PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Sears Roebuck & Company
DOCKET NO.: 02-28639.001-C-3 and 02-28639.002-C-3
03-24928.001-C-3 and 03-24928.002-C-3
04-25461.001-C-3 and 04-25461.002-C-3
PARCEL NO.: See Page 15

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 Aaron Bilton; and three intervenors, School District #215 by Attorney Joel DeTella with the law firm of Sraga Hauser, LLC in Flossmoor, as well as School District #157 and the City of Calumet City both by Attorney Elizabeth Shine with the law firm of Odelson & Sterk Ltd. in Evergreen Park.

The subject property consists of two parcels of land improved with a part one-story and part two-story, single-tenant anchor department store of masonry construction attached to a regional shopping mall as well as a detached, stand-alone, auto service center. The land comprises 1,069,790 square feet of area. The retail store contains 306,250 square feet with a sales area of 197,000 square feet. This store was constructed in 1966 with a second floor expansion in 1972. The auto service center contains a part one-story and part two-story building. It contains 52,532 square feet of area and was constructed in 1966. The entire property contains 358,782 square feet of building area. In addition to the building improvements, there is approximately 700,000 square feet of asphalt paving used for parking and driveway areas.

At the commencement of this hearing, the PTAB dealt with several procedural matters relating to verbal motions made by the parties. First, intervenor, school district #215, moved to exclude witnesses, whereupon the board of review and remaining intervenors had no objections. 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

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

LAND: See Page 15
IMPR.: See Page 15
TOTAL: See Page 15

Subject only to the State multiplier as applicable.

PTAB/KPP

submissions. Upon due consideration, the PTAB denied intervenor's motion to exclude witnesses; therefore, both the appellant's and the intervenor's review appraisers were not excluded from any portion of these proceedings.

Secondly, the appellant moved to strike appraisals submitted by the board of review as well as the city of Calumet City due to the absence of the preparer's testimony. The board of review and the intervenors objected to said motion. The PTAB denied appellant's motion to strike.

In addition, the parties jointly stipulated to the expert qualifications of the appraisers and prospective witnesses in this matter: Gary Battuello, James Gibbons, Michael Kelly, and John Pogacnik. Therefore, these four witnesses were accepted as expert witnesses at the hearing.

Furthermore, 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, 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.

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.

The appellant's first 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 that contained a nationwide portfolio of $175,000,000. He also stated that he was not directly involved in real estate negotiations at the May Company. He was offered as an expert in real estate perspectives from the early 1980's through 2005. The board of review objected to such an offer. Upon due consideration of the parties' positions, the PTAB sustained the board of review's objection.

As to the overvaluation argument, the appellant's pleadings included a copy of a full, narrative appraisal undertaken by appraiser, Michael Kelly. The Kelly appraisal addressed the three traditional approaches to value, while opining an estimated market value of $10,100,000. He testified that his market value estimate would not change from 2002 through 2004 because the market for anchor department stores had not changed significantly over these tax years.

Kelly testified that he undertook an interior and exterior inspection of the subject, several times. He described the subject's site as containing 24.56 acres of land. The subject property is improved with a part one-story and part two-story, masonry, commercial retail buildings with a combined area of 358,782 square feet. The main structure was used as a single-tenant, anchor department store in a regional shopping mall and contained 306,250 square feet of area, while the second building was used as an auto, tire, and battery service facility containing 52,532 square feet of area. He stated that the buildings had an effective age of 35 years with a remaining economic life of 5 years, but that the improvements were adequately maintained and in good condition. In addition, he indicated that the two-level anchor store suffers from a lack of ingress and egress on its upper level into the mall.

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. In addition, Kelly expounded on a detailed description of the characteristics distinguishing regional malls, super-regional malls, strip centers, and community centers.

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 $9,160,000, rounded; the income approach reflected a value of $10,275,000, rounded; and the sales comparison approach indicated a value of $10,045,000, 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 $10,100,000 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 and in doing so Kelly undertook two analyses from market indicators. First, he used six suggested land sales of local sites that ranged in size from 119,267 to 674,309 square feet and in price from $2.24 to $6.63 per square foot. 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. Kelly then capitalized the sales to indicate a land value under this method of $4.84 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 $6.00 per square foot and he then applied that to the subject's land size indicating a land value of $6,420,000, rounded.

Using the Marshall Swift Valuation Service, Kelly estimated a replacement cost new of both buildings as well as the site improvements for a total of $27,382,000, or $76.32 per square foot. 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 88%. 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 $130 per square foot. Therefore, functional/economic obsolescence was estimated at 5% for total depreciation at 93%.

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. The subject's land value less the physically depreciated building value was multiplied by the market required rate of return of 11% to estimate a market required net income of $1,067,642. Deducting the subject's stabilized net income of $1,130,163 resulted in a deficient income of $62,521. Further, the appraisal indicated a total depreciation from all causes by using the physical depreciation of $24,096,160 and dividing by the cost new of $27,382,000, which resulted in a total percentage of depreciation at 88%. Upon reviewing the two methods used to abstract depreciation, Kelly estimated that the subject suffered from 90% total depreciation. Applying this percentage to the replacement cost new resulted in a depreciated value of the improvements at $2,738,200. Adding the land value of $6,420,000 reflected a final estimate of value under the cost approach of $9,160,000, 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 $6.83 per square foot. 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 2 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 <u>The Dollars & Cents of Shopping Centers</u> survey of anchors stores across the country. Therefore, even though there are higher sales per square foot in San Francisco or New York City, there is still the relationship of rent to sales from 2.5% or 3.0%.

Furthermore, in viewing the retail market, Kelly explained how big box stores differed from the subject's anchor store. Specifically, he noted that that big box stores not only vary in size and adjacent tenant mix, but also in markets. He elaborated that due to the disparity in market over time big box stores will show lower capitalization rates and higher prices per square foot when they sell in comparison to anchor department stores, which are actually the traffic generators in any regional or super-regional mall. He indicated that historically anchors pay lower rents related to their actual sales, and as a result, anchor stores sell for a lesser amount per square foot than a free-standing big box store.

Reviewing the data in totality, Kelly chose a market rent of $3.50 per square foot, triple net, which was applied to the subject's 358,782 square feet of building area to indicate potential gross income for the subject of $1,255,737. Less a vacancy and collection loss of 10% indicated an effective net annual income of $1,130,163. 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%. The Korpacz Real Estate Investor Survey, First Quarter, 2002, reflected a range for institutional-grade national strip centers including multi-tenant shopping centers from 8.5% to 12.0%. Capitalizing the subject's annual income by 11.0% produced a value estimate under the income approach of $10,275,000, rounded.

Under the sales comparison approach to value, Kelly utilized five suggested comparables that are single-tenant, anchor department stores located in regional malls located throughout Illinois. Kelly testified that because there is a national market for the subject property, adjustments could be made to the properties to account for location. 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. 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 $28.00 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 middle of this range due to its older age and design. This analysis indicated a retail sales multiplier for the subject of 0.21 with the subject's retail sales per square foot at $130.00 equaling a value for the subject of $27.30 per square foot. Therefore, Kelly estimated a market value for the subject of $28.00 per square foot or $10,045,000, rounded.

Under examination, Kelly testified: that he had personally verified each sale transactions' data; 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. As to sales #1, #2 and #5, Kelly responded credibly articulating the background of each sale. He disclosed that the initial anchor store in each matter had sought bankruptcy relief and had initially sold the store. Thereafter, each property was subsequently sold again and Kelly stated that this subsequent sale transaction was personally verified and included in his appraisal report.

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 indicated that he recognized that there had been sales of freestanding stores or shopping centers, but that those are not the same market as an anchor department store. Further, he stated that the subject's market was nationwide and that adjustments were made prior to opining a market value for the subject.

Kelly stated that his estimate of market value for the subject in tax year 2002 at $10,100,000 was slightly lower than his estimate in tax year 1999 at $11,000,000. In explanation, he indicated that the 1999 average weighted sales of all of the subject's fellow anchors was about $176.00 per square foot, while in 2002 there was a decrease to $149.00 per square foot. He continued by stating that this decrease converts to a slightly lower rent, which when capitalized reflects a slightly lower value. In addition, while the retail sales multiplier in the sales approach was the same in both triennial assessment periods at .21, he stated that the slightly lower stabilized sales at $130.00 converted to a slightly lower value estimate for tax year 2002.

In reconciling the three approaches to value, Kelly accorded minimal weight to the cost approach due to the subject's age, configuration and calculation of large amounts of depreciation. In contrast, substantial consideration was accorded the income and sales comparison approaches. Therefore, he testified that his market value estimate for the subject of $10,100,000 is applicable to tax years 2002 through 2004 for the market for this type of anchor property had not changed during that time period.

In rebuttal, the intervenors called James Gibbons to testify regarding his assignment as a review appraiser of the appellant's evidence. Having previously been accepted as an expert witness, Gibbons testified that he has previously conducted a total of 12 appraisals of anchor stores from 1999 through 2008.

As to the subject, he stated that an anchor store is typically one half the size of the subject property. He also indicated that there had not been significant growth in the subject's area and/or the customer base for the subject's mall. He stated that there were inherent inefficiencies in the subject's store and auto center's two-story design, which is not normally found in super-regional or regional malls.

As to Kelly's appraisal, Gibbons stated: that his development of the highest and best use was sufficient; that Kelly developed a typical cost approach, but believed that the development of the effective age and remaining economic life was unsupported; that in the income approach Gibbons called into question whether there had been any ancillary income from licensing agreements relating to a dentist, optometrist, portrait studio or auto center; that he did not believe that the market supported a capitalization rate of 11%; that he did not believe that Kelly's improved sale comparables were appropriate due to their location and/or community; that Kelly's sale #3 reflected a different highest and best use because the improvement was purchased for conversion into an office building; and that Kelly's sale #5 reflected the application of projected costs as opposed to actual costs of renovation.

Under examination regarding the subject property, Gibbons was confused as to whether there had been major renovation undertaken in the subject's mall, the subject's store and/or the auto center. Further, he was personally unaware of whether sales at the ancillary services within the store were included in the store's retail sales. In addition, he stated that a two-story, 52,000 auto center was larger than typically found in the market, which is generally about 15,000 square feet in size. Gibbons indicated that an anchor department store lacks comparability to a freestanding building. Moreover, he stated that failure to disclose the details regarding the purchase of a company and allocation of a purchase price to real estate would be misleading to an appraisal's reader and a possible USPAP violation.

At the conclusion of the appellant's case-in-chief, the Assistant State's Attorney on behalf of the Cook County Board of Review moved for a directed verdict. In response, the appellant's attorney noted that there was an absence of evidence and testimony to support the board of review's estimate of value at $18,900,000. Counsel indicated that the appellant's expert opined a value at $10,100,000, while the intervenor's expert opined a value at $15,500,000, both below the board of review's valuation. Upon consideration of the parties' positions, the PTAB denied the motion.

The board of review timely submitted "Board of Review Notes on Appeal" wherein the subject's final assessment of $7,208,004 was disclosed indicating a market value of $18,968,432 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 cover memorandum and market analysis prepared by Jeffrey Hortsch submitted with an effective date of January 1, 2002 and a market value of $19,025,000. The analysis provided limited data and explanation, while addressing 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 two of three tax years at issue, School District #157 and/or the City of Calumet City as intervenors submitted an appraisal prepared by Kevin Byrnes with an effective date of January 1, 2003 and a market value estimate of $21,430,000. However, Mr.

Byrnes was not presented to testify regarding either his qualifications or the methodology used in his appraisal.

Intervenor, School District #215, submitted an appraisal for property tax years 2003 and 2004 prepared by John Pogacnik of Price Associates, who holds the designation of Member of the Appraisal Institute (MAI). The appraisal has an effective date of January 1, 2002 and a market value estimate of $15,500,000 for the subject, which is less than the current market value attributed to the subject by the county at $18,968,432. Pogacnik testified that he had conducted approximately 6 to 10 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). Nevertheless, he was questioned regarding his signature page that reflected initials after his signature, thereby elicited varying responses. His final answer, after several attempts, was that the initials after his signature were most likely for accounting purposes, but could have been signed by a secretary.

The Pogacnik appraisal addressed the three traditional approaches to value, while opining an estimated market value of $15,500,000 for the tax years 2003 and 2004. 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 June 3, 2004, which consisted of an exterior inspection along with an interior inspection of the areas open to the public. However, under examination, Pogacnik's testimony revealed that he was less than familiar with the subject's design and/or ingress or egress into the subject's mall.

As to the subject's area, Pogacnik stated that the subject was sited in a little regional mall with average area income, but with population statistics slightly below average according to his research. He indicated that the subject was built in 1966, while the subject's site had been converted in 1993 and 1994 from an outdoor mall to an enclosed mall. He stated that the mall's improvements were of average to above average condition with a land-to-building ratio of 2.98:1. Furthermore, he indicated that the anchor store and the tire, battery and auto store were both considered large by comparison to the market.

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 $16,200,000, rounded; the income approach reflected a value of $15,200,000, rounded; and the sales comparison approach indicated a value of $15,500,000, rounded. In reconciling these approaches to value, he placed main reliance on the sales comparison approach to reflect his final value estimate of $15,500,000 for the subject. Further, he testified that his value estimate would not vary significantly from tax year 2003 to tax year 2004 because market conditions were stable within the subject's market area.

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 262,493 to 674,309 square feet and in price from $2.42 to $6.63 per square foot. Based upon the subject's size, location and amenities, the appraiser attributed a land value of $5.00 per square foot to the subject's land size indicating a value of $5,350,000, rounded.

Using the Marshall Swift Valuation Service, Pogacnik estimated a replacement cost new base value of $51.92 per square foot, while then factoring in the auto service center build-out and different features in an analysis to reflect a final indicated value of $67.60 per square foot or $24,253,663. He stated that the subject's site improvements were minimal including approximately 700,000 square feet of asphalt paved parking. The appraisal indicated that surface parking lots cost between $2.75 and $3.75 per square foot, which is why he chose an average thereof at $3.25 per square foot or $2,275,000. Based on the age-life method, he opined the depreciated value of the site improvements at $840,000, rounded. He estimated entrepreneurial profit at 5% or $1,540,817. Further, he opined that the subject's total economic life was 40 years with an effective age at 25 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 $9,992,650. Adding the land and site improvements value reflected a final estimate of value under the cost approach of $16,200,000, rounded.

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 five leases on a pre-set per square foot basis reflecting a range of rates from $5.85 to $8.74 per square foot. Thereby, he estimated a market rent of $6.00 per square foot on an absolute net basis for the subject. Under examination, he testified that none of the rental properties were anchor department stores located within a regional or super-regional mall. Rental #2 was a smaller, two-tenant, freestanding building, while the remaining rentals were significantly smaller and younger department stores.

Less a vacancy and collection loss of 12% indicated an effective gross income of $1,894,369. Deducting expenses of $238,228 indicated a net operating income of $1,656,141. Pogacnik relied upon data from a Price Waterhouse Coopers survey conducted in the Fourth Quarter of 2001 to conclude a 9.5% overall capitalization rate. Thereafter, he applied a partial tax load to obtain a loaded capitalization rate of 10.9%. Capitalizing the subject's annual income produced a value estimate under the income approach of $15,200,000, rounded.

Under the sales comparison approach to value, Pogacnik utilized four single-user properties with one exception. 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 $44.00 per square foot to be appropriate for the subject estimating a market value for the subject of $15,800,000, rounded.

Under examination, Pogacnik testified: that his improved sales were not anchor department stores sited in either super-regional or regional malls; that sale #1 and sale #2 were in Lake and DuPage counties; that sale #3 and #4 were in Cook County as is the subject property; and that he was unaware of the effective tax rate in Lake and DuPage counties. Regarding the specific sales, he stated that sale #1 was a one-year old, free-standing structure; while sale #2 related to a free-standing retail building which was one tenth the size of the subject while he undertook a limited verification of the sale's financing. He stated that sale #3 was semi-attached to a community strip mall and was vacant at sale time requiring retrofitting. He indicated that sale #4 was another free-standing building not located within a mall, but was utilized as a multi-tenant location at sale time.
In reconciling the three approaches to value, Pogacnik accorded minimal weight to the income approach with primary consideration accorded to the sales comparison approach. 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. Most emphasis was accorded the sales comparison approach for a final value estimate of $15,500,000 for the subject.

In rebuttal, the appellant called as its review appraiser, Gary Battuello, who is also accorded the MAI designation. Having previously been accepted as an expert witness, he briefly testified that he has conducted approximately 60 to 75 appraisals of anchor department stores. Battuello stated that the subject property was an extremely large, anchor department store in a traditional-mix shopping center with a fee simple interest.

He further stated that his assignment was to undertake a desk review of the evidence submitted by the board of review as well as both intervenors in this tax appeal. In summary, Battuello stated that the Pogacnik appraisal: lacked items in the addenda; misnamed the intended user; included contradictory land area application varying from the subject's two parcels to usage, at times, of only one parcel's area; absence of a market description for the subject's area; absence of the subject property's description; a possible USPAP violation in relation to the appraiser's lack of signature; inconsistent application of adjustments to suggested comparables; inappropriate and unexplained data on suggested comparables; as well as varying property rights involved in the improved sales comparables.

Battuello also elaborated on the inconsistencies and/or inadequacies present in the Byrnes' appraisal as well as the board of review's evidence submission indicating that the value conclusions therein would neither be 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.

Under a 'de novo' standard of review, within this appeal was various evidence submissions as well as testimony of numerous experts in the field of real estate appraisal. These experts expounded on either 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 as well as the intervenors, the City of Calumet City and/or School District #157's, evidence submission. The Hortsch and Byrnes reports, respectively, lacked the preparer's testimony concerning his qualifications and to explain the methodology and data used in each report.

The PTAB then looks to the remaining evidence that comprises the Kelly appraisal and testimony submitted by the appellant as well as the Pogacnik appraisal and testimony submitted by the remaining intervenor. The PTAB further finds that the remaining intervenor's evidence reflects a market value opinion of $15,500,000, which is less than the current market value of $18,968,432 as determined by application of the class 5a level of assessment to the properties' current total assessment proffered by the county.

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 of value 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 personal verification of data relating to 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 configuration. This position is 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 intervenor's appraiser, Pogacnik, testified to using leases of properties that were not anchor department stores in regional malls.

Further, Kelly referred to market data reflected in recognized, nationwide surveys. 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%. This rate was supported by market data as well as

Pogacnik's usage of 10.9% in the development of the intervenor's income approach to value. Kelly opined a market value of $10,275,000, rounded, under the income approach 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 disclosed that the anchor stores related to sale #1, #2 and #5 had filed for bankruptcy relief and then sold the properties. Kelly stated that the subsequent sales transaction is reflected in his appraisal, while explaining the details regarding each sale which he had personally verified with a party to the transaction. 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 store sales available within the market as comparables, while, in contrast, the intervenor's evidence reflected the usage of improved sales of freestanding, big box properties and/or multi-tenant, big box properties. The testimony of Kelly as well as both review appraisers, Gibbons and Battuello, indicated that a tenant of appraisal theory is that anchor department stores reflect a different market than the one available to freestanding, big box stores. Kelly opined a market value estimate of $10,045,000, rounded, under this approach to value. In reconciling all approaches to value, Kelly's final value for the subject was $10,100,000 without signification variation for tax years 2002 through 2004.

Moreover, the PTAB accorded less weight to the intervenor's evidence due to either evasive responses and/or responses that were less than credible from its appraiser. Further the PTAB found the intervenor's evidence less than persuasive due to a disparity in: the appraiser's lack of experience in appraising anchor department stores; the absence of items allegedly placed in the addenda; the misnaming of the appraiser's intended user; the application of contradictory land area for the subject in the appraisal; the absence of a market description for the subject's area; his testimony indicating a sole reliance upon the appellant's appraisal data in the absence of the subject property's description; a possible USPAP violation in relation to the appraiser's lack of actual signature; the inconsistent application of adjustments to suggested comparables; the inappropriate and/or unexplained data on suggested comparables; the lack of anchor department stores as rental or improved sale comparables; as well as the varying property rights involved in the improved sale comparables.

On the basis of this analysis, the Property Tax Appeal Board finds that the subject had a fair market value of $10,100,000 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
02-28639.001-C-3	30-19-100-102	$ 10,746	$ 0	$ 10,746
02-28639.002-C-3	30-19-100-110	$1,063,894	$2,763,360	$3,827,254

DOCKET #	PIN	LAND	IMPROVEMENT	TOTAL
03-24928.001-C-3	30-19-100-102	$ 10,746	$ 0	$ 10,746
03-24928.002-C-3	30-19-100-110	$1,063,894	$2,763,360	$3,827,254

DOCKET #	PIN	LAND	IMPROVEMENT	TOTAL
04-25461.001-C-3	30-19-100-102	$ 10,746	$ 0	$ 10,746
04-25461.002-C-3	30-19-100-110	$1,063,894	$2,763,360	$3,827,254

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: April 24, 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.