FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Kmart Corporation
DOCKET NO.: 07-20658.001-C-3
PARCEL NO.: 09-29-106-012-0000

The parties of record before the Property Tax Appeal Board are Kmart Corporation, the appellant(s), by attorney Patrick C. Doody, of The Law Offices of Patrick C. Doody in Chicago; the Cook County Board of Review; the Des Plaines S.D. #62, and Maine Twp. H.S.D. #207, intervenors, by attorney Ares G. Dalianis 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:	$825,176
IMPR.:	$1,010,224
TOTAL:	$1,835,400

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 402,133 square foot parcel of land improved with a 40-year old, one-story, freestanding, masonry department store containing 107,325 square feet of building area. 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, 2007. The appellant presented the testimony of the appraisal's author, Terrence P. McCormick of McCormick & Wagner, LLC. Mr. McCormick testified he is co-owner of McCormick & Wagner, is an Illinois certified general real estate appraiser, and holds the MAI designation from the Appraisal Institute. He testified he has been an appraiser for 34 years and has appraised over 150 properties that are similar to the subject. He stated he has been qualified as an expert previously in several courts and administrative agencies, including the Illinois Property Tax Appeal Board. Without objection, the PTAB accepted Mr. McCormick as an expert witness in appraisal theory and practice.

McCormick testified he inspected the interior and exterior of the subject on December 28, 2005 and February 29, 2008.

The witness described the subject property and its environs. He described the subject's location within a shopping district and the surrounding stores. McCormick testified the subject contains approximately 107,000 square feet of building area and was constructed in 1967. He opined the highest and best for the subject as vacant is commercial use and the highest and best use as improved is continuation as a retail building. He further opined an economic life for the subject of 30 with an effective age of 20 years.

McCormick developed the three traditional approaches to value in estimating the subject’s market value. The cost approach indicated a value of $4,740,000, rounded, while the income approach indicated a value of $4,100,000, rounded. The sales comparison approach indicated a value of $4,290,000, rounded. The appraiser concluded a market value of $4,300,000 for the subject property as of January 1, 2007.

The initial step under the cost approach was to estimate the value of the land at $8.00 per square foot or $3,220,000, rounded. In doing so, McCormick testified he considered seven land sales located in Des Plaines, as the subject is. These properties sold from November 2003 to November 2006 for prices ranging from $4.71 to $15.42 per square foot.

Using the Automated Marshall Valuation Service, and a survey of local cost indexes, the appraiser estimated the reproduction cost new to be $7,120,837. McCormick testified he added site improvements of $500,000 for a total reproduction cost of $7,620,837. In establishing a rate of depreciation, McCormick testified he analyzed nine sales of properties included in the sales comparison approach. The appraisal indicates an annual rate of depreciation between 1.5% and 2.6%. McCormick established a total depreciation 80% which is an average annual rate of depreciation of 2% to arrive at the depreciated value of the improvements at $1,524,167. Adding the land value resulted in a final value estimate of $4,740,000, rounded, under the cost approach.

Under the income approach, McCormick testified subject is leased on a long-term basis. He stated that the lease as of the date of value was 40 years old and had an additional 40 years of option periods going forward. McCormick testified he did not use the subject's actual rental data in establishing income. He testified he reviewed the leases or offerings of eight rental comparables. McCormick described the comparables. These properties ranged in size from 28,220 to 147,245 and have leased or asking rates of $2.50 to $7.00 per square foot of building area. McCormick opined that age was an important factor in comparing the properties because older properties require more renovation to bring them up to current standards. McCormick estimated the market rent to be $4.75 per square foot of building area. This resulted in a potential gross income of (PGI) $509,794. Vacancy and collection loss was estimated at 10% of PGI and reserves for replacement and management fees were estimated at 2% each. Therefore, the effective net income (ENI) was estimated at $440,463.

In determining the appropriate capitalization (CAP) rate, McCormick testified he utilized the band of investment technique as well as analyzed the nine sales used in the sales comparison approach. He testified these sales indicated an overall range from 10.3% to 13.3%. McCormick testified he applied an overall CAP rate of 10.75% to the ENI to estimate the market value for the subject under this approach at $4,100,000, rounded.

The final method developed was the sales comparison approach. McCormick testified he used sales of properties located within Cook County. McCormick described each of the nine comparables. The properties range in building size from 80,000 to 193,000 square feet and sold from May 2002 to August 2007 for prices ranging from $2,000,000 to $9,700,000, or from $13.00 to $78.42 per square foot of building area, including land. The properties ranged in age from 10 to 32 years and in land to building ratio from 1.80:1 to 5.33:1.

McCormick testified he performed an analysis based on the price per square foot of building area, including land and performed a secondary analysis of the price per square foot of building area, excluding land. He testified he estimated a value for the subject of $40.00 per square foot of building area, including land which yields a value for the subject property under the sales comparison approach of $4,290,000, rounded.

McCormick testified that for a property of this size and nature, the market is a broader area than it would be for a smaller property so the comparable sales were found within the whole of Cook County. He further testified the comparables were all newer than the subject, but they were the sales that were available. He stated the average market time for these comparables was 19 months.

In reconciling the various approaches, McCormick testified he gave the most emphasis to the sales comparison approach, secondary weight to the income approach and the least amount of weight to the cost approach. After reconciliation, the appraisal estimated the value for the subject property as of January 1, 2007 to be $4,300,000.

Under cross-examination by the board of review, McCormick testified the subject property is located approximately one and one-half miles from O'Hare Airport and one mile from interstate highways. He opined that the subject is located in an area that is desirable for retail as it's on a major street, but that the immediate area hasn't seen recent large commercial development. He opined that shoppers were not coming from the interstate highways to the subject, but from the community.

McCormick testified the subject's actual rental rate is $42,000 per year. He opined this was an extremely low rental rate. He also opined the subject's seven drive-in loading doors may be over-adequate for its use. He did acknowledge that there was more of a problem for a property that had less than adequate loading docks than more than adequate.

As to the land sales in the cost approach, McCormick acknowledged that land sale #1 was smaller than the subject and testified it was located nine miles north from the subject. He opined that property located closer to the airport may not be more valuable based on its use. He testified that greater density has the potential for more shoppers and sometimes attracts more commercial users. As to land sales #6 and #7, McCormick testified they are comparable to the subject in nature as large retail users. He stated that smaller sites tend to sell for a higher unit price. He testified that some of the land sales are smaller and some are larger and that the larger ones are being used for a similar use as the subject. He testified that land sales #2, #3 and #5 have less desirable locations than the subject. McCormick testified he did not average the land sales to arrive at an estimated land value for the subject.

As to the rental comparables in the income approach, McCormick testified rental #1 is in a less desirable location. He acknowledged the tax rate for this location is higher and would be considered in a rental rate. He testified rental #2, which he has personally appraiser, has more commercial development at this location than the subject's area. He acknowledged the mall at rental #2's location has vacancy. He also agreed that the socioeconomic factors are different in this area than in the subjects. McCormick testified the mall where rental #4 is located was doing well as of the date of value. He acknowledged that rental #6 is located in DuPage County and is a current offering. He confirmed that rentals #1, #6 and #8 were current offerings and that #8 is also located in DuPage County.

McCormick testified he performed the band of investment and the market extraction techniques to develop the capitalization rate. He testified that two of the sales within the sales comparison approach, #5 and #8, were leased fee sales. He testified he estimated the rent for sale #8 because the seller was going out of business and the buyer knew the property would be vacant after the sale. In addition, he opined that sale #5 was converted into a fee simple sale when the leasee purchased the property. He testified that his capitalization rate of 10.75% was opined from the analysis of the band of investment which was 10.25% and the market extraction method which indicated a range of 10.3% to 13.3%. He acknowledged that the net income listed for the sales comparables are his estimates.

McCormick testified that his vacancy and collection rate was his opinion based of a review of the market as well as his management fees and reserves for replacement.

As to the sales comparison approach, McCormick was shown *Board of Review's Exhibit #1*, a copy of the Chicagoland area map included within McCormick's appraisal. McCormick marked off in blue pen the general location of the sales comparables on the map. McCormick acknowledged that only sale #5 and the subject property are located north of the I-90 expressway. He testified that sale #7 is 42 miles away from the subject, sale #8 is 34 miles away, and sale #3 is 48 miles away. He opined that the sales all have adequate loading docks.

McCormick testified sale #1 was purchased by a business college. He testified that sale #2 was vacant at the time of sale, but not distressed. He also opined that sale #3 was not a distressed sale and testified it was on the market for three years. He testified he considered this location inferior to the subject. He also considered sale #7's location inferior. He acknowledged that sale #7 was from 2002 and testified he made adjustments for the age of the sale.

Under cross-examination by the intervenors, McCormick testified he did not take interior photographs of the subject property because he did not want to disrupt customers. He opined that he described the interior sufficiently in the appraisal.

McCormick was shown *Intervenors' Exhibit #2*, a copy of a website printout for the City of Des Plaines. McCormick acknowledged that the printout indicates the City of Chicago is 17 miles from Des Plaines. *Intervenors' Exhibit #3*, a copy of a Mapquest printout, indicates Des Plaines is 18.86 miles from Chicago.

McCormick acknowledged the subject is located at the corner of two major arterial roads. He agreed the subject has a good location. He was unaware of the traffic counts on the two roads that the subject is located on. He testified traffic counts could be an attraction if there is not an oversupply of retail properties at that location. He also testified that the speed of traffic is also a factor. He opined that the traffic flow at the subject's location was adequate.

McCormick testified he did not utilize the age-life method when depreciating the subject under the cost approach. He testified he has used this method in the past when there is no market derived data available. He acknowledged that the subject's depreciation rate using the age-life method would be 67%. He testified he utilized the market extraction method. He acknowledged he estimated the land value, the building remainder, and the cost new are estimated. He agreed that if any of these estimates are off or changed, the indicated depreciation would change.

As to the land sales in the cost approach, McCormick testified that land sale #1 is not located on a corner, but is slightly off the corner with frontage on two streets. McCormick acknowledged land sales #2 and #3 are located on corner parcels with one road elevated which means there is no access off of Palatine Road for these properties. McCormick was shown *Intervenors' Exhibit #4*, a CoStar printout detailing land sale #3 with a Sidwell map attached. McCormick confirmed that the subject could not be built on this property. He testified that land sale #4 was developed with a hotel which is a different use than a big box store, but still commercial. McCormick testified that land sale #5 set aside approximately 10% of land for water retention. He did not know the traffic counts for land sale #6. McCormick testified that land sale #7 also has set asides for water retention as well as a park. He testified he knows the traffic counts for this sale are high, but could not give the exact number.

In the income approach, McCormick testified rental #1 was vacant for eight years. He acknowledged this property was distressed. He testified rental #2 shares a common wall with a factory. He testified this rental was built during World War II and was once an industrial building. He acknowledged there are some crime problems at the mall this rental is located in. McCormick confirmed that rental #3 is located on the same street as the subject, but south of the airport and is similar in size; he acknowledged this property lease for over $6.00 per square foot. He acknowledged the lease is for 29,000 square feet of building area which is less than a third of the subject. He testified rental #7 is also smaller than the subject and located 30 miles from the subject. He acknowledged that the appraisal does not contain a written analysis of these rentals.

McCormick acknowledged that the appraisal does not contain a written analysis to determine the vacancy and collection rate which McCormick estimated at 10%. He testified the subject has not been vacant since the inception of its lease in 1967.

As to the capitalization rate, McCormick confirmed he used the band of investment and the direct capitalization methods. He opined that investors want a 15-year mortgage term for large commercial properties. In addition, he testified that your mortgage term should not exceed the remaining economic life of the property.

McCormick testified that seven of the nine sales he used for the direct capitalization analysis were not rented and he estimated the rent for all nine properties. He testified that any change in the net income calculation would change the overall rate.

McCormick was shown *Intervenors' Exhibit #5*, a CoStar printout detailing sale #5 within the sales comparison approach. The document indicates an annual gross income of $521,601 which produced a capitalization rate of 6.47%. The appraisal estimated the net operating income for this comparable at $940,000 which indicated a capitalization rate of 10.5%. McCormick opined that this sale was not a leased fee transfer because the tenant purchased the property. He acknowledged that his income estimate was 80% higher than what was reported in CoStar. McCormick was shown *Intervenors' Exhibit #6*, a copy of a page from a *Korpacz* survey listing capitalization rates for the first quarter of 2007. McCormick testified he chose a rate slightly above the high end of the range listed in *Korpacz*. McCormick testified he estimated the subject's net operating income at $4.10 per square foot of building area. He agreed this amount is lower than the $8.21 per square foot of building area for comparable #5.

As to the sales comparables, McCormick testified that sale #1 is located in the northernmost part of the mall and has a traffic control signal for ingress and egress in front of the building. He acknowledged the highest and best use changed. As to sale #2, McCormick acknowledged the area around this comparable has a lower income per household than the subject. McCormick acknowledged that a portion of sale #3's building was demolished after there was an attempt to lease it. McCormick testified sale #4 is located three blocks from sale #2 and has a lower income per household than the subject. He did not know the traffic counts for sale #6. McCormick acknowledged sale #8 was a free standing building that was part of the mall. McCormick testified that sale #5 is the only sale within the northwest suburbs of Cook County and this property sold for $78.42 per square foot.

In redirect, McCormick testified the *Korpacz* survey was not based on fee simple sales, but on leased fee transactions. He further testified the capitalization rate he developed was a fee simple rate based on market rent as of the date of value. He opined that leased fee capitalization rates are typically lower because the analysis is based on the strength of the tenant.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $2,202,305 was disclosed. This assessment reflects a fair market value of $5,795,539 or $54.00 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 98,774 to 121,507 square feet of building area. They sold between July 2003 and July 2008 for prices ranging from $3,550,000 to $23,630,000 or from $35.94 to $194.47 per square foot of building area, including land.

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 assessment.

In support of the intervenors' position, the intervenors submitted a summary appraisal of the subject prepared by Michael S. MaRous with MaRous & Company with an effective date of January 1, 2007 and an estimated market value of $5,900,000. Mr. MaRous testified he has been an appraiser for 33 years and is president of his appraisal company. He stated he is a licensed general real estate appraiser and holds the MAI designation from the Appraisal Institute. He testified he has been involved in the publication of the book entitled Appraisal of Real Estate. MaRous testified he has appraised all types of properties and has attended numerous seminars in regards to valuation of large retail properties. He stated he has undertaken hundreds of appraisal in Des Plaines with the majority being for commercial or retail use. He testified he has appraised properties for Costco, Target, Kmart and many other major retail developers. Finally, he testified he has appeared as an expert witness before the Property Tax Appeal Board, the Circuit Court of Cook County, and federal court. The Property Tax Appeal Board accepted Mr. MaRous as an expert witness in the valuation of commercial properties without objection from the remaining parties.

MaRous testified he inspected the subject on multiple occasions the first time being in April 2009 and the last prior to hearing on April 14, 2013. He described the subject and its environs. He opined the subject has the benefit of close proximity to interstate systems. He testified the traffic count for the two roads the subject is on is approximately 45,000 cars a day. He opined that the traffic count is a huge factor for the subject. MaRous opined the subject's highest and best use as improved is continued retail use.

MaRous utilized the three traditional approaches to value to estimate a market value for the subject as of January 1, 2007 of $5,900,000.

Under the cost approach to value, MaRous further described the subject's location and the details of the underlying land. He noted the subject does not require water retention ponds for storm water management.

MaRous testified he analyzed five land sales. He described the sales which sold from November 2003 to September 2006 for prices ranging from $6.99 to $23.35 per square foot. He testified land sale #1 was purchased, the building on the site was razed and a small retail building was built on the site. Sale #2 was developed with a mid-quality hotel facility. Sale #3 was purchased to build a drive-in bank. MaRous testified sale #4 was a large commercial site developed with a Target store. He testified sale #5 was developed with a modern movie theater. MaRous testified he made adjustments to arrive at an estimate of value for the land at $12.00 per square foot or $4,825,000, rounded. Using Marshall Valuation Services, MaRous estimated a cost new of $60.00 per square foot of building area or $6,439,500.

As to depreciation, MaRous testified he estimated the subject's effective age at 35 years with an economic life of 50 for a physical depreciation rate of 70%. He testified he estimated functional depreciation at 10% because of the depth and ceiling height of the store. The appraisal also includes an analysis of the sales comparables to determine depreciation. This data showed an annual depreciation rate from 1.2% to 8.4%. MaRous testified he estimated a final rate of depreciation at 85% which, when applied reflected, a cost new of $965,925. Site improvements of $200,000 and the land value were added to this amount for a final value under the cost approach of $5,990,000, rounded.

Under the income approach to value, MaRous testified the subject is an income producing property in that it is leased. He opined that the lease was a ground lease negotiated in the 1960s for $42,000 per year or less than $1.00 per square foot of building area.

MaRous testified he looked for rental comparables located in the northwest or western suburbs that were 40,000 to 130,000 square feet of rental area. He testified he focused on large size, big box spaces. MaRous utilized 10 comparables with rental or offering rates of $2.50 to $8.75 per square foot of rentable area to estimate the subject's rent at $6.50 per square foot of building area. He testified he considered location, population, traffic counts, and the fact that the subject has been renting the property for 40 years. MaRous estimated a potential net income of $697,600. He testified that the subject property has not experienced any vacancy in 40 years, but that the overall big box market is softer than it was and MaRous applied a 10% vacancy and collection factor for an effective net income of $627,840.

MaRous testified he partially loaded the property taxes in the capitalization rate analysis. He testified he also applied $2.50 per square foot for holding costs, 4% for management fees, 4% for miscellaneous, and 2% for reserves for total expenses of $77,060. This reflected a net operating income of $550,780.

As to the capitalization rate, MaRous testified he used the direct capitalization and band of investment methods and reviewed market surveys. He testified he was able to develop a capitalization rate from sales #2 and #6. The sales indicated capitalization rates of 6.5% and 9.4%, respectively. He also testified that Korpacz surveys indicated a range from 5.8% to 9% with an overall rate of 7.38%. MaRous testified that the lower rates applied to new, very modern, extremely well located properties with strong credit tenants. MaRous then described how he applied the band of investment method. MaRous chose a capitalization rate of 8.75%.

MaRous testified he loaded the capitalization rate for the vacant portion of the building as determined by the vacancy and collection rate. He testified this tax load comes to .69% which is then applied to the capitalization rate for a loaded rate of 9.50%. Applying this loaded rate to the subject's net operating income results in an estimate of market value for the subject under the income approach of $5,800,000, rounded.

The final method developed was the sales comparison approach. MaRous described each of the six sales. The properties range in building size from 96,165 to 124,265 square feet and sold from July 2003 to August 2007 for prices ranging from $3,550,000 to $7,900,000, or from $36.88 to $68.98 per square foot of building area, including land. The properties ranged in age from 10 to 28 years and in land to building ratio from 2.64:1 to 7.98:1. MaRous described the traffic counts for each comparable. He testified sale #3 was leased at the time of sale. He testified he did not review the lease for this property. MaRous opined that sale #6 was in an inferior location compared to the subject even though it is located near Mannheim. He testified he made adjustment to the comparables for pertinent factors to estimate a value for the subject under the sales comparison approach between $50.00 and $55.00 per square foot of building area while the appraisal indicates a value from $54.00 to $56.00 per square foot. The final value under the sale comparison approach is $5,900,000, rounded.

In reconciling the approaches, MaRous testified he gave most reliance to the sales comparison approach which was supported by the other two approaches for market value for the subject property as of January 1, 2007 at $5,900,000.

Under cross-examination by the appellant, MaRous acknowledged that, based on his land value, the subject building may be at or near the end of its useful life.

MaRous testified 5 out of the 10 rental comparables lease the whole building, two of the comparables are free standing buildings, four are located outside Cook County, and six are actual rents and not asking rents. He testified that of the six rental comparables that are located within Cook County only two have rental rates above $5.00 per square foot of rentable area. MaRous testified that rental #7 is similar in age to the subject and the others are newer. MaRous testified that one Cook County rental comparable was leased or offered for lease at or above the rate that he estimated for the subject.

As to the capitalization rate, MaRous testified he used sales #2 and #6 to develop the rate from the market. He acknowledged that these rates were based upon leased fee sales and that the *Korpacz* survey was also developed a leased fee capitalization rate. He testified the appraisal does not indicate any adjustments to these rates from leased fee to fee simple rates, but opined this adjustment would be downward in consideration of the safety of that lease.

MaRous testified as to why he did not include entrepreneurial profit in the cost approach and how he arrived at this vacancy and collection rate in the income approach.

As to the sales comparables, MaRous acknowledged that three of the six comparables are leased fee sales with sale #4 being questionable as to whether it is leased fee or fee simple. MaRous opined it was bought as a fee simple for $37.00 per square foot of building area. He testified he did not include an adjustment grid, but that he did discuss each comparable within the appraisal. MaRous testified he was aware of the lease information on two of the leased fee properties.

MaRous testified that in a strong market, many times there are not enough fee simple properties to use as comparables for developing a fee simple value. He opined that if the appraiser considers the lease comparable to market rates, then the leased fee sale is reasonable.

MaRous testified sale #1's improvement was divided up after the sale and became multi-tenant. He acknowledged this building was not freestanding. He acknowledged that sale #2 was possibly a buyout of the lease. He was unaware of any 1031 exchanges involved in any of the sales.

In rebuttal, the appellant called Mr. Joseph M. Ryan. Ryan testified he is president of LaSalle Appraisal Group and has been there since 1991. He testified he is an Illinois state certified general real estate appraiser and holds the MAI designation from the Appraisal Institute. Ryan has been an appraiser for over 30 years. He testified he has qualified as an expert witness before tax boards or tribunals in Illinois and Michigan and courts in Illinois and Wisconsin. He testified he has performed between 15 and 20 appraisal reviews and that he has appraised over 200 single-tenant, big box type buildings. Ryan was accepted as an expert witness on appraisal review without objection from the remaining parties.

Ryan testified he reviewed the appraisal report prepared by MaRous to ascertain whether MaRous followed property methodology and techniques in the appraisal. Ryan opined the data was inadequate and improperly used to ascertain a value for the fee simple market value of the subject.

As to the cost approach, Ryan testified land sales #1, #2, and #3 were significantly smaller than the subject and had a different highest and best use. He testified land sale #1 was developed with a four-unit retail building, land sale #2 was developed with a hotel, and land sale #3 was developed with a bank. He testified that the two land sales that had adequate size to build the subject, sales #4 and #5, sold for $7.00 and $7.32 per square foot of living area. He opined that MaRous concluded his land value at $12.00 per square foot based on the much smaller land sales and that the estimated value was too high.

Ryan testified that the appraisal did not contain much detail on how MaRous arrived at a $60.00 per square foot of building area cost new figure, but he agreed with MaRous's conclusion that this approach did not have much weight in the final conclusion of value. Ryan opined that using the same cost price per square foot for the subject and the sales comparables indicates the properties are exactly the same, but they are not the same.

In the income approach to value, Ryan testified as to each rental comparable used by MaRous. Ryan testified most of these rental comparables are newer than the subject and that four are located in DuPage County. He opined that the appraisal failed to analyze the effect of the lower effective taxes in this county compared to the subject. In reviewing the Cook County rentals, Ryan testified these properties have rental or asking rates from $4.00 to $8.50 per square foot of rentable area and that these buildings were newer than the subject. He opined that reviewing the Cook County data should not result in a $6.50 per square foot of building area rental value for the subject as MaRous did.

Ryan opined that the capitalization rate used by MaRous was too low. He testified that the appraisal incorrectly identified the buyer of sale #2 and the actual buyer was Walmart who was currently leasing the property. He testified that Walmart was buying out their lease on the property and opined that the capitalization rate from this sale is irrelevant. He testified that the two sales used to develop MaRous's direct market capitalization rate were newer than the subject. He opined that the analysis and data within the income approach was inadequate.

As to the sales comparison approach, Ryan testified sale #1 was not a freestanding building and was much newer than the subject. Ryan reconfirmed that sale #2 was purchased by Walmart and not Marcus & Millichap as indicated in the appraisal. Sale #3, Ryan testified was a 10 year old property that was not property described in the appraisal. He testified that the square footage of this building was 185,000 which would reflect a unit sale price of $42.42 per square foot of building area.

Ryan testified sale #4 consists of two buildings, a freestanding Kmart with 85,680 square feet of building area and a five-unit retail building with 13,872 square feet of building area. He testified sale #5 was a leased fee sale. Ryan testified sale #6, which is similar in size to the subject, but 12 years newer, sold for $36.88 per square foot of building area. He testified that there was five years left on the lease at the time of purchase and the tenant was unsure at that time if they would stay. Ryan opined that the opinion of value in the sales comparison approach was too high.

Under cross-examination by the board of review, Ryan testified that MaRous's first three land sales were smaller in size than the subject's land and had different highest and best uses. He testified the other two land sales were developed with big box stores and had land prices of $7.00 and $7.32 per square foot. He testified comparability in size is one factor that is used in choosing comparables. He testified that a property that contains 2,000,000 square feet of land may not be comparable to the subject. He opined that, generally, the price per square foot decreases the higher the square footage of a property.

Ryan acknowledged the subject is located in a decent commercial area that was very marketable. He testified there is some vacant land located around the subject, but not a great deal. He opined that the subject's land would be more valuable, in general, than land in Harvey.

In the sales comparison approach, Ryan testified the age is an element of comparison that should be considered. He testified that less of an adjustment for age would be needed if the comparable was only one-year newer or older than the subject.

Under cross-examination by the intervenors, Ryan testified that MaRous's conclusion of land value was too high. He opined he did not conclude an opinion of value by making this statement. He opined that a land sale that was developed with a bank is a different highest and best use than the subject. He agreed that land that was developed with a school has a different highest and best use than the subject. He testified he may use a site that did not have municipal services like the subject does, but he would try not to use it.

Ryan testified that he did not look at the traffic counts of the subject and comparables and that the appraisal does not address traffic counts. He testified that comparables that are closer to the subject, all other things being equal, are preferable.

Ryan opined that an appraisal should contain an analysis of rental comparables used in the appraisal. He testified that a market derived capitalization rate is the best source for information in terms of what the market is doing when the information is correct and available. He also testified that it is a consideration when choosing comparables to look at the population and household income of the area.

On redirect, Ryan opined that retail sales can be better in less desirable areas than higher populated areas depending on the product that is being sold.

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. <u>National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board</u>, 331Ill.App.3d 1038 (3rd Dist. 2002); <u>Winnebago County Board of Review v. Property Tax Appeal Board</u>, 313 Ill.App.3d 179 (2nd 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, the PTAB examined the appellant's and intervenors' appraisal reports and testimony, the board of review's submission, and the appellant's rebuttal documentation and testimony.

The PTAB finds the board of review's witness was not present or called as a witness to testify about their qualifications, identify their work, testify about the contents of the evidence, the conclusions or be cross-examined by the appellant, intervenors 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 PTAB then reviewed the two appraisals and the testimony regarding these appraisals to determine the best evidence of the subject's market value.

In the cost approach, the PTAB finds both appraisers used land sales that were developed with buildings that had different highest and best uses than the subject and, hence, the cost approach is not the most reliable indicator of value. Therefore, this approach was given diminished weight.

In the income approach, the PTAB finds both appraisers used rental comparables that were located outside Cook County and have different tax structures that would affect the asking and actual rates. Therefore, the PTAB finds both appraisers had flawed income approaches and the income approach is not a reliable indicator of value.

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 (2nd Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989). In addition, both appraisers gave the greatest consideration to the sales comparison approach when concluding a final value for the subject. Therefore, the PTAB will give this approach the most weight.

The PTAB finds MaRous's sale comparables #3 and #5 are leased fee properties and sold with differing property rights than the subject. In addition, the PTAB finds MaRous's sale comparable #2 was leased at the time of sale and this tenant exercised their option to purchase the subject, essentially buying out the lease which is also a different property right than the fee simple right used for the subject. Therefore, the PTAB gives these comparables diminished weight.

As to McCormick's sales comparables, the PTAB gives diminished weight to sale #1 as this property had a different highest and best use as the subject; #2, which was used by MaRous, as this sale was the exercise of an option by the tenant to purchase the property; and #8 as this sale was leased at the time of sale and had a different property right than the fee simple used to value the subject.

The remaining sales were given significant weight by the PTAB and have unadjusted sales prices ranging from $13.00 to $52.54 per square foot of building area, including land. The subject property's assessed value equates to a market value of $54.00 per square foot of building area, including land, which is above the unadjusted range of comparables. The PTAB also finds that when the lowest and highest unit values are removed, a very small range of $36.67 to $49.91 per square foot of building area is created. After considering all the evidence including the experts' testimony and submitted documentation as well as the adjustments necessary to the unadjusted sales values, the PTAB finds that the subject property had a market value of $45.00 per square foot of building area, including land, or $4,830,000, rounded. Since market value has been determined, the Cook County Real Property Assessment Classification Ordinance level of assessments of 38% for Class 5A commercial property shall apply and a reduction is warranted.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

Chairman

Member

Member

Member

Member

DISSENTING:

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: September 20, 2013

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.