PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Lord & Taylor
DOCKET NO.: 04-25467.001-C-3
PARCEL NO.: 07-13-200-034-0000

The parties of record before the Property Tax Appeal Board are Lord & Taylor, the appellant, by attorneys Gregory J. Lafakis and Ellen Berkshire of The Law Offices of Liston & Lafakis, P.C., Chicago; the Cook County Board of Review by attorney Ralph Proietti of the Cook County State's Attorney's Office; and Palatine Township High School District No. 211 and Schaumburg Community Consolidated School District No. 54, intervenors, by attorney Michael J. Hernandez of the law firm of Franczek Sullivan, P.C., of Chicago.

The subject property consists of a 281,445 square foot site improved with a two-story anchor department store that contains 130,872 square feet of building area. The subject building was constructed in 1994 and is a single-tenant Lord & Taylor retail department store that is part of a larger 2,235,000 square foot super-regional mall known as the Woodfield Mall in Schaumburg, Illinois.

The issue in this appeal is the determination of the correct market value of the subject property for assessment purposes as of January 1, 2004.

The appellant contends the assessment of the subject property is excessive and not reflective of the property's market value. The appellant contends the subject property had a market value of $7,200,000 as of January 1, 2004. In support of this argument the appellant submitted an appraisal of the subject property prepared by Joseph M. Ryan of LaSalle Appraisal Group, Inc.

Ryan was called as the appellant's first witness. Ryan is a State of Illinois Certified General Real Estate Appraiser. Ryan also has the Member of the Appraisal Institute (MAI) designation. Ryan has previously appraised 25 to 30 anchor department stores associated with regional malls.

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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 valuation of the property is:

LAND:	$	1,336,863
IMPR.:	$	1,399,137
TOTAL:	$	2,736,000

Subject only to the State multiplier as applicable.

PTAB/mmg/04-25467/08-08

Ryan identified Taxpayer's Exhibit No. 1 as the appraisal of the subject property he had prepared. The appraisal was described as a summary report of a complete appraisal. The witness explained that the purpose of the appraisal was to estimate the fee simple market value of the subject property as of January 1, 2004. Ryan explained that the subject property was identified as the Lord & Taylor store at Woodfield Mall. Ryan testified that he performed an interior and exterior inspection of the subject on May 22, 2004. Ryan determined that the subject had a 40-year economic life, a 10-year effective age, and a 30-year remaining economic life. Ryan testified that the highest and best use of the subject as improved is its continued use a retail department store.

Ryan used two of the three approaches to value; the income approach and the sales comparison approach. Ryan testified he did not use the cost approach because market participants for properties such as the subject do not give that method of valuation any weight. He explained that anchor stores buyers and sellers rely upon historical and anticipated retail sales per square foot within the subject.

The witness analyzed the retail sales market in the area. Sales in the Schaumburg Woodfield market area had dropped from 4.0 billion dollars in 2000 to 3.8 billion dollars in 2003. Ryan testified that increased competition from smaller specialty stores and from stores classified as "category-killers" such as Target, Kohl's, and K-Mart, caused a decline in sales for stores such as the subject. As a result, department stores were losing portions of the market share.

The first approach to value developed by Ryan was the income approach. The initial step under the income approach was to estimate the potential gross income using market rent. To estimate the subject's market rent Ryan used nine rental comparables. All of the comparables used were anchor department stores. The comparables were located in the Illinois, Indiana or Michigan. They ranged in age from five to forty years and in size from 80,000 to 297,000 square feet of building area. Lease dates ranged from 1997 to 2003. The range of the comparable's rentals were from $3.25 to $7.25 per square foot. Ryan reconciled his figure for the subject at $6.50 per square foot.

Ryan verified his market data with two sources: <u>Dollars and Cents of Shopping Centers 2004</u> published by the Urban Land Institute and the actual subject's sales. The subject's store's sales indicated that from years 1998 to 2000 sales increased from $245.00 to $270.00 per square foot and dropped to $228.00 by year 2003. <u>Dollars and Cents</u> said that anchor department stores would lease at 2-3% of gross sales or from $4.60 to $6.90 per square foot. Based upon this information, the witness testified that he was very comfortable using a figure of $6.50 per square foot for the subject. The witness used a retail sales figure of $230 per square foot for the year 2004 in arriving at a potential gross income of $850,668.

Ryan estimated the subject property would have a vacancy and collection loss of 7% or $59,547. Deducting 7% for the vacancy and collection loss resulted in an effective gross income of $791,121. Ryan also estimated that operating expenses of $0.84 per square foot should be deducted. This figure was based upon a report published by <u>IREM</u>. However, since industry standards are closer to 5% for operating expenses, the witness used a figure of $0.20 per square foot, or $26,174. After deducting for vacancy and collection losses, and operating expenses, the witness determined the subject's net operating income at $764,947.

Ryan next estimated the capitalization rate using data from the direct capitalization approach and the band of investment. Ryan used the *Korpacz* study to determine that overall rates for mall properties were from 7.25% to 10.00%. The witness determined that anchor department stores have greater risk because of their size and the limited number of potential users, and Ryan used a capitalization figure of 10%. Ryan then applied a tax load of 0.51% to this figure. Using a capitalization figure of 10.51% when applied to the subject's NOI, the witness opined a value, via the income approach, of $7,275,000, rounded.

The next approach to value developed by Ryan was the sales comparison approach. Under the sales comparison approach Ryan used eight comparable sales located in Illinois, Ohio, and Michigan. He also used one listing comparable located in Illinois. The comparables ranged in size from 56,192 to 635,288 square feet and in age from 5 to 30 years old. The sales occurred from January 2000 to September 2003 for prices ranging from $2,750,000 to $10,215,000 or from $22.99 to $50.07 per square foot of building area. Ryan testified that all of the sales required an upward unit adjustment and that the indicated unit value range of $52.50 to $57.50 per square foot. Based on these sales Ryan estimated the subject property had an indicated market value under the sales comparison approach of $55.00 per square foot of building area resulting in a total estimate of value of $7,197,960 or $7,200,000, rounded.

In reconciling the two approaches to value Ryan placed most weight on the sales comparison approach and was of the opinion the income approach supported the conclusion derived under the sales comparison approach. Ryan was of the opinion the subject property had a market value of $7,200,000 as of January 1, 2004.

Under cross-examination by the board of review Ryan agreed that in order to make comparisons to the subject he made qualitative adjustments to the comparables. Ryan testified that his adjustments were not quantitative and he could not put a specific dollar amount on the adjustments. Instead, these adjustments were qualitative based upon sales, market conditions, location, size, age and land-to-building ratios. Market conditions included those factors mentioned on direct examination describing how properties like the subject were losing market share to specialty stores and category killers.

Ryan stated that of the 25 to 30 anchor stores in regional malls that he appraised approximately 15 were in Cook County. He identified the stores as Lord & Taylor, Von Maur, Bloomingdales, and Sears's stores. Ryan did admit under cross-examination that he should have used a comparable sale of a Montgomery Wards store in Orland Park that sold for approximately $29.00 per square foot. In his analysis Ryan acknowledged that the subject was superior to all of his comparables and he adjusted according to this fact.

Upon cross-examination by the intervenor, Ryan acknowledged the locations of all of his rental and sales comparables in relation to the subject property. The witness testified that his comparables were located in inferior locations to the subject's location. Ryan testified that he made adjustments for the various locations.

The witness was also questioned on his use of sales figures. Ryan explained that he stabilized the sales figure per square foot at $230 based upon market trends and reporting data from the subject's store sales. The intervenor further questioned the witness on his use of vacancy and collection figures and capitalization rates and the sources for his data. The witness was able to articulate his use of data and his answers were credible and persuasive in support of his conclusions.

Susan Enright was called as a witness for the intervenor. She is a Member of the Appraisal Institute (MAI) and was accepted by the PTAB as an expert in the field of real estate appraisal. Enright was presented by the intervenor as a review appraiser to determine the reasonableness and completeness of the Ryan report. Her clients were Schuamburg School District 54 and Township High School District 211.

Enright testified that she performed her review in light of Uniform Standards of Professional Appraisal Practice (USPAP) standard 3, which prescribes the industry standard for appraisal review.

Enright identified the property as a 10-year-old anchor department store in a super-regional mall, Woodfield Mall, containing approximately 130,000 square feet of building area over two stories. The witness testified that in her professional opinion the market data used in the report was not relevant because of the differences in age of the properties, location, lease age, or sales date age when compared to the subject. Further, Enright testified that a lack of the cost approach in the Ryan report would have been meaningful in helping to determine the value of the subject.

In her analysis of the Ryan report, the witness testified that the sales comparison approach used poor data with locations that were not comparable to the subject's location. Therefore, the witness testified that in her opinion the Ryan report does not provide a reliable value conclusion.

Enright also reviewed the income approach to value in the Ryan report. Enright again elaborated on the significance of the inferior locations when compared to the subject's location. The witness went on to testify that some of the data included dated leases or not enough information to provide a reasonable value conclusion.

The witness also testified in the publication Dollars and Cents of Shopping Centers there is a category for the top two percent of shopping malls. Enright testified that Ryan should have alluded to that fact in his report in light of the fact that Woodfield Mall is one of the largest shopping centers in the nation. In her opinion, this information should have been included and that the Woodfield Mall would be in at least the top 10 percent if not the top 2 percent of shopping malls in the country.

Enright also disagreed with Ryan's use of median store sales at $230.00 per square foot and the use of a vacancy and collection loss of 7 percent. Enright stated that store sales were closer to $250 per square foot and there is virtually 100% occupancy on the subject so the figure for vacancy and collection losses should be lower than 7%.

Moreover, Enright opined that Ryan should have used the *Korpacz* survey from the first quarter of 2004, not the first quarter of 2003. The capitalization rates for the year 2004 were lower than in 2003, Enright testified. Further, Enright testified, that Ryan's report should have used a higher mortgage percent and a longer mortgage amortization schedule in deducing the band-of-investment approach to capitalization rates. As a result, the witness testified that she did not believe that the results provide for a reliable value conclusion for the subject.

On cross-examination, the witness admitted that she did not prepare a written review report. Rather, she provided the intervenor with discussion points on the topics that she presented in her direct examination. She did not prepare a memorandum detailing her review, either. The witness testified that she had not worked in an assessment office or for a board of review or any governmental organization charged with reviewing ad valorem assessments.

Enright testified on cross-examination that she had prepared approximately ten appraisals of anchor department stores associated with regional malls. All appraisals were performed for intervenors in property tax appeal cases. Enright testified that she has never completed an appraisal for a large retailer.

The witness testified that she had not discovered any inaccuracies in the description of the subject site. The witness did not inspect the subject site. However, the witness testified that she was familiar with the subject property, because she had worked as a store designer at a different store in the mall.

Enright testified that she had verified all of Ryan's comparables sales and Ryan's rental comparables not by speaking with buyers and sellers to the transactions but rather by checking information on the internet. Enright did admit on cross-examination that all of Ryan's rental comparables were of anchor department stores in regional malls. She further did not find any errors in Ryan's reporting data.

The witness was unable to answer whether or not Ryan's range of unit selling prices for anchor stores associated with regional malls was inaccurate. Further, the witness did not have any evidence to support the fact that retail sales at the subject were not declining, as Ryan had claimed in his direct examination.

The intervening school districts submitted an appraisal prepared by Lorraine Apiecionek, M.A.I. of L.M. Apiecionek & Associates in support of its contention of the correct assessment of the subject property. Apiecionek estimated the subject property had a market value of $9,900,000 as of January 1, 2004. Lorraine Apiecionek testified as a valuation witness for the intervenor.

Apiecionek was cross-examined about her qualifications to appraise the subject property. The witness had never prepared an appraisal report for an anchor department store for ad valorem tax purposes. Apiecionek was accepted by the PTAB as an expert in the field of appraisal theory and practice but not as an expert in anchor department stores within regional malls. Apiecionek testified from the information prepared in her report. Apiecionek prepared a complete summary appraisal report. Apiecionek testified she estimated the fair market value of the fee simple unencumbered interest of the subject property.

Apiecionek testified the subject is a two-story 130,872 square foot, anchor department store within a 2.2 million square foot regional mall. Lord & Taylor came to the center in 1994, she testified. Woodfield Mall is one of the largest regional shopping centers in the United States. Approximately 25 miles northeast of Chicago, Woodfield Mall is considered a "destination" shopping center area, the witness testified. Apiecionek testified that the highest and best use of the subject as improved is its current use.

Apiecionek developed the three approaches to value. First, the witness was examined about the income approach. The witness testified that she stabilized income on an annual basis and then estimated a vacancy and collection loss and then analyzed expenses pertinent to the subject property during the holding period. From this, she was able to determine net operating income.

In order to determine stabilized market rent, the witness developed a percentage rent and a dollar per square foot rent. The witness determined the stabilized retail sales per square foot for the subject at $249.68. The witness compared this figure to the top 10% of stores as reported by the publication Dollars and Cents and found her figures to be consistent. The witness determined that a reasonable rent for the subject is three percent of the estimated gross sales or $7.49 per square foot.

The witness also selected eight rental comparables located within the Chicagoland area as a check on her rental figure of $7.49 per square foot. All were similar-sized department stores. The witness considered three of the comparables closest to the subject in terms of comparability. One is a Carson's store in Schaumburg containing 144,000 square feet; it rents at $8.20 per square foot. Another is a Galyan's, now known as a Dick's Sporting Good's store in Schaumburg that contains 177,971; it rents for $6.50 per square foot. The third is a Carson's store in the Orland Square Mall in Orland Park, approximately 35 miles from the subject; it rents for $7.25 per square foot.

Apiecionek applied her estimated figure of $7.49 per square foot to the subject's square footage to arrive at a projected annualized income of $980,284. The witness applied a figure of three percent for vacancy and collection. The witness used this figure although the market average is 7.8% because the subject is located in Woodfield Mall, which is considered a high demand location. Subtracting three percent from the annualized income leaves an effective gross income of $950,875. Next, the witness stabilized the subject's operating expenses at a figure of $84,723, which was subtracted from the effective gross income to arrive at a net operating income. The subject's net operating income was determined to be $866,152 from which a capitalization rate was applied.

The witness looked at actual capitalization rates from comparables sales. A second method to determine capitalization rates was from industry standards such as *Korpacz.* Lastly, the witness used a band of investment approach to check the first two methods. Apiecionek discovered a range of capitalization figures from 6.8% to 10.25%. Apiecionek selected from the range of capitalization rates the final figure of 8.75%. Applying this figure to the net income derived an overall value of $9,900,000 for the subject property as of January 1, 2004.

Turning to the comparable sales approach, Apiecionek used all sales within the Chicago area and within a 35-mile radius of the subject property. The witness' five comparable sales ranged from 77,721 to 188,000 square feet of building area and the properties sold from August 1998 to April 2004. Sales prices ranged from $4,500,000 to $14,905,675 or from $29.03 to $104.85 per square foot of building area. Based upon this information Apiecionek estimated the sales price of $90.00 per square foot for the subject property.

The witness also used the gross income multiplier (GIM) as a check to determine the subject's value. Using several sales from the sales comparison approach the witness determined that the subject's gross income multiplier should be 11; that is to say the the subject's value divided by 11 would equal its gross rental income. Using this method, Apiecionek arrived at a figure of $10,780,000 for the subject property's value as of January 1, 2004.

Lastly, the witness was questioned about her cost approach to value. First, a land value was determined. The land was valued at a figure of $15.00 per square foot. When applied to the size of the site, the estimate of the subject's land value is $4,220,000. Next, the witness estimated the depreciated replacement cost of the subject. Apiecionek arrived at a depreciated replacement cost of the subject improvement as $6,633,250 for a total value for the subject through the cost approach of $10,850,000, rounded.

Apiecionek reconciled the three approaches to value: the cost approach $10,850,000; the sale comparison approach $10,780,000; and the income approach $9,900,000. The witness testified that the cost approach was considered as a secondary approach to value and the sales comparison was used as supporting approach to value, while the income approach was given the most weight. Therefore, the witness concluded a final estimate of value for the subject as of January 1, 2004 of $9,900,000.

Under cross-examination Apiecionek was asked to elaborate on her qualifications. The witness testified that she had never done an appraisal for a department store associated with a regional mall. The witness was further questioned about her knowledge of the definition market value and the Cook County Classification Ordinance. She appeared under cross-examination to be uncertain when attempting to explain her understanding of these terms. When asked about her inspection of the subject, Apiecionek opined that many of her observations came from the LaSalle Appraisal Report, while some observations were through her own investigation during her inspection of the subject. She was of the opinion that the highest and best use of the subject was its current use.

Upon further examination, the witness testified that she was not aware if Lord & Taylor had previously occupied another store in the same mall prior to the subject's construction in 1994. She also agreed that she obtained the retail sales figures for the subject from the Ryan report. However, the witness did not agree with the conclusion of value from the Ryan report. The witness was unable to articulate several of her answers as to where she obtained her data and other relevant information. The witness admitted that had she followed normal appraisal procedures and obtained most of her own data that her appraisal report may have been more accurate. The conclusion of value reached by the witness was stipulated to as being less than the value set by the board of review. The witness also admitted that she did not check the assessments on properties she included as comparable sales and that she did not take these factors into consideration when performing her value conclusions.

Furthermore, as elicited on cross-examination, none of the land sales used by the witness were for department stores associated with regional malls. In fact, one land sale was for an Aldi grocery store, one was for a Menard's home improvement center, one was a Costco big box retailer, one was a Lowe's department store, and one was for a Harley Davidson motorcycle facility. All the comparables with the exception of the first land sale for the Aldi grocery store were adjusted upward.

The witness was also asked a series of questions on the indirect costs related to the subject property that were presented in her report. Again, the witness was unable to substantiate her findings based upon a lack of ability to either speak with the parties involved in various transactions or to independently verify the data she used in her analysis.

Furthermore, the witness testified that she applied a 10% loss in value to the subject property based upon both vacancy rates and exterior obsolescence. This was explained by the witness as a way to determine the overall market external to the subject. The witness also added a figure of $490,000 to the subject as entrepreneurial profit as a factor of the market, but not applicable to the subject per se. Also, a number of the witness's comparable properties were lease fee sales, bulk sales, sale leasebacks, or bankruptcy sales which did not provide adequate comparability in order to determine the fee simple market value of the subject property.

Turning to the witness' income approach to value, she was questioned about the sales figures she employed to determine a conclusion of value for the subject. The witness used sales figures of $252.85 per square foot, although the subject had sales of $236 and $228 for the last two years prior to 2004. The information provided further that sales have been steadily declining since the year 2000. Similar declining sales figures were also verified by the Marshall Field's store in the same mall.

The witness used market rentals in her income analysis of a freestanding property in a power center, a lease negotiated in 1998, a Galyan's (now Dick's) sporting goods store, an open-air retail center, a Sam's Club and a Wal-Mart. With the exception of one comparable, a Carson's store, the appellant contended that none of the above is comparable to the subject, an anchor department store associated with a super-regional mall.

Terrence McCormick was called as a witness by the appellant, Lord & Taylor. McCormick is a partner in the appraisal firm of McCormick and Wagner. He is a member of the Appraisal Institute (MAI) and a State of Illinois Licensed Appraiser. McCormick was offered by the appellant to review the appraisal prepared by Loraine Apiecionek of L.M. Apiecionek & Associates for the subject property with an effective date of January 1, 2004.

McCormick was offered to and accepted by the PTAB as an expert in the field of real estate appraisal and review appraisal.

McCormick testified that the scope of his assignment was "to read the appraisal report, to check for its accuracy and analyze the reasonableness of the appraisal methodology, verify the sales data that was used in the report, consider the adequacy of the appraiser's reasoning and support." McCormick did not inspect the subject property and did not look for any additional data outside the scope of the Apiecionek report.

McCormick testified that the report opined a figure of $15.00 per square foot for land, which he considered reasonable. However, the witness did not see any support for the adjustment in the Apiecionek report that the market conditions for the land sales should have a six percent annual inflation rate. McCormick testified that a separate land value has no effect on the market value of the property being appraised since the appraiser's assignment is to value the entire property as a whole.

McCormick discovered a number of errors in the report. Several improvements appeared to have been added twice. Contradictions existed between the figures used for indirect costs. Lastly, the inclusion of an entrepreneurial profit is not typically found in a property such as the subject property; rather, it is a component that might be found in a new construction site where the builder is creating value buying land and putting improvements on the land in order to return a difference between the cost and the sales price. Therefore, this figure for entrepreneurial profit should not have been included, the witness testified.

McCormick testified that the depreciation figures used in the report he reviewed are not supported by the market. There is no comparison to justify the amounts used other than a simple mathematical assumption, without any supporting market data, McCormick explained. Of all the rental comparables used in the Apiecionek report only one was an anchor department store in a super-regional mall and that comparable was the result of a sale leaseback bulk transfer, which is not considered an arm's length rental.

McCormick further stated that his review of the report shows that the appraiser used figures for a six-year average of historical sales. Although the retail sales of the subject indicate a downward trend, Apiecionek actually uses the average. The result is a higher figure that overestimates the stores sales, McCormick testified. She also used the higher end of the Dollars & Cents figures of that range from 1.5% to 3% to estimate market rent and this also produces an inflated figure for the estimate of income. McCormick formed an opinion that the appraiser overstated the value of the property.

Turning to the sales comparison approach, McCormick further opined that the sales do not adequately support the value chosen.

McCormick took issue with each of the five sales. Sale one is a warehouse showroom; Sale two is a Kohl's store that was part of a 1031 exchange; Sale three was a Montgomery Wards that was part of a bankruptcy proceeding; sale four is a Kohl's store that was brand-new; and sale five is the Carson's store in Orland Park that was part of a bulk sale.

McCormick also disagreed with Apiecionek's statement that the sales comparison approach should not be a primary approach to value in the case of the subject property. McCormick testified that the best indicator of value is what an anchor department store would sell for on the open market. Instead, McCormick testified that Apiecionek used three properties that were not anchor department store and the two that she used were not arm's length transactions.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $3,978,508 was disclosed. The subject's assessment reflects a market value of approximately $10,469,758 using the Cook County Real Property Classification Ordinance of 38% for 5A commercial property, such as the subject. The board of review also submitted what is termed "A Retropsective Appraisal of A Single Tenant Retail Building Lord & Taylor 4 Woodfield Mall Schaumburg, Illinois." The report was dated January 18, 2006 with an effective date of valuation of January 1, 2004. The author of the report is Jeffrey Hortsch, Illinois State Certified General Real Estate Appraiser. Mr. Hortsch's report included two of the three approaches to value; the sales comparison approach, and the income approach. In his report, Hortsch began but did not complete the cost approach. The sales comparison approach was estimated at $10,860,000 and the income approach was estimated at $11,055,000. The appraiser reconciled his final opinion of value at $10,900,000. The appraiser was not tendered to the PTAB as a witness. The board of review did not provide any other party as a witness to support its findings.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The issue before the Property Tax Appeal Board is the determination of the market value of the subject property as of January 1, 2004, for assessment purposes. According to the Cook County Real Property Classification Ordinance 5A commercial property, such as the subject, is to be assessed at 38% of fair cash value. Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean 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. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). After considering the evidence and testimony provided by the parties, the Board finds a reduction in the subject's assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. The appellant argued the subject property had a market value of $7,200,000 as of the assessment date based on the appraisal and testimony provided by Ryan. The intervening Chicago Board of Education contends the subject property had a market value of $9,900,000 as of the assessment date based on the appraisal and testimony provided by Apiecionek. The subject property had a final assessment, as established by the board of review, of $3,978,508, which reflects a market value of approximately $10,469,758 using the Cook County Real Property Classification Ordinance for 5A commercial property at 38% of the subject's market value.

First, the Board finds the parties were in general agreement with respect to the physical description and condition of the subject property. The Board also finds the parties were in general agreement that the subject property is located in a very strong commercial area known as the Woodfield Mall. The Board further finds the subject property should be considered an anchor department store attached to a super-regional mall.

Of the three valuation reports only two developed a cost approach to value. Apiecionek prepared a cost analysis and the board of review began a cost approach but did not reach a conclusion of value under this method. However, in her cost approach to value, Apiecionek used an entrepreneurial profit in her calculation. As testified to by McCormick, those figures are already included in the Marshall & Swift commercial cost estimator and, therefore, the value conclusion was incorrectly increased. Furthermore, the depreciation used was a simple mathematical 10%. Apiecionek does not support this depreciation figure with market data. As a result, the Board gives the cost approach estimate of value little weight.

All three reports developed an income approach to value. With respect to the income approach to value, the Board gave less weight to Apiecionek's conclusion due to several inconsistencies in her data. Apiecionek testified that her income approach was given the greatest weight in her analysis. The board of review also developed an income approach to value and arrived at a value estimate of $11,055,000. However, the board did not present any witness to be examined and cross-examined as to the credibility and the reliability of the report. As a result, the PTAB gives the board of review's analysis no weight. Ryan developed an income approach to value as a check on his sales comparison approach, which received the most consideration.

In her income approach to value, Apiecionek used a figure of $249.68 for stabilized retail sales per square foot for the subject property. This figure was derived from her analysis of the publication Dollars and Cents. She concluded that a reasonable rent for the subject is 3% of this figure or $7.49 per square foot and determined a projected income of $980,284. After subtracting for expenses and determining a capitalization rate of 8.75% for the property, the witness concluded an opinion of value for the subject of $9,900,000.

However, Apiecionek used figures to develop her market rental rate of $7.94 per square foot mostly using brand-new properties as comparables. Brand-new properties have rent structures that are usually based upon a builder's cost with a profit included from the sale, as testified to by McCormick. This does not give a clear indication of where the market rents should be valued. Moreover, Apiecionek only used one rental comparable from an anchor department store associated with a regional mall. That rental comparable was part of a sale-leaseback bulk transfer, which is not indicative of an arms-length rental.

Furthermore, Apiecionek determined an income estimate by using a six-year average based upon the subject's historical retail sales; however, those figures had been trending downward in the last three years and the use of the six year average skewed the result upward. Also, Apiecionek's use of a 3% vacancy rate is also below market rates, which range from 7-8%. Use of a lower vacancy rate and a higher retail sales average will tend to drive the market value conclusion upward. Apiecionek relied upon the income method of valuation as her primary conclusion of market value for the subject and gave it the most weight. The PTAB finds that the income approach data and methodology used by Apiecionek is not reliable.

The Board finds that the most comparable rental properties should be anchor stores at regional malls. Ryan used nine rental comparables to establish market rent. All of the comparables were of anchor department stores. The comparables were located in the entire Midwest region. Lease dates ranged from 1997 to 2003 and the range of rentals was from $3.25 to $7.25 per square foot of building area, including land. Ryan selected the high end of the range at $6.50 per square foot, reflective of the subject's desirable location in one of the top super-regional malls in the Midwest.

Ryan further verified his data with several sources, including the subject's actual sales data. Dollars and Cents of Shopping Centers reports that anchor department stores lease at 2-3% of gross sales or from $4.60 to $6.90 per square foot. Ryan reconciled this figure to $6.50 per square foot. Again, this figure was at the high end of the range. The last year prior to the year at issue, 2003, reflected sales of $228.00 per square foot for the subject property and Ryan reconciled this figure to $230.00 per square foot, including land, for the year 2004. Ryan determined the subject's potential gross income at approximately $850,000. Moreover, Ryan's figure of 7% for vacancy and collection loss is more closely reflective of the market than Apiecionek's figure of 3%. Ryan also used industry figures published by IREM to determine operating expenses of 5%. Due to the size of the subject and the risk associated with super-regional malls Ryan selected a figure of 10% for a capitalization rate. This, too, is a reasonable estimate considering the subject's risk factor. Comparing the three reports, the Board finds Ryan's conclusion of value of $7,200,000 to be the best indicator of the subject's market value by the income capitalization approach.

All three reports also developed a sales comparison approach to value. The board of review concluded a figure of $10,860,000 by the sales comparison approach. However, again, the board of review did not tender a witness at the hearing to either explain or substantiate the board's findings. Without a witness subject to examination and cross-examination, wherein the PTAB can observe the veracity and the credibility of the witness, the PTAB cannot give the board of review's report any weight.

The last approach to value employed by Apiecionek was the market or sales comparison approach to value. She used this method of valuation for the subject property in order to support her valuation results derived from the income approach, which she placed primary emphasis on. Apiecionek used five sales of suggested comparable properties and a gross income multiplier (GIM) to determine the value for the subject through the sales comparison approach. She used all department stores within a 35-mile radius of the subject. Sales prices ranged from $4,500,000 to $14,905,675 or from $29.03 to $104.85 per square foot of building, including land. Apiecionek also used the GIM figure of 11 as a check on her valuation of the subject through this approach. She arrived at an estimate of value for the subject of $10,780,000 using the sales comparison method. Her final conclusion to value using all three methods was $9,900,000, relying most heavily on the income approach.

However, GIM's are used to determine value for income producing properties, such as apartment buildings, McCormick testified. The subject is an owner-occupied, anchor department store attached as part of a super-regional mall and the PTAB finds that the use of a GIM, in this instance, is not an appropriate check on value. With property such as the subject the most desirable method of valuation is through the sales comparison approach when compared to other anchor department stores in regional malls. Apiecionek comparables in her sales comparison approach to value were questionable. Of the five sales that Apiecionek used to develop her sales comparison approach to value only one was an anchor department store associated with a mall. This sale was a Carson's store in the Orland Square mall; however, it was part of a bulk sale and not representative of an arm's length transaction. The other sales included two Kohl's "big-box" stores, a warehouse showroom, and a Montgomery Wards store that was part of a bankruptcy sale. The PTAB finds that the data and analysis used by Apiecionek in her sales comparison approach lacks reliability. The PTAB further finds that Apiecionek's reliance on the income approach to value and not the sales comparison approach when valuing the subject, an anchor department store in a super-regional mall, to be less reliable. The PTAB places little weight on the sales comparison approach by Apiecionek.

In keeping with the Chrysler Corporation v. State Property Tax Appeal Board 69 Ill.App.3d 207, 387 N.E.2d 351 (1979), Ryan placed the most weight on the sales comparison approach to value. Ryan used eight comparable sales located in the greater Midwest region. The sales all occurred within three years prior to the year at issue. Sales prices ranged from $22.99 to $50.07 per square foot of building area, including land. While two of the comparables were the subject of bankruptcy proceedings, Ryan clearly articulated the steps taken the by the bidders to the process to insure a fair value was paid for these properties. Moreover, based upon the subject's superiority in terms of location and amenities, Ryan made an upward unit adjustment to the comparables and arrived at a unit value for the subject of $55.00 per square foot of building, including land. The PTAB finds this is a reasonable unit value for the subject property.

Ryan further enhanced his testimony by explaining how "big-box" "category-killer" stores, such as Kohl's, had grabbed a share of the market traditionally enjoyed by retail properties such as the subject. It was an industry-wide trend, Ryan testified and, therefore, he reflected in his appraisal the decreasing sales per square foot of the subject. Ryan further testified that he made his adjustments to each of the comparables for inferior locations. The PTAB finds that Ryan's testimony and conclusions of value are both credible and reasonable.

Enright, review witness for the intervenor, did not successfully impugn the credibility of Ryan. Rather, in her opinion, she merely highlighted the inferior location of Ryan's comparables; however, as Ryan explained, he chose comparables from the greater Midwest to ensure he had properties that were similar to the subject; that is, anchor department stores. Moreover, Ryan adequately explained his rationale for making upward adjustments to all of the comparables due to location. Enright also disagreed with Ryan's use of a figure of $230 per square foot for retail sales, however, as previously explained, the PTAB finds this figure reasonable in light of the data presented. Moreover, Enright's critique of the Ryan's report that should have used a much lower vacancy rate since the store is 100% occupied ignores the facts of the market. For all these reasons, the PTAB finds Ryan's methodology is sound and the best evidence of the subject's market value is the sales comparison approach employed by Ryan.

In conclusion, the PTAB finds that the appellant's evidence and witnesses were more credible than that of the intervenor's witnesses and evidence and the board of review's evidence. The PTAB further finds that the best evidence of the subject's market value is the Ryan appraisal report. As a witness, Ryan was able to articulate his approaches to value as reasonable and proper. McCormick, as a review appraiser, highlighted the inconsistencies in the Apiecionek report and McCormick’s testimony was credible and convincing. The board of review's evidence was given little weight due to the lack of any witnesses on their behalf whose demeanor could be observed and be subject to examination and cross-examination.

In reconciling his approaches to value Ryan gave most weight to the sales comparison, or market, approach. In so doing, Ryan estimated that the subject property had a market value of $7,200,000 as of January 1, 2004.

In conclusion, the Property Tax Appeal Board finds the subject property had a market value of $7,200,000 as of January 1, 2004. Since market value has been determined, the correct assessment for the subject, a class 5A property, as mandated by the Cook County Real Property Classification Ordinance of 38% of market value shall apply. 38% of the subject’s correct market value of $7,200,000 is $2,736,000. Since the subject's current assessment is $3,978,508, a reduction is warranted.

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: August 29, 2008

Eileen Castrovillari

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.