PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Sears Roebuck & Company
DOCKET NO.: 02-27063.001-C-3, 03-24126.001-C-3 and 04-25447.001-C-3
PARCEL NO.: 27-10-301-008

The parties of record before the Property Tax Appeal Board (hereinafter PTAB) are Sears Roebuck & Company, the appellant, by Attorney Patrick Doody with the Law Offices of Patrick Doody in Chicago; the Cook County Board of Review by Cook County Assistant State's Attorney Ralph Proietti; and the three intervenors, Orland Fire Protection District by Attorney Joel DeTella with the law firm of Sraga Hauser, LLC in Flossmoor, as well as School District #230 and School District #135 both by Attorney Ares Dalianis with the law firm of Franczek Radelet & Rose in Chicago.

The subject property consists of 16.43 acres of land improved with a two-story, single-tenant, anchor department store of masonry construction with an adjacent one-story, auto service center, which were constructed in 1976. The retail department store is one of the anchor stores located in Orland Square Mall. This single-tenant, retail store contains 184,548 square feet of building area with 108,465 square feet thereof utilized as sales area. The auto service center contains a one-story building with 20,267 square feet of area. In totality, the subject includes 204,815 square feet of building area. In addition to the building improvements, the subject contains 520,000 square feet of asphalt paving used for parking spaces and driveways.

At the commencement of this hearing, the PTAB dealt with several procedural matters relating to verbal motions made by the parties. First, the PTAB finds that these appeals involve common issues of law and fact and a consolidation of the appeals would not prejudice the rights of the parties. Therefore, without objections from the parties and pursuant to Section 1910.78 of the *rules of the Property Tax Appeal Board (86 Ill.Admin.Code 1910.78),* the PTAB consolidated the above appeals.

Secondly, PTAB also noted that the attorney for the Orland Fire Protection District had failed to appear at the hearing. Nevertheless, the remaining intervenors' attorney stated, at

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds <u>*a reduction*</u> in the assessment of the property as established by the Cook County Board of Review is warranted. The correct assessed valuations of the property are:

LAND: See Page 24
IMPR.: See Page 24
TOTAL: See Page 24

Subject only to the State multiplier as applicable.

PTAB/KPP

hearing, that there had been verbal agreements amongst the intervenors' attorneys that Mr. Dalianis would take the lead at hearing representing the interests of all the intervenors for judicial economy. Therefore, rather than defaulting the Orland Fire Protection District and striking its evidence, the PTAB considered the economic rationale for this posture, but required a written document to reflect this agreement, which would thereafter be entered into the record. There being no objections by the remaining parties, this document is identified for the record as Preliminary Exhibit #1.

Thirdly, two intervenors, school districts #230 and #135, as well as the board of review jointly moved to bar appellant's appraisal testimony and strike appellant's appraisal report due to the absence of the expert's signature on the transmittal letter as well as the appraisal, while citing Section 1920.67(l) of the official rules of the Property Tax Appeal Board. This rule states in part that:

> Appraisal testimony offered to prove the valuation asserted by any party shall not be accepted at the hearing unless a documented appraisal has been timely submitted by that party pursuant to this Part. Appraisal testimony offered to prove the valuation asserted may only be given by a preparer of the documented appraisal whose signature appears thereon.

Moreover, the motion argued that the absence of an appraiser's signature on a report was a violation of the Uniform Standards of Professional Appraisal Practice (hereinafter USPAP) standards rule 2-3, which states that the appraisal report must contain a signed certification.

A review of the tax appeal years at issue found a lack of the expert's signature; however, the expert was permitted to testify regarding the absence of his signature on the report copies currently before the PTAB prior to ruling on this motion. After being duly sworn, the appraiser, Michael Kelly, testified that he did in fact undertake an appraisal of the subject property and acknowledged that the appraisal currently submitted into evidence at this hearing and marked as Appellant's Hearing Exhibit #1 was his work product. He also stated that to the best of his recollection, he had signed a copy of the report; however, he also noted that he has no personal control of how or when copies are made and distributed of his official report. The PTAB permitted the appraiser to sign the copy of his report currently in evidence. Thereby, the PTAB denied the motion to strike evidence and bar the appellant's appraiser's testimony.

Furthermore, the appellant moved to strike the intervenors' evidence and testimony from appraiser, John Pogacnik, citing the rationale previously articulated by the board of review and the intervenors regarding an appraiser's signature on his work product. In further support of the appellant's motion, the appellant submitted Appellant's Exhibits #2 and #3. These documents reflected the signature page and the cover page from Pogacnik's appraisal of a different Sears property with recognizably differing signatures from the appraisal document submitted into evidence in these proceedings. Under examination, Pogacnik was evasive regarding whether any or all of the signatures were penned by him eliciting varying responses from him, while he finally admitted that none of the signatures were his. The PTAB permitted Pogacnik to testify and confirm that he had in fact undertaken an appraisal of this subject property. Therefore, the PTAB also permitted this appraiser to resign the copy of his report currently entered into evidence.

Lastly, upon undertaking their case-in-chief, the intervenors verbally moved to exclude witnesses during the proceedings. However, the appellant's objections lay in the argument that a review appraiser should be present during the opposing parties' appraisers' testimony to assist in formulating questions for cross examination most especially due to the summary format of several parties' evidence submissions. Upon due consideration of the parties' positions, the PTAB denied intervenors' motion to exclude witnesses; therefore, the review appraisers were not excluded from any portion of these proceedings.

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

As to the overvaluation argument, the appellant's pleadings included a copy of a full, narrative appraisal undertaken by appraiser, Michael Kelly. Kelly testified that he holds the designations of Member of the Appraisal Institute (hereinafter MAI) and a Member of the Society of Real Estate Appraisers (hereinafter SRPA) as well as appraisal licenses in Illinois, Iowa, Indiana, and Michigan. He stated that he has been an appraiser for approximately 33 years, while also teaching appraisal theory and practice at the Illinois Property Assessment Institute. Further, he indicated that he has appraised in excess of 100 similar properties composed of anchor department stores in super-regional malls. The parties jointly stipulated to Kelly's qualifications when he was offered as an expert in real estate theory and practice and was so accepted by the PTAB.

The Kelly appraisal addressed the three traditional approaches to value, while opining an estimated market value of $9,700,000. Kelly testified that he undertook an interior and exterior inspection of the subject on: January 7, 2000; December 20, 2002; and April 4th prior to this hearing. He described the subject's site as containing 16.43 acres of land. The subject property is improved with a two-story, masonry, commercial retail building and an adjacent auto service center with a combined building area of 204,815 square feet. He stated that the subject's buildings had an effective age of 26 years with a remaining economic life of 14 years, with a typical life for an anchor store being approximately 40 years. In addition, he indicated that the improvements were adequately maintained and in good condition, while the subject's property rights were an unencumbered, fee simple interest.

As to the highest and best use analysis, Kelly testified that the property's highest and best use as if vacant was its present use as a commercial, retail structure, while its highest and best use as improved was its current use as an anchor-type, commercial retail facility. Furthermore, he explained that this subject property's market area is really the retail market on a national or regional basis due to the fact that this property is an anchor department store.

The Kelly appraisal addressed the three traditional approaches to value in developing the subject's market value estimate. The cost approach reflected a value of $8,410,000, rounded; the income approach reflected a value of $9,635,000, rounded; and the sales comparison approach indicated a value of $9,830,000, rounded. In reconciling these approaches to value, Kelly placed main reliance on both the income and sales comparison approaches to reflect his final value of $9,700,000 for the subject.

Kelly's appraisal expounds on a national retailing trend. It states that one of the most dramatic changes in the retail industry over the past decade has been the simultaneous emergence of discount retailers and the demise and restructuring of traditional mass merchandise department stores. In support of this statement, Kelly provided a table of 10 large department store retailers from Fortune 500, specifically years 1991, 1997 and 2000. Kelly opined that these charts illustrated how discount retailers are dominant in the retail field and continue to see strong sales growth. Further, Kelly stated that such retailing trends revolve around the consumer's pursuit of lower prices, better quality goods, great service, and improved convenience. Therefore, he indicated that the consumer's retail dollar has promoted the growth of such retailers as: discount retailers, off-price retailers, category killers, power centers, and warehouse clubs. Thereafter, Kelly proceeded to detail and/or define each of these categories of retailers.

Further defining trends in shopping center development, Kelly presented charts from the National Research Bureau/ Shopping Center Database Statistical Model reflecting years 1986 through 2000. This data indicated that the majority of new shopping center development has not been by regional or super-regional shopping malls, but rather by power centers and outlet centers, which are often anchored by off-price or discount retailers. Thus, he concluded that the retail market will continue to experience significant changes over the next decade with increased competition and a position challenge to super-regional malls from category killers, power centers, and internet shopping.

In Kelly's appraisal, the first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site and in doing so Kelly undertook two analyses from market indicators. First, he used five suggested land sales of local sites that ranged in size from 180,000 to 849,856 square feet and in price from $3.33 to $6.18 per square foot. These properties sold from February, 1997, through April, 2001. Under examination, he testified that these land sales were smaller in size than the subject and that eventual development of these land sales were for commercial usage with varying highest and best uses in comparison to the subject.

Second, Kelly also derived an indication of the contributory value of the land as an anchor store site based on applying typical ground rent terms of 1.0% of store retail sales. His appraisal stated that in deriving the land value, consideration must be given the effect on land value caused by the economics of an entire shopping center including anchor stores and mall portion. Since there were no available sales transaction for sites developed only with an anchor store as part of a shopping center, Kelly analyzed the retail sales for the subject stores as an additional indicator of the value of the subject's site for use as an anchor store. In the income approach, he analyzed and stabilized the subject's sales at $210.00 per square foot. Kelly then capitalized the retail sales to indicate a land value under this method of $6.68 per square foot. Upon consideration of both sources of data, if the subject site were vacant and available to be developed to its highest and best use, the market value of the land would be $6.50 per square foot. He then applied that to the subject's land size of 715,721 square feet indicating a land value of $4,650,000, rounded.

Using the Means Cost Manual, Kelly estimated a replacement cost new of both buildings as well as the site improvements for a total of $15,037,000, rounded. He testified that he did not apply entrepreneurial profit. This appraiser employed two methods in developing depreciation. In the first method, after inspecting the subject property, Kelly employed the age-life method to estimate physical depreciation at 65%. Thereafter, Kelly utilized the market sales present in the appraisal's sales comparison approach to extract the land value as well as the contributory value of the land to the sale value as an anchor department store. This was done by stabilizing the retail sales for each sale property and multiplying by 1% to obtain the indicated ground rent, which was then capitalized by 9% to indicate the contributory land value. Next, Kelly subtracted the land value from the total sale price with the remainder as the residual of the sale price imputable to the improvements. After developing the replacement cost new for each of the comparables' improvements, the building residual was deducted to obtain an estimate of the total accrued depreciation for each sale comparable. The accrued depreciation was divided by the reproduction cost new to indicate the total percentage of depreciation from all causes. This total depreciation was then divided by each improvement's respective age to arrive at an annual rate of depreciation.

This analysis indicated that the properties from 19 to 26 years in age experienced depreciation rates from 3.3% to 4.3% per year with a total depreciation from 74.6% to 95.2%. Further, physical depreciation was deducted from the indicated total depreciation from all causes, to obtain the functional and/or economic obsolescence for each of the sale comparables that ranged from 20.8% to 40.2%. Moreover, the sale comparables contained stabilized retail sales levels of approximately $120 to $180 per square foot, while Kelly stabilized the subject's sales at $210 per square foot. Therefore, functional/economic obsolescence was estimated at 15% for total depreciation at 80%.

In the second method, Kelly abstracted total depreciation based upon the subject's ability to generate net rent. In turn, he compared this to the subject's land value and cost new to determine if the income is sufficient to support an acquisition cost. Further, the appraisal indicated a total depreciation from all causes by using the physical depreciation of $10,051,395 and dividing by the cost new of $15,037,000, which resulted in a total percentage of depreciation at 67%, rounded. Upon reviewing the two methods used to abstract depreciation, Kelly estimated that the subject suffered from 75% total depreciation. Applying this percentage to the replacement cost new resulted in a depreciated value of the improvements at $3,759,250. Adding the land value of $4,650,000 reflected a final estimate of value under the cost approach of $8,410,000, rounded.

The next developed approach was the income approach. Kelly obtained and analyzed leases in two categories: rental comparables that are structured on a pre-set per square foot rental rate as well as rental comparables that are structured on a percentage of retail store sales. A total of 18 leases were considered from both categories. In Category I, 16 leases were reviewed with properties that ranged: in age from 1 to 33 years; in building size from 62,692 to 180,729 square feet; and in net rental rates from $2.74 to $8.75 per square foot with varying degrees of comparability to the subject.

In addition to these rental comparables, Kelly consulted <u>The Dollars & Cents of Shopping Centers, 2002</u>, published by the Urban Land Institute, which is a compilation of statistics of the shopping center industry in the United States. The statistics relating to national chain department stores indicated that regional shopping centers reflected: median sales per square foot of $163.20, a median percentage of rent at 1.88%, median rent at $3.07 per square foot, and a percentage of sales at 1.9%. A review of rental comparables reflected net rents based on a percentage of retail sales ranging from 1.0% to 3.0% of sales.

In Category II, Kelly reviewed two leases that indicated percentage levels also ranging from 1.0% to 3.0% of sales. The appraisal indicated that while the retail sales on a per square foot basis will vary from one department store location to another, the rental rate as a percentage of sales does not show significant variation from one area to another.

Kelly testified that comparing nationwide leases of anchor department stores gleans a percentage of sales that various anchors are paying in rent. He stated that his 16 rental comparables demonstrated an average of 2.5% of retail sales, which supported the data reflected in The Dollars & Cents of Shopping Centers survey of anchors stores across the country. Therefore, even though there are higher sales per square foot in different cities, there is still the relationship of rent to sales from 2.5% or 3.0%. Further he stated that the average retail sales for all combined anchors was approximately $220.00 per square foot, while the subject was slightly below this average at $210.00 per square foot even after adjusting for the subject's tire, battery and auto service center which typically generate less retail sales than a normal anchor store. He indicated that this stabilized retail sales for the subject was actually higher than what the subject was actually generating in retail sales in 2001, which was $188.00 per square foot. Kelly also testified that expected retail sales drives lease rates for anchor department stores. At the time of the hearing, Kelly was aware of the actual retail sales for the remaining anchor stores within the subject's mall: JC Penney at $183.00 per square foot, Marshall Field's at $246.00 per square foot, and Carson Pirie Scott at $277.00 per square foot. Further, Kelly expounded on a typical mix of anchor department stores that a developer of a regional or super-regional mall will seek in order to appeal to different levels of income and different consumer tastes for retail products. He also explained in detail the historical perspective of rents in retail malls relating to anchor stores versus in-line stores.

The Kelly appraisal also summarized the subject's actual retail sales from 1999 through 2001 as well as the range of rents based upon 2.5% to 3.0% of sales. Using the percentage rent method indicated a market rent for the subject ranging from $4.45 to $5.66 per square foot. The appraisal also reviewed the remaining anchor's building size and retail sales for 2001 to estimate retail sales per square foot for that year for each anchor.

In addition, the Kelly appraisal reviewed total vacancy rates of shopping centers in the Chicago area via two methods. In the first method, Kelly consulted CB Richard Ellis-Chicago Market Index-Retail Market, 1st Quarter, 2002, which reflected that the Chicago area experienced a vacancy rate of 9.4% in the first quarter of 2001 and 10.3% in the first quarter of 2002 for all retail stores including stand-alone retail as well as shopping centers. The second method used was to analyze actual vacancies of anchor stores in the Chicago area. This analysis referred to 11 anchors stores with a total of 1,748,208 square feet of vacant anchor space in the Chicago area. Based upon this data, Kelly opined the subject's deduction for management fee, vacancy and collection loss would be 10%, in totality.

Reviewing the data in totality, Kelly chose a market rent of $5.75 per square foot, triple net, which was applied to the subject's 204,815 square feet of building area to indicate potential gross income for the subject of $1,177,686. Less a vacancy and collection loss of 10% indicated an effective net annual income of $1,059,917. Kelly used various methods to estimate a capitalization rate for the subject of 11.0%. Abstracting an overall rate from sales comparables indicated a range from 9.6% to 15.7%, while using the band of investment method reflected an overall rate of 10.2%. <u>The Korpacz Real Estate Investor Survey, First Quarter, 2002</u>, reflected a range for institutional-grade national strip centers including multi-tenant shopping centers from 8.5% to 12.0% and for power centers from 8.75% to 11%. He testified that he considered the fact that the subject is a single-tenant building, which includes increased risk in comparison to any multi-tenant building or power center. He opined that a single-tenant building such as the subject would sell at a higher capitalization rate due to the fact that there is only one tenant to diversify any risk versus multiple tenants. Capitalizing the subject's annual income by 11.0% produced a value estimate under the income approach of $9,635,000, rounded.

Under the sales comparison approach to value, Kelly utilized five suggested comparables that are single-tenant, anchor department stores located in regional malls throughout Illinois. The properties sold from November, 1994, through October, 1999, for prices that ranged from $15.86 to $39.53 per square foot before adjustments. The improvements ranged in size from 84,747 to 175,012 square feet of building area and in age from 19 to 26 years. The properties' retail sales per square foot ranged from $120.00 to $180.00 per square foot. Kelly testified that stabilized retail sales were undertaken for each comparable at the time of its sale and explained his methodology. He stated that this was done based upon taking into consideration what the actual sales were of the other anchors in that respective mall and in some cases, also what the sales were for the particular store depending on whether they appeared to be in line with a typical anchor. In addition, he testified that total retail sales within a mall typically among the anchors are not going to significantly change as you replace an anchor with another anchor. He indicated that customers tend to move to other anchors within that mall; therefore, the total average retail sales will typically remain consistent.

Based upon this, Kelly indicated that he calculated what the weighted average sales were for the anchors in each of these malls on a stabilized basis. After making adjustments, Kelly considered a unit value of $48.00 per square foot to be appropriate for the subject.

Moreover, he developed a sales multiplier utilizing each sale comparable by dividing the sales price per square foot by the retail sales per square foot. In undertaking this analysis, the suggested comparables were selling from 0.17 to 0.23 times stabilized retail sales. The appraisal indicated that the subject's multiplier would be near the high end of this range due to its superior location. This analysis indicated a retail sales multiplier for the subject of 0.23 with the subject's retail sales per square foot at $210.00 equaling a value for the subject of $48.30 per square foot. Therefore, Kelly estimated a market value for the subject of $48.00 per square foot or $9,830,000, rounded.

Under examination, Kelly testified: that the sales occurred from three to five years from the effective date of this tax appeal; that the comparables' communities were smaller than the subject's; that only three properties were located in Cook County; that the building sizes were smaller than the subject's improvement; and that improved sale #5 was adjusted to include proposed renovation costs, while this property was also included in the establishment of a tax increment financing (hereinafter TIF) district. Kelly further stated that TIF could be a stimulus to consummating a sale transaction, but that this type of financing is becoming commonplace. As to sale #3, this sale resulted in a different highest and best use for the property as an office building, while the only other anchor in that mall was a Dominick's grocery store, which is typically not an anchor store. As to the sale properties, Kelly responded credibly regarding the background of each sale. As to the subject's market, Kelly stated that these sales were of anchor department stores available at the time he undertook the subject's appraisal. He also testified in detail regarding super-regional malls within the Chicagoland area as well as details regarding the history of the subject's mall.

In reconciling the three approaches to value, Kelly accorded moderate weight to the cost approach due to the subject's calculation of large amounts of functional and economic depreciation. In contrast, substantial consideration was accorded the income and sales comparison approaches. Therefore, he testified that his market value estimate for the subject was $9,700,000.

The appellant's second witness was Jay Mason, Director of property tax with CBIZ Accounting, Tax & Advisory Services. Mr. Mason testified to his prior experience as the Vice President of Property Taxes and Real Estate with the May Company. He also stated that he was not directly involved in real estate negotiations at the May Company, but did share some information with competitors. The intervenors and the board of review jointly objected to the witness and the relevancy of his hearsay testimony. Upon due consideration of the parties' positions, the PTAB sustained the intervenors and the board of review's objections.

In rebuttal, the intervenors called Eric Dost to testify regarding his assignment as a review appraiser of the appellant's evidence. As to his experience, Dost testified that he has been a general real estate appraiser for 22 years, while also holding the designation of MAI since 1993. Of the 100 retail-type properties he has appraised, he has undertaken approximately 10 to 15 anchor stores with an additional 15 to 20 appraisals of regional malls. Thereafter, the parties stipulated to Dost's qualifications as an expert in the area of real estate appraisal and he was accepted as such by PTAB.

Dost stated that the scope of his assignment was to review the Kelly appraisal for the quality of the data, completeness, accuracy, and relevance of the data analysis given the property type. He indicated that he has undertaken several hundred appraisal reviews and will inspect the subject property, while conducting additional research as he feels appropriate in undertaking the review.

As to this subject, Dost stated that he felt the subject's area was not analyzed and that the majority of the Kelly analysis was based on the appraiser's estimated sales data for the comparables. Dost also testified that he believed the subject was sited in a strong area mall that appeared well-occupied, while on cross-examination, he admitted that he had no personal knowledge of the subject property or the subject's mall during the tax years at issue prior to viewing them during the week preceding this hearing date.

As to Kelly's appraisal, Dost stated: that the market extraction depreciation was somewhat speculative; that the concluded market rent in the income approach was inconsistent with most recent comparables; that the capitalization rate appeared to be excessive; and that he believed that three of the improved sales comparables were from distressed malls, which were since redeveloped. Further, he indicated that Kelly used smaller sized land sale comparables with varying highest and best uses; however, Dost also stated that he was personally unaware of any seven-acre land sales in the subject's area and/or within Cook County that were used to develop a regional mall.

As to Kelly's cost approach, Dost stated that there was an unsupported ground rent analysis, but that Dost, himself, was unfamiliar with calculating ground rent as a percentage of sales. Dost also stated that Kelly's depreciation analysis was based on estimates as well as actual sales prices and building's ages, but he later stated that this methodology is recognized by the Appraisal Institute. As to Kelly's income approach, Dost testified that the vacancy rate and capitalization rate appeared to be unsupported and that the rental data was old. He also stated that Kelly should not have placed primary reliance on market data from the Dollars and Cents survey; however, on further examination, Dost stated that this market survey is the best source of data and that he also uses this survey.

As to Kelly's sales approach, Dost indicated that Kelly's improved sales contained aged sale dates with several sales sited within distressed malls; that he did not believe that some improved sale comparables were appropriate due to their location; and that Kelly's sale #3 reflected a different highest and best use because the improvement was purchased for later conversion into an office building. In addition, Dost stated that he was not familiar with the retail sales multiplier analysis undertaken by Kelly; however, he believed that reliance on estimates can skew results. Moreover, Dost testified that anchor department stores whether sold or leased are the best comparables when appraising an anchor department store. As to his personal knowledge of Kelly's improved sales comparables, Dost testified that his primary and sole source of information was from internet research.

The board of review timely submitted "Board of Review Notes on Appeal" wherein the subject's final assessment of $5,094,307 was disclosed indicating a market value of $13,406,071 applying the ordinance level of assessment at 38% for class 5a property as designated by Cook County Real Property Assessment Classification Ordinance. The evidence includes a market analysis prepared by Jeffrey Hortsch submitted with an effective date of January 1, 2002 and a market value of $13,425,000. The analysis provided limited data and explanation, while addressing only two of the three traditional approaches to value. However, Mr. Hortsch was not presented to testify regarding either his qualifications or the methodology used in his appraisal.

In the 2002 tax year appeal, Orland Fire Protection District as well as School Districts #135 and #230 as intervenors submitted a restricted appraisal prepared by John R. Pogacnik of Price Associates, who holds the MAI designation as of June, 2001. At hearing, intervenors requested that this appraisal be marked for identification purposes as Intervenors' Exhibit #1. The appraisal had an effective date of January 1, 2002 and a market value estimate of $11,700,000, which is less than the current market value attributed to the subject by the board of review. Without objections from the remaining parties, the intervenors offered Pogacnik as an expert in the field of real estate appraisal and he was accepted as such by the PTAB.

This appraisal's cover letter stated that the appraiser had personally inspected the subject and that he assumes that the descriptive data in the appellant's appraisal and in public records is accurate regarding the subject. Pogacnik testified that he had conducted several appraisals of anchor stores during the prior nine years, while his appraisal report of the subject was in compliance with the Uniform Standards of Professional Appraisal Practice (hereinafter USPAP).

The Pogacnik appraisal addressed the three traditional approaches to value, while opining an estimated market value of $11,700,000. Pogacnik's appraisal reflects the adoption of descriptive data regarding the subject taken from the Kelly appraisal. He undertook a personal inspection of the subject on August 12, 2004, which consisted of an exterior inspection along with limited public spaces.

As to the Chicago area retail market, Pogacnik's appraisal stated that while the wave of success that the real estate industry had been riding over the past several years is starting to show signs of flattening, few investors are taking drastic steps to prepare themselves for the inevitable downturn looming ahead. According to Korpacz Real Investor Survey by Price Waterhouse Coopers, many investors are simply adopting a more cautious investment attitude. The appraisal further stated that as store closings and consolidations become commonplace in the retail industry, several regional malls throughout the country are coping with at least one empty anchor store to re-tenant. The appraisal goes on to state that this trend started to materialize in November, 2000 with store closings, while many department stores cited tighter competition and poor sales performance as reasons for closing locations with some landlords finding it difficult to attract new department stores to their centers.

Moreover, Pogacnik cited current retail activity in the area's retail market by referring to the Chicago Market Index Brief prepared by CB Richard Ellis, First Quarter, 2002. This report indicated that the Chicago area retail vacancy rate remained virtually unchanged with an increase from 10.2% matching the market's highest vacancy levels recorded in 1977 and again in 1990.

As to the subject's area, Pogacnik stated that the subject was sited in a regional mall with three other anchor tenants: Carson Pirie Scott, J.C. Penney and Marshall Fields. He indicated that the subject was built in 1976 having a gross building area of approximately 204,815 square feet. He stated that the mall's improvements were of average condition. Furthermore, he indicated that the anchor store and the tire, battery and auto store were analyzed as an aggregate property.

As to the highest and best use analysis, Pogacnik testified that the property's highest and best use, as if vacant, was the development of a commercial facility with retail use, while its highest and best use, as improved, was its current use as an anchor-type, commercial retail facility, which was maximally productive.

The Pogacnik appraisal addressed the three traditional approaches to value in developing the subject's market value estimate. The cost approach reflected a value of $11,800,000, rounded; the income approach reflected a value of $11,700,000, rounded; and the sales comparison approach indicated a value of $11,300,000, rounded. In reconciling these approaches to value, he placed main reliance on the sales comparison approach to reflect his final value estimate of $11,700,000 for the subject.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site. Pogacnik used five suggested land sales that ranged in size from 221,439 to 453,895 square feet and in price from $4.67 to $9.84 per square foot. The properties sold from December, 1998, through May, 2002, with only properties #1 and #4 containing the same zoning as did the subject property. The appraisal indicated that after analyzing these and other sales in the subject's market area, Pogacnik determined that the larger the lot size, offering similar market amenities, the lower the unit value of that property. Further, he testified that he was unable to uncover any land comparables as large as is the subject property. Based upon the subject's size, location and amenities, he attributed a land value of $7.50 per square foot to the subject's land size indicating a value of $5,400,000, rounded.

Using the Marshall Swift Valuation Service, Pogacnik estimated a replacement cost new base value of $55.08 per square foot. He classified the subject as a Class C mall anchor store, while testifying regarding the details related to this type of classification. He did not include indirect costs, which were estimated at 4% of the replacement cost new. The final cost new was $71.81 per square foot or $14,707,765. The appraisal indicated that site improvements were minimal with 520,000 square feet of site area as asphalt paved off-street parking. He stated that the Marshall Valuation Service indicated asphalt paved surfaces ranged from $2.75 to $3.75 per square foot; therefore, he estimated the average of the range of $3.25 per square foot for the subject. The appraisal stated that site improvements generally had an economic life of 8 years, but he estimated the effective age of the site improvements at 5 years for a total depreciated rate of 63%. Based on the age-life method, the depreciated value of the site improvements is $625,000, rounded.

Pogacnik estimated entrepreneurial profit at 5% or $1,005,388. He testified that he included this profit because Marshall Valuation Service does not include it and that appraisers normally would look at whether this component should be included or not. He chose to include it. Under cross-examination, he also testified that the retail trend is that anchor department stores are owner-occupied stores and rarely leased stores. In addition, he stated that even though such an anchor would be owner-occupied, there should still be an inclusion to undertake the development of such a project.

Further, he opined that the subject's total economic life was 30 years with an effective age at 19 years resulting in accrued depreciation of 63%. Pogacnik stated that the subject exhibited moderate physical deterioration that is generally attributable to the aging process and the subject's high foot traffic retail use. He indicated that there was no external obsolescence, but that the subject suffered from a degree of functional obsolescence due to its age and constant changes in building design and layout necessary for image-conscious retailers to remain competitive.

Applying this depreciation percentage to the replacement cost new resulted in a depreciated value of the improvements at $5,813,867. Adding the land and site improvements value reflected a final estimate of value under the cost approach of $11,800,000, rounded.

Under the sales comparison approach, Pogacnik utilized four single-user properties of which he had personally verified the sale data. He testified that he tried to obtain the largest retail properties to compare to the subject. The properties sold from January, 1997, through December, 2001, for prices that ranged from $30.18 to $104.85 per square foot before adjustments. The improvements ranged in size from 36,000 to 109,332 square feet of building area and in age from 2 to 34 years. Pogacnik's data indicated: that sale #1 was a fully leased property by Kohl's Department Stores at the time of purchase; that subsequent to the purchase of sale #2, the property became an owner-occupied Best Buy Store; and that sale #4 was occupied by two retail tenants at sale time, a Best Buy Store as well as a Michael's Store, a craft supply business. The appraiser's narrative of adjustments; however, indicated that sale #4 was a single-user, retail building. After making narrative adjustments, Pogacnik considered a unit value of $55.00 per square foot to be appropriate for the subject estimating a market value for the subject of $11,300,000, rounded.

Under examination, Pogacnik testified: that his improved sales were not anchor department stores sited in either super-regional or regional malls; and that two sales were freestanding buildings, while a third building's sale included a building attached to in-line stores, and the fourth building sale was attached to another large retail building on its property.

Regarding the specific sales, he stated that sale #1 was a smaller, leased fee sale in Lake County; while sale #3 was another leased fee sale located in a secondary retail market comprised of scattered small strip centers and fast food restaurants. He testified that relevant factors to a secondary retail market are lower disposable income and location. He indicated that sale #4 was another freestanding building not located within a mall and significantly smaller in size, while being utilized as a multi-tenant location at sale time. In further testimony, Pogacnik defined a big box store as something larger than 100,000 square feet of building area.

As to the income approach, Pogacnik concurred with the Kelly position that anchor store leases fall into two categories: rental comparables that are structured on a pre-set per square foot rental rate as well as rental comparables that are structured on a percentage of retail store sales. Pogacnik considered three leases on a pre-set per square foot basis reflecting a range of rates from $5.85 to $7.50 per square foot. Thereby, he estimated a market rent of $7.25 per square foot on an absolute net basis for the subject. Under examination, he was unable to describe the store and/or anchor store components of each of his rental comparables.

Less a vacancy and collection loss of 12% indicated an effective gross income of $1,306,720. Deducting expenses of $137,021 indicated a net operating income of $1,169,699. Pogacnik relied upon data from a Price Waterhouse Coopers survey conducted in the Fourth Quarter of 2001 to conclude a 9.25% overall capitalization rate. His appraisal stated that since data relative to overall rates involving big box retail properties are nearly nonexistent, he relied on data from national strip shopping centers and power centers in arriving at this overall rate estimate for the subject. Thereafter, he applied a partial tax load to obtain a loaded capitalization rate of 10.0%. Capitalizing the subject's annual income produced a value estimate under the income approach of $11,700,000, rounded.

In reconciling the three approaches to value, Pogacnik testified that he accorded primary weight to the income approach to value. In contrast, his appraisal accorded primary weight to both the income approach and the sales comparison approaches. He indicated that the cost approach was used as a secondary indication of value even though market participants do not rely on the cost approach in valuations of properties such as the subject due to its degree of functional obsolescence in the structure's age and constant change in construction design and layout. Pogacnik's final value estimate for the subject was $11,700,000.

In the 2003 and 2004 tax year appeals, Orland Fire Protection District as well as School Districts #135 and #230 as intervenors submitted a summary appraisal report prepared by Susan A. Enright of Appraisal Associates Inc., who holds the MAI designation. The appraisal had an effective date of January 1, 2003 and a market value estimate of $13,400,000, which is less than the current market value attributed to the subject by the board of review. The original submission of this appraisal was marked for identification as Intervenors Exhibit #2. Under examination, Enright admitted that there were typographical errors in this report relating to: the subject's PIN; data included regarding condominium size and price; inaccurate neighborhood data; as well as reference to the subject as an office building.

Enright testified that she had conducted approximately 2,000 appraisals of commercial properties, with 12 of those appraisals relating to anchor stores. She further stated that at the time she undertook the subject's appraisal that she had actually undertaken only three or four appraisals of other anchor stores. Without objections from the remaining parties, the intervenors offered Enright as an expert in the field of real estate appraisal and she was accepted as such by the PTAB.

The Enright appraisal addressed the three traditional approaches to value, while opining an estimated market value of $13,400,000. Enright's appraisal reflects the adoption of descriptive data regarding the subject taken from the Kelly appraisal. She undertook a personal inspection of the subject on January 2, 2006, which consisted of the public areas. The appraisal looked to the subject's mall, while detailing the square footage included in each of the four anchor tenants. As to the subject, Enright stated that the subject's building appears to be in average to good condition. In addition, she testified that the subject's mall is sited within a great area of supporting retail in the vicinity of the mall. Her appraisal indicated that the subject's design was consistent with new anchor construction;

however, she later testified that she was unaware of whether newly constructed anchor department stores have a greater percentage of selling area in comparison to the subject property.

As to the highest and best use analysis, Enright testified that the property's highest and best use, as if vacant, was for commercial development, while its highest and best use, as improved, was its current use as an anchor-type, commercial retail facility.

The Enright appraisal addressed the three traditional approaches to value in developing the subject's market value estimate. The cost approach reflected a value of $13,400,000, rounded; the income approach reflected a value of $13,400,000, rounded; and the sales comparison approach indicated a value of $13,300,000, rounded. In reconciling these approaches to value, she placed main reliance on the income and sales comparison approaches to reflect her final value estimate of $13,400,000 for the subject.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site. Enright used five suggested land sales located within the subject's suburb that ranged in size from 150,500 to 849,856 square feet and in price from $6.13 to $19.93 per square foot. The properties sold from November, 1999, through May, 2002. Based upon the adjustments to the land sales, she attributed a land value of $8.00 per square foot to the subject's land size indicating a value of $5,725,000, rounded.

Using the <u>Marshall Swift Valuation Service</u>, Enright estimated a replacement cost new base value of $80.01 per square foot. She classified the subject as an average, Class A department store building. On this classification choice, she hesitantly testified that the category that she used was for a detached department store, but also stated that there was another category for attached department stores with a lesser base value. Further on this point, she indicated that there was a class C property for an upscale mall, which she thought was too generic for application to this subject.

In addition, Enright stated that since the cost manual does not include indirect costs such as site work around the building and financing, she estimated indirect costs at 5% of the replacement cost new. She further estimated entrepreneurial profit at 5% because she stated that she had been trained to do so. The appraisal indicated that site improvements included extensive asphalt paved parking areas, lighting, landscaping and concrete service walks. Therefore, site improvements were estimated at $350,000. Enright opined that the subject contained a physical age of 27 years and an estimated total economic life of 45 years; therefore, total physical deterioration of 55% was indicated. She testified that there was no obvious deferred maintenance anywhere in the subject, which is why she had accorded it an effective age of 25 years. She also stated that the subject looked very similar to any other shopping center she has viewed that could have been built earlier or later; furthermore, she testified that it was just a couple of percentage points difference which is fairly typical to do that in reference to effective age calculations. No additional deductions were made for either functional or external obsolescence.

Enright's appraisal indicated that in spite of increasing competition from power centers and lifestyle centers, development of new anchor stores such as the subject was on going as noted by recent additions to competing malls. Applying this depreciation percentage to the replacement cost new resulted in a depreciated value of the improvements at $8,674,366. Adding the land and site improvements value reflected a final estimate of value under the cost approach of $14,750,000, rounded.

As to the income approach, Enright's appraisal stated that department store rents are typically structured based on anticipated sales volume; therefore, that was the premise for establishing market rents. As to her rental comparables, she testified that Rental #1 was not an anchor store in a super-regional mall, but a retail location in a community center. She indicated that Rental #2 and #3 were located across from the subject's mall, while both were sited in a large community mall. Moreover, she stated that Rental #4 was the same property as improved Sale #4 in a sale-leaseback transaction.

Enright consulted <u>Dollars and Cents of Shopping Centers</u>, 2004 edition, published by the Urban Land Institute. The U.S. Super Regional Shopping Center category of this survey indicated that total rent per square foot of $6.59 for the top 10% of full-line department stores and $9.55 per square foot for the top 2%. Using the subject's actual sales data reflected in the appellant's appraisal ranging from $178.32 in 1999 to $188.68 in 2001, Enright averaged the subject's sales at $183.00 per square foot. Using additional data from the appellant's appraisal, she imputed an overall average of $220.00 per square foot for the remaining anchors in the subject's mall. She estimated rent for the subject at 3.0% of estimated gross sales of $220.00 per square foot or at $6.60 per square foot for the subject. Enright also considered three leases reflecting a range of rates from $6.50 to $8.20 per square foot. She testified that these market rents were as well driven by sales per square foot. She further stated that she had no personal knowledge as to whether $183.00 or $220.00 per square foot is a good sales volume for a Sears store. She estimated potential gross annual income for the subject at $1,351,779.

Enright opined that anchor tenants are typically good credit tenants with long-term leases; and therefore, accorded a vacancy and collection loss lower than the overall market. She testified that a vacancy and collection loss of 3% derived solely from her conversations with people in this industry was deducted resulting in an effective gross income of $1,311,226. In contrast, she also testified that application of 0% vacancy loss would be appropriate as well because department stores have long-term leases. Deducting expenses of $135,803 indicated a net operating income of $1,175,423. She relied upon data from a Real Estate Research Corporation and the National Investor surveys for the First Quarter of 2003 to conclude a 8.75% overall capitalization rate. Enright's appraisal stated that the subject's mall would be considered a B+ mall in developing this overall capitalization rate. In examination, she testified that she accorded the subject mall this designation because it was a good mall with upscale tenants, while an A mall would be a brand-new mall in her opinion. Capitalizing the subject's annual income produced a value estimate under the income approach of $13,400,000, rounded.

Under examination, Enright testified that she allocated Other Mall Expenses of $85,000 and included this deduction in her methodology, but later stated that she would not do this again for it was an excessive charge. She stated that this was not the property owner's expense, but should have been a tenant's expense.

Under the sales comparison approach, Enright utilized four properties that sold from August, 1998, through January, 2003, for prices that ranged from $29.03 to $104.85 per square foot before adjustments. The improvements ranged in size from 77,721 to 163,000 square feet of building area and in age from 2 to 26 years. Enright's data indicated: that sale #1 was a fully leased property at the time of purchase; that subsequent to the purchase of sale #2, the anchor-size property was divided into multiple spaces to be occupied by an Office Depot and a Dick's Sporting Goods stores while the property was located in a community mall; that sale #3 was fully leased at the time of sale; and that sale #4 was the sale of another anchor located in the subject's mall which was part of a bulk sale of six properties, while each property was leased at the time of this bulk purchase. She further testified that sale #2 was an anchor location directly across the street from the subject's mall. She elaborated on the high vacancy experienced by that property's mall as well as the fact that the City of Orland Park enacted an ordinance to address this high vacancy. In summary, she stated that the city ordinance was enacted to have the comparable property's mall redeveloped while incorporating that mall as part of a TIF district. Enright further expounded that the anchor location was vacant at the time of sale and was basically sold in bankruptcy as a very distressed sale in a distressed mall that would be undergoing redevelopment.

In addition, she testified further regarding sale #4 which was an anchor store located within the subject's mall. She stated that even though the sale was aged having occurred in 1998 that it was a great sale comparable regardless of the facts that this sale was part of a bulk purchase of leased fee interests. She indicated that she was able to evaluate the bulk purchase and make adjustments, but that these transactions were arm's length in nature with the new leases established at market rent at the time of sale.

Enright's appraisal further stated that fee simple sales of freestanding anchor department stores are limited. She indicated that sales which do occur are typically sold either through bankruptcy or of a leased fee interest. Under examination, she clarified her statement by stating that she meant sales of just department stores are few and far between.

As to real property rights conveyed, her appraisal also stated that while her sales #3 and #4 involved the sale of only a leased fee interest in the real estate, she noted that this value of leased fee interest approximated the value of the fee simple interest without further explanation and without any adjustments for this factor. She testified that in her opinion lease rates are commensurate with market rents; therefore, a leased fee value would be equal to a fee simple value. After making other narrative adjustments to the properties, Enright considered a unit value of $65.00 per square foot to be appropriate for the subject estimating a market value for the subject of $13,300,000, rounded.

Enright was also examined regarding Appellant's Exhibit #5 which was a copy of USPAP's Standards Rule 1-4(b), 2005 Edition. In reconciling the three approaches to value, Enright accorded primary weight to the income approach with support from the sales comparison approach reflecting a final value estimate of $13,400,000 for the subject as of the assessment date of January 1, 2003. At hearing, she testified that her opinion of value for the subject as of the assessment date of January 1, 2004 would not be any lower than the value estimate for 2003.

In rebuttal, the appellant called as its review appraiser, Gary Battuello, who is a licensed real estate appraiser for 27 years in several states while also holding the MAI designation. He has also authored publications on appraisal theory and practice, specifically on the appraisal of extremely large buildings. Battuello testified that he conducts appraisal work on extremely large buildings, anchor department stores, and retail locations throughout the country. He stated that he has conducted approximately 60 to 75 appraisals of anchor department stores, while also undertaking from 36 to 48 desk reviews of other such appraisals. Without objections from the other parties as to Battuello's qualifications, he was offered and accepted as an expert in real estate appraisal and theory by the PTAB.

Battuello stated he was familiar with the subject property as an extremely large, anchor department store in a traditional-mix shopping center with a fee simple interest. He also stated that his assignment was to undertake a desk review of the evidence submitted by the board of review's Hortsch analysis as well as the Enright appraisal in this tax appeal, while determining the reasonableness and reliability of the conclusions and value estimates therein. He testified that both documents contained all the elements necessary for a complete document.

In summary, Battuello credibly testified that the Enright appraisal: lacked consistency with the land sale data with none having the site shape for an anchor department store; an inconsistent and contradictory development of the subject's highest and best use; contradictory data in development of the replacement cost new; application of entrepreneurial profit to an owner-occupied anchor department store; absence of functional obsolescence applicable to an older anchor department store with 204,000 square feet that is perhaps too large for the market; absence of rental properties that are anchors in a super-regional or regional malls; application of 3% rental factor which is usually associated with a poorly-performing store; inappropriate application of a vacancy and collection loss; reliance upon two market sales of leased fee interests in development of a capitalization rate for a fee simple, anchor store; additional reliance upon market surveyed rates for regional shopping centers when the subject property is an anchor store within a super-regional shopping center evoking a different capitalization rate; inappropriate improved sale properties with varying highest and best uses or property rights; as well as the absence of quantitative or qualitative adjustments to these improved sale properties.

Specifically, Battuello testified that inconsistent development of the land and improvement's highest and best use can violate the principle of substitution necessary in obtaining appropriate rental and improved sales comparables. As to the development of Enright's replacement cost new in her report and in her testimony, Battuello testified that her report classified the subject as a Class A department store, which is an inappropriate category for the subject, while also being an inappropriate class of construction for the subject. He explained in detail and at length regarding the distinct categories in cost manuals for department stores as pure department store versus mall anchor stores. He stated that the latter category was clearly the appropriate category for this subject property, while Enright choose the other category for her analysis. In addition, Battuello testified that Enright was confusing market positioning descriptions with actual construction classifications available in cost manuals. He elaborated on how market position categorizes downtown office buildings as Class A, B, and/or C depending on the building's location and age. He further stated that in contrast to this type of categorization, cost manuals have very specific meanings relating to construction types in using Class A, B and C classifications. He indicated that the subject was not a Class A building as used by Enright, but actually a Class C construction building with concrete flooring, masonry walls and floors as well as a steel frame. Further, Battuello expounded on the definitions applicable to each aforementioned class of construction.

As to entrepreneurial profit, Battuello explained that this is an incentive for people to build a building anticipating a real estate profit and that the test to determine whether this is a reasonable profit is whether it is the type of building built on a speculative basis in a given market. He stated that anchor department stores generally do not fall into this category where individuals are building them on an independent basis anticipating a profit. As to Enright's rental properties in the income approach to value, Battuello stated that the properties were not anchor stores within super-regional or regional malls. In addition, his personal knowledge of the transaction reflected in Enright's rental #4 was that it was not an arm's length transaction, but a sale-leaseback arrangement with a subsequent resale within a bulk portfolio. Further, he opined that Enright's application of a 3% vacancy and collection loss and her testimony that she could have applied 0% vacancy to the subject are incorrect. Battuello stated that her testimony regarding 0% vacancy related to her example of a Walgreens store which would have a lengthy, net lease in contrast to an anchor department store. He also indicated that an appraiser is required to account for economic vacancy as opposed to actual vacancy.

As to Enright's improved sale properties, Battuello testified that overall her properties were not anchor department stores, but smaller sized, freestanding department stores or discount department stores. He indicated that properties #1 and #3 were from 38% to 43% the size of the subject, while property #2 was sited in a community mall and property #4 was included in a bulk sale of a portfolio which was not an arm's length nature. Having personally researched Enright's improved sale property #4, Battuello explained the details regarding this purchase. As to the absence of adjustments to the improved properties, he indicated that Enright's report stated that her data demonstrated that leased fee sales and fee simple sales were selling for the same price, but that a review of her data actually demonstrated a huge difference in the sale prices for the leased fee property versus the fee simple properties. Furthermore, Battuello elaborated on the anchor department store industry and how said industry is driven by rental rates and sales volumes.

In conclusion, Battuello testified that Enright's errors in her cost and income approaches to value would tend to overstate the subject's value, while the disparate data in the sales comparison approach is confusing and lacks a reasonable or reliable value estimate.

Battuello also elaborated on the inconsistencies and/or inadequacies present in the Hortsch analysis submitted by the board of review indicating that the value conclusions therein would be neither reasonable nor reliable.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The PTAB further finds a reduction in the subject's assessment is warranted.

When overvaluation 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, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *86 Ill.Admin.Code 1910.65(c)*. Having considered the evidence presented, the PTAB finds that the appellant did meet its burden and that a reduction 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 years 2002 through 2004, representing one triennial assessment period, the PTAB closely examined the parties' four appraisal reports. The PTAB accords little weight to the board of review's evidence submission for it lacked the preparer's testimony concerning his qualifications, the methodology regarding data used therein, and his conclusions.

The PTAB then looks to the remaining evidence that comprises the Kelly appraisal and testimony submitted by the appellant as well as the intervenors' evidence encompassing the Pogacnik appraisal and testimony as well as the Enright appraisal and testimony. The PTAB further finds that the intervenors' evidence reflects a market value opinion of either $11,700,000 or $13,400,000, which are both less than the current market value opinion of the subject reflected in the board of review's evidence of $13,425,000. Therefore, the intervenors' had requested that the subject's assessment be maintained.

The PTAB finds that the best evidence of market value was the appraisal and supporting testimony of the appellant's appraiser, Kelly. In totality, this appraisal developed the three traditional approaches to value in order to estimate market value. Overall, the PTAB accorded most weight to the appellant's evidence due to: the extensive experience of the appraiser in appraising anchor department stores on a nationwide basis; the credibility of testimony elicited from this expert; his personal inspection of the subject property and his knowledge of its environs; the usage of appropriate rental and sales comparables; the usage of appropriate adjustments to suggested comparables; and the development of a retail sales multiplier in the sales approach to value.

Specifically, Kelly placed less validity on the cost approach to value due to the subject property's age, size and large amounts of depreciation. This position regarding reliance on the cost approach was confirmed by the testimony of the remaining appraisal experts. He indicated that main consideration was given to the income and sale comparison approaches to value. In his income approach, Kelly viewed 18 leases of rental comparables obtained on a nationwide basis of anchor department stores gleaning not only descriptive data, but also rental data and a percentage of sales that various anchors are paying in rent. In contrast, the intervenors' appraisers, Pogacnik and Enright, testified to using leases of properties that were not anchor department stores in super-regional or regional malls.

Further, Kelly referred to market data reflected in recognized, nationwide surveys, which the remaining experts also testified to utilizing in developing their own appraisals. He testified that while retail sales per square foot may vary from one department store location to another, rental rates as a percentage of sales are without significant variation from one area to another. Kelly utilized various methods to estimate a capitalization rate for the subject of 11%, which was supported by market data. Overall, Kelly applied a consistent and industry-sanctioned methodology in deriving his estimate of value under the income approach. He opined a market value of $9,635,000, rounded, under this to value.

In Kelly's sales approach, he utilized five properties that were single-tenant, anchor department stores in regional malls located throughout Illinois. He testified credibly regarding his adjustments to these anchor properties. He also elaborated on his calculation of stabilized retail sales for each comparable at the time of its sale. Moreover, he developed a sales multiplier utilizing each sale comparable. Kelly used sales of anchor department stores available within the market as comparables, while, in contrast, the intervenor's evidence reflected the usage of improved sales of freestanding, big box properties, multi-tenant properties, and/or anchor stores located in community malls. The testimony of Kelly as well as both review appraisers, Dost and Battuello, indicated that a tenet of appraisal theory is that anchor department stores in super-regional or regional malls reflect a different market than the one available to freestanding, big box stores or anchors in community malls. Kelly opined a market value estimate of $9,830,000, rounded, under this approach to value. In reconciling all approaches to value, Kelly's final value for the subject was $9,700,000 for tax years 2002 through 2004.

Further, the PTAB found the intervenors' evidence reflected in the Pogacnik appraisal less than persuasive due to: the appraiser's lack of experience in appraising anchor department stores; evasive and contradictory testimony; the inappropriate and/or unexplained data on suggested comparables; the lack of anchor department stores as rental or improved sale comparables; the varying property rights and/or highest and best uses involved in the improved sale comparables as well as his primary reliance on the income approach to value in valuing an owner-occupied, anchor department store.

As to the intervenors' evidence reflected in the Enright appraisal, the PTAB found this evidence less than persuasive due to: the lack of experience in appraising anchor department stores; the multiple, relevant typographical errors in the report; the development of the subject's effective age at less than the subject's actual age when admitting to viewing only the subject's public areas; the inconsistent land sale data with insufficient size to accommodate an anchor department store; the improper expense deduction in the income approach that she admitted to under examination; the inappropriate rental comparables which were not anchor department stores in super-regional or regional malls, but anchor stores in community malls; the incorrect reliance on data relating to leased fee interests in developing a capitalization rate for a fee simple, anchor department store; and the usage of inappropriate improved sales comparables with varying property rights sited in community malls and/or part of a bulk purchase of leased fee interests.

Furthermore, the parties presented rebuttal witnesses, Dost and Battuello. The PTAB found that the Dost testimony was riddled with inconsistencies and/or contradictions thereby diminishing credibility. In contrast, the PTAB found that the Battuello testimony credibly and objectively reviewed and analyzed the Enright and Hortsch evidence submissions. Battuello's experience in appraising anchor department stores as well as his personal knowledge of industry theories and standards added credence to his testimony.

On the basis of this analysis, the Property Tax Appeal Board finds that the subject had a fair market value of $9,700,000 for tax years 2002 through 2004. Since fair market value has been established, the ordinance level of assessment for Cook County as reflected in the Cook County Real Property Assessment Classification Ordinance for class 5a property of 38% shall apply.

DOCKET #	**PIN**	**LAND**	**IMPROVEMENT**	**TOTAL**
02-27063.001-C-3	27-10-301-008	$2,022,710	$1,663,290	$3,686,000
03-24126.001-C-3	27-10-301-008	$2,022,710	$1,663,290	$3,686,000
04-25447.001-C-3	27-10-301-008	$2,022,710	$1,663,290	$3,686,000

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

Chairman

Member

Member

Member

Member

DISSENTING:

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: July 28, 2009

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.