



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

APPELLANT: Federated Department Stores, Inc  
DOCKET NO.: 06-21194.001-C-3  
PARCEL NO.: 10-09-411-081-0000

The parties of record before the Property Tax Appeal Board are Federated Department Stores, Inc, the appellant(s), by attorney Patrick C. Doody, of The Law Offices of Patrick C. Doody in Chicago; the Cook County Board of Review by Cook County Assistant State's Attorney Ralph Proietti; and Niles Township H.S.D. #219, the intervenor, by attorney Michael J. Hernandez of Franczek Radelet P.C. in Chicago.

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:** \$561,458  
**IMPR:** \$3,352,542  
**TOTAL:** \$3,914,000

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property consists of 95,324 square foot parcel of land improved with a three-story, single-tenant anchor department store of masonry construction attached to a regional shopping mall. The retail store contains approximately 206,139 square feet of building area. This store was constructed in 1995.

The appellant, through counsel, appeared before the Property Tax Appeal Board arguing that the fair market value of the subject is not accurately reflected in its assessed value. In support of this argument, the appellant submitted a complete summary appraisal report. The appraisal has a valuation date of January 1, 2004. The appellant presented the testimony of the appraisal's author, Joseph M. Ryan of LaSalle Appraisal Group, Inc., Chicago. The parties stipulated to Mr. Ryan's credentials and his expertise as an appraiser. Therefore, the PTAB accepted Mr. Ryan as an expert witness in property valuation.

Ryan testified he inspected the subject on several occasions, but for the current appraisal his associate, Tim Grogan, inspected the subject on September 14, 2004. Ryan testified that 2004 was the general assessment year for the subject's township and that between 2004 and 2006 the county did not reassess the township.

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

To estimate a total market value for the subject of \$10,000,000 as of January 1, 2004, Ryan employed two of the three approaches to value: the income capitalization approach and the sales comparison approach to value. Ryan testified the subject property is owner-occupied.

Under the income approach, Ryan testified he analyzed four comparables located in the Chicago market area. Ryan testified the comparables range in size from 105,456 to 114,000 square feet. The commencement dates on the leases range from 1999 to 2003, with lease terms ranging from 15 to 20 years. The rents range from \$4.50 to \$10.50 per square foot, triple net. Ryan testified he compared and contrasted these properties to the subject to estimate rent of \$6.00 net per square foot for the subject.

Ryan tested this rent amount by reviewing *Dollars & Cents of Shopping Centers, 2004* to estimate sales revenue at \$200.00 per square foot for the subject with an estimated rent of 2.5% of retail sales. The appraisal placed more weight on the market rents and stabilized rent for the subject at \$5.75 per square foot of building area.

Ryan testified the rental comparables were not anchor department stores. He opined that he was unable to find recent anchor department store rents because they weren't being built as the mall concept was in transition; that the market was showing power and leisure centers. Ryan opined that power centers and big box stores differ economically in value because they typically rent for more than an anchor store. He also testified that leisure centers' anchor stores are smaller than mall anchor stores.

The appraisal estimated the potential gross income (PGI) of \$0,052,066. Ryan testified he estimated vacancy and collection loss (V&C) of 5.0% resulting in an effective gross income (EGI) of \$1,126,034 for the subject. Ryan testified he allocated expenses for insurance, management and replacement reserves at \$.27 per square foot, or \$55,503. The estimated expenses were deducted from the EGI resulting in a net operating income (NOI) of \$1,070,531 for the subject.

To estimate the capitalization rate, Ryan testified he reviewed *Korpacz Investor Survey* for non-institutional malls which had an estimate of 8.5% to 14%. He opined that the Korpacz survey's data was the most comparable to an anchor department store. Based on the Korpacz survey, Ryan testified he estimated a rate of 10.5%.

Ryan testified he also developed a capitalization rate using the band of investment technique at 9.87%. Ryan testified he estimated a capitalization rate of 10.5% which was increased by .33% for the taxes to arrive at a loaded capitalization rate of 10.83%. Dividing the NOI by the appraiser's total capitalization rate resulted in an indicated value for the subject of \$9,880,000, rounded.

To estimate a value for the subject through the sales comparison approach, the appraisal analyzed eight sales and one offering of similar properties located in the Midwest area. The properties are located in Illinois, Michigan and Ohio. The properties consist of department store buildings in regional malls. Ryan testified that anchor department stores are different from big-box stores in that they are usually two-story, not freestanding, and not as efficient to operate. He testified that anchor department stores sell on a regional rather than a market-specific basis. Ryan testified the region for anchor department stores between the Appalachians and the Rocky Mountains.

The comparables range in building size from 94,341 to 254,720 square feet of building area and in land size from 56,192 to 755,330 square feet. The comparables have land to building ratios ranging from 0.27:1 to 3.65:1 and range in age from five to 40 years old. The comparables sold from January 2000 to September 2003 for prices ranging from \$2,750,000 to \$10,215,000, or from \$25.45 to \$50.00 per square foot of building area, including land. The listing is on the market for \$22.99 per square foot of building area, including land. Ryan described each sale and the listing. He testified that, he would adjust sale comparable #6 upward to \$31.81 per square foot of building area, including land, because he was subsequently informed that the site was leased at the time of sale even though the lease transferred with the sale. Ryan testified that although sales #3 and #4 were bankruptcy sales, he spoke to the parties involved with the sale and determined them to be at market. He also testified that sales #6 and #7 sold at the same time from the same buyer to the same seller, but determined, after discussions with the parties to the transactions, that each sale was separately negotiated.

Ryan testified that adjustments were made for location. He testified that, after all adjustments, he reconciled the subject at \$50.00 per square foot of building area, including land which reflects an estimated market value for of \$10,300,000, rounded.

When reconciling the two approaches to value, Ryan testified he accorded more weight to the sales comparison approach to value as the subject is owner occupied. He testified he did give some weight to the income capitalization approach to value to estimate

a value for the subject property of \$10,000,000 as of January 1, 2004.

Under cross examination by the board of review, Ryan acknowledged that not estimating a value for the subject under the cost approach is a departure from the Uniform Standards for Professional Appraisal Practice (USPAP). He also acknowledged this was one of his first appraisals completed for an anchor department store in the Chicago area. He testified that this was one of the reasons he did not have enough rental information on anchor department stores and used other types of stores for his rental comparables in the income approach.

The witness was questioned in regards to several other appraisals he prepared on other anchor department stores. He was shown *Board of Review's Group Exhibit #1*, a copy of the sales summary page from seven other appraisals. Ryan acknowledged that these sales summary pages are mostly identical. He testified that sales comparable #6's price per square foot changed when he discovered that the land was leased. He further testified that he contacted a professor of land economics to determine how to adjust the sales prices for this information. Ryan testified he used this new adjustment amount for the sale after that point. Ryan acknowledged the sales comparables are all the same for these appraisals.

As to the locational adjustments made to the sales comparables, Ryan was shown *Board of Review's Group Exhibit #2*, a copy of the sales adjustment grids for the same seven appraisals in group exhibit #1. Ryan testified that sales comparable #6 for the subject property had a location equal to the subject's location. He acknowledged that this sales comparable was adjusted upward when appraising a property, Lord & Taylor, located at the same mall as the subject. Ryan testified that one these adjustments was an error, but he was not sure which one. He opined that there should have been an upward adjustment for the subject's appraisal.

Ryan briefly explained the capitalization rate, its significance, and a loaded capitalization rate. He testified he used a partially loaded capitalization rate to represent the owner's responsibility for the taxes when the property is vacant. Ryan testified that he used *Korpacz* surveys and the band of investment method to determine the subject's capitalization rate. He acknowledged that the surveys he reviewed were for non-institutional properties. He opined that the subject property would be non-institutional because institutional investors do not invest in anchor department stores. He was unaware of the capitalization rates for institutional properties, but acknowledged they would be lower. Ryan was shown appraisals from other anchor department stores he appraised and he acknowledged their loaded capitalization rates were less than the subject's.

Under cross examination by the intervenors, Ryan testified that the subject has ingress, egress and parking easements for the

other parts of the mall. He acknowledged that a buyer of the subject property would also have these easements.

Ryan acknowledged that one reason he did not do a cost approach was because he could not find any sales of anchor mall pad sites. He opined that the physical characteristics of a pad site are much different than land sales for freestanding big-box stores. Ryan described the relationship between an anchor department store and the in-line store of the mall and testified that in-line store typically pay much higher rents than anchor department stores.

Ryan testified that the improvement contributes to the value, but acknowledged he did not specifically state what this value was. He opined that there is value in the improvement based on his experience as an appraiser for 30 years, the size of the subject improvement on the land and everything he has learned.

Ryan was shown *Intervenor's Exhibit #2*, a copy of a grid from the International Council of Shopping Centers listing definitions of shopping centers. Ryan testified the subject is a super-regional shopping center. He acknowledged that sale comparable #1 is not a super-regional mall and opined that it was a regional center. He acknowledged that sales comparable #4 is located in a regional mall.

Ryan acknowledged that the rental comparables in the income approach were not located in regional malls, but are freestanding stores or stores located in power centers.

Ryan acknowledged that four of the department store comparables used under the sales comparison approach are located in Michigan while two sales are located in Ohio. He acknowledged that differences in tax law affect the value of real estate. Ryan testified he did not know the core market retail sales for these comparables.

Ryan was asked about the median household income of the subject's neighborhood compared to the sales comparables. Ryan testified he was unaware of the figures, but that he didn't measure the demographics that way.

As to sales comparable #1, Ryan acknowledged that the sale was a leased fee sale and that he did not put this in the report. He testified that he knew the terms of the lease and opined that the sale was at market value.

Ryan testified that in sale #2, the purchaser was the mall developer and this buyer then leased the property back to the seller for a short time while the buyer sought out a new tenant. He acknowledged the property was not on the market at the time of sale and that he did not include this information in the appraisal.

Sales #3 and #4, Ryan testified, were sold through bankruptcy auctions. He testified he investigated the sales to determine if they met the definition of market value. Ryan testified these properties were advertised and competitively bid on.

Ryan acknowledged that sale #5 was demolished after the sale and the mall was redeveloped into a lifestyle center. He opined that a property purchased for redevelopment may not have a different highest and best use than the subject.

As to sale #6, Ryan again testified that he adjusted the sale price on this property. He testified that the new adjusted sale price for the property is still within the range of sales, but acknowledged that it does change the distribution of the unit values within the range and that it indicates a higher market value for the subject property.

Ryan acknowledged that the listing comparable was later torn down and the mall redeveloped.

As to the income approach, Ryan testified that the rental comparables are freestanding stores and have a better location than the subject. He testified that he did not use regional shopping centers when estimating the subject's rent. The appraisal indicates the subject fell in the top 10% for regional shopping center department stores and estimated the sales revenues of \$200.00 per square foot.

Ryan acknowledged he used regional mall data in the *Korpacz* survey as he was developing the capitalization rate. He testified he used the non-institutional *Korpacz* survey. Ryan agreed that the subject has never been vacant nor had any vacancy problems and that the subject is a Class A mall property in a metropolitan area. He opined that institutional grade investors rarely invest in department store properties, but acknowledged that the sale #1 was sold by an investor.

On redirect, Ryan testified that the other appraisal reports he completed on anchor department stores that he was questioned about by the board of review were smaller in size than the subject. He opined that this would impact the capitalization rate as the larger the property, the fewer users are interested in the property. He further opined that this would increase the risk.

Ryan testified that the other anchor department stores he appraised would not have identical rental rates to each other as they all have different characteristics. He testified that the capitalization rates for these other anchor department stores, excluding the tax burden, were between 9.5% and 11%.

Ryan stated he captured all the fee simple sales of anchor department stores in the regional area when he estimated the value for the subject. Ryan addressed the sales in Michigan and Ohio and opined that a lower tax rate for an area would generally make a property more valuable. Ryan testified that the time sale

#5 sold, there were no plans to redevelop the mall from a regional mall to a lifestyle center.

In regards to questions by the PTAB, Ryan opined that if he were to value the land, he would use the subject's pad site of 95,324 square feet. He testified he would not make adjustments for the easements available to the subject because when a building sells, parking is inherent to the sale whether it will be owned by the buyer or by the mall owners.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$5,483,296 was disclosed. This assessment reflects a fair market value of \$14,249,726 or \$69.13 per square foot of building area, land included, when the Cook County Real Property Assessment Classification Ordinance level of assessments of 38% for Class 5A commercial property is applied.

In support of this market value, the notes included raw sales information on six properties suggested as comparable to the subject. These properties range in size from 100,773 to 260,000 square feet of building area. They sold between April 2004 and May 2007 for prices ranging from \$10,861,297 to \$18,620,000 or from \$71.62 to \$120.07 per square foot of building area, including land.

In addition, the board of review submitted an appraisal undertaken by Terrence M. O'Brien and Brian J. Duniec with Terrence O'Brien & Co. This appraisal estimated a market value for the subject property as of January 1, 2004 of \$14,000,000.

At the hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions. As a result of its analysis, the board requested confirmation of the subject's assessments.

In support of the intervenor's position, the intervenor submitted a summary appraisal of the subject prepared by Susan A. Enright with Appraisal Associates, Inc. with an effective date of January 1, 2006 and an estimated market value of \$15,500,000. Ms. Enright was the intervenor's only witness in this appeal. The parties stipulated to Ms. Enright's credentials and her expertise as an appraiser. Therefore, the PTAB accepted Ms. Enright as an expert witness in property valuation.

Enright testified to the typographical errors in the report and verbally made changes to correct those errors. She testified she inspected the subject on January 6, 2008. Enright described the subject and its neighborhood characteristics. She described the subject property as located in a super-regional mall. Enright testified to the demographics of the subject's area and the retail sales of the mall. She opined that the sales for a mall are important to a retailer and being located in an affluent community is desirable.

Enright opined that the highest and best use of the subject as improved would be its continued retail use. In addition, Enright developed utilized the three traditional approaches to value in estimating the subject's market value.

Under the cost approach to value, Enright testified she analyzed seven land sales located within seven miles of the subject property. The properties ranged in size from 204,645 to 797,148 square feet and sold from June 1999 to December 2005 for prices ranging from \$12.70 to \$31.42 per square foot. Enright testified about the similarities in these properties with the subject and stated that land sale #1 was similar in size to the subject's assumed economic land area. She testified that after adjustments for location, date of sale, size and zoning to estimate the subject's land value at \$17.50 per square foot or \$10,800,000 using 618,417 square feet of land.

Enright estimated the replacement cost new for the subject of \$16,792,083. She testified she included an allowance of 5% for entrepreneurial profit and total depreciation of 52%. Enright testified she utilized the age/life method to establish the physical depreciation at 20% and included a 30% deduction for external obsolescence. Based on this, Enright opined a value for the subject property under the cost approach of \$19,650,000.

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

Enright analyzed the sale of five properties and the offering of one property located within the Chicagoland area. The appraisal describes the properties as warehouse, in-line, freestanding or anchor stores. The sales comparables ranged in size from 79,000 to 163,000 square feet of building area and sold from September 1998 to February 2006 for prices ranging from \$5,725,000 to \$14,905,675 or from \$72.47 to \$120.07 per square foot of building area, including land.

Enright testified that sale #3 was not technically a leased fee sale because, although there was a lease at the time of the sale, it was a short term lease and, therefore, she opined, the lease was not pertinent to the sale. She testified that this property is an anchor department store.

Enright testified sale #4 was a department store located in Lake Zurich, Illinois. She testified that sale #5 is an anchor tenant in a mall in the Chicago metropolitan area. The appraisal indicates the sale was part of a six property bulk sale. Enright testified she concluded a value under the sales comparison

approach of \$75.00 per square foot of building area, including land, or \$15,500,000, rounded.

Under the income approach, Enright testified she used a couple methods to develop the subject's potential gross income. She opined that rents are best expressed as a percentage of the store's sales and testified that she examined information on sales for the subject's mall as well as national publications. Enright estimated retail sales for the subject property at \$260.00 per square foot of building area which translates to rent of \$6.50 per square foot of building area. Enright also look at seven rental comparables with rental rates from \$5.65 to \$9.00 per square foot of building area. She testified that the estimated rent for the subject falls within this range.

Enright applied a vacancy rate of 3% to the potential gross income of \$1,339,904 to arrive at an effective gross income (EGI) of \$1,299,707. She testified that anchor tenants typically have long-term leases so a lower vacancy rate is appropriate.

Enright testified she deducted management fees at 2% of EGI and replacement reserves at \$.12 per square foot for total expenses of \$50,731. The estimated expenses were deducted from the EGI resulting in a net operating income (NOI) of \$1,2,48,976 for the subject.

In determining the appropriate capitalization rate (CAP rate), Enright testified she reviewed Korpacz Real Estate Survey, which had a range of 5.5% to 9.5%. She testified she also reviewed the market derived data points that she extracted from the sales comparables. Enright concluded a CAP rate of 8%. NOI was then capitalized by this rate to reflect a market value estimate under the income approach of \$15,600,000, rounded, for the subject.

In reconciling the various approaches, Enright testified she gave weight to all three approaches. She testified that the cost approach was meaningful because the property is newer and best captures the value of the underlying land, the income approach was meaningful because it reflects how an investor would make their purchase decision, and the sales comparison approach is meaningful as it shows what similar properties are selling for. In the end, Enright testified she found the income and sales comparison approaches' values to be close and concluded a value for the subject property as of January 1, 2006 in that range at \$15,500,000.

Under cross-examination by the board of review, Enright testified she estimated the rent for the subject based on a percentage of estimated sales. She opined that the amount of sales at the subject property and the mall are relevant and important. She testified that she used two reports from *Korpacz* to estimate the subject's capitalization rate. Enright stated one of the books used was the first quarter 2006 book which estimated a rate range of 5.5% to 9.5%. She further explained she used the institutional investors table. She opined the subject was a class A type

property from an investors standpoint. Enright opined that the market was improving from 2004 to 2006.

Under cross-examination by the appellant, Enright acknowledged the report stated she had discussions with ownership, but that she did not speak with any of the owners; she opined this information was not misleading.

Enright testified that the appellant leases about 95,000 square feet of land, but that she valued the economic land to building ration in the appraisal. She opined that the party responsible for paying the property taxes on the extra land would depend on the terms of the mall agreement. She acknowledged that if she calculated the value of the extra land in her appraisal the value would be \$9,150,000 and removing this from the cost approach would estimate a value for the subject of \$10,500,000.

Enright testified entrepreneurial profit was the risk involving relative to the ownership undertaking building a new property. She testified the subject is not an owner-occupied property. She testified the subject is leased by the appellant from the mall. She stated she got this information from people in the industry.

In regards to questions concerning the rental data used by Enright, she testified that the *Dollars & Cents of Shopping Centers* survey includes rental information from anchor department stores. She further testified that the number of anchor department store responses for the two year period she reviewed was between 60 and 80.

Enright acknowledged rental comparable #1 sold, but was not sure if rental comparables #4 and #5 sold. She testified rental comparable #7 was an anchor department store in a mall and rented for \$7.68 per square foot of building area. She did not agree that this property was superior to the subject because of the subject's location.

As to the capitalization rate, Enright testified she reviewed the Korpacz and RERC surveys, but did not rely on them. She testified she relied on many factors including the reports and market derived sales. Enright acknowledged that all her sales comparables were leased at the time of sale with the exception of the offering.

Enright testified that sale #1 was a freestanding store roughly half the size of the subject. She further testified that the parties to the sale were related entities.

As to sales #2 and #3, Enright acknowledged these properties were half or 40% the size of the subject and sale #2 was the sale of a retail center. She acknowledged that the seller of sale #3 moved to the other end of the mall the property was located in.

Enright testified sale #5 was part of a bulk transaction. She testified she did not know how long the property was offered for

sale on the open market. She was unsure if this sale was a sale-leaseback because she could not tell from the seller's name.

In response to questions by the Board, Enright testified that the building sits on 95,000 square feet of land, but the store needs parking to exist. She opined that a typical retail center has a 5:1 or 3:1 land to building ratio to allow for parking. She testified that if the subject's land site was owned by the appellant the highest and best use would be the same and the parking area would be needed to support the department store. Therefore, she opined she would still use the economic analysis to develop a value for the land.

In rebuttal, the appellant called Mr. Gary Battuello. Mr. Battuello testified he is the managing partner in a commercial real estate appraisal firm in Minnesota. He stated he is a certified general appraisal in Minnesota, Wisconsin and Illinois and holds the MAI designation from the Appraisal Institute. Battuello testified he has been an appraiser for 30 years and has authored many publications on the topic. He testified that on a regional basis his company specializes in large commercial and retail properties including anchor department stores. Battuello testified he has appeared as an expert in many courts and tribunals in several states which includes the Illinois Property Tax Appeal Board. He testified he has conducted appraisal reviews on between 75 and 100 appraisals.

The intervenor objected to Battuello being admitted as an expert witness because he was not licensed in Illinois at the time of his review. Mr. Battuello then testified that prior to the change in Illinois law, non licensed appraisers were allowed to review work for non federally-related transactions. The PTAB admitted Mr. Battuello as an expert in the field of property valuation over the objection of the intervenor.

Battuello testified he reviewed two appraisals for the subject property, one prepared by Appraisal Associates and one prepared by Terrence O'Brien & Company. He testified he performed a desk review of the subject property. He stated he has been to the subject's mall on previous occasions, but did not inspect the subject prior to the review.

As to the Appraisal Associates appraisal undertaken by Enright, Battuello testified that the appraisal was complete and contained all the required reporting elements.

Battuello testified that the cost approach in this appraisal assumes an economic land area of 3:1 land to building ratio. He opined that this should have been identified in the appraisal as a hypothetical assumption. He testified it is six times larger than the actual land area owned by the appellant and identified as the subject property. Battuello opined that a larger land area department store could be used as a comparable in the income or sales comparison approaches, but for the cost approach, where one

is trying to replicate market development, the actual size should be used.

In addition, Battuello testified that Enright is reasonable in her physical depreciation calculation, but that she did not find any functional obsolescence based on the fact that the subject is readily available for multi-tenancy. Battuello opined that the subject is not ready for multi-tenancy due to its three-story structure within a one-level mall. He opined that multi-tenancy would be difficult to achieve from just the standpoint of the physical subdivision. Battuello opines that her other reason for calculating no functional obsolescence is due to the replacement cost new eliminates those issues; however, Battuello testified that if you use the same specifications for the subject to calculate the replacement cost, you are creating the same building which would have the same functional obsolescence due to design characteristics. Battuello also opined that the economic obsolescence used by Enright is inconsistent with calculations made by Appraisal Associates for other anchor department stores located within this mall

As to the income approach, Battuello testified that Enright used seven rental comparables from various categories with some being build-to-suit and some sale-leasebacks. He opined they were generally smaller, one-story stores that were difficult to compare to a multi-story anchor store.

Battuello testified Enright used a good standard in the industry, percentage rent, however, he opined that the Nordstrom's in the subject's mall should not be looked at when developing an percentage rate because of the unusually high amount per square foot that is sold by Nordstrom's. He opined that a purchaser of another anchor store would not look to Nordstrom's for comparison. Based on this, Battuello testified that if Nordstrom's was removed from comparison to the subject, the subject's stabilized volume would be less than that arrived at by Enright.

In regards to the capitalization rate used within the income approach, Battuello testified that Enright looked at the sales within the sales comparison approach to help develop a rate. However, these sales were leased fee capitalization rates and not fee simple rates. He opined that a leased fee rate is based on the credit rating of the tenant and that there would be more risk for the subject property as a fee simple. He indicated this increased risk would increase the capitalization rate.

As to the sales comparison approach, Battuello testified that the sales were primarily big box stores with only sale #5 a true anchor tenant in a shopping center. He also opined that these sales were essentially all leased fee sales.

Battuello reiterated that leased fees sell based upon the rent being paid and the good faith and credit of the tenant. He opined that a sale may not be an arm's length market situation that was

a factor in the lease amounts. Battuello testified that a sale under a 100% leased property has no vacancy, no expenses and the capitalization rate is driven by the credit rating of the tenant. He opined that there are differences in the leased fee and the fee simple which could dramatically change the actual price that is paid even if rent would be the same.

Battuello testified that sale #4, which was a leased fee sale, had a rent somewhere around \$9.00 per square foot and that Enright estimated a rent for the subject in the income approach at \$6.50 per square foot of building area. Battuello opined that sale #4's rent was not at market because it was much higher than the subject's estimated rent. He opined that this is supported by the fact that rental comparable #7 was at \$7.25 per square foot of building area and Enright testified that the landlord got a good deal at that amount, which is lower than the \$9.00 per square foot of sale #4.

As to each sale, Battuello testified sale #1 was a one-story, freestanding store with the purchaser buying out their lease. He testified that sale #2 was 100% leased to two tenants and that the building was a quarter of the size of the subject property. Battuello testified sale #3 was not on the market at the time of the sale and was leased back to the seller for a short time. Sale #4, Battuello testified, had a dramatically higher rent than market rent and was a leased fee sale. He also testified this sale was of a freestanding building with a huge land to building ratio. Battuello testified sale #5 was a portfolio sale which included six properties from one investment group to another investment group. He testified the property was leased at the time of sale, there were no individual negotiations on each property, and there was 103% financing involved in the bulk sale. Battuello testified that the offering used by Enright had not yet concluded with a sale.

Based on his review, Battuello opined that the judgment, conclusions and values arrived at by Enright were unreliable.

Battuello then testified as to his review of the Terrence O'Brien & Company appraisal. Battuello opined that within the cost approach, the replacement cost new and the depreciation rate are not supported within the appraisal. As to the income approach, he opined the rental comparables are far too small to be comparable to the subject and the use of "normal building standards" as an expense is inappropriate in this market. Battuello testified the sales comparison approach only has two anchor department stores and the information presented was very limited. He testified five of the seven sales are freestanding stores and two are significantly smaller than the subject. Battuello opined that the appraisal was not a reliable or credible appraisal.

On cross-examination by the intervenor, Battuello testified that the use of a 3:1 building ratio for the subject property was a judgment call made by Enright. He acknowledged that there is value associated with access to the mall and parking.

Battuello opined Enright used the wrong cost category to establish a replacement cost new for the subject. He was shown *Intervenor's Exhibit #3*, a Marshall & Swift Valuation cost page. Battuello acknowledged this page was from May 2006 for properties that were mall anchor department stores/big-box stores that were class A-B.

Battuello reiterated that it would be difficult to convert the subject property into a multi-tenant property due to the access and individual store identity needed for these tenants.

Battuello acknowledged that he criticized Enright's rental comparables for being different than the subject property. He testified that you can adjust for these differences within certain parameters.

Battuello disagreed that a leased property that is sold and leased back at market rent would equate to a fee simple interest in the property. He testified that Enright did not make adjustments for the property rights and opined that this is the most compelling difference between the subject and the sales comparables from an economic standpoint.

As to the market rents that Battuello opined about, Battuello acknowledged that the market rents of \$6.50 and \$9.00 were for two different types of retail outlets.

Under cross-examination by the board of review, Battuello testified Enright's rental comparables were not comparable to the subject because they were build-to-suit, freestanding, a sale-leaseback, or rebuilt to be brand new stores. He opined that there were inadequate adjustments for all these differences.

As to Enright's capitalization rate, Battuello testified that the survey rates are derived from inline space in a shopping center and not an anchor department store. But he did opine that if a survey was looked at, the category of an institutional property should be used if the property had a long-term lease and non-institutional if there the property was not subject to a long-term lease because you are not sure who the tenant would be.

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

Battuello testified that that Enright's sale #5 was a portfolio sale with an allocated amount and 103% financing. He opined this sale was not an arm's-length transaction based on these factors

as well as the sale-leaseback situation. He opined that it is difficult to show that portfolio sales were there is allocated amount to a property where be the market price established ina an individually negotiated transaction.

In response to questions by the PTAB, Battuello testified the subject was owner-occupied and opined that based on this, the sales comparison approach should receive primary weight along with some weight to the income approach.

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.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). 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 concludes that the appellant has satisfied this burden and that a reduction is warranted.

In determining the fair market value of the subject property for tax year 2006, the PTAB examined the appellant's and intervenor's appraisal reports and testimony, the board of review's submission and appraisal report, and the appellant's rebuttal documentation and testimony.

The PTAB finds the board of review's witness was not present or called as witness to testify about their qualifications, identify their work, testify about the contents of the appraisal, the conclusions or be cross-examined by the appellant, intervenor and the Property Tax Appeal Board. Without the ability to observe the demeanor of this individual during the course of testimony, the Property Tax Appeal Board gives the evidence from the board of review no weight.

The cost approach was only performed within the Enright appraisal. However, the PTAB finds Enright incorrectly described the subject as owned by the mall developer and leased to the appellant. The PTAB finds this error combined with Battuello's expert testimony diminishes the reliability of the cost approach within the Enright appraisal to provide a reliable indicator of land value and this approach is given no weight.

As to the income approach, the PTAB finds that both appraisers failed to use comparables or appropriately adjust these comparables to be similar to the subject, a large anchor department store. Therefore, the PTAB gives this approach less weight.

The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207 (2<sup>nd</sup> Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5<sup>th</sup> Dist. 1989). Therefore, the PTAB will give this approach the most weight.

The PTAB finds four of Enright's sales comparables were leased fee properties and that she did not properly adjust these comparables for this difference in property rights. The PTAB finds Battuello's testimony that the credit worthiness of a tenant during a sale of a leased property is a factor in the sale and that this sale price may not be reflective of the market value regardless of the rental rate. The PTAB finds these comparables are not similar to the subject and are given no weight. Enright's remaining comparable was leased by the seller immediately after purchase and that this property was not on the market at the time of sale. Therefore, the PTAB also accords this sale no weight in the analysis.

As to Ryan's sales comparables, the PTAB gives no weight to sales #1 and #2 as these properties, similar to the Enright comparables, were leased at the time of sale or leased back to the purchaser and not on the market at the time of sale. In addition, the PTAB gives diminished weight to sale #6 as this property's sale price was adjusted during testimony.

The remaining sales were given significant weight by the PTAB and have unadjusted sales prices ranging from \$28.08 to \$50.00 per square foot of building area, including land. The subject property's 2006 assessed value equates to a market value of \$69.13 per square foot of building area, including land which is above the unadjusted range of comparables. After considering all the evidence including the experts' testimony and submitted documentation as well as the adjustments necessary, the PTAB finds that the subject's 2006 assessment is not supported by the comparable sales contained in this record.

As a result of this analysis, the PTAB finds that the evidence and testimony has demonstrated that the subject property was overvalued and that a reduction in the subject's assessment 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.

*Donald R. Cuit*

Chairman

*K. L. Fern*

Member

*Frank A. Huff*

Member

*Mario Morris*

Member

*J. R.*

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 28, 2012

*Allen 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.