PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Countryside Plaza – Tri-Land Properties, Inc.
DOCKET NO.: 04-02340.001-C-3 and 05-01736.001-C-3
PARCEL NO.: 02-28-104-015

The parties of record before the Property Tax Appeal Board are Countryside Plaza – Tri-Land Properties, Inc., the appellant, by attorneys Robert M. Sarnoff and Steven Kandelman of Sarnoff & Baccash in Chicago, Illinois, and the Kendall County Board of Review by State's Attorney Eric C. Weis.

The Property Tax Appeal Board conducted a consolidated hearing involving the 2004 and 2005 appeals under Docket Nos. 04-02340.001-C-3 and 05-01736.001-C-3. Due to the commonality of the appeals, the Property Tax Appeal Board will issue a consolidated decision for these appeals in accordance with the Official Rules of the Property Tax Appeal Board, Section 1910.78 (86 Ill.Admin. Code, Sec. 1910.78).

The subject property consists of an irregularly shaped 18.2± acre (792,792 square foot) parcel at the intersection of State Route 47 (to the east) and U.S. Route 34 (to the south) in Yorkville, Bristol Township, Kendall County, Illinois. The site has no direct access from either highway or from the outlots along those routes. The outlots also create somewhat limited visibility of the site from those highways. The subject property is accessed from parkways on the north and west; each of the parkways meet at signaled intersections to one of the surrounding highways. The property has been improved with a retail/office center built in 1972, commonly known as Countryside Shopping Center, consisting of three one-story retail buildings and a one-story cinema building. Property record cards for the subject property were not filed by the board of review, but the board of review included a reference in a letter to the center having 158,000 square feet of improvements. The improvements were demolished in mid-2006.

The appellant appeared before the Property Tax Appeal Board through counsel contending overvaluation as the basis of the appeal. In support of this argument, appellant submitted a narrative appraisal of the subject property estimating a market

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds *no change* in the assessment of the property as established by the **Kendall** County Board of Review is warranted. The correct assessed valuation of the property is:

Docket No.	Parcel No.	Land	Impr.	Total
04-02340.001-C-3	02-28-104-015	1,615,204	200,000	1,815,204
05-01736.001-C-3	02-28-104-015	1,615,204	200,000	1,815,204

Subject only to the State multiplier as applicable.

PTAB/cck/11-18

value of $3,965,000 or $5.00 per square foot of land area as of January 1, 2004. As set forth in that appraisal, appellant argued the subject property suffered from significant economic and functional obsolescence, noting more specifically that this property was the subject of a tax increment financing (TIF) district. On the basis of this evidence, appellant requested the subject's assessment be reduced to reflect the subject's appraised value for both 2004 and 2005, or a total assessment not exceeding $1,323,914 for 2004 and $1,327,482 for 2005 using Kendall County's 2004 and 2005 three-year median level of assessments of 33.39% and 33.48%, respectively. The board of review contends the subject property is fairly and accurately assessed at $1,815,204 reflecting an estimated market value for 2004 and 2005 of roughly $5,445,612 or $6.87 per square foot of land area.[1]

Appellant called the Kendall County Chief County Assessment Officer, David E. Thompson, as its first witness under procedures for calling an adverse witness (86 Ill.Admin. Code Sec. 1910.90(j)). Among other things, Thompson explained that application of an equalization factor, whether positive or negative, is utilized by the Chief County Assessment Officer after examining sales data; the factor is applied in order to attempt to bring all property to 33 1/3% of fair market value. The equalization factor is derived from examination of sales data for the county which has been entered into the county's computer, sales ratio studies as provided by the Illinois Department of Revenue, and consideration of the previous year's assessed values. To the extent possible, accuracy is checked when entering sales data in the computer by Thompson's staff.

The record in this appeal also contains "Board of Review Notes on Appeal" wherein the subject's final assessment was disclosed (Board of Review Ex. 1). In the course of this adverse examination, Thompson acknowledged he gathered the data which was presented on behalf of the board of review in response to the instant appeals. The witness was questioned about the evidence submitted. Vacant land comparable Sale #1, consisting of 3.94 acres, sold in January 2005 for $6.73 per square foot of land, but this sale was not included in the Illinois Department of Revenue Sales Ratio Study nor was it denoted as a "good sale" for purposes of a sales ratio study on the computer records of the county. Through an underlying deed, it was established that comparable land Sale #1 was segmented, or taken as a portion from another parcel identification number, which would be one reason it might not be utilized in a sales ratio study according to Thompson. He further testified that his staff determines inclusion and exclusion of sales from the sales ratio study based upon criteria provided by the Illinois Department of Revenue.

As to vacant land comparable Sale #2 presented by the board of review, appellant through adverse questioning of Thompson established that this sale was not included in the Illinois

[1] The improvements on the property had a nominal assessment of $200,000.

Department of Revenue's sales ratio study data either and the coding on the property record card indicated there was an improvement on the parcel which was not correct according to Thompson. Additionally, the records indicate this vacant parcel of 1.26 acres was also segmented and admittedly substantially smaller than the subject property. Thompson reiterated that the record card is for a 2005-2006 value, but the sale presented by the board of review was from 2002.

Upon further adverse examination concerning board of review comparable land Sale #3, Thompson acknowledged that the property record card submitted also reflected an improvement on the property, although Thompson reiterated that as of the sale date in 2003 the property was vacant. The reference to a sales ratio of 12.53% on this property meant the sale was extremely undervalued in relation to its sale price. (TR. 32) At about 4.0 acres, this sale comparable was admittedly substantially smaller than the subject property.

Appellant further established through Thompson that comparable land Sale #4 presented by the board of review was also segmented. Upon examination of the underlying deed for this sale, Thompson testified that new parcel identification numbers are created when segmentation occurs and that Thompson, with his experience, can tell this by examination of the documents submitted in support of the board of review's notes on appeal.

With regard to finding suitable sales to compare to the subject parcel, Thompson noted that farmland would not be a suitable comparable in his opinion, although the size of the property might be more similar to the subject. Thompson further acknowledged that general appraisal rules suggest that per unit values increase as size decreases, all other factors being equal, which would be applicable to the subject parcel as well.

Thompson was further adversely examined with regard to a three-page letter he had written and filed with board of review's evidentiary submission. In describing the subject property in that letter, Thompson noted the shopping center began to show a decline in usage in the 1990's; admittedly a decline in usage can be associated with more vacancy and lower rents. However, by decline in usage, Thompson testified he meant less foot traffic to this center as other commercial ventures entered the market. Thompson wrote with regard to the center's decline in usage:

> This was brought upon by the rapid growth being experienced throughout Kendall County. New and more modern facilities provided more types of retail outlets closer to the major growth areas and at a much more competitive level.

During his adverse examination, Thompson refused to characterize the foregoing observation as indicators of functional and/or economic obsolescence. Although he did admit that economic obsolescence is defined as the loss in value from outside the subject property and in some cases the existence of new and more modern facilities would be considered a form of economic obsolescence.

Thompson further testified that he attempted to estimate a value for assessment purposes as of January 1, 2004, but he did not do an appraisal although he is an appraiser and familiar with the three traditional approaches to value and how those are to be reconciled in an appraisal. Thompson testified that the county examined the most recent sale of the subject as being the best indicator of value as outlined in guidelines provided by the Illinois Department of Revenue. (TR. 54) In this regard, Thompson's cover letter referenced sales of the subject property in 2002 for $5 million with nearly 100% occupancy and a sale in 2005 for $7 million with less than 15% occupancy. When questioned as to whether he arrived at a market value, Thompson responded that for the subject property he arrived at a sale price conclusion of value. (TR. 57) No further testimony was elicited on this point.

Examination then turned to the witness' familiarity with an Eligibility Study commissioned by the city of Yorkville with regard to the subject property for tax increment financing (TIF) purposes. While a TIF was passed for the subject property which included a finding of elements of blight present, Thompson's cover letter stated:

> While the Board [of Review] understands the City of Yorkville must do what it can to attract new businesses, it sees little evidence of a blighted condition in the immediate area of the subject as evidenced by the sales they have submitted.

Turning back to the evidence submitted in response to the appeal, Thompson acknowledged that Improved Sale Comparable #1 concerns a car wash facility located on a 67,725 square foot parcel. Improved Sale Comparable #2, a restaurant facility, was purchased by an adjoining gas station.

Upon cross-examination by the State's Attorney, Thompson testified that there were no comparable properties similar in land size, location and type of improvement to the subject property available for presentation. There were, however, larger vacant parcels of land similar in location that were sold for commercial development.

As to the sales prices of the subject property, Thompson indicated on cross-examination that he learned that information from the sales declaration sheets filed with the County Clerk. Thompson testified that as of the 2004 and 2005 assessment dates at issue in this proceeding, the buildings on the subject property were still standing and had not been condemned or demolished.

On re-direct examination, Thompson stated that he did not present sales of larger vacant parcels which were similar in location to the subject because those sales were "past the date of the effective date of this assessment appeal." He further stated those sales were not relevant at the time to this appeal. Then Thompson opined that the sales had not closed at the time the evidence was filed, or if they had closed, the evidence had already been filed by the board of review. Thompson concluded that if the evidence had been open, he would have submitted those sales. Thompson acknowledged that two vacant land sales located near the subject property sold in April 2001 and in early 2005; they contain about 19 and 45 acres, respectively. The record reveals that for the 2004 appeal filing, the board of review postmarked its evidence on May 30, 2006. In the 2005 appeal, the board of review's evidence was postmarked on October 24, 2006.

Upon questioning by the Hearing Officer, Thompson testified that the sale of the subject property in 2005 for $7 million was not a portfolio sale; however, in later testimony, Thompson indicated he did not know if the $7 million sale was the same parcel(s) as were offered for $4.7 million.

Furthermore in response to the Hearing Officer, Thompson explained that vacant land Sale #4 with a sale date in January 2006 was chosen due to location, despite the fact that the sale occurred after the assessment dates at issue.

The next witness called by the appellant was Michael S. MaRous, a real estate appraiser and consultant licensed in the State of Illinois who is also president of MaRous & Company of Park Ridge, Illinois. The firm, which MaRous founded in 1980, specializes in real estate valuation, real estate consultation, and real estate land use issues. MaRous has been employed in real estate appraisal work since May 1976, having appraised over 8,000 properties with a total estimated value in excess of $10 billion in over 25 states, notably having appraised over 1,000 retail properties.

MaRous has held the Member of the Appraisal Institute (MAI) designation for about 27 years and the Society of Real Estate Appraisers (SREA) designation since 1979. Additionally, MaRous was invited to membership in the Counselors of Real Estate (CRE) for real estate consulting roughly eight or nine years ago. He also has held various positions with the Appraisal Institute and other like organizations and has spoken to various groups and published several articles. MaRous also testified that in the past six years he has performed appraisal work specifically for the Kendall County Board of Review and appraisals for other clients in Kendall County. Lastly, evidence was elicited that MaRous had experience with tax increment financing (TIF) arrangements from both the municipality's perspective as having been mayor for several years of the Illinois community of Park Ridge and from the developer's perspective as an investor.

MaRous prepared the instant appraisal (Appellant's Ex. 5) along with field appraiser Barbara Ricken which estimated a fair market value for the subject as of January 1, 2004 of $3,965,000. MaRous opined that the value as of January 1, 2005 would be similar. He took responsibility for the entire report and testified that he inspected the property on numerous occasions and up to the date of the hearing. Despite this testimony, the appraisal report on pages 13-14 specifies co-worker Ricken conducted an inspection on January 26, 2006 and MaRous inspected the subject on February 1, 2006. The stated purpose of the appraisal is two-fold: (1) to assist the owner in determining at what price the property would sell if properly exposed for sale in the open market and (2) for possible *ad valorem* taxation purposes. (Appellant's Ex. 5, p. 13)

Upon questioning, MaRous testified that a TIF is adopted to remove blight, upgrade facilities and stimulate economic development; TIF financing is used for subsidies to help achieve redevelopment. He described the steps in achieving a TIF: (1) an Eligibility Study is performed which considers eighteen factors to ascertain if the property meets established criteria; (2) a Joint Review Board is established of the affected taxing districts and public hearings are held before this board votes for or against the TIF; and (3) as the last step, assuming a positive vote was had, the matter goes before the municipal elected officials (city council, etc.) and further public hearings are conducted after which the municipal officials either vote for or against the creation of the TIF by ordinance. The parties then typically negotiate a Redevelopment Agreement and can either structure it through the issuance of bonds or "pay-as-you-go." In some situations, a developer's incentive is also negotiated.

Without objection, the witness was qualified as requested as an expert in the field of appraising real estate in general, in appraising shopping centers, and as an expert in TIF properties.

In terms of market area, MaRous noted the Yorkville area is currently in the path of Chicago suburban development and as a result, the community has been changing with the introduction of large retailers along with expanded residential development and away from an agricultural community with locally owned retailers. Thus, while the subject property is in a prime location at the junction of two major arterial east-west and north-south roads, the property has no direct access from either of those roads and is somewhat blocked out by development on the outlots; MaRous testified there is 891 feet of frontage on Route 47,[2] but no curb cuts or access. Moreover, the subject's improvements are obsolete office/retail buildings and an obsolete theater with very high vacancy as of the date of value with a total building area of 157,820 square feet. MaRous testified the improvements were razed around mid-April 2006.

[2] Page 2 of the report indicates the property has 589.06 feet of frontage on the west side of Route 47.

MaRous opined that the fact that new and more modern facilities in the area provided more types of retail outlets closer to the major growth areas and at a much more competitive level than the subject property was a form of economic obsolescence. He described such obsolescence as factors outside the subject property which generally have a negative impact on the property's value.

On the other hand, he described physical depreciation as wear and tear, from buckling or cracked parking surfaces to leaky roofs or poorly sealed windows, water damage, worn carpet, and/or an insufficient cooling system. MaRous described the subject improvements as being in average condition consistent with 32-year-old buildings; they were not derelict such as caved-in ceilings and/or broken out windows.

In testimony, MaRous analogized functional obsolescence to something that does not meet the market or keep up with modern times, such as gas stations now all are covered and self-serve.

MaRous found the subject property to be physically obsolete because it was 32-years-old or average; functionally obsolete because it did not work for the market from a retail standpoint being blocked out and not having easy access with no anchor store; and economically obsolete because of the growth and demand for modern facilities citing numerous large retailers that have come into the Yorkville area with related outlots.

For appraisal purposes, highest and best use is defined as the highest use to which a property can be put considering whether it is physically possible, legally permissible, financially feasible, and highest economic use to which the property can be put. As a result of MaRous' highest and best use analysis of the subject property as vacant, he found the property should be redeveloped with a larger retail use such as a retail big-box facility with a multi-tenant commercial building or buildings. As improved, MaRous found the existing improvements do not contribute any value to the land and the highest and best use is a commercial use in conformance with current zoning that is up to market standards in layout, design, and size. In other words, the improvements do not contribute adequate value to the land as compared to what the land as vacant would contribute.

As part of his appraisal process, MaRous examined the rent rolls, income and expenses of the property and found the occupancy rate to be a disastrous 55% in 2004; a thriving shopping center would have 95% to 100% occupancy and an economically viable one would have something over 80% occupancy. Even worse was the subject's approximate 15% occupancy rate in 2005, unless the owner was trying to vacate and redevelop the property (and avoid buying out leases). The appraisal report states by the end of 2005, the property was 100% vacant (Appellant's Ex. 5, p. 1). Furthermore, MaRous found the subject's income for 2004 and 2005 was negative without even considering depreciation or mortgage cost; about

($161,000) for 2004 and several hundred thousand dollars in 2005. He opined that based on the value estimate and a typical capitalization rate of 9%, the property would have to generate a net income of about $357,000 (Appellant's Ex. 5, p. 36).

MaRous testified that his review of the sale contract of the subject property impacted his determination as to an estimate of the fair market value of the subject property. The Uniform Standards of Professional Appraisal Practice (USPAP) require reporting and analyzing any sale transactions of the subject property occurring within 3 years and any current listings, pending sales, or options for the subject. (Appellant's Ex. 5, p. 15) The property had a last recorded sale of $5 million in July 2002 according to MaRous.

The appraisal report also acknowledges the existence of a contract dated August 16, 2004 for $7 million concerning the subject property. (Appellant's Ex. 5, p. 16) MaRous testified the contract included an unusual contract term allowing the buyer to get out of the contract for any reason and also provided for a 180-day due diligence period. The report at page 16 then continues:

> This long period of time was agreed upon to allow the necessary time to obtain the United City of Yorkville's consent and the passage and sale of a Tax Increment Financing (TIF) District subsidy. As of March 21, 2005, a $3,000,000 bond issue from the City of Yorkville was deposited into an escrow account and the City's obligation to issue a Note to the Development (subject to procuring an anchor tenant) for an additional $2,200,000 was recorded. The acquisition of the shopping center was contingent upon obtaining the TIF subsidy; when received, all but $500,000 of the TIF subsidy will be designated for demolition cost reimbursement and the remainder of the TIF funds will be used to reduce the land acquisition basis from the purchase price of $7,000,000. In our opinion, this is not considered to be a conventional arm's length transaction.
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> The TIF subsidy from the City of Yorkville amounts to approximately $5,200,000; under Illinois TIF law, subsidy funds are usable for reimbursement of acquisition, renovation, demolition, and infrastructure (site improvement) costs. The TIF subsidy (under Illinois law) cannot be used for new building construction costs. A portion of the bond proceeds held in escrow ($500,000) are to be released when the shopping center is demolished. The balance of the proceeds ($2,500,000) and issuance of the Developer Note ($2,200,000) is to occur when a lease is signed or a sale is closed for a portion of the Property with an "anchor" retailer that will operate a store of at least 60,000 square feet and the property owner gives a firm

> commitment to the City to construct an additional 25,000 square feet of new retail space at the property or when a lease is signed or a sale is closed for a portion of the Property with an "anchor" retailer that will operate a store of at least 80,000 square feet. Under the terms of the Redevelopment Agreement, if a Vesting Event does not occur by March 7, 2008, the property owner will not be entitled to receive the $2,500,000 payment.

MaRous further testified that analyzing the relationship of a sale price with a TIF developer's incentive versus a sale price without such an incentive is very complex. Depending upon the facts, if there is significant assistance or bond assistance, the sale price generally reflects a higher value than a property without the TIF assistance.

MaRous was asked to discuss the 2002 and 2005 sale prices of the subject in light of the decreasing occupancy rates from 2002 to 2005. He testified that to understand these transactions despite this reduced tenancy, the parties to the transaction(s) would have to be interviewed and contracts analyzed to ascertain if there are extraordinary situations impacting the situation. MaRous did not indicate that he engaged in interviews and analysis of the contracts. He opined, however, that the differences in sale prices could be things such as a partial interest sale, assemblage, purchase by government for condemnation, an unknowledgeable buyer, although at $7 million most buyers are knowledgeable, significant participation through a business redevelopment agreement or TIF assistance. With regard to the subject property, there was TIF assistance; an Eligibility Study dated September 17, 2004 was performed (Appellant's Ex. 6) finding five of the thirteen statutorily necessary blighted area factors. After the TIF processes were concluded by the appropriate entities, the parties entered into a Redevelopment Agreement regarding the subject property dated March 8, 2005 (Appellant's Ex. 7).

From this data, MaRous opined that while the $7 million purchase price did not reflect market value, deducting $5.2 million of TIF incentives ($3 million bond issue + $2.2 million incentive) would also not reflect market value as some money was based on performance and taking risk, obtaining an anchor tenant, and construction of an 80,000 square foot building, but a significant portion of the $5.2 million was directly attributable to the as-is value of the land. In summary with regard to the subject's sale price of $7 million, MaRous found this was not a typical arm's-length transaction with a conventional due diligence period and conventional contingencies, but it was instead a complex financial transaction. Although the appraisal report was dated February 20, 2006, there was no acknowledgement in the report of the Real Estate Transfer Declaration reflecting the sale of the subject for $7 million as of April 2005.

In preparing his appraisal report, MaRous began with consideration of the three traditional approaches to value. Due to the obsolescence of the improvements, he did not feel that a cost approach to value was appropriate. Had the income of the subject property been sufficient to attract an investor, he could have performed an income approach to value. Given MaRous' conclusion that the highest and best use was as vacant with the improvements being demolished, the sales comparison approach was the only approach deemed to be germane to estimate the value of the subject; moreover, the income approach reflected net losses and the cost approach was not appropriate given the age of the improvements. The sale comparison approach was performed through market research and consideration of similar trends in similar situations and locations, preferably finding four comparables in the immediate area of similar size and similar characteristics as the subject.

In the sales comparison or market approach to value utilized for this report to arrive at a vacant land value estimate of the subject property, MaRous set forth six vacant land sales, two of which were related, and two pending sales or sales under contract. One land sale was in Yorkville and the remaining sales were in Sugar Grove and the Aurora areas of Kane County, Illinois. The properties ranged in size from 19 acres to 80.18 acres and sold between April 2001 and January 2005 for prices ranging from $1,251,500 to $9,982,000 or from $1.08 to $4.87 per square foot of land area. The pending sales were located in Oswego and Yorkville, respectively, for properties of 22 and 45 acres each with prices (one of which was estimated) of $3,833,280 and $6,125,000 or $3.12 and $4.00 per square foot of land area.

The appraisal report discussed adjustments made to the sales data from pages 51 - 53. MaRous testified that Sale #1 was inferior to the subject due to the lack of development in its location, but also required a downward adjustment due to its greater size than the subject. Sale #2 involved a larger property that has the ability to sell off the outlots which may sell for two or three times the original purchase price; while the subject no longer has outlots available. MaRous testified that Sale #3 involves an inferior location compared to the subject. Sales #4A & #4B were part of the same transaction, the average sale price of the two properties was about $1.60 per square foot of land area; the location of these parcels is significantly superior to the subject, but a significant upward adjustment was also necessary due to some hydrology and wetlands that had to be addressed; an upward adjustment for time was necessary for these sales and adjustments for size as compared to the subject. Sale #5, located kitty-corner from the subject, while similar in size, required upward adjustments for time; also, this property had available outlots and much better road access. Pending Sale #6, similar in size to the subject and in a community similar to Yorkville, was given less reliance because the contract for sale was executed after the date of value. Pending Sale #7, west of the subject and along Route 34, involves property for which

MaRous engaged in negotiations on behalf of the owner(s) consisting of 45 acres from a 150-acre parcel.

Based on the sales, MaRous testified that the range of unit prices was $1.46 to $4.87 per square foot of land area[3]; given the subject's excellent general location, even without direct access from either of the two major highways and only limited frontage on one of the major highways, MaRous concluded an estimated market value of $5.00 per square foot of land area for the subject. With a site area of 792,792 square feet, MaRous concluded an estimated market value as of January 1, 2004 of $3,965,000, rounded, by the sales comparison approach to value. An additional notation was made that demolition costs were estimated to be $500,000, according to the appellant's confidential private placement memorandum dated June 1, 2005, which costs were to be paid out of the TIF proceeds. In light of the reimbursement, the appraisal made no consideration for demolition, because while accounting for the demolition cost would have reduced the value estimate, since it was also paid for by the TIF MaRous did not want to "double count" it. The appraisal further noted consideration was given to the facts that a majority of the comparables were zoned for a less intense use at the time of sale and sales were contingent upon rezoning to a more intense use (Appellant's Ex. 5, p. 51). In testimony MaRous indicated the actual demolition costs of the subject's improvements were between $350,000 and $360,000.

With regard to the sale evidence submitted by the board of review in this matter, MaRous reviewed the data and commented upon it (see also Appellant's Ex. 8). MaRous noted board of review vacant land Sale #1 is a retangular, significantly smaller, corner backlot of a larger commercial parcel with more frontage than the subject; MaRous found this property to have a different highest and best use and lacking in comparability due to its size. The property is a back outlot of a larger development; not a prime outlot. It sold for about $6.73 per square foot of land area. Board of review land Sale #2 is a small outlot of a shopping center with no direct arterial access; as a general rule, outlots tend to sell for significantly more money on a per-square-foot basis than a large lot, with prime outlots commanding from $15 to $20 per square foot versus the large lot price of $2 to $5 per square foot. This particular property sold for $13.66 per square foot of land area. Likewise, MaRous described board of review land Sale #3 as a prime outlot at the intersection of the two arterials, like the subject, but with direct access and additional access via an adjoining shopping center; it is a prime outlot, not a large parcel. This parcel sold for $11.48 per square foot of land area. As to board of review land Sale #4, MaRous found it lacked similarity due to its size. Improved Sale #1 was a carwash and an outlot of a larger shopping center; MaRous failed to see how it was comparable to the subject. Likewise, board of review Improved Sale #2, a restaurant with

[3] On page 51 of the appraisal report, the analysis summarizes a land sales range of $1.08 to $4.87 per square foot.

direct access to one of the arterials, was not comparable to the subject.

Under cross-examination, the board of review established that the stated street address of the subject property was erroneous in MaRous' appraisal report.[4] MaRous testified that he appraised the subject property and not some other facility.

With regard to the 2002 sale of the subject for $5 million, MaRous stated he was not aware of the occupancy rate(s) at the time of that sale involving a mix of office and secondary retail with the movie theater still perhaps operating, but he understood the buildings to be in average condition. MaRous admits there was no development agreement or TIF district established as of the 2002 sale of the subject property; furthermore MaRous did not interview the participants in detail or review the contract for the 2002 sale of the subject. MaRous had no reason to believe or any special conditions to suggest that the 2002 sale was not an arm's-length transaction. MaRous then acknowledged that he considered the 2002 sale price, but then considered the fact that the area had significantly changed from mid-2002 until January 2004 with a major push for redevelopment and modern retail which caused more obsolescence for the subject. MaRous acknowledged that in general values were increasing from 2002 to 2004/2005 in this area.

As to the sales comparables in his appraisal, MaRous acknowledged that most of the sales were larger properties than the subject. Sale #1 in the appraisal, located about 6 to 8 miles to the north of the subject, was unimproved farmland with utilities nearby, but not on the property; access to the property from Route 47 was undetermined at the time of sale and subject to negotiation with the Illinois Department of Transportation (IDOT). Sale #2 was an agricultural parcel for which some discussions with IDOT had occurred, but no specific plans or permits for road access were in place prior to sale. Again, utilities were nearby, but not developed on the parcel. Furthermore, while MaRous did not have the specifics, it was very possible that there were some special tax incentives associated with Sale #2 which would have increased the unit sales price paid. Sale #3 considered by MaRous was not directly on a major arterial road and was agricultural land without any known access authorized by IDOT and without incentive agreements for development. As to his Sales #4A and #4B which were acquired for development of an outlet mall, MaRous acknowledged on cross-examination that these properties had visibility from and access near to Interstate 88; additional access directly to the property would need to be negotiated with IDOT and MaRous believed that some type of governmental incentive

[4] The same erroneous address of 1107A S. Bridge Street, Yorkville, is set forth in the appellant's 2004 and 2005 Commercial Appeal forms filed with the Property Tax Appeal Board and also on the Board of Review - Notes on Appeal filed in 2004. Both the computer screen printout of the subject filed as part of the board of review's evidence and the 2005 Board of Review - Notes on Appeal have the property address as 509 Countryside Center, Yorkville.

agreement was in place for development of these properties which would have inflated the overall price and lead to the need for a downward adjustment of the sales price. Lastly, these parcels were located closer to metropolitan Chicago than the subject property. As to Sale #5 located near the subject, at the time of purchase utilities were located nearby, but as an undeveloped parcel hook-ups would be necessary and discussions with IDOT along with a plan for access would need to be negotiated after purchase. As to Pending Sale #6, MaRous acknowledged there was an incentive agreement in place prior to purchase. There was no such incentive involved in Pending Sale #7, but there was an agreement with the municipality prior to close on that sale with regard to a roadway extension.

MaRous characterized the subject parcel as unique in its size and location at a critical intersection of two highways, even with limited direct access. In addressing adjustments to sales comparables, MaRous testified, "Our profession is an art, not a science." In this regard, he noted that there can be some difference of opinion on adjustment and he further acknowledged that the subject property could petition IDOT for direct access along its frontage with Route 47.

On cross-examination, MaRous indicated that he discussed the developer's intent with regard to the subject property and learned they intended to take advantage of area growth, but to only purchase the property with significant economic assistance and incentive from Yorkville. Then, the developer intended to raze the facility and attempt to get one or two "big box" stores in the parcel with smaller in-line shop space and build a new modern facility. Prior to purchase, the developer had done preliminary feelers in the market and felt there was enough interest in Yorkville by large to mid-sized retailers to suggest growth was possible. As far as MaRous was aware, the previous owner continued to attempt to lease the subject property from 2002 until 2005.

As to the 2002 sale price of $5 million, MaRous admitted the price reflected the value of the property as an office/retail building in 2002 and that buyer's perception of the market. However, by 2005, the highest and best use of the property had changed according to MaRous. The level of investigation done by MaRous was questioned in terms of whether the sales comparables were adjusted for TIFs and/or redevelopment agreements, but MaRous was not aware of any for those properties.

As to the subject property's utility access, MaRous noted that while utilities may exist, in a situation where the buildings have been razed, the developer typically must remove and replace the thirty-year-old infrastructure.

Upon being cross-examined about the impact of access to the subject property from the main arterials, MaRous described a number of factors that go into desirability of a property including shape, access, visibility (or whether the property is blocked out from major roadways). He testified that an access road directly from a major road into the heart of a property is more desirable than "side-road" access like the subject property has. He noted the subject is even further blocked out by office building improvements on one of the side-streets that lead to the subject property.

On re-direct examination, MaRous stated he was unaware of any applications as of the dates of value at issue in this matter seeking to obtain additional access to the subject property from either arterial highway. MaRous testified as to a number of "big-box" retailers that have gone out of business since 1998 thereby reducing the number of big retailers who could lease a vacant space such as the subject property.

To questions posed by the Hearing Officer, MaRous stated the TIF study only confirmed his opinion of the need for redevelopment and the obsolescence, both functional and economic, of the subject property as improved. Furthermore, the existence of the TIF illustrated why the $7 million purchase price was not an arm's-length or traditional comparable which needed to have significant adjustment. The $7 million sale price influenced MaRous' estimate of fair market value to a higher figure in that both a developer and the municipality recognized the property was in a good location and both were willing to take significant risk and expend significant dollars to have the site redeveloped. Likewise, the redevelopment agreement essentially provided a gross discount of $5.2 million, therefore, as MaRous summarized the subject has a low end value of $1.8 million (after deducting the incentive) and a high end value of $7 million; however, this agreement was an "earn-out" and involved the construction of a building; there would be no deduction for land. Finally, as to the 2002 purchase price of $5 million, MaRous testified that price reflected the perception of market value at that time, but the market went the other way.

Based on the foregoing evidence of an appraisal setting forth an estimated fair market value for the subject property, appellant's counsel in closing argument reiterated that the subject property was overvalued. Counsel further argued, given the previous testimony, that a 55% occupancy rate in 2004 is not evidence of a viable shopping center. In summary, appellant asserted the 2002 sale price was not relevant to the property's value as of January 1, 2004. Moreover, counsel argued that the existence of the TIF with regard to the subject affects how the $7 million sales price should be treated. In other words, a TIF district would not have been granted by the municipality if, in fact, the subject property was not blighted, obsolete, and/or deteriorating. Additionally, the purchase of the property was contingent on the approval of the TIF and also allowed the buyer an open-ended exit clause. Likewise, the execution of a redevelopment agreement with significant requirements, but also significant financial incentives, was executed prior to the $7 million sale of the subject property. In closing argument, counsel for appellant cited People of the State of New York, ex rel. Empire State

Building Corp. v. Boyland, 135 N.Y.Supp.2d 764 (1954) and Reynolds v. Coleman, 173 Ill.App.3d 585 (1988) for the proposition that in a complex transaction not every sale of a property reflects fair market value.

Pursuant to Section 1910.67(h)(1)(D) of the Official Rules of the Property Tax Appeal Board, the Hearing Officer required the production of the Illinois Real Estate Transfer Declarations relevant to the 2002 and 2005 sales of the subject property. Those documents were produced and marked before the close of the hearing.

Property Tax Appeal Board Ex. No. 2 concerns the July 2002 sale and confirms the $5 million purchase price. The primary intended use is described therein as:

> Shopping center containing grocery store, travel service, clothing store, liquor store, book store, offices for doctor and others, gift store, dry cleaners, restaurant, County Health department offices, hardware store, video rental store, theater, card/gift shop, parking lots space.

This PTAX-203 form further indicates at Line 7 that the property was not advertised for sale, but on the required PTAX-203-A supplemental form in answer to Line 3 states the property was for sale on the market for 9 months. Moreover, this supplemental form reflects the property was approximately 92% occupied on the sale date of July 2002.

Property Tax Appeal Board Ex. No. 1 concerns the April 2005 sale and confirms the $7 million purchase price. The primary intended use is described as "Retail Shopping Center" and the supplemental PTAX-203-A form reflects the property to have been 6% occupied as of the date of sale.

The board of review filed its Notes on Appeal in each case reflecting total assessments for 2004 and 2005 of $1,815,204. For 2004, the assessment reflects an estimated market value of $5,436,370 or $6.86 per square foot of land area using the 2004 three-year median level of assessments of 33.39% as determined by the Illinois Department of Revenue. For 2005, the assessment reflects an estimated market value of $5,421,756 or $6.84 per square foot of land area using the 2005 three-year median level of assessments for Kendall County of 33.48%. In support of the assessments, the board of review submitted identical evidence in these two docket numbers consisting of data sheets regarding what it described as four vacant land sales and two improved sales which it considered comparable to the subject.

The four vacant land sales presented by the board of review consist of parcels within less than one mile of the subject property which range in size from 1.26 to 4.0 acres in size. The parcels sold between February 2002 and January 2006 for prices ranging from $750,000 to $2,000,000 or from $6.72 to $13.66 per square foot of land area. Additionally the board of review presented data sheets on two improved sale comparables, a car wash and a restaurant. These parcels consisted of 56,400 and 67,725 square feet of land area, respectively, and had structures for which no size information was provided. These two improved properties each sold twice as reported in the board of review's data printouts. Improved Sale #1 sold in October 2002 and in November 2004 for sale prices of $750,000 and $1,500,000, respectively. Improved Sale #2 sold in January 2004 and December 2005 for sale prices of $726,000 and $1,600,000, respectively. On the basis of these sales comparisons, the board of review requested confirmation of the 2004 and 2005 assessments of the subject property.

At hearing, the board of review recalled David Thompson to the stand for testimony in its case-in-chief. Board of review Sale #3 was clarified to consist of two separate adjacent parcels totaling 4 acres with one sale price. Thompson further testified that the selling price of the four vacant land sales comparables and two improved sales comparables submitted by the board of review were important factors in the consideration of the value of the subject property.

For its closing argument made through State's Attorney Weis, the board of review argued that the 2002 sale price of the subject property for $5 million should be given considerable weight in determining the subject's fair market value as it reflects what the market will bear. Moreover, according to the State's Attorney the 2005 sale price for $7 million should bear heavily in the determination of the property's fair market value. There was, however, no specific request by the board of review to increase the 2004 and/or 2005 assessments of the subject property. Weis argued the appellant's appraisal should be discounted because the appraiser failed to engage in an in-depth analysis to consider adjustments to the sales comparables for things such as TIFs and/or incentives related to those properties. However, counsel noted that the best comparable in the appraisal was Sale #5 located near the subject with similar lack of direct access, although it had a sale date of April 2001 and was a vacant farm field at the time of sale lacking the infrastructure already on the subject property.

After closing arguments, there was discussion and agreement by the parties that a large map used by the appraiser in testimony, but which had been taken back by the witness who was now gone, would be submitted after the hearing to the Property Tax Appeal Board. No submission of that map was made by appellant's counsel and a decision shall be rendered without that particular document.

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 Board further finds the evidence in the record fails to support a reduction in the subject's assessment for either 2004 or 2005.

The appellant contends the market value of the subject property as reflected by the assessment is excessive. When overvaluation is claimed, the appellant has the burden of proving the value of the property by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000); National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3rd Dist. 2002). The Board finds the evidence in the record does not support the appellant's claim of overvaluation.

Before analyzing the evidence, the Board makes some initial findings about the subject property. The Board finds, based on the uncontested testimony, that the subject's configuration, reduced visibility, and lack of direct access from two major arterial highways, has a negative impact on its value. Appellant's appraiser explained that the subject's layout does not provide for significant exposure and there is no ingress/egress at the one point of frontage on Illinois Route 47. The appraiser made a logical point that retail space prefers direct access and exposure on major arterial streets. No one disputed the testimony that the improvements on the subject property were mostly blocked from view from these two arterial highways by the surrounding outlot developments, which has a negative impact on the ability to lease the space. The Board also finds the subject property at the time of valuation was experiencing high vacancy due in part to the development of more modern and desirable retail space in nearby areas. Testimony from both the appraiser and the Chief County Assessment Official suggested that national retailers were more inclined to locate in these newer areas of development rather than at the subject property. The Board further finds that testimony indicated the improvements at the subject property were razed after the valuation dates at issue, which further indicates that the subject property was experiencing economic or functional problems with difficulty in finding and maintaining tenants to occupy the retail and office building space. This finding is further supported by the creation of the TIF district.

Appellant's appraiser estimated the subject property had a market value of $3,965,000 as of January 1, 2004 and was of the opinion that the value of the subject property as of January 1, 2005 had not changed significantly. This estimated market value did not include consideration of the anticipated cost of demolition of the improvements of $500,000 which were to be paid by the TIF and therefore the appraiser did not want to double deduct for demolition. The Property Tax Appeal Board finds the appraiser's analysis of the highest and best use of the subject property to be highly persuasive. The Board further finds this instant appeal hinges on the underpinnings of the highest and best use concept as determined by appellant's appraiser. Highest and best use is the reasonable and probable use that supports the highest present value as of the date of the appraisal. For improved properties, the highest and best use is determined for the site, both as if vacant and as if improved. Once a highest and best use has been determined, the use must meet four criteria:

1. Physically possible
2. Legally permissible
3. Financially feasible
4. Most productive

The Board finds the appellant's appraiser determined the subject's highest and best use was as vacant as for further retail development. The Board further finds the board of review supplied no highest and best use analysis nor an alternate highest and best use analysis to refute the appraiser's analysis. With this framework in mind, the appraiser considered the three approaches to value, finding only the sales comparison approach to be valid under the facts and circumstances.

As to the appraisal, the Property Tax Appeal Board finds an important factor to be considered is the lack of investigation by the appraiser into the two sales of the subject property. As a consequence of this lack of investigation, the Board finds the appraisal prepared by MaRous lacks credibility as a valid indicator of the subject's fair market value at issue in this matter.

The subject sold in July 2002 for $5 million or $6.31 per square foot of land area. The appellant's appraiser explained that the 2002 sale reflected that buyer's expectation of the market at that time, but the market went the other way as evidenced by the declining occupancy rate of the property. Thus, the appraiser found the sale to not be representative of the property's market value as of 2004 and/or 2005.

The subject sold in April 2005 for $7 million or $8.83 per square foot of land area. Both parties agree and the evidence supports that the 2005 sale was tied to a TIF district and developer's agreement. Appellant's appraiser MaRous explained why those factors of a TIF and developer's agreement detract from the sale price as being an indication of the subject's market value.

As to both the 2002 and the 2005 sale, MaRous did not interview the parties to the transaction or ascertain why the parties in both PTAX-203-A (Property Tax Appeal Board [PTAB] Exs. 1 & 2) declarations on line 8 answered "yes" to the following question:

> In your opinion, is the net consideration for real property entered on Line 13 of Form PTAX-203 [$5 million and $7 million, respectively, on PTAB Exs. 1 and 2] a fair reflection of the market value on the sale date?

Moreover, PTAB Exs. 1 and 2 regarding these sales transactions also indicate on line 7 of the PTAX-203-A that "the seller's financing arrangements" did not affect the sale price of either $5 million or $7 million.

The Illinois Supreme Court has held that "fair cash value" means "what the property would bring at a voluntary sale where the owner is ready, willing and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced so to do . . . . " [citation omitted]. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d 428, 430, 256 N.E.2d 334, 336 (1970). Illinois courts have consistently held that "a contemporaneous sale between parties dealing at arm's length is not only relevant to the question of fair cash market value but would be practically conclusive on the issue of whether an assessment was at full value." People ex rel. Korzen v. Belt Ry. Co. of Chicago, 37 Ill. 2d 158, 161, 226 N.E.2d 265, 267 (1967). However, the sale price of property does not necessarily establish its value without further information on the relationship of the buyer and seller and other circumstances. Ellsworth Grain Co. v. Illinois Property Tax Appeal Board, 172 Ill.App.3d 552, 526 N.E.2d 885 (4th Dist. 1988).

A sale of the property that occurred after the relevant assessment date, in this case a sale in April 2005, may still be considered unless it is too elusive as to the value on the assessment date. In re. Appl. of Rosewell v. United States Steel Corp., 120 Ill.App.3d 369, 458 N.E.2d 121 (1st Dist. 1983). In this regard, it is essential to more than superficially address these two recent sales of the subject property and then discard them as not reflective of market value when preparing an appraisal of the subject. See Residential Real Estate Co. v. Illinois Property Tax Appeal Board, 188 Ill.App.3d 232, 543 N.E.2d 1358 (5th Dist. 1989). The appellant elected not to present any other objective evidence of the purchase price of the subject property through parties to the transaction. The $7 million sale of the subject was concluded a mere four months after one of the assessment dates at issue in this matter and yet the appraisal makes a final value conclusion for this same basic time period of $3,965,000. In considering what evidence was presented by the appellant, the Property Tax Appeal Board finds MaRous was remiss in his lack of consideration of the two recent sale prices of the subject property in relation to his final value conclusion. (Kankakee County Bd. of Review v. State Property Tax Appeal Board, 337 Ill.App.3d 1070, 787 N.E.2d 865 (3rd Dist. 2003). Due to this failure, the Board finds that it may not rely upon the appraiser's value conclusion.

The Board does not disagree with MaRous' statement that the 2005 sale price which was tied to the TIF was a complex financial transaction. However, the mere fact that it may be a complex financial transaction does not mean that it should not be analyzed and dissected so as to ascertain all of the facts and circumstances surrounding the transaction and why the parties engaged in the transaction so as to determine whether the transaction in any way reflects the subject property's fair cash value, even after potential adjustments for TIF considerations. (See Town of Cunningham v. Property Tax Appeal Board, 225 Ill.App.3d 760, 587 N.E.2d 573 (4th Dist. 1992) (actual rent paid under sale-leaseback arrangement property properly excluded in appraising mall since the payments did not reflect either actual income potential or true market rent); National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038, 780 N.E.2d 691 (3rd Dist. 2002)). Additional analysis would be also be required for the 2002 sale of the subject property for $5 million when the property's occupancy rate was much more attractive than it was in 2005 when it sold for $7 million.

Appellant's sole evidence challenging the instant assessments, the MaRous appraisal, focused upon comparable sales as the purported best evidence of the subject's market value. The appellant's appraiser used recent sales or pending sales in the area and surrounding communities of properties ranging in size from 19 to 80.18 acres finding prices ranging from $1.08 to $4.87 per square foot of land area in order to estimate a value for the subject land of $3,965,000 or $5.00 per square foot. As set forth above, the lack of adequate consideration of the recent sales of the subject property has significantly reduced the credibility of the opinion of value set forth by MaRous.

In support of the current assessment, the board of review submitted four vacant land sales comparables and two improved sales comparables gathered by the Chief County Assessment Official. The Board finds the documentation and presentation of all of this sales data was extremely poor. There was no grid setting forth the data. The primary evidence consisted of computerized printouts from which the reader had to decipher the date of sale, price and what property(s) were involved in the sale. Then, upon adverse examination, it became evident that the board of review was relying upon sales of properties which, by their very nature, were deemed to be inappropriate sales for purposes of the Illinois Department of Revenue's sales ratio studies. The board of review never adequately explained why these sales would be valid sales comparables for presentation to the Property Tax Appeal Board when these same sales were not feasible for sales ratio studies.

More importantly, the Property Tax Appeal Board finds the board of review's presentation of four significantly smaller vacant land sales comparables to be merely anecdotal. The subject property over 18 acres in size, cannot reasonably be compared to parcels no larger than 4 acres especially without any meaningful adjustment, analysis or articulation as to why these suggested comparable sales should be considered valid indicators of the market value of the subject land. The record reflects sales of these smaller vacant outlots ranging from $6.72 to $13.66 per square foot of land area. However, these properties bear little if any resemblance to the subject property, other than in location. Similarly, the presentation of two improved sales comparables consisting of a car wash and a restaurant, both of which are located on outlots of other larger properties, without sufficient analysis and adjustment and/or explanation as to the rationale for comparability, again fails to present a valid indication of the market value of the subject 18 acre site and its multiple buildings.

In conclusion, while there is no presumption of correctness of the board of review's assessment of the subject property, in this matter the appellant failed to support his overvaluation claim by a preponderance of the evidence and therefore no reduction is warranted. People ex rel. Thompson v. Property Tax Appeal Board, 22 Ill.App.3d 316, 317 N.E.2d 121 (1974), *appeal dismissed, cert. denied*, 422 U.S. 1002 (1975); Mead v. Bd. of Review of McHenry County, 143 Ill.App.3d 1088, 494 N.E.2d 171 (2nd Dist. 1986); Commonwealth Edison Co. v. Property Tax Appeal Board, 102 Ill. 2d 443, 464, 468 N.E.2d 948, 956-57 (1984); Residential Real Estate Co., *supra*. The Board finds the two sales of the subject property in July 2002 for \$5 million and in April 2005 for \$7 million demonstrate the subject's assessment is not excessive in relation to its market value.

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: December 5, 2008

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.