000,000, or from \$8.23 to \$43.68 per square foot of building area, including land. Ryan briefly described each sale. Ryan testified that sales #2 and #3 were sold in the same market for a similar sale price per square foot, which corroborates their sale prices were at market value. Ryan testified that sale #5 was a leased-fee sale but still provided a capitalization rate from an anchor department store sale and was located in the same demographic area as the subject property. He also testified that sales #4 and #6 sold in the same mall two years apart, one to an owner-occupant and the other to the mall owner, corroborating that their sale prices were at market value. Sale #8 was the most recent sale and was a user-to-user sale.

After making adjustments, he testified he valued the subject property at \$45.00 per square foot of building area, including land which reflects an estimated market value for of \$9,275,000, rounded.

When reconciling the two approaches to value, Ryan testified he accorded more weight to the sales comparison approach to value as the subject is owner occupied. He proffered an estimate of value for the subject property of \$9,275,000 as of January 1, 2010, while emphasizing how department stores are losing market shares which negatively impacts their value.

Under cross examination by the intervenor, the intervenor questioned Ryan on a reprimand by the Real Estate Division of the Illinois Department of Financial and Professional Regulation (Intervenor's Hearing Exhibit #1), fines, and inconsistent appraisal adjustments he made on identical properties for market conditions, age and size. Ryan acknowledged his reprimand and fine and indicated adjustments can vary on the same property from year to year. Ryan also acknowledged that he did not provide an estimate of land value in his report.

Under cross examination as to the sale comparison approach, Ryan testified the mall owner in sale #1 purchased the property, it was vacant at the time of sale, and there were no brokers involved in the deal. The mall owner could not find a tenant or a purchaser so this property was razed. Ryan testified that he could not remember the name of the person he spoke with to confirm this data. Ryan was aware of this mall's vacancy issues, but did not know the vacancy at Old Orchard Mall,

where the subject property is located. He testified that it was not relevant in determining comparability.

As to sale #2, Ryan testified that Lord & Taylor was undergoing restructuring at the time of this sale, the store had closed prior to the sale, and the mall owner purchased this property. Sale #2 was also razed and repurposed. Ryan testified that he could not remember the name of the person he spoke with to confirm this data and did not remember the date of his inspection of this property.

As to sale #3, Ryan testified that Lord & Taylor was undergoing restructuring at the time of this sale and the store had closed prior to the sale. Two “category killers” took over this anchor department store space. Ryan testified that he could not remember the name of the person he spoke with to confirm this data.

As to sale #4, Ryan testified that Lord & Taylor “may have been” undergoing restructuring at the time of this sale and the store had closed prior to the sale. Ryan testified that no adjustment was made for condition of sale.

As to sale #5, Ryan indicated he made no adjustment for location and that this was a leased-fee sale. The buyer was the mall owner.

As to sale #6, Ryan testified that this sale was part of the corporate restructuring of Macy’s and May Department Stores in 2007. He confirmed that Macy’s sold the property because they did not want to own two anchor department stores in the same mall that were competing with each other. Ryan further testified that this property was eventually repurposed and was gutted and multi-tenanted.

As to sale #7, Ryan acknowledged that although the sale price per square foot was less than half of the next lowest sale comparable contained in his appraisal report, he believed it was still a market fact. He also acknowledged that a consolidation led to the owner owning two stores in the same mall. This store was sold to the mall owner. Ryan testified that he could not remember the name of the person he spoke with to confirm this data.

As to sale #8, Ryan testified that the Midwestern market spans from the Appalachians to the Rocky Mountains which is why this Georgia sale was included. He further testified that this property was never listed on the open market and there were no brokers involved in the deal. Ryan also testified that he was not aware of a prior sale of this property in 2007 where it sold for a price of \$86.96 per square foot.

No adjustments were made to any sale for market conditions, location, or land-to-building ratio.

Under cross-examination by the intervenors as to the income approach, Ryan confirmed that the lease for rental comparable #1 started 12 years prior to the appraisal’s January 1, 2010 valuation date. He also stated that Utah is located in the Rocky Mountains and the 10-mile population radius for this comparable is less than one-fifth of that of the subject property.

As to rental comparable #2, Ryan confirmed that the lease started 12 years prior to the appraisal’s January 1, 2010 valuation date. He further testified that Hawaii is not considered to be part of the

Midwestern United States and that the 10-mile population radius for this comparable is less than one-third of that of the subject property.

As to rental comparable #3, Ryan confirmed that the lease started 11 years prior to the appraisal's January 1, 2010 valuation date. He further testified that Georgia is not considered to be part of the Midwestern United States and that the 10-mile population radius for this comparable is less than one-quarter of that of the subject property.

As to rental comparable #4, Ryan confirmed that the lease started 10 years prior to the appraisal's January 1, 2010 valuation date. He further testified that New Mexico is not considered part of the Midwestern United States and that the 10-mile population radius for this comparable is less than one-fifth of that of the subject property.

As to rental comparable #5, a Sears store in Michigan, Ryan confirmed that the lease started 10 years prior to the appraisal's January 1, 2010 valuation date. He further testified that this property sold in 2000 and is considered to be located in a regional power center, not a super-regional mall.

As to rental comparable #6, a Von Maur store in Kentucky, Ryan stated that the 10-mile population radius for this comparable is less than one-half of that of the subject property. He further testified that it is not located in a super-regional mall.

As to rental comparable #7, Ryan revised his report and indicated that the lease started 7 years prior to the appraisal's January 1, 2010 valuation date.

As to rental comparable #8, Ryan testified that the 10-mile population radius for this comparable is less than one-fifth of that of the subject property.

As to rental comparable #9, Ryan testified he was unaware of gang violence at this suburban Detroit mall. He testified this would have no bearing on determining comparability to the subject property. He further testified that this mall is older and is not a super-regional mall.

As to rental comparable #10, Ryan testified this property was located in Oak Brook, Illinois and leased for \$6.60 per square foot. He confirmed his conclusion of a rental rate of \$4.75 for the subject property.

As to rental comparable #11, Ryan testified that the 10-mile population radius for this central-Pennsylvania comparable is less than seven percent of that of the subject property.

As to rental comparable #12, Ryan testified that he considered Tennessee to be part of the Midwestern United States and that the 10-mile population radius for this comparable is less than one-tenth of that of the subject property.

As to rental comparable #13, a Dillard's in Texas, Ryan testified that the lease started in 2007, while the date of his appraisal report was 2010. He also indicated a rental rate of \$5.06 per square foot and a 10-mile population radius for this comparable of over one million people.

As to rental comparable #14, a Penney's in Texas, Ryan testified that the lease started in 2007, while the date of his appraisal report was 2010. He also indicated a rental rate of \$5.50 per square foot and a 10-mile population radius for this comparable of over one million people.

As to rental comparable #15, a Von Maur in Ohio, Ryan testified that the 10-mile population radius for this comparable is less 27.5% of that of the subject property. He further testified that this comparable is not a super-regional mall, as is the subject property, and the complex is actually a mixed-use office, retail, dining and entertainment center.

Ryan testified that there was no discussion in his report of any adjustments for market conditions. He confirmed that the ten-mile population radius is 332,500 people larger than the closest comparable he used in his report. He further testified that the sale price per square foot value he used for 2010 in his income analysis was incorrect. It should have been \$162.00 psf and not \$160.00 psf as reported. Ryan confirmed that the rent range for department stores in super-regional centers is between 0.5% and 4.0% while he used a range of 1.5% to 3.0% in his income analysis. Upon further questioning, Ryan confirmed that the Neiman Marcus store located in Oak Brook, Illinois had a rental rate of \$6.60 per square foot. Ryan acquiesced that the subject property's sales at \$162.00 per square foot combined with a percentage rental rate of 4% of sales ($4.0\% \times \$162.00$) would yield a rental rate of \$6.48 psf for the subject property.

Lastly, regarding his development of a capitalization rate, Ryan testified that his report stated on page 73 that "a 14% return on invested capital would be required to attract potential investors". He confirmed that he did not rely on the Cushman Wakefield Capital Market update which provides risk premium for anchor retail transactions. He further testified that instead he relied on an investor survey which reported capitalization rates for free-standing retail stores even though he did not consider them to be comparable to the subject property.

Under cross-examination by the board of review, Ryan indicated that there are three markets for anchor department stores: the East coast, the West coast, and the center of the country. He testified that sale price per square foot values could be influenced by location, household income, population, and whether an area was "over-malled". Ryan also testified that, in his opinion, the real estate market hit a low at some point during 2010 or 2011.

The witness was questioned regarding the attributes of the Village of Skokie, where the subject property is located, and acknowledged its many benefits. Ryan could not definitively answer the same questions regarding the location of his sale or rental comparables. He further testified that the rental property that was located closest to the subject property and had a similar 10-mile population radius, was leased at a rental rate of \$6.60 psf. He acknowledged that he used a rental rate of \$4.75 psf in his analysis.

On redirect, Ryan testified that the Neiman Marcus store located in Oak Brook, Illinois was approximately one-half the size of the subject property and that, all other factors being equal, would require a downward adjustment in the rental rate when compared to the subject property. Ryan testified that he has testified before the Property Tax Appeal Board 50 times with many satisfactory results.

Upon further questioning, Ryan indicated that anchor department stores serve as primary traffic generators for inline stores, and that a successful anchor department store would not be sold, as it was doing what it was designed to do.

On re-cross, the intervenor tendered an article from *Crain's* marked "Intervenor's Hearing Exhibit #2", the gist of which Ryan agreed: anchor department stores may become obsolete and are being repurposed by mall owners.

The board of review submitted its "Board of Review-Notes on Appeal" wherein the subject's total assessment of \$3,770,765 was disclosed. This assessment reflects a fair market value of \$15,083,060 or \$73.17 per square foot of building area, land included, when the Cook County Real Property Assessment Classification Ordinance level of assessment of 25% for Class 5 commercial property is applied.

In support of this market value, the notes included raw sales information on seven retail properties suggested as comparable to the subject. These properties ranged in size from 152,619 to 250,354 square feet of building area. They sold between January 2005 and March 2008 for prices ranging from \$10,740,500 to \$43,250,000 or from \$63.18 to \$219.70 per square foot of building area, including land. As a result of its analysis, the board requested confirmation of the subject's assessments. At hearing, the board of review rested on its written submission.

In support of the intervenor's position, the intervenor submitted a summary appraisal report (Intervenor's Hearing Exhibit #3) of the subject prepared by Lorraine M. Apiecionek of L.M. Apiecionek & Associates with an effective date of January 1, 2010 and an estimated market value of \$15,400,000. Ms. Apiecionek was the intervenor's only witness in this appeal. After *voir dire* confirming Ms. Apiecionek's credentials and her expertise as an appraiser, the Board accepted Ms. Apiecionek as an expert witness in property valuation with no objection from the appellant.

Apiecionek initially corrected typographical errors in her report. She then testified she inspected the subject on January 25, 2013. Apiecionek described the subject and its neighborhood characteristics. She described the subject property as located in a super-regional mall. Apiecionek testified to the demographics of the subject's area and the retail sales of the mall. She opined that the sales for a mall are important to a retailer and being located in an affluent community is desirable.

Apiecionek opined that the highest and best use of the subject as improved would be its continued retail use. In addition, Apiecionek utilized two of the three traditional approaches to value in estimating the subject's market value, as well as developing a land valuation.

Apiecionek testified she analyzed five land sales located within several miles of the subject property. The properties ranged in size from 126,324 to 765,780 square feet and sold from May 2005 to September 2010 for prices ranging from \$14.99 to \$22.96 per square foot. Apiecionek testified that after making adjustments, she estimated the subject's land value at \$17.00 per square foot or \$10,500,000 using a land square footage of 618,417 SF (suggested economic size). She indicated that although the actual land-to-building ratio of the subject was considerably less than 3:1, this takes into account the additional parking garage located to the south of the subject as well

as additional land area that is available for ingress and egress and easements that are in place for the mall.

The next method developed was the sales comparison approach. Under this approach, Apiecionek testified she looked for commercial property sales of properties that shared similar locational features. Apiecionek described a leased fee sale as a sale of a property that is encumbered by a lease at the time of sale. She opined that if the lease is at market rent, then the leased fee value is the same as the fee simple value. She stated an appraiser needs to know the terms of the lease at the time of sale to make a determination on the market level.

Apiecionek analyzed the sale of six properties located within the Chicagoland area. The appraisal described the properties as single-tenant retail buildings. The sale comparables ranged in size from 76,427 to 145,605 square feet of building area and sold from April 2006 to December 2010 for prices ranging from \$4,073,542 to \$8,981,000 or from \$40.68 to \$78.78 per square foot of building area, including land. Apiecionek testified that sale #5 was a leased-fee sale of JC Penney in Stratford Mall in Bloomingdale, Illinois. It was purchased by the mall owner and the lease was reported to be below market. Apiecionek testified that she made appropriate adjustments because it was leased below market. She further testified that sale #6 was not technically a leased fee sale because, although there were two years left on a long-term lease at the time of the sale, the lease was not pertinent to the sale. Sales #1 through #4 were all fee simple sales.

Apiecionek testified she included in her report an analysis of the factors she considered when making her adjustments, with the most important being location. She indicated that she believed anchor department stores were not the only type of property that could be used as comparables for the subject because several of the larger single tenant commercial buildings were sold to department store users. Apiecionek then concluded a value under the sales comparison approach of \$75.00 per square foot of building area, including land, or \$15,400,000, rounded.

Under the income approach, Apiecionek testified she used two methods to develop the subject's potential gross income. She opined that rents are best expressed in dollar per square foot of sales and testified that she examined the historical sales information for the subject from 2001 through 2010, as well as reviewing average store sales for mall anchor stores as noted in *Dollars & Cents (2008 Edition)*. Apiecionek estimated average retail sales for the subject property at \$200.85 per square foot of building area based on the subject's historical sales information. She noted that market data indicated the average store sales for the subject are below the \$256.11 per square foot average store sales for the top ten percent of stores as reported in *Dollars & Cents (2008 Edition)*. She further reported that the subject is an anchor in a Class A Regional Mall, and store sales should be equal to or greater than the average reported for the upper ten percent of mall anchor store dollar per square foot of sales. Apiecionek further testified that 2.75% of estimated gross sales would be a reasonable rental rate for the subject, which translates to a rent of \$5.52 per square foot of building area.

Apiecionek also analyzed eight anchor department store lease transactions with rental rates that ranged from \$5.00 to \$8.68 per square foot of building area on a triple net basis. The building sizes ranged from 50,000 square feet to 160,895 square feet. She testified that the stabilized rent for the subject is within this range of the comparables. Apiecionek further explained that she primarily

used rental comparables from the Chicagoland area because it contains approximately 130 million square feet, demonstrating there are ample rentals in the subject's market.

Apiecionek applied a vacancy rate of 2% to the potential gross income (PGI) of \$1,138,583 to arrive at an effective gross income (EGI) of \$1,115,811. She testified that anchor tenants typically have long-term leases so a lower vacancy rate is appropriate.

Apiecionek testified she deducted management fees at 2% of EGI and replacement reserves at \$0.10 per square foot for total expenses of \$42,316. The estimated expenses were deducted from the EGI resulting in a net operating income (NOI) of \$1,073,495 for the subject.

In determining the appropriate capitalization rate (CAP rate), Apiecionek testified: she reviewed market surveys including *Pricewaterhouse Survey-1stQ2010 (National Net Leased Market)* and *Real Estate Research Corporation (RERC) Investor Survey-1stQ2010 (Regional Mall-Chicago Market)*; she used overall extracted rates from comparables; and she developed a band of investment technique referencing the *First Quarter 2010 Cushman Wakefield Capital Markets Update*. Apiecionek concluded a CAP rate of 7.0% was appropriate. NOI was then capitalized by this rate to reflect a market value estimate under the income approach of \$15,300,000, rounded, for the subject.

In reconciling the two approaches, Apiecionek testified she gave considerable weight to both approaches, noting that the difference in value between each was less than one percent. Apiecionek testified she concluded a value for the subject property as of January 1, 2010 of \$15,400,000.

Under cross-examination by the appellant, Apiecionek acknowledged she was not actually denied access to the subject property, and completed her appraisal based on her interior inspection.

Apiecionek testified that the subject land is approximately 95,324 square feet, but that she valued the economic land-to-building ratio in the appraisal. She opined that typically Bloomingdale's would pay for the use of the additional land through cross-easements and common area maintenance, however. She acknowledged that her inflated land value indicated that the subject suffers from some obsolescence. Apiecionek further testified that: two of her land sales were located in Cook County; none of her land sales had the same zoning as the subject property; and none of her land sales were used for development of anchor department stores attached to a super-regional mall

In regards to questions concerning the rental data used by Apiecionek, she testified that she stabilized the subject's actual sales to \$200.00 per square foot, although the historical data for the subject's actual sales had basically been trending downward. She further testified that this value was supported by market data.

Apiecionek acknowledged rental comparables #2, #6 and #7 were one-third of the size of the subject property. She testified rental comparables #2, #3 and #4 were either department or anchor department store in a regional or super-regional mall. Comparable #7 was an anchor department store in a mall and rented for \$7.68 per square foot of building area. She did not agree that this property was superior to the subject because of the subject's location.

Apiecioneck testified that four of her six retail sales were fee-simple sales. She acknowledged sale #5 was her largest sale comparable, approximately one-third smaller in square footage than the subject property. Sale #1 was a furniture store that was not attached to a regional or super-regional mall. Sale #2 was 50% smaller than the subject and was a freestanding retail building. It had a 6.67:1 land-to-building ratio and, in fact, all of her improved sale comparables had a land-to-building ratio greater than 2.31:1. Apiecioneck acknowledged that she failed to make adjustments for this factor.

As to sale #5, Apiecioneck testified that this property was one-third smaller than the subject property but it was an anchor department store in a super-regional mall. Apiecioneck testified sale #6 was a freestanding warehouse-type store, with the seller listed as Mart Acquisitions and the purchaser listed as Walmart. Apiecioneck testified that she did not know if these parties were related. Apiecioneck agreed with the appellant that her appraisal's market value supports that of the county's indicated market value as of January 1, 2010.

In response to redirect, Apiecioneck opined that a typical retail center has a 3:1 land-to-building ratio to allow for a parking area that would be needed to support the department store. Therefore, she opined she would still use the economic analysis to develop a value for the land to account for access to the subject property through certain easements and parking.

In rebuttal, the appellant called Mr. Gary Battuello. Mr. Battuello testified he is the managing partner in the commercial real estate appraisal firm of Ramsland & Vigen, Inc. in Minnesota. He stated he is a certified general appraiser in Minnesota, Wisconsin and Illinois and holds the MAI designation from the Appraisal Institute. Battuello testified he has been an appraiser since 1981. He testified that on a regional basis his company specializes in large commercial and retail properties including anchor department stores. Battuello testified he has appeared as an expert in many courts and tribunals in several states which includes the Illinois Property Tax Appeal Board. He testified he has conducted appraisal reviews on 50 to 100 appraisals. The Board admitted Mr. Battuello as an expert in the field of property valuation over the objection of the intervenor.

Battuello testified he reviewed the appraisal of the subject property written by Lorraine Apiecioneck. He testified he performed a desk review of her appraisal. Battuello testified that the appraisal was complete and contained all the required reporting elements.

As to the income approach, Battuello testified that Apiecioneck used rental comparables from various categories with some being anchor stores and others freestanding retail. He opined they all were a great deal smaller than the subject, a multi-story anchor store. In regards to the capitalization rate used within the income approach, Battuello testified that Apiecioneck looked at the sales within the sales comparison approach to help develop a rate. However, these sales were leased fee rates and not fee simple rates. He opined that a leased fee rate is based on the credit rating of the tenant and that there would be more risk for the subject property as a fee simple. He indicated this increased risk would increase the capitalization rate. He further testified that Apiecioneck also looked at surveyed rates for leased properties and malls, which are not the same as an anchor department store. He expounded that in January 2010, the real estate market had not yet improved from its 2007 downturn therefore any methodology relying on financing was not a realistic expectation. Battuello concluded that due to the problems with Apiecioneck's comparables, as well as her use of a low 7% cap rate, her income approach was unreliable.

As to the sales comparison approach, Battuello testified that Apiecioneck's sales were primarily freestanding stores with only one sale being a true anchor tenant in a shopping center. He indicated that anchor department stores are less flexible than freestanding properties, and they are most likely associated with regional or super-regional shopping centers. Battuello testified that it was appropriate to make qualitative adjustments in her appraisal, however, there were no adjustments for land-to-building ratio. He also opined that two sales were essentially leased fee sales.

As to each sale, Battuello testified sale #1 was a two-story, freestanding store that was one-third the size of the subject. He testified that sale #2 was a discount department store, 40% smaller than the subject, with a high land-to-building ratio. Battuello testified sale #3 was a one-story, freestanding building that was half the size of the subject property. It had a high land-to-building ratio. Sale #4, Battuello testified, was half the size of the subject property with a high land-to-building ratio. It was a former Walmart purchased by JC Penney but the contract price had been set 18 months prior to the purchase. Battuello testified sale #5, a leased fee sale of JC Penney, was an anchor department store. He would consider this to be a good comparable. As to sale #6, Battuello indicated this was a one-story, freestanding building that was a Walmart re-purchase. It was a leased fee sale. Based on his review, Battuello opined that the judgment, conclusions and values arrived at by Apiecioneck were unreliable.

On cross-examination by the intervenor, Battuello testified that he had only become licensed in Illinois as of June 2011, two years prior to conducting this desk review.

On cross-examination by the board of review, Battuello acknowledged that it is the job of an appraiser to make adjustments to rental and sale comparables, including leased fee sales and rentals. Battuello acknowledged that he criticized Apiecioneck's rental comparables for being different than the subject property. He testified that you can adjust for these differences within certain parameters.

Battuello testified that the survey rates he indicated of 8.6% to 8.84% are derived from inline space in a shopping center and not anchor department stores, but he considered anchor department stores to have a greater risk level than that of inline space. He further testified that he did not believe Apiecioneck's cap rate or market rent estimate were well-supported, making her income approach unreasonable and unreliable.

Battuello opined that a leased-fee sale could be used as a comparable for a fee simple assignment, but that market based adjustments are necessary. He testified that to make this adjustment, you can look to highly-similar properties with one leased at the time of sale then compare the difference in the sale prices, or when a property sells and immediately after the sale the property is leased and then it sells again within the same market period the two sale prices will show the market based adjustment needed. Battuello further testified that one can encounter a leased fee sale that is worth more than a fee simple sale. He stated that even as of January 1, 2010, the market for leased fee properties was very strong.

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did meet 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 the tax year in question, the Property Tax Appeal Board examined the appellant's and intervenor's appraisal reports and testimony, the board of review's submission, and the appellant's rebuttal documentation and the testimony of all parties.

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

Similarly, the Board gives no weight to Apiecionek's estimate of land value in her appraisal, as her analysis utilized a land square footage value of six times that of the subject property.

As to the income approach, the Board finds Ryan's approach to be unreliable. He testified that the sale price per square foot value he used for 2010 in his income analysis was incorrect. Regarding his development of a capitalization rate, Ryan testified that his report stated on page 73 that "a 14% return on invested capital would be required to attract potential investors". He confirmed that he did not rely on the Cushman Wakefield Capital Market update which provides risk premium for anchor retail transactions. He further testified that instead he relied on an investor survey which reported capitalization rates for free-standing retail stores even though he did not consider them to be comparable to the subject property. Additionally, Ryan used rental comparables spanning from Hawaii to Pennsylvania, with no adjustment for location. Finally, Ryan confirmed that the Neiman Marcus store located in Oak Brook, Illinois, which is a similar location and demographic to the subject property, had a rental rate of \$6.60 per square foot, net, while he attributed a rental rate to the subject property of \$4.75 per square foot, net.

Apiecionek's income approach was also afforded less weight by the Board as her rental comparables included various categories of retail use other than anchor department stores. The Board notes that Apiecionek gave equal emphasis in her value conclusion to the income and sale comparison approaches to value, even though the subject is an owner-occupied, anchor department store. The Board finds that in both appraisers' income approaches they relied on a leased-fee transfer with different property rights than that of the subject.

The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207 (2nd Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal

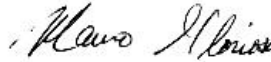
Board, 187 Ill.App.3d 9 (5th Dist. 1989). Therefore, the Board will give this approach the most weight.

The Board finds that Ryan submitted sales for eight anchor department stores that ranged in value from \$8.23 to \$40.00 per square foot, including land. Most, if not all, of Ryan's sales were purchased by the mall owners, with no broker used, and were razed or repurposed. Ryan's sales were not adjusted for market conditions or land-to-building ratio, and just two sales were adjusted for conditions of sale and location. Moreover, Ryan testified that he made different adjustments for location, size of building, market conditions and land-to-building ratios in varying years for the identical sale comparables as compared to the subject property. This calls into question the final value conclusion opined by Ryan for the subject property as of the valuation date.

The Board finds that Apiecionek submitted six sales of retail property that ranged in value from \$40.68 to \$78.78 per square foot, including land. Two of her sales were leased fee sales (sale #5 and sale #6) and four were fee simple sales (sales #1 through #4). Apiecionek's sale #5 is the same property as Ryan's sale #5, although each appraiser submitted a different price per square foot value for the same property. These leased fee sales were accorded no weight in the Board's analysis.

While one of Apiecionek's main criteria in choosing her comparables was location, Ryan focused on choosing anchor department store properties located from sea to shining sea. However, Ryan acknowledged that the traditional mall-model is becoming obsolete, and anchor department stores are being replaced and repurposed with restaurants, "category killers," and other multi-tenanted uses. The remaining 11 sales, excluding the leased fee sales, were given significant weight by the Board and have unadjusted sale prices ranging from \$8.23 to \$63.65 per square foot of building area, including land. The subject property's assessed value equates to a market value of \$73.17 per square foot of building area, including land which is above the unadjusted range of comparables. The Board notes, however, that based on undisputed testimony of the appraisers, the subject property is located in a desirable location in a Class A rated mall. Therefore, after considering all the evidence, including the experts' testimony and written documentation, as well as adjustments for market condition, size, location and use to the unadjusted sales values, the Board finds that the subject property should have a market value of \$63.50 per square foot, including land, which is at the upper end of the range of the best comparables contained in the record. Since the market value has been determined, the Cook County Real Property Assessment Classification Ordinance level of assessment of 25% for Class 5 commercial property shall apply.

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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