FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Federated Retail Holdings, Inc.
DOCKET NO.: 06-21369.001-C-3 through 06-21369.004-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Federated Retail Holdings, Inc., the appellant, by attorney Gregory J. Lafakis, with the law firm of Verros, Lafakis & Berkshire, P.C. in Chicago; the Cook County Board of Review by Assistant State's Attorney Randy Kemmer with the State's Attorneys Office in Chicago; as well as the intervenor, Niles Township HSD No. 219, 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:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
06-21369.001-C-3	10-09-411-075-0000	1,200,000	308,330	$1,508,330
06-21369.002-C-3	10-09-411-080-0000	3,988,005	3,853,998	$7,842,003
06-21369.003-C-3	10-09-411-083-0000	14,000	2,895	$16,895
06-21369.004-C-3	10-09-411-084-0000	17,900	3,872	$21,772

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of four land parcels containing 1,086,730 square feet or 24.95 acres of land improved with two structures. The main structure is a part one-story and part three-story, commercial building of masonry construction used as an anchor department store within a super-regional mall. This single-tenant, retail department store contains 429,949 square feet of building area. The second structure is a three-story parking garage containing 234,000 square feet of building area. The subject's structures are located in a shopping mall containing 1,814,000 square feet of building area.

The PTAB found that the tax appeal years 2004, 2005 and 2006 involve common issues of law and fact and a consolidation of the appeals for hearing purposes would not prejudice the rights of the parties. Therefore, without objections from the parties and pursuant to Section 1910.78 of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code 1910.78), the PTAB consolidated the 2004, 2005 and 2006 property tax appeals for hearing purposes, solely.

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

As to the overvaluation argument, the appellant's pleadings included a copy of a complete, summary appraisal undertaken by appraiser, Michael Kelly, with the Real Estate Analysis Corporation (hereinafter REAC). Kelly testified that he holds the designations of Member of the Appraisal Institute (hereinafter MAI) and a Member of the Society of Real Estate Appraisers (hereinafter SRPA) as well as appraisal licenses in Illinois, Indiana, and Michigan. He stated that he has been an appraiser for approximately 34 years, which entailed over 10,000 appraisals of which over 500 appraisals have related to various retail and/or commercial properties. In addition, he testified that he has studied anchor department stores and has spoken at different industry organizations on the valuation of anchor department stores, including the International Association of Assessing Officers as well as being the co-author of a section on appraisal theory including a section on valuing anchor department stores for the Illinois Continuing Legal Education.

Further, Kelly testified that he has appraised primarily industrial and commercial properties throughout Illinois and other parts of the country. Specifically, Kelly stated that he had appraised in excess of 100 anchor department stores associated with regional malls. Kelly was offered as an expert in the valuation of anchor department stores as well as an expert in the valuation of real estate such as the subject. After additional voir dire by the appellant's attorney and the hearing officer, Kelly was accepted as an expert by the PTAB over the objection of the board of review.

The Kelly appraisal was a complete, summary appraisal addressing the three traditional approaches to value, while opining an estimated market value of $24,700,000. This timely submitted appraisal was marked for the record as Appellant's Hearing Exhibit #1. As to this appraisal, Kelly testified that he had supervision and control of the appraisal process, while being assisted by the remaining three signatories on this appraisal. He stated that the purpose of his appraisal was to determine the market value of the unencumbered fee simple estate of the subject and that the effective date of his appraisal was January 1, 2004.

Further, Kelly indicated that the scope of his appraisal was to determine the value of the subject based upon its existing use as a commercial building located within a regional mall. Thereby, Kelly's appraisal indicated that the subject was valued on an analysis of rental and sales data that pertains to anchor department stores located in regional malls. Because of these factors and the scarcity of such data relating to anchor department stores, the appraisal indicated the necessity to expand the geographic area from which the market data could be drawn. The appraisal states that these properties compete on a national basis and their rental rates and unit sale prices show a relatively consistent pattern that is primarily controlled by the buyer and seller's expectation of what retail sales will be for that store on a stabilized basis. While considering other typical characteristics, retail sales per square foot is a measure that encompasses several economic factors. The appraisal also indicated that the analysis and comparison of unit sale prices from a national geographic market is made manageable and reliable by using retail sales per square foot as a primary unit of comparison.

As to a retail market analysis, Kelly's appraisal detailed various types of retail shopping centers. The appraisal stated that during the 1970's and 1980's, super-regional shopping centers became one of the most sought after property types by institutional investors. The economic justification for these sale prices was centered on the assumption of mall tenant sales increasing at average rates of 4% to 8% per year. In addition, the appraisal indicated that rental rates at super regional shopping centers are based on a percentage of tenant sales, while the anticipated level of tenant sales is the critical factor in valuing a super regional shopping center.

Kelly's appraisal also explained retailing trends indicating that these revolve around the consumer's pursuit of lower prices, better quality goods, great service and improved convenience. Specifically, the appraisal indicated that the pursuit of the consumer's retail dollar has promoted the growth of various retailers, such as: discount retailers which caused the demise and restructuring of traditional mass merchandise department stores thereby dominating the retail field with strong sales growth; off price retailers which purchase overstock, discontinued items or canceled orders from department stores and specialty retailers thereby offering steep discounts; category killers which specialize in focusing their sales efforts on a single merchandise type thereby purchasing their goods in massive quantities at discount prices while passing the savings to consumers; power centers which are a type of super community shopping center containing one anchor of a discount store or warehouse club as well as multiple off-price stores or small tenant stores thereby gaining a market share with developers; warehouse clubs which are very large, semi-finished big box stores which sell a wide variety of goods and clothing allowing consumers to buy goods in bulk at steep discounts; and lifestyle centers which offer shoppers convenience with a retail tenant mix and movie theaters commonly located in high-income areas. In reconciling all of the retail trends, the appraisal stated that the retail market will continue to experience significant changes as competition increases and the once powerful position enjoyed by super regional shopping centers will be challenged by various other retail offerings identified herein.

As to the subject property, Kelly testified that his staff appraiser inspected the subject property on October 26, 2004 including the interior and exterior of the subject, while the subject's land area was obtained from the assessor's records as well as reference to Sidwell maps. He also indicated that he had personally inspected the property when he initially appraised it in April of 1985 and again in 1998, while also reinspecting the property a week prior to this hearing date. Moreover, Kelly testified that the subject was located within a super-regional, open-air, shopping mall with a total of five anchor department stores therein totaling approximately 1,000,000 square feet of anchor space, inclusive of the subject. He stated that in addition there was another 765,000 square feet of smaller, in-line stores for a total mall size of about 1,800,000 square feet.

Kelly described the subject's site as containing 1,086,730 square feet of land consisting of irregularly shaped, non-contiguous land parcels located within a regional shopping center located in Skokie, Illinois. The subject is improved with a part one-story, and part three-story, anchor department store including basement area. The building contains 429,949 square feet of area and was constructed in 1955 with an addition completed in 1965. He indicated that the average age of the subject was 47 years, but that the subject was completely renovated in 1995; thereby, he opined that the effective age of the subject was 25 years due to this renovation. Moreover, he testified that there was approximately 650,000 square feet of asphalt paving used for parking and driveway areas on the subject. Kelly noted that the anchor store also contains 12,850 square feet of mezzanine area used to store inventory which was not included in the building's total square footage. The building includes four escalators, two freight elevators, four passenger elevators, and four truck bays in the dock area. The appraisers opined that the building was adequately maintained and was in good condition.

Further, Kelly testified that there were two parking garages to the west and east of the anchor department store, which he described as support buildings. He explained that both are effectively used as common area for the whole mall, but that one of the garages which he believed to be attributed to the mall was in fact located on one of the subject's four land parcels and was treated by the appraisers as a yard improvement. He stated that there is no way to determine to what extent a public-access garage used by anyone visiting the subject's mall and is tantamount to becoming a common element, such as this one, could contribute to the retail sales of the anchor department store.

Therefore, he concluded that the inclusion of another parking garage in the valuation of this subject would not significantly change his final opinion of value via the cost approach, for his valuation conclusion for the subject is predicated on the income and sales comparison approaches. Nevertheless, he stated that the initial garage had already been included in the development of his cost approach for this subject. This particular improvement on the subject property is a three-level, parking garage containing approximately 234,000 square feet as well as a 4,000 lb. capacity passenger elevator.

As to the subject, Kelly testified that as of the effective date of this appraisal, January 1, 2004, that there was no sales history during the time period required by the Uniform Standards of Professional Appraisal Practice (USPAP). He stated that the subject's chain was sold in August of 2004. He indicated that the later transfer was not relevant to the subject property's valuation. He elaborated that the subject's entire chain, Marshall Field's, was sold for a total gross price of approximately $3,000,000,000. He indicated that included in that sale price was approximately 60 stores, 3 warehouses, inventory, accounts receivables, and goodwill. Kelly testified that the chain could only allocate a price to each particular location; and therefore, he would place little weight on those types of allocated prices.

As to the highest and best use analysis, Kelly testified that the subject's highest and best use as vacant and available would be for the development of a large anchor department store similar to its existing use and in conformity with zoning. The subject's highest and best use as improved was the existing use of the property. He stated that the most probable buyer for the subject's location would be another major national retailer, which would develop the subject as an anchor department store.

In developing the subject's useful life, Kelly stated that the actual age of the subject was 47 years even though the current useful life of a similar commercial property is 40 years. The appraisal stated that occupants of a larger single-tenant store are conscious of property image and design as it influences consumers. In addition, the appraisal indicated that the highly competitive nature of the retail industry requires that the property's useful life reflect the time period during which the structure remains useful as a merchandising tool; thereby, retail properties require continual maintenance and redecoration. Moreover, the useful life of a commercial property similar to the subject reflects the emergence of increased competition between companies selling the same type of goods, where this trend creates a shift from traditional retailing techniques. Therefore, the subject's useful life was estimated at 40 years with an effective age of 25 years and a remaining useful life of 15 years.

Kelly indicated that his appraisal addressed the three traditional approaches to value in developing the subject's market value estimate. The cost approach reflected a value of $24,190,000, rounded; the income approach reflected a value of $25,705,000, rounded; and the sales comparison approach indicated a value of $23,650,000, rounded. In reconciling these approaches to value, Kelly placed substantial emphasis on the income and sales comparison approaches with moderate consideration to the cost approach to reflect his final value of $24,700,000 for the subject.

In Kelly's appraisal, the first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site and in doing so Kelly undertook an analysis of five suggested land sales of local sites that ranged in size from 76,349 to 620,006 square feet and in price from $7.00 to $21.06 per square foot. These properties sold from December, 2001, through October, 2003. However, he stated that none of these sites are to be developed with an anchor department store in a regional mall. Therefore, he indicated he also considered using the typical ground rent for an anchor, which was explained in his appraisal.

Kelly's appraisal stated that developers have been paying higher land prices for entire shopping center sites; however, the mall portion generates a higher land value per square foot than the average price paid for the entire site because of their higher rent level. The anchor store portion generates a lower land value per square foot than the average for the entire site because of the economic limits on rent levels for anchor stores and their negotiating leverage on the developer. The appraisal indicated that in some cases, the entire site is purchased and the developer then sells or rents the anchor sites for less than the average price or value of the entire center site. As a result, the appraisal stated that when valuing the anchor portion only of an entire shopping center it should be noted that it will have a lower square foot contribution to the value of the entire shopping center site than that of the mall portion and the average for the entire center. In addition, the appraisal explained that there were no available sales transactions for sites developed only with an anchor store as part of a shopping center in the subject's immediate area. These sales would show the differential in the land price per square foot between the anchor portion and the mall portion. Nevertheless, Kelly stated that ground leases for anchor store sites are typically executed at approximately 1% of store retail sales.

In Kelly's income approach, the subject's retail sales were analyzed and stabilized at $245.00 per square foot. This yields total sales of $105,337,505 as well as an indicated ground rent of sales at $1,053,375 for the subject. Kelly stated that he capitalized the ground rent at approximately 9% reflecting a capitalized value for the subject of $11,704,167 or $10.77 per square foot. In comparison, the aforementioned suggested sale transactions of local commercial sites contained a range of sale prices from $7.00 to $21.06 per square foot. Therefore, Kelly stated that he estimated a unit value for the subject's land site at $12.00 per square foot or $13,040,000, rounded. In addition, he expounded on the methodology and rationale used herein.

Using the 2004 Edition of the <u>Means Cost Manual</u> as well as the <u>Marshall and Swift Valuation Service</u>, Kelly estimated a replacement cost new of both structures on the subject as follows: $75.00 per square foot of the department store building and approximately $32.00 per square foot for the parking garage. In addition, the following costs from the Marshall and Swift Valuation Service were added to the cost of the subject, such as a price for the mezzanine of approximately $20.00 per square foot and the price of asphalt paving was $1.50 per square foot. Therefore, the total replacement cost new was estimated at $44,595,000, rounded.

Thereafter, Kelly stated that he determined the total amount of depreciation present at the subject by utilizing two methods: the abstraction of total depreciation from comparable sale properties and abstraction of total depreciation based on required return on local land value and cost new. In the first method, he stabilized the retail sales of each of the six sale properties and multiplied by 1% to obtain the indicated ground rent, which was then capitalized at 9% to indicate the contributory value of the land. This land value was subtracted from the total sale price and the remainder was the residual of the sale price attributable to the improvements. The appraisers then estimated the replacement cost new for each sale properties' improvements and deducted the building residual sale price from the estimated replacement cost of the improvements to obtain an estimate of total accrued depreciation for each sale property. The appraisers then divided the accrued depreciation by the replacement cost new for an indication of the total percentage of depreciation from all causes, which was then reduced by dividing the respective ages into the total accrued depreciation percentage to arrive at an annual rate of depreciation. Each step of these calculations was reflected on a detailed chart within the subject's appraisal. Under this method, the appraisers estimated total depreciation as 63% plus obsolescence of 15% resulting in a total depreciation of 78%.

In the second method, Kelly stated that total depreciation was abstracted based on the subject's ability to generate net rent. The appraisal indicated that to economically justify the replacement cost, a property must provide income sufficient for an acceptable rate of return on the land and a return on and of the improvements. The appraisal stated that the rate of return necessary for the subject's real estate was 10.5% which was developed in the income approach to value. A detailed chart reflecting the development of the subject's land value, physical depreciation, market required rate of return, deficient income and total obsolescence was included within this appraisal. Thereafter, the subject's obsolescence of $3,835,343 was added to the physical depreciation for a total depreciation of $31,930,193, which was divided by the cost new of $44,595,000 to reflect a total percentage of depreciation at 72.0%, rounded.

Based upon this analysis, Kelly opined a total depreciation of 75% or $33,446,250, which was subtracted from the replacement cost new resulting in a depreciated value of the improvements at $11,148,750. Adding the land value of $13,040,000 reflected a final estimate of value under the cost approach of $24,190,000, rounded. At hearing, Kelly revised this value to reflect the addition of the second parking garage culminating in a final estimate of value under this approach would be $25,400,000.

Moreover, Kelly stated that entrepreneurial profit was not provided for within this approach because the market does not indicate that buyers of properties similar to the subject are paying for or expect to achieve such profit. He indicated that there was no market evidence that department stores, such as the subject, are constructed for resale or lease after construction or for a profit on a speculative basis. In addition, the appraisal noted that sale prices of similar properties do not indicate that an increment is being paid for entrepreneurial profit. For these reasons, he stated that it was not added in the cost approach to value.

The next developed approach was the income approach, wherein Kelly's appraisal employs two methods in analyzing lease data. In the first method, Kelly stated that he used lease data of fixed rental rate per square foot of building area, while the second method of structuring leases is based strictly on a percentage of the retail sales of each store. In the first method, he obtained and analyzed lease data on 23 properties. These leases were structured on a pre-set per square foot basis and indicated a range of rates from $2.74 to $8.75 per square foot. The base rent divided by breakpoint sales range was 1.3% to 3.3% with an average of 2.3%. In the second method, Kelly used two rentals that were structured strictly as a percentage of store retail sales which ranged from 2.75% to 3.0% of sales.

In addition, Kelly explained that he consulted a nationally recognized publication on shopping centers, <u>The Dollars & Cents of Shopping Centers</u>, the 2002 edition, published by the Urban Land Institute. He stated that this data reflected a range from 1.9% to 2.2% of sales for national chain department stores located in regional or super regional shopping centers.

Kelly also detailed his analysis of the retail sales at the subject's anchor store as well as the other four anchor stores in the subject's mall. The indicated rent for the subject based on a percentage of actual retail sales was $5.59 to $7.23 per square foot. The indicated rent for the subject based on a percentage of stabilized retail sales was from $6.13 to $7.35 per square foot. Lastly, the rental rates based on the pre-set square footage of the 23 submitted lease comparables was from $2.74 to $8.75 per square foot.

Based upon all this data, Kelly testified that he estimated a net rental rate for the subject of $6.75 per square foot or $2,902,156. Deducting an allowance for management fees and vacancy and collection losses of 7% reflected an effective net rent of $2,699,005.

Kelly stated that he looked at three different indicators of what the overall capitalization rate should be for the subject. He indicated that first he abstracted an overall capitalization rate from his improved sale comparables indicating a range from 9.6% to 15.2%. His appraisal stated that rates from multi-tenant shopping centers are substantially lower than the overall rates from sales of single-tenant department stores. The appraisal further noted that the subject property has an average size and high age when compared to the improved sales; and therefore, should have an overall rate at the middle to high end of the range established by these sale comparables.

In order to further check on the subject's capitalization rate, Kelly testified that he employed the band of investment method, while consulting with the American Council of Life Insurers, Fourth Quarter 2003, to review mortgage interest rates. This analysis resulted in estimated overall capitalization rate of 9.8%. In addition, he also explained that he consulted with the Korpacz Real Estate Investor Survey, First Quarter 2004, wherein overall rates ranged from 8.0% to 10.0% for institutional-grade national power centers and from 7.0% to 11.0% for institutional-grade national strip centers. Kelly testified that there was no category of data designated as national regional malls. After considering all of the aforementioned data, he determined that the subject's overall capitalization rate was 10.5%. Capitalizing the subject's net income of $2,699,005 produced a value estimate under the income approach of $25,705,000, rounded.

Under the sales comparison approach to value, Kelly testified that he utilized six suggested comparables that are multi-story, single-tenant, anchor department stores that are attached to malls. Further, he stated that all of the properties were national regional anchor department store chains, which he had personally inspected. The six properties sold from February, 1996, through March, 2003, for prices that ranged from $26.67 to $50.00 per square foot of gross building area including land prior to adjustments. The improvements ranged: in age from 10 to 26 years; in improvement size from 84,747 to 428,036 square feet of building area; and in land-to-building ratio from 1.55:1 to 3.57:1.

Kelly testified that sale #1 comprised two stores which he considered inferior to the subject due to their lower retail sales per square foot of $150.00 compared to the subject's $245.00 per square foot. As to sale #2, he stated that this property was the same age as the subject, but was much smaller in size with lower retail sales of $160.00 per square foot. Kelly testified that sale #2 was located on a pad parcel with a reciprocal easement on the associated parcels to permit customer parking. As to sale #3, he stated that this property was sold at auction via bankruptcy. However, he explained that the property's chain had gone bankrupt and that the court appointed a real estate brokerage firm to sell the property at auction. The brokerage firm invited all of the major retailers to the auction with the property sold to the highest bidder. However, Kelly explained that the bankruptcy court permitted any bidder after the auction was completed to submit another bid directly to the court to trump the earlier bid accepted at the auction. Kelly stated that no subsequent bids were made to the court. Moreover, Kelly explained his methodology in using the sales price of $50.00 per square foot and typical retail sales of $240.00 per square foot of another anchor in this mall to determine a typical retail sales multiplier of .21 which he indicated was in the range of similarly sold stores. Therefore, Kelly believed sale #3 to be a market price for the property.

As to sale #4, Kelly testified that the original owner, an anchor department store, had undergone bankruptcy wherein a real estate management company purchased the property and obtained a long-term tenant. Thereafter, the property was sold to an investor for $39.00 per square foot. He stated that he considered this sale inferior to the subject because this property's retail sales were $180.00 per square foot. As to sale #5, Kelly stated that the original anchor department store had closed and then leased the building to another anchor department store chain. Then, he stated that the mall owner purchased the property from the initial anchor chain but later sold it to the leasing anchor chain for approximately $26.00 per square foot with retail sales of $155.00 per square foot. As to sale #6, he stated that this sale was from one anchor department store chain to another such chain selling for $33.00 per square foot.

Kelly indicated that the retail sales per square foot of the subject and sale properties was also considered although such sales can be affected by the strengths and weaknesses of the business operation conducted within the real estate; it is still an indicator of the overall desirability and value of a particular location. In addition, because of the scarcity of large department store property sales in Illinois, the appraisal indicated that sales from other large malls in metropolitan areas across the country were analyzed. The appraisal stated that this analysis of retail sales at the sale properties relative to the subject indicated that the subject's performance was average with stabilized retail sales per square foot at $245.00. Moreover, the appraisal indicated that this common element of retail sales per square foot between the subject and sale properties allows for a valid comparison as improved properties, even though there are significant differences in the land values per square foot.

Kelly stated that he derived a sales multiplier from each sale property reflecting a range from .17 to .24 times stabilized retail sales. Therefore, he opined that the subject's multiplier would be at the high end of the range due to its location. Thereby, the retail sales multiplier for the subject of .24 was multiplied by the stabilized retail sales per square foot of $245.00 resulting in a value for the subject. Kelly's appraisal stated that weight was placed on the retail sales multiplier method because this method takes into account the actual stabilized retail sales for the subject property. Moreover, he stated that all of the sale comparables' retail sales data was confirmed with either the seller or the buyer of the property.

As to all of the improved sales, Kelly testified thoroughly, explaining the comparability and adjustments applicable to each sale property, while confirming that the details of each sale were verified using available sale documents and at least one principal party to the sale. Moreover, he stated that besides the verbal verification of any sales data, appropriate paperwork would be referred to in order to support that initial verification. Further, he testified that he had not considered sales of freestanding discount stores because they have a different market. After making adjustments, Kelly considered a unit value of $55.00 per square foot to be appropriate for the subject resulting in a market value of $23,650,000, rounded.

In reconciling the three approaches to value, Kelly testified that he accorded moderate consideration to the cost approach due to the subject's age asserting that this approach to value is most effective on newer buildings which does not entail the calculation of large amounts of obsolescence. Therefore, he stated that substantial weight was accorded the income and sale comparison approaches to value. Thereby, he testified that his market value estimate for the subject was $24,700,000. Moreover, Kelly testified that he was not aware of any significant physical changes in the subject property from January 1, 2004 through January 1, 2006; that there were no significant changes to the market for similar properties in the subject's market area from January 1, 2004 through January 1, 2006; and that there would be no significant difference in the market value estimate for the subject from January 1, 2004 through January 1, 2006.

Under cross-examination by the county's states attorney, Kelly testified that he was aware that eight months after his appraisal valuation date that the subject's chain was sold with an allocated price for the subject property at $26,700,000. However, he also reiterated that minimal weight would be accorded to the allocated price, which he stated are typically driven more by federal tax considerations than what a property might sell for on its own. In addition, he stated that after the completion of the subject's appraisal and after the sale, he spoke with the buyer's representative, who confirmed that the subject's price was allocated. Moreover, Kelly stated that he found the buyer's representative to be truthful in his responses to Kelly's questions. Kelly also testified that an appraiser should not rely on an allocated price relating to a 60 store chain sale which includes many types of assets besides the real estate. Furthermore, Kelly testified regarding his methodology in developing a capitalization rate for the subject as well as his adjustments for the land and improved sales comparables.

On cross-examination by the intervenor's attorney, Kelly testified that the subject is sited within a super regional mall, while his comparables are located within regional malls. He explained that he considered there to be minimal difference between regional and super regional malls outside of a variance in the number of anchors from three to five, respectively. He also stated that an anchor department store competes on a regional and/or national basis as its market. As to his land sales, he stated that his land comparables were smaller than the subject's land size, but he reiterated that there were no commercial land sale properties comparable in size to the subject's approximate 1,000,000 square feet of land; therefore, he testified that he used the largest commercial land sales in the area for comparison purposes.

Kelly was examined further in regards to Intervenor's Hearing Exhibit #1, which were copies of four pages from The Appraisal of Real Estate, 12th Edition, relating to the market extraction and age-life methods regarding calculation of depreciation. He testified that he considered making adjustments to the land sales comparables, and that he determined that there was no need for any adjustments. In addition, he was examined in reference to Intervenor's Hearing Exhibit #2, which contained a copy of one page from the Korpacz Real Estate Investor Survey, First Quarter 2004, relating to overall capitalization rates for national regional mall markets. Kelly testified that this data pertains to only the interior in-line mall space and does not pertain to anchor department store space. Therefore, he stated that this data relates to a different part of a retail mall, while elaborating that inline mall space and anchor space are totally different types of investment. He stated that a mall could contain inline stores ranging in number from 50 to 100 with an average size of 5,000 square feet, whereas an anchor department store space would be few in number in any mall with each containing approximately 430,000 square feet of area.

On redirect examination, Kelly reiterated that his rental sales may have contained old lease dates, but that they were used in his appraisal because they were leased from single-tenant, anchor department stores located in a mall. In addition, he stated that these sales were analyzed to determine the relationship between base rent and store sales, which corresponded with the data obtained from the Dollars & Cents of Shopping Centers publication. Further, Kelly was questioned regarding the second paragraph of Intervenor's Hearing Exhibit #2, which indicated that the percentage of all retail sales attributable to department stores has declined from 6% to 3.5% over the past ten years according to Customer Growth Partners; as a result, announcements of department store closings continue to occur.

The board of review timely submitted "Board of Review Notes on Appeal" wherein the subject's final assessment of $10,619,735 was disclosed indicating a market value of $27,946,671 or $65.00 per square foot applying the ordinance level of assessment at 38% for class 5a, commercial property as designated by Cook County Real Property Assessment Classification Ordinance.

For tax year 2006, the evidence includes a market analysis prepared by Ralph DiFebo consisting of a cover memorandum and raw sales data for six suggested comparables represented on a grid sheet with corresponding printouts. The sales indicated an unadjusted range from $69.76 to $120.07 per square foot. The printouts reflected that sale #1 was a free-standing store not attached to a mall, which the PTAB notes was also used as intervenor's sale #1. The printouts indicated that the remaining sales were located out-of-state, with sale #5 and #6 as part of a bulk purchase. Mr. DiFebo was not offered as a witness at this hearing by the board of review.

The intervenor, Niles Township High School District #219, submitted a summary appraisal report with a valuation date of January 1, 2005 and an estimate of value of $28,750,000. The appraisal was undertaken by Susan A. Enright who holds the designations of State Certified General Real Estate Appraiser as well as Member of the Appraisal Institute. Enright stated that during her appraisal career she has completed several hundred appraisals of retail stores of which 15 appraisals related to anchor department stores for ad valorem purposes. Enright was offered as an expert in the appraisal of commercial or retail properties and without objections from the remaining parties was accepted as such by the PTAB. Enright's appraisal, which had been timely filed in the tax year at issue, was marked and identified for the record as Intervenor's Exhibit #3.

The Enright appraisal addressed the three traditional approaches to value in developing the subject's market value estimate. The cost approach reflected a value of $29,500,000, rounded; the income approach reflected a value of $28,750,000, rounded; and the sales comparison approach indicated a value of $28,875,000, rounded. In reconciling these approaches to value, she placed main reliance on the income approach with some weight accorded to the sales comparison approach to reflect a final value estimate of $28,750,000 for the subject.

Enright testified that she had personally inspected the subject on November 29, 2007, which consisted of walking through the public areas of the subject's four floors, walking throughout the mall, as well as driving around the mall and the parking structures.

The appraisal indicated that Enright relied to a certain extent on the physical building description and other financial details as contained in the appellant's appraisal. In addition, the Enright appraisal noted that the appellant's appraisal contradicted the county's records regarding the subject's improvement size; therefore, Enright utilized the county's data. Enright's appraisal indicated that the subject property contains 24.95 acres of land improved with a part one-story and part three-story, masonry, anchor department store plus basement area as well as two parking structures. The appraisal stated that the department store was built in 1955 with an addition in 1965 and a complete renovation in 1995. It was noted that the west parking structure was built in 1978, while the east parking structure was built in 1995. The Enright appraisal estimated that the department store contains 444,248 square feet of gross building area including 125,000 square feet of below grade area, while the parking structures contained an overall building area of 475,736 square feet. At hearing, she testified that she had overestimated the size of the five-story, west parking lot by 70,000 square feet due to her confusion over the two parking structures. Thereafter, she stated that she knew that this five-story garage was not part of the subject property. Furthermore, Enright's appraisal stated that based upon discussions with former management agents for the subject's shopping center that the parking decks are considered a common element of the shopping center; and therefore, should not be valued in this appraisal report.

In addition, the Enright appraisal submitted two summary grids reflecting the subject's taxes and assessments for tax years 2004 and 2005. Further, Enright stated that the per square foot assessed value and taxes for the primary site parcel represent the primary improvement only. A parking deck is also included on this parcel; although, she stated that it appears that the county's records might not accurately reflect the size of said parking deck. Moreover, Enright's appraisal comments that there is adequate asphalt parking provided for the store in common parking lots or decks surrounding the mall, while certain parking lots or decks might be owned, they are nonetheless a common element to the shopping center. As to functional utility, her appraisal opined that the subject was well-designed for anchor tenant use.

Next, Enright developed the subject's highest and best use, which as vacant was for commercial development because rezoning is not likely at this time, while the highest and best use as improved was for its continued use as an anchor tenant retail location with the potential for subdivision of the store for multiple tenant use.

The scope of the Enright appraisal indicated that it involved the physical inspection of the property (exterior and limited interior inspection) and the surrounding area, review of demographic and economic information concerning the neighborhood, and collection and analysis of comparable data in conjunction with the appropriate valuation methodology to develop a final value conclusion. As to the subject, Enright's appraisal indicated that in July of 2004, title to the subject property was conveyed via quitclaim deed to the May Department Stores, in conjunction with their purchase of the Marshall Field business, including the real estate. This bulk portfolio sale of properties across the country, included the acquisition of 62 Marshall Field's stores, three distribution facilities, and approximately $600 million of Marshall Field's credit card receivables for a cost of approximately $32 million in cash. Her appraisal also stated that a sale price of $26,700,000 was allocated to the subject facility. Moreover, the appraisal reflected that in the 3rd Quarter of 2005, the May Department Stores was acquired by Federated Department Stores, which was again identified as a bulk portfolio sale of properties across the country as previously described plus other May Company assets. Enright's appraisal also disclosed that the terms of the sale included Federated assuming May debt that amounts to approximately $6 billion at year's end, valuing the total sale/deal at about $17 billion. She also indicated that despite the final sales transaction in 2005, the real estate transfer declarations had not been recorded as of the date of Enright's appraisal.

In the cost approach, Enright utilized seven land sales to estimate the subject's land value at $17.50 per square foot applicable to the subject's 1,086,730 square feet for a land value of $19,000,000, rounded. The land comparables sold from June, 1999, to December, 2005, for prices that ranged from $12.70 to $31.42 per square foot. The properties contained land sizes that ranged from 204,645 to 797,148 square feet. The appraisal noted that land sale #3 and #7 are located within the subject's immediate area, but that land sale #6 was located in Orland Park and was an outlot of a regional mall. Therefore, Enright testified that her value conclusion for the subject's land for tax year 2005 and 2006 was $19,000,000.

Using the Marshall Swift Valuation Service, Enright described the subject as an average, Class A-B mall anchor department store building having a replacement cost new base value of $69.69 per square foot applicable to all floor levels of the building or $31,848,139. She estimated indirect costs of marketing, financing, and property taxes at 5% as well as entrepreneurial profit at 5% of the cost new. She testified that entrepreneurial profit was applied because sometimes department stores are leased, even though the subject was owner-occupied.

The appraisal indicated that since the subject is developed to its highest and best use, the economic age-life method was used to estimate depreciation. Enright opined that the subject's building appears to have been well maintained with no significant items of deferred maintenance; therefore, the effective age of the improvement is estimated at 25 years. Based upon this effective age, she estimated physical deterioration at 56% with an estimated total economic life of 45 years. No deduction for functional obsolescence was noted, while external obsolescence was estimated at 25%. However, she testified at hearing that this estimate of physical deterioration actually encompassed all forms of obsolescence.

Deducting total depreciation estimated at 81% resulted in a depreciated value of the improvements at $6,656,261. Site improvements were estimated by Enright by using the Marshall Swift Cost Manual while describing the parking decks as an average class B parking deck having a replacement cost of approximately $40.00 per square foot after adjustments for size, location and other factors. Using a combined parking deck area of 475,736 square feet, Enright estimated total site improvement costs at approximately $20,300,000. However, at hearing, she testified that this was her inflated parking size with the incorrectly included 71,300 extra square feet of area. These improvements were also depreciated by 81% to indicate a depreciate value of the site improvements at $3,857,000. Adding the site improvements and land value to the depreciated value of the improvements resulted in a final value in Enright's appraisal under the cost approach of $29,500,000, rounded. She indicated that this value would be applicable to both the 2005 and 2006 tax years.

At hearing, Enright testified that she used an incorrect square footage for the parking decks; therefore, she indicated that her value conclusion was incorrect by approximately $540,000 resulting in a revised value under this approach at $29,000,000, rounded. She indicated that this value would be applicable to both the 2005 and 2006 tax years.

Under the income approach, Enright used seven rental comparables that ranged in size from 51,215 to 163,370 square feet of net rentable area and in rentals from $7.02 to $10.10 per square foot on a triple net basis. After marking adjustments to the comparables and noting that the subject is larger relative to all of the market rentals, she estimated a value of $6.25 per square foot, net, for the subject.

Moreover, Enright's appraisal and testimony indicated that department store rents are typically structured based on anticipated sales volume with typical rents ranging from 2% to 6% of estimated retail sales. She also consulted the Dollars and Cents of Shopping Centers with reference to the U.S. Regional Shopping Center category. She noted that the 2004 edition indicated total rent per square foot of $6.59 per square foot for the top 10% of full-line department stores, while the 2006 edition indicated total rent per square foot of $7.24 for the top 10% of full-line department stores. Enright opined that this data reflected an upward trend; therefore, she estimated a rent for the subject of 2.5% of gross sales of $250.00 per square foot or $6.25 per square foot for a potential gross income of $2,776,550. Less a vacancy and collection loss of 3% indicated an effective gross income of $2,693,253. Deducting stabilized expenses indicated a net operating income of $2,586,078. Capitalizing the income by 9.00% reflected a value estimate under the income approach of $28,750,000, rounded.

As to her income approach, Enright testified that she reviewed the subject's actual store sales submitted in the appellant's appraisal as well as the other anchor store sales within the subject's mall. She stated that this would be relevant for any investor would typically look at the blend of all the anchors in a mall. She also testified that the Dollars and Cents report reflected an upward trend in retail sales, yet the subject property's actual store sales had an opposite effect in the years following the September 11, 2001 disaster, which is the data that she had access to in rendering her appraisal. She stated that the appellant's appraisal reflected the subject's sales at approximately $243.00 per square foot, but she indicated that this was a blended rate of store sales from years 2000 through 2003. Therefore, she stated her belief that the subject's store could achieve sales of $250.00 per square foot.

As to her vacancy rate development, Enright testified that she considered the CB Richard Ellis studies that reflect overall vacancy rates for the Chicago area at 7.6%; however, she indicated that those studies generally focus on different submarkets. Specifically, she stated that they generally focus on anchor grocery store centers or strip centers, which contain 'for rent' signs thereon. She testified that these studies do not really capture department stores because those stores do not really turn over; therefore, she believed the appropriate vacancy rate was 3% for the subject.

As to her development of the capitalization rate, Enright testified that she reviewed the Korpacz National Investor, 1st Quarter, 2005, surveys as to national regional mall properties. She stated that this survey reflects a capitalization range from 5.5% to 9.5%, while three of her improved sales were leased fee sales she developed a capitalization range of 7% to 8.2% for those improved sales. Therefore, she concluded that the subject should be at the high end of the range at 9%.

Under the sales comparison approach, Enright utilized five properties sited in Illinois. The properties sold from August, 1998, through April, 2004, for prices that ranged from $4,500,000 to $14,905,675, or from $29.03 to $120.07 per square foot of net rentable area before adjustments. The improvements ranged in size from 79,000 to 163,000 square feet of net rentable area and in age from 5 to 29 years. In addition, Enright's appraisal provided the following descriptive data: sale #1 consisted of a two-unit, junior anchor retail center which was fully leased; sale #2 consisted of a one-story, in-line, masonry, single-tenant retail store; sale #3 consisted of a one-story, masonry, single-tenant retail department store in a nearly vacant mall which thereafter was de-malled and converted into a power center; sale #4 consisted of a one-story, free-standing, masonry, single-tenant retail department store which was fully leased; and sale #5 consisted of a two-story, masonry, anchor tenant attached to a mall with said property as part of a bulk sale of six properties all of which were leased at the time of sale.

Enright's appraisal indicated that fee simple sales of freestanding anchor department stores are limited, while sales that do occur are typically either sold through bankruptcy(sale #3) or of a leased fee asset whether via a sale/leaseback or an exercise of a purchase option stated within a lease(sales #1, #3 and #4). In addition, Enright testified that her sale #1 was a leased-fee sale of a two-unit, junior anchor tenant spaces, while also stating that only two of her five suggested sale properties were anchor department stores.

Regarding her adjustments, the appraisal further noted that while sales #1, #4, and #5 involved the sale of leased fee interests in real estate, she opined that the value of the leased fee interest approximated the value of the fee simple interest; therefore, no adjustments were made for this factor. Moreover, Enright stated that while size, sale date, location, age and other factors certainly had a role in the sale price of each comparable, she opined that the driving factor of each sale was the income potential of the property and the credit worthiness of each tenant.

After making narrative adjustments, Enright considered a unit value of $65.00 per square foot of gross building area to be appropriate for the subject estimating a market value for the subject of $28,875,000, rounded. Nevertheless, her appraisal stated that the market value conclusion computed to a unit value of $90.45 per square foot of above-grade area or 319,248 square feet, including the basement area. Furthermore, her appraisal stated that the market value conclusion recognized the value of the parking decks and lots that service the subject property and the other tenants and/or occupants at the mall. At hearing, she testified that this value estimate would not be diminished in the 2006 tax year.

In reconciling the three approaches to value, Enright placed no weight on the cost approach because of the inherent difficulty of estimating depreciation. Therefore, she placed primary weight on the income approach to value because retail properties such as the subject are typically purchased based on the income potential of the property. In addition, she stated that only some weight was accorded the sale comparison approach to value because fee simple sales of freestanding anchor department stores are limited even though she opined that five sales were found that could be adequately adjusted in comparison to the subject. Therefore, she estimated a final market value for the subject at $28,750,000, rounded, which she indicated would be applicable to tax years 2005 and 2006.

Under cross-examination, Enright thoroughly testified regarding her incorrect application of the second parking garage's square footage to the primary building area, which she had initially indicated that she obtained the data from the county's records. At hearing, she also stated that those records were also inaccurate as to the subject's property square footage. She also indicated that the parking lots were to be considered a common element of the shopping center; and therefore, should not be valued in her appraisal. As to the subject's building size, she indicated that she was unaware of whether the subject contained mezzanine area, but would not include such area in her calculations if the area was used solely as storage. In addition, she stated that there would have been no significant physical changes or additions to the subject property from January 1, 2005 through November 29, 2007, the latter of which was her inspection date.

As to the subject's site, she stated that the area is fully developed without any vacant land and that traditional enclosed malls are facing increased competition from lifestyle centers and power centers. As to the subject's highest and best use, Enright testified that it would be the continued use as an anchor department store while mentioning that it had potential for some subdivision into smaller stores. However, she also stated that for ad valorem purposes, a property should be valued in its present use unless that alternative use is eminent and not speculative. Moreover, she testified that not only was the subject's building a larger than typical anchor department store, but that the subject's building was twice the size of the other anchor department stores located within the subject's mall.

As to Enright's land sales, she testified that: sale #1 included TIF funding; sales #2, #4 and #5 were purchased for big box retail development; sale #3 included a ground lease for mixed-use retail and residential development in the sale price; sale #7 was the sale of an improved lot; and only sale #6 was a land sale related to a regional mall at a sale price of $12.70 per square foot. In her development of depreciation, Enright admitted that even though her application of the age-life method and the market extraction method included all forms of depreciation, she nevertheless added depreciation of another 25% for economic obsolescence as well in her methodology. She explained that she did this because her value conclusion would have been an additional $8,000,000 higher and that this was a way for her to recognize changes in the retail industry. She further stated that she made similar adjustments for the increased competition in the retail industry in the income and sales comparison approaches to value.

As to Enright's rental comparables, she testified that: rental #1 was of a freestanding store which was ¼ of the size of the subject's building; rental #2 and #3 were 1/10 and ¼ of the size of the subject, respectively; rental #5 was not only ¼ of the size of the subject but was also sited within a lifestyle center; rental #6 was of a newly constructed building; and rental #7 was included in a sale-leaseback transaction. In reference to the <u>Korpacz</u> surveys, she indicated that none of the data therein would have related to owner-occupied department stores for <u>Korpacz</u> surveys focus on leased properties in order to obtain their capitalization rates. Furthermore, she testified that she accorded the income approach most weight in her appraisal; even though she needed to impute market rental rates and a capitalization rate because the subject property was an owner-occupied retail location.

As to the subject's actual retail sales, Enright testified that after completion of her appraisal she reviewed the subject's actual retail sales data which reflected a downward trend in 2005 and 2006. In contrast, she reiterated that within her appraisal, she had adjusted her estimate of the subject's retail sales upward to $250.00 from Kelly's estimate of $245.00, which Kelly had based upon three prior years of subject's actual sales data.

As to Enright's improved sale properties, she testified at length that: sale #1 was a leased fee interest in a free-standing, multi-tenant property which was ¼ of the size of the subject's building; sale #2 related to essentially the trading of retail space within the same retail center, which consisted of square footage that was 20% of the subject's size; sale #3 was an anchor department store located in a distressed mall, which sold for $29.00 per square foot; sale #4 was a leased fee interest sale of a newly-built, free-standing department store which was 1/5 of the size of the subject's building; and sale #5 was a leased fee interest sale which was 1/3 of the size of the subject as well as part of a bulk sale transaction. Enright also stated that she did not make any adjustments for the variance in property rights conveyed in her improved sale properties. She also elaborated that a junior anchor is a Factory Card Outlet or a Wal-Mart store which typically consists of a smaller size building of less than 80,000 square feet of area.

Under further examination, Enright stated that she was aware of the review report of her work product conducted by Battuello. In response to his written comments, she stated that her land sales for the most part were purchased for commercial development and that it was not necessary that they be purchased for anchor department stores. As to her varying levels of economic obsolescence accorded to the subject and other properties in the subject's mall, she stated that she was aware of the varying amounts of economic obsolescence, but indicated that there were other factors related to the different properties which would account the variances. She also indicated that Battuello was correct in that she used retail sales data from the appellant's appraisal without making any adjustments for size. She disagreed with Battuello's review characterizing a lack of anchor properties for rental comparables because she used two Carson's stores and a Value City location. She also indicated that there would be no effect on her income analysis of a sale-leaseback transaction. As to her sale comparables, she admitted that her properties were smaller, but stated that she made adjustments for this factor.

As written rebuttal, the appellant timely submitted an appraisal review of the intervenor's appraisal. At hearing, the appellant's called as a rebuttal witness, Gary Battuello, who read, reviewed, and tendered the written appraisal review of the intervenor's evidence. Battuello testified that he has been an appraiser since 1981 who holds certified general real estate appraisal licenses in Wisconsin and Minnesota as well as the designation of MAI. He indicated that he has undertaken approximately 70 appraisals of anchor department stores all of which were associated with regional malls. He stated that by industry definition an anchor store is in a regional mall; however, he has also appraised free-standing department stores. These appraisal assignments have included properties in 13 states. As to appraisal review reports, he indicated that he had completed approximately 70 reports with the majority undertaken for ad valorem purposes and related to anchor department stores on a regional or national basis. Battuello was offered as an expert review appraiser and an expert in the valuation of department store properties. Under additional voir dire, he explained that under Minnesota law, any valuation assignment requires a license, while Wisconsin is similar to Illinois, wherein licensing is voluntary for non-FIERRA transactions; therefore, he could conduct a real estate appraisal without a license in Illinois.

At this point on the second hearing day in the proceedings, the intervenor made a motion in limine and upon consideration of the parties' positions, the PTAB denied this motion. Thereafter, the board of review moved to bar any testimony from Battuello and to strike the Battuello report based upon the Real Estate Appraiser Licensing Act of 2002, specifically citing Section 5-5(a) et al. which stated in part: "that it is unlawful for a person to act or assume to act as a real estate appraiser, to engage in the business of real estate appraisal, to develop a real estate appraisal, to practice as a real estate appraiser, . . . in connection with a federally related transaction without a real estate appraiser license issued under this Act". 225 ILCS 458/1-1 et seq.

Upon consideration of the parties' positions, the PTAB denied the board of review's motions due first to the unrebutted argument that Illinois is a voluntary licensing state wherein Battuello was informed by the Illinois Office of Banks and Real Estate that for appraisals of ad valorem tax purposes a temporary license was not needed; and secondly, that the Act cited herein to support barring said testimony and evidence relates specifically to federally-related transactions which is distinguishable from this PTAB proceeding. Furthermore, this Act does not designate that the real estate appraiser's license much be accorded by Illinois. In the present case, Battuello holds licenses in two states: Minnesota and Wisconsin as well as a MAI designation. At hearing, the PTAB enumerated at length the distinguishing factors. Therefore, over the county's standing objection, PTAB accepted Battuello as an expert in real estate appraisal and as an expert review appraiser.

Battuello's report was identified for the record as Appellant's Hearing Exhibit #3. In summary, the Battuello review report stated: that the Enright appraisal improperly completed the approaches to value; that the data and adjustments thereto are inappropriate; and that the Enright appraisal conclusions of a value estimate were not reliable. The stated purpose of Battuello's review was to determine the adequacy of the appraisal process/report and the reasonableness/reliability of its conclusions and value estimate.

Battuello's appraisal review indicated that the subject property was an extremely large, single-tenant department store located in a super-regional shopping center. His review initially notes absences in the Enright report. Specifically, the review stated that the intended user of the report was identified as the school district's law firm with elaboration regarding the report being submitted to the property owner or in tax appeal proceedings before the PTAB. It was also noted that the Enright report failed to identify the size and design of the other anchor department stores located within the subject's mall; and that the Enright report identified the subject's July 2004 sale, but failed to analyze the sale as required by USPAP.

Battuello testified that Enright's inconsistent inclusion and then exclusion of the two parking garages tainted her value conclusions. He also stated that even though Enright discusses the subject's descriptive details within her appraisal, he indicated that she does not appear to consider these factors in her development of obsolescence or the comparative process.

As to Enright's cost approach, Battuello opined that: the seven land sales were not designated for construction of an anchor department store; the land sales were not irregular or non-contiguous in shape; an inappropriate estimate of functional obsolescence was developed; an inconsistent estimate of economic obsolescence was developed in comparison to the subject's sister anchors within the subject's mall; and the Enright land value conclusion appeared to be extraordinary for an anchor store where Battuello called into question her stated highest and best use of the subject. Overall, he testified that Enright developed a street value for land, but did not actually consider what an anchor store operator might pay to buy or lease a parcel of land to support an anchor department store. He elaborated that an anchor department store is built on what he would call subsidized land which is not paid for or leased at a rate consistent with street value. He stated that Enright's valuation was not wrong for other properties, but not applicable to an anchor department store. He indicated that her application of indirect costs was appropriate, but that her application of entrepreneurial profit was incorrect. He testified that such a profit is not applicable to anchor department stores because they are not built on a speculative basis to make real estate money, but are built to make money by operating a business therein.

As to Enright's income approach, Battuello stated that: Enright did not make adjustments to her rental comparables' sales volume per square foot to reflect the larger square foot area used by Enright; there was an absence in Enright's report of an explanation for a downward trend in sales volume at the subject's store; there was an unsubstantiated retail sales volume for the subject; the usage of leases #1 through #5 which are not anchor department store properties with sizes which do not accumulatively equal the subject's size; the usage of lease #7 which was a renegotiated lease originating from an earlier sale-leaseback arrangement unrelated to an arm's-length market transaction; Enright's usage of a questionable rental rate for the subject based upon less than appropriate lease comparables; and the usage of an overall capitalization rate that was obtained from surveyed information relating to regional shopping centers and not anchor department stores.

As to Enright's sales comparison approach, Battuello stated that: Enright indicated in her report that this approach was not considered as a primary approach in the subject's valuation; Enright's sale properties #1, #4, and #5 contained a variance in property rights, specifically leased fee instead of fee simple property rights; sale #1 also included multiple tenants; sale #4 was a one-story, free-standing store with a larger land component than the subject; sale #5 was part of a bulk sales transaction; but sale #3 containing fee simple property rights similar to the subject. Battuello testified that the subject as an anchor department store is a defined property type with the best sale comparables coming from the same property type. He stated that only two of Enright's five suggested comparables were true anchor department stores, with one of those two properties being part of a portfolio sale. Overall, Battuello opined that Enright failed to understand the distinctions between leased fee and fee simple property rights without making necessary adjustments, and that she accorded inappropriate size adjustments to her suggested comparables, which were not larger than 37% of the subject property. Therefore, he believed that Enright's value estimate under this approach was unsupported.

In concluding arguments, the appellant requested that the PTAB take judicial notice of two prior PTAB decisions related to another anchor department store sited within the subject's mall: #03-22636-C-3 and #04-21196-C-3 as well as another PTAB decision related to an anchor department store sited within the Woodfield Mall: #04-25467-C-3. Complimentary copies of these decisions were submitted into the record by the appellant and distributed to the remaining parties.

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 the basis of the appeal, the value of the property must be proved by a preponderance of the evidence. *86 Ill.Admin.Code 1910.63(e)*. Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *86 Ill.Admin.Code 1910.65(c)*.

Having considered the evidence presented, the PTAB finds that the best evidence of valuation in the record was submitted by the appellant and demonstrates that a reduction in the assessment is warranted for the 2006 tax year at issue. The PTAB accords little weight to the board of review's DiFebo evidence submission, due to the failure of the board of review to present the preparer for testimony and cross-examination concerning his qualifications, the methodology regarding data used therein, and his conclusions.

In looking to the three traditional approaches to value, Kelly opined that the cost approach was less than applicable to a large and aged anchor department store in a regional mall with increased calculations of depreciation and obsolescence. Substantial emphasis was accorded to the income and sales comparison approaches to value wherein the PTAB finds that Kelly used land and improved sales from the market while undertaking appropriate adjustments. Furthermore, Kelly's exhaustive testimony was credible and convincing regarding industry standards and retailing trends, various market data and sources used in the three approaches to value, verification of sales data, development of retail sales per square foot for the improved sales, as well as the adjustments made to his comparables. The PTAB finds Kelly's findings of values and conclusions were articulated in a clear and convincing manner, while substantiating his findings.

As to the appraisal submitted by the intervenor, Enright also indicated that little weight was accorded the cost approach due to the inherent difficulty in estimating depreciation for this subject property. Enright placed primary weight on the income approach to value because retail properties such as the subject are typically purchased based on the income potential of the property. In addition, she stated that only some weight was accorded the sale comparison approach to value because fee simple sales of freestanding anchor department stores are limited even though she submitted five sales she opined could be adequately adjusted in comparison to the subject. The PTAB finds that Enright responded sincerely to the questions posed to her, but was less than convincing in her valuation testimony.

As to the Enright appraisal, the appellant submitted an appraisal review undertaken by Battuello who opined in summary: that there were inconsistent and unsupported land value conclusions and depreciation development; poor rental comparables; and inappropriate sale comparables which failed to address the variances in property rights or arm's-length nature of the transactions as well as inappropriate adjustments to these sale properties.

The PTAB further finds that both appraisers testified that there is significant market competition of lifestyle centers and power centers for anchor department stores in the retail industry and that there are limited sales of anchor department stores associated with malls within the market place. Both appraisers placed little validity on the subject's sale in August, 2004, due to the nature of the transaction and the subject's allocated price. The appraisers also concurred on: the development of a highest and best use for the subject property absent any speculative use; the development of the subject's effective age in the cost approach at 25 years; and the lack of inclusion of the subject's mezzanine area solely used as storage in the subject's square footage. Moreover, the appraisers testified that the subject's market value would not vary significantly from January 1, 2004 through January 1, 20006.

Overall, the PTAB accorded diminished weight to the intervenor's appraisal due to: inconsistent testimony at hearing;

contradictory square footage accorded to the subject's land and improvement; contradictory statements in comparing her testimony to her written appraisal regarding the subject's site improvements; mathematical errors in the cost approach; incorrect methodology applied in developing depreciation in the cost approach; inappropriate application of entrepreneurial profit to an owner-occupied, anchor store; inappropriate land sales and rental comparables; lack of foundation for her estimate of the subject's purported actual retail sales per square foot; less than appropriate development of an overall capitalization rate; operating under the misconception that fee simple interests are commensurate with leased fee interests while not undertaking any adjustments for the variance in property rights; inappropriate improved sale comparables and/or the lack of appropriate adjustments to the sale comparables. Beyond these findings, the PTAB notes that the intervenor's appraiser lacked experience in valuing anchor department stores located in regional or super-regional malls for ad valorem purposes and incorrectly placed primary weight on the income approach to value. In this 2006 appeal, the aforementioned PTAB findings are echoed in the Enright appraisal review undertaken by Battuello.

The courts have stated that where there is credible evidence of comparables sales, these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App. 3d 207 (2nd Dist. 1979), the Court further held that significant relevance should not be placed on the cost approach or the income approach especially when there is market data available. Id. Moreover, in Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989), the Court held that of the three primary methods of evaluating property for purposes of real estate taxes, the preferred method is the sales comparison approach.

Therefore, the PTAB will also place significant weight on the sales comparables submitted into the record. The PTAB finds that Kelly's improved sale comparables' data to be most relevant and similar to this large and aged, anchor department store sited in a regional mall, which is the subject property of this appeal. These six comparables were each improved with multi-story, single-tenant, anchor department stores that are also attached to malls. Further, Kelly stated that all of the sale properties relate to nationally-recognizable, regional anchor department store chains, and indicated that he had personally inspected each of the comparables. The six properties sold from February, 1996, through March, 2003, for prices that ranged from $26.67 to $50.00 per square foot of gross building area including land prior to adjustments. The improvements ranged: in age from 10 to 26 years; in improvement size from 84,747 to 428,036 square feet of building area; and in land-to-building ratio from 1.55:1 to 3.57:1.

Moreover, the PTAB finds that the sale comparables' data submitted in the Kelly appraisal reflect an unadjusted range of values from $26.67 to $50.00 per square foot of building area.

After making adjustments to these comparables with additional reliance upon the development of a retail sales multiplier employing stabilized retail sales per square foot, Kelly estimated the subject's market value was $23,650,000 or $55.00 per square foot under this approach. In reconciling the income and sales comparison approaches to value, Kelly estimated the subject's market value as of the assessment date at issue to be $24,700,000.

In contrast, the PTAB finds that Enright's improved sale comparables were inappropriate due to the disparity in property rights and/or highest and best use with one exception. Only one of the five properties, sale #3, was an anchor department store connected to a mall. Regardless of the fact that Enright disclosed that this was a distressed mall, she indicated that this anchor department store sold for an unadjusted value of $29.00 per square foot. This comparable's sale price is within the range established by Kelly's improved sale comparables.

On the basis of this analysis, the Property Tax Appeal Board finds that the subject's fair market value for tax year 2006 is $24,700,000 and that a reduction is warranted to the subject property's assessment.

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 19, 2011

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.