FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Sears, Roebuck & Company
DOCKET NO.: 08-20085.001-C-3 through 08-20085.002-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Sears, Roebuck & Company, 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 Chicago Board of Education, intervenor, by attorney Ares G. Dalianis of Franczek Radelet P.C. in Chicago, City of Chicago, intervenor, by attorney Richard Danaher of City of Chicago Department of Law 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
08-20085.001-C-3	19-27-304-025-0000	149,019	393,716	$542,735
08-20085.002-C-3	19-27-304-026-0000	340,011	796,854	$1,136,865

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of two parcels of land totaling 147,245 square feet with a 65-year old, one-story, single-tenant department store of concrete construction attached via a tunnel to the adjacent regional shopping mall. The retail store contains approximately 147,245 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, 2006. 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 33 years and has appraised 50 to 100 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 property valuation.

McCormick testified he inspected the interior and exterior of the subject on April 13 and 15, 2005 and September 28, 2007. McCormick testified his value for the subject as of January 1, 2006 would not be significantly different for January 1, 2007 or January 1, 2008.

The witness described the subject property and its environs. McCormick testified the subject is located in what is known as the north mall of the Ford City Mall. He described the north mall as similar to an in-line shopping center. McCormick stated there is a connection via an underground passageway which connects the north mall to the south mall. The south mall has three anchor tenant department stores in the enclosed shopping mall.

McCormick described the subject as part of a large industrial complex that was constructed during World War II. He testified the subject was redeveloped after the Korean War into the Ford City Mall which required the demolition of part of that industrial building to create the parking corridor that separates the north mall from the south mall.

McCormick testified the subject is broken down into two units of space with one unit containing approximately 45,000 square feet of building area; this unit has been vacant since 2001. He stated the remaining 102,000 square feet of building area is used as the Sears department store. Based on this, the witness opined the highest and best for the subject as vacant is commercial development and the highest and best use as improved is retail commercial property.

McCormick developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of $4,330,000, rounded, while the income approach indicated a value of $4,150,000, rounded. The sales comparison approach indicated a value of $4,420,000, rounded. The appraiser concluded a market value of $4,350,000 for the subject property as of January 1, 2006.

The initial step under the cost approach was to estimate the value of the land at $12.00 per square foot or $1,770,000, rounded. In doing so, McCormick testified he considered six land sales of commercial properties that had similar highest and best uses. These properties sold from February 2004 to October 2004 for prices ranging from $6.77 to $14.03 per square foot.

Using the <u>Automated Marshall Valuation Service</u>, and a survey of local cost indexes, the appraiser estimated the reproduction cost new to be $30,119,977. McCormick testified he utilized the reproduction cost new to replicate the subject's origins as an industrial building. In establishing a rate of depreciation, McCormick testified he analyzed six sales of properties included in the sales comparison approach. The appraisal indicates an annual rate of depreciation between 1.9% and 4.5%. McCormick established a range of total depreciation between 84% and 92.1%. He testified he estimated the subject property's depreciation at 75% which is an average annual rate of depreciation of 3% to arrive at the depreciated value of the improvements at $2,558,374. Adding the land value resulted in a final value estimate of $4,330,000, rounded, under the cost approach.

Under the income approach, McCormick testified he did not select the lease rental rate of the subject in establishing the income. He testified he reviewed the leases or offerings of seven rental comparables as well as the subject's retail sales. These properties ranged in size from 21,706 to 174,000 and have leased or asking rates of $4.00 to $6.10 per square foot of building area. McCormick described the rental comparables and testified that the subject's retail sales have historically been below the median average of sales figures for regional and super-regional malls. McCormick estimated the market rent to be $3.75 per square foot of building area. This resulted in a potential net income (GPI) of $552,169. Vacancy and collection loss was estimated at 10% of GPI and reserves for replacement and management fees were estimated at 2% each. Therefore, the effective net income (ENI) was estimated at $477,074.

In determining the appropriate capitalization (CAP) rate, McCormick testified he utilized the band of investment technique as well as analyzed the six sales used in the sales comparison approach. He testified these sales indicated an overall range from 10.6% to 13.3%. McCormick testified he applied an overall CAP rate of 11.5% to the ENI to estimate the market value for the subject under this approach at $4,150,000, rounded.

The final method developed was the sales comparison approach. McCormick testified he used sales of properties that had a similar highest and best use as the subject. He further stated all the comparables were located in south Cook County. McCormick described each of the six comparables. The properties range in building size from 46,000 to 188,000 square feet and sold from May 2002 to November 2006 for prices ranging from $1,374,500 to $9,200,000, or from $13.00 to $48.94 per square foot of building area, including land. The properties ranged in age from 15 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 the later analysis utilized the same methodology used in the cost approach for market extraction depreciation. An analysis using these methods indicated two different values. He testified he estimated a value for the subject of $30.00 per square foot of building area, including land and $18.00 per square foot, excluding land. Both analyzes yield a value for the subject property under the sales comparison approach of $4,420,000, rounded.

In reconciling the various approaches, McCormick testified he gave the most emphasis to the sales comparison approach, secondary emphasis 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, 2006 to be $4,350,000.

Under cross examination by the intervenor Chicago Board of Education, McCormick testified there was more traffic flow at the subject site and a higher density of population than land sale comparable #1. He acknowledged land sale #2 was one third the size of the subject. In addition, he acknowledged land sale #3 has a lower traffic count and less residential density than the subject. Sale #4 was sold by the City of Chicago to Senior Lifestyle Corporation and, according to McCormick, was improved with two senior assisted living facilities. McCormick testified land sale #5 was improved with a grocery store. McCormick acknowledged that land sale #6 was 13 times larger than the subject; he acknowledged this sale was the only comparable large enough to build the subject property on.

As to the reproduction cost new, McCormick testified he did not include any entrepreneurial profit. He opined that the reproduction cost includes the typical profit and overhead costs. He acknowledged the subject was leased, but opined that the market, in this instance, does not support inclusion of additional entrepreneurial profit because of the other anchor stores that remain vacant.

As to depreciation, McCormick testified he analyzed the six sales comparables to extract a depreciation rate. He acknowledged that that the sale prices and ages were known facts and that the elements of the methodology were estimated by him.

McCormick testified that comparable sale #1 was vacant at the time of sale and was sold at auction. He acknowledged this property was listed for sale with a broker, but that this process failed and the property was then auctioned. McCormick reiterated that the property was identical in size to the Home Life portion of the subject property.

As to sale #2, McCormick acknowledged the property sold to a college to be used for educational purposes. He was shown *Intervenor's Exhibit #1*, a CoStar printout detailing this sale. McCormick testified that this printout is incorrect in stating that the property is landlocked; he explained that there is ingress and egress to this property via Harlem and 79th Streets.

McCormick was shown Intervenor's Exhibit #2, a CoStar printout detailing sale #3. McCormick testified that subsequent to the sale, a portion of the property was demolished and it was developed into a fitness center.

McCormick testified that sale #4 was a furniture store and warehouse. He was shown *Intervenor's Exhibit #3*, a CoStar printout detailing this sale. McCormick acknowledged that this property has eleven loading docks and two drive-in doors. He confirmed the subject contained two or three loading docks.

McCormick acknowledged that sale #5 was a JCPenney's store that was subsequently demolished. He opined that the mall where this property was located in was similar to the mall where the subject is located in that both had seen better days and their sales numbers had been consistently dropping. McCormick was shown *Intervenor's Exhibit #4*, a CoStar printout detailing this sale and *Intervenor's Exhibit #5*, a copy of the PTAX-203, Illinois Real Estate Transfer Declaration. McCormick testified that at the time of purchase the buyer placed the property up for lease because they were unsure of what to do with the property. He acknowledged that other parcels in the area were also owned by the buyer and this purchase was part of an assemblage. McCormick opined that this sale was an arm's length transaction.

As to sale #6, McCormick testified that his data showed that this property contained 188,000 square feet of building area. He was shown *Intervenor's Exhibit #6*, a CoStar printout detailing this sale and listing a size of 166,000 square feet of building area. He opined that CoStar can be inaccurate with their data and can update their data so that it no longer reflects what was in the database at the time a property sold.

As to the income approach, McCormick acknowledged that four of his rental comparables were asking rents. McCormick stated that rental #1 was vacant for seven years before he utilized this asking rent. He acknowledged that rental #2 is the subject property, but that he did not explicitly state this comparable was the subject in the appraisal. McCormick also acknowledged that rental #5 is the same JCPenney's that is used as a sale comparable. McCormick acknowledged that the appraisal does not contain any data to support the 10% vacancy rate that was chosen.

In developing the capitalization rate, McCormick testified he looked to *Korpacz*, but did not cite it in his report. He acknowledged he estimated the net operating income for his six sales comparables to determine a capitalization rate from the market.

On cross-examination by the county, McCormick testified that land sale #4 is the only sale where the information came only from the transfer declaration.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $2,879,983 was disclosed. This assessment reflects a fair market value of $7,578,902 or $51.47 per square foot of building area, land included, when the Cook County Real Property Assessment Classification Ordinance level of assessments of 38% for Class 5A commercial property is applied.

In support of this market value, the notes included raw sales information on six properties suggested as comparable to the subject. These properties range in size from 100,773 to 260,000 square feet of building area. They sold between April 2004 and May 2007 for prices ranging from $10,861,297 to $18,620,000 or from $69.76 to $120.07 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 interveners' position, the intervenors submitted a summary appraisal of the subject prepared by James A. Gibbons with Gibbons and Sidhu, Ltd. Gibbons testified he is vice president of Gibbons and Sidhu and that he has been an appraiser for over 30 years. He testified he is a certified general real estate appraiser in Illinois, Indiana and Wisconsin and received his MAI designation in 1987. The parties then stipulated to Mr. Gibbon's qualifications as an expert in appraisal theory and practice and he was accepted by PTAB as an expert in appraisal practice.

The appraisal utilized the three traditional approaches to value to estimate the value of the subject property at $7,300,000 as of January 1, 2006.

Gibbons testified he performed an inspection of the public areas of the subject. Gibbons testified he could not opine a value for the subject as of January 1, 2007 or January 1, 2008 because without a written analysis, he would be violating the Uniform Standards of Professional Appraisal Practice (USPAP).

Gibbons described the property as a one-story, masonry constructed retail building located on the northern portion of the north mall at Ford City Mall. He further described the Ford City Mall. Gibbons was shown Intervenor's Exhibit #8, a printout on Gibbons & Gibbons paper with photographs and diagrams of the Ford City Mall. Gibbons testified he printed these documents from the website of the mall's management firm in December 2007. Intervenor's Exhibit #9 is an aerial photograph of the subject property and the Ford City Mall. Gibbons testified he downloaded this map the morning of the hearing, but that he does not know when the photograph was taken. Gibbons then described the subject's environs.

Gibbons testified that the subject’s highest and best use as vacant would be for commercial development and that the continuation of its existing use is its highest and best use as improved.

Under the cost approach, Gibbons first valued the land. Gibbons described the land sales analyzed to estimate a land value for the subject. These four sales sold from September 2002 to November 2004 for prices ranging from $14.14 to $38.43 per square foot. He testified that all the land sales are located within five miles of the subject. Gibbons testified that sale #5 was an assemblage of multiple parcels with an aggregate value of $14.14 per square foot of living area. After adjustments, Gibbons estimated a value for the land at $20.00 per square foot or $2,940,000, rounded.

Using the Marshall Valuation Service for a class C, average-quality, retail store the appraiser estimated the replacement cost new to be $11,461,551. In establishing a rate of depreciation, Gibbons testified he used the age-life method and cross checked this with an analysis of the four sales of properties included in the sales comparison approach to estimate the subject property's depreciation for a value of the improvements at $4,011,543. Adding the land value resulted in a final value estimate of $6,950,000, rounded, under the cost approach.

Under the income approach, Gibbons testified he researched the market for comparable properties and looked at the rental history of the subject. Gibbons described the rental comparables. These properties range in rental size from 13,277 to 166,000 square feet of rentable area for rental rates from $5.89 to $12.00 per square foot of rentable area. Gibbons testified that all the rents were actual rents and that rentals #3 and #5 are located in the north mall of Ford City Mall. He testified that he also reviewed a tax filing from another appraisal report regarding the rental and retail sales within the Ford City Mall. Gibbons concluded a rent for the subject at $5.00 per square foot of building area for a potential gross income (PGI) of $736,225.

Gibbons testified he estimated vacancy and collection loss (V&C) at 10% based on surveys of the market area which resulted in an effective gross income (EGI) of $662,603 for the subject. Gibbons testified he deducted 3% for management expenses and $.15 per square foot of building area for reserves for replacement. The estimated expenses were deducted from the EGI resulting in a net operating income (NOI) of $620,638 for the subject.

To estimate the capitalization rate, Gibbons testified he relied upon investor surveys and applied the band of investment technique. Gibbons reviewed *Korpacz Investor Survey* which had estimates of 5.50% to 9.5% and, Gibbons testified, the overall rate developed by the band of investment was 9.1%. He testified he also reviewed the market extracted rates by analyzing the sales comparables and estimating income for these sales. He testified he concluded an overall rate of 8.5% which resulted in an indicated value for the subject under the income appraoch at $7,300,000, rounded.

To estimate a value for the subject through the sales comparison approach, Gibbons analyzed four sales. He described each property. The properties range in size from 107,750 to 779,111 square feet of building area and sold from January 2004 to August 2007 for prices ranging from $5,750,000 to $9,700,000 or from $49.89 to $55.42 per square foot of building area.

Gibbons testified he also reviewed sales of two properties located down the block from the subject. Gibbons described the properties and indicated they sold in January and August 2007 for $134.89 and $134.49 per square foot of building area. The appraisal indicates these sales were each encumbered by leases.

After adjustments to the comparables for pertinent factors, the appraiser opined a value under the sales comparison approach of $50.00 per square foot of building area, including land, or $7,360,000, rounded.

In reconciling the approaches to value, Gibbons testified he gave significant weight to the income and sales comparison approaches to estimate a value for the subject of $7,300,000 as of January 1, 2006.

Under cross-examination by the appellant, Gibbons testified that there was an increase in vacancies between 2006 and 2008. He opined that the estimated remaining economic life of 50 years was an appropriate analysis based on the information available at the time the appraisal was written. He could not recall how many in-line stores were vacant at the time the appraisal was written.

Gibbons testified that, under the cost approach, he calculated the costs for the improvement as a retail store, but acknowledged the subject was constructed as an industrial building.

Gibbons opined it would be inappropriate to calculate the cost of the subject as industrial because the building is used as retail. Gibbons did not know who owned the shared wall between the subject property and the industrial property connected to the subject, but acknowledged he projected the cost of the subject as having four walls. He testified that he did not include entrepreneurial profit in the estimated replacement cost.

As to the land comparables, Gibbons testified land sales #3, #4 and #5 were located within five miles of the subject. He acknowledged that land sale #5 was an assemblage. Gibbons testified he did not speak to the parties of the transaction in land sale #2. He acknowledged that land sale #3 was also part of an assemblage and that the Village of Oak Lawn provided financial assistance in the sale. He also testified that land sale #4 was not on the open market at the time of sale.

As to depreciation, Gibbons testified the sales comparables used for the market extraction method were not identical to the subject, but were similar. He acknowledged they were not built like the subject, but that the cost to replace was calculated for each at the same price as the subject, $77.00 per square foot of building area.

As to the rental comparables, Gibbons clarified that rental #1 includes one tenant renting two spaces and that the second space is subleased to a third party. He did not know what financing was supplied by the city to the owner of this property when it was sold. He acknowledged he included this leased fee sale in the sales comparison approach to value. Gibbons acknowledged that many of the rental comparables had older leases and less square footage than the subject.

In estimating a capitalization rate, Gibbons testified the rents utilized for the sales comparables are not actual rents, but estimates. He acknowledged he increased the rent for sale #2 from its actual rent.

Gibbons testified that sale comparable #1 was on the market for 18 months according to the transfer declaration.

In rebuttal, the intervenors called Mr. Eric Dost. Mr. Dost testified he is president of Dost Valuation Group and has been an appraiser for 25 years. He testified he is a state certified general real estate appraiser in five states, including Illinois and holds the MAI designation from the Appraisal Institute. Dost testified he has prepared approximately 2,500 appraisals with 2,000 of those being commercial appraisals. He testified he has prepared approximately 125 to 150 appraisal reviews with approximately 50 being retail properties. Dost testified he has appeared as an expert witness before courts and tribunals. The PTAB admitted Mr. Dost as an expert in the field of property valuation without objection from the parties.

Dost testified he reviewed the McCormick & Wagner appraisal for accuracy, compliance, reliability, and credibility. He stated he reviewed the report and conducted supplemental research which included seeing some of the comparables.

Dost testified there was a large land size range for McCormick's land comparables. He testified most of the comparables were significantly smaller in size than the subject and could not have a building the size of the subject built on any of the properties. Dost testified that sale #6 was 13 times larger than the subject. He did not agree with the adjustments made to the comparables and opined that these sales represent a different highest and best use than the subject and that the land value was not supported.

Dost testified that McCormick should have use as a replacement cost new the category for department or retail store. He also testified that soft costs and entrepreneurial profit should have been included because they are essential to a reliable cost estimate. He reiterated that the subject property is leased. For depreciation, Dost opined that using the market extraction method was not appropriate because the sales were not similar to the subject. He also testified that most of the data, other than the sale price, is an estimate. Dost opined that the cost approach was not reliable.

As to the rental comparables in the income approach, Dost testified that McCormick did not identify rental #2 as the subject property. He testified that he would prefer to use actual rents as opposed to asking. He testified that rental #5 is the JCPenney in Lincoln Mall, which is a distressed mall and that most of the buildings were demolished and it is undergoing a redevelopment. He opined there was a change in highest and best use for this property. Dost testified the report did not include any analysis, qualitative or quantitative, of the comparable rentals and opined some analysis should have been done.

Dost testified the market analysis for rental rates should have considered more local data as opposed to national figures for percentage of rent based on gross retail sales. He testified that the percentage rent does not include the base rent. He further opined that this data does not represent current market conditions. Dost testified there was no data in the appraisal to support any vacancy and collection loss or the mortgage interest rate used in the capitalization rate analysis. Dost further testified he had issues with the market-oriented capitalization rate analysis. He testified the net operating incomes within this analysis were estimated. He opined that the income approach was not credible or reliable.

As to the sales comparison approach, Dost described the sales and opines as to what each property lacks to be comparable to the subject. He testified that the extraction of the land value in the sales comparison approach is not a market oriented technique and that buyers and sellers do not make that type of analysis.

Dost testified that, based on his research, the subject is located in a more densely populated area than the comparable sales. Dost opined that the sales comparison approach is not credible or reliable. In summary, Dost found nothing credible or reliable within the McCormick appraisal.

Under cross-examination, Dost testified that the purpose of market data is to try to advertise the property for potential tenants to lease space. He acknowledged that the demographic data showed that the subject's city had the lowest median disposable income and the lowest per capita income. He opined that Sears would be looking for middle income families to use the store.

Dost acknowledged that the depreciation method used by McCormick, market extraction, is taught by the Appraisal Institute and is an accepted method. Dost testified he would have prepared the appraisal differently if he was appraising the property.

Dost acknowledged that the report was in summary for and intended for use by informed users. He testified that the appraiser needs to summarize the relevant data, analyses, and conclusions. He acknowledged McCormick summarized some of his data.

In response to questions regarding the Ford City Mall, Dost was uncertain if there were any vacant anchor department stores within the mall. He reiterated his experience is preparing appraisal reviews.

Dost testified there is a difference between a reproduction cost and a replacement cost. He testified a reproduction cost is creating an exact replica using the same material and techniques. He acknowledged the subject was built as an industrial building, but opined that McCormick did not utilize a reproduction cost for the subject.

As to the subject's current lease, Dost testified that the subject was under a long term lease which ended, then a month-to month lease began, and finally the subject entered into a short term lease which will end in August 2007. He reiterated that Sears has been occupying the space for 15 years. He acknowledged that Sears chose not to exercise any of the five-year options on the lease.

In rebuttal, the appellant called Mr. Gary Battuello. Mr. Battuello testified he is the managing partner in a commercial real estate appraisal firm in Minnesota. He stated he is a certified general appraiser in Minnesota, Wisconsin and Illinois and holds the MAI designation from the Appraisal Institute. Battuello testified he did not have the Illinois license at the time this work was done. He stated he has been an appraiser for 30 years and has authored many publications on the topic. He testified that on a regional basis his company specializes in large commercial and retail properties including anchor department stores. Battuello testified he has appeared as an expert in many courts and tribunals in several states which includes the Illinois Property Tax Appeal Board. He testified he has conducted appraisal reviews on between 75 and 100 appraisals. The PTAB admitted Mr. Battuello as an expert in the field of property valuation without objection from the parties.

Battuello testified he reviewed the board of review's evidence and found it was not an appraisal. He could not perform an appraisal review of this evidence.

Battuello testified he reviewed the appraisal for the subject property prepared by Gibbons & Gibbons. He testified he performed a desk review of this appraisal. Battuello testified this review was to determine the adequacy of the appraisal process and report and the reasonableness and reliability of the conclusions and value estimates. He stated he inspected the exterior of the subject and researched rents and sales volumes for anchor stores at the Ford City Mall.

In regards to the cost approach, Battuello testified that the land sales are not properties purchased for anchor store use. He further testified the replacement cost new utilized by Gibbons was for retail buildings and did not take into account the common wall shared between the subject and the attached industrial property. Battuello opined that Gibbons was correct in not including entrepreneurial profit.

As to depreciation, Battuello testified that in the market extraction analysis, Gibbons used the subject's replacement cost new of $77.00 for each sale comparable; he opined that the replacement cost new should be developed individually for each sale comparable and the result of this incorrect process is the inaccuracy of the depreciation rate. Battuello also testified that sales #1 and #3 are located in the same mall, but that different land values were used for these properties in the extraction method.

Battuello testified that in developing the estimate of value in the income approach, Gibbons did not include information regarding the other anchor store at the mall. Battuello testified that his research show the two active anchor department stores in the subject's mall have leases of $2.65 and $1.85 per square foot of building area. He opined that these values would be more reflective of the subject's estimate of market rent. Battuello testified that it was unclear in Gibbon's percentage rental analysis if Gibbons used only in-line stores or if the sales volumes for the anchor stores were also included. He opined that the use of the in-line stores gives an inaccurate number as these stores are different from the subject.

Battuello testified that with the high vacancy rate estimated by the Gibbon's appraisal, the expenses the landlord is sustaining due to this vacancy should be included in the expenses or accounted for with a higher capitalization rate. He testified the capitalization rate included an analysis of the sales comparables with imputed rents and not actual rents. He opined that sales #2 which was leased at the time of sale indicates a capitalization rate of 10%.

As to the sales comparison approach, Battuello testified that the sales comparables are not anchor department stores within a super-regional shopping center which is how Gibbons describes the subject. He opined the sales comparables were different from the subject and would sell in a different market, be used by different users than an anchor store, and didn't meet the principle of substitution.

Battuello testified that the testimony from Gibbons differed from the report in that Gibbons testified the subject was a big box store and the sales comparables would be more similar to that type of property. He opined that the land adjustments would need to be significant because the subject's land is the footprint of the building whereas the comparables, especially comparable #1, have significant amounts of land in addition to the improvement.

Battuello described the sales comparables. He testified that sale #1 was significantly newer than the subject and sale #2 was a leased fee sale. He testified that sale #1 and sale #3 have high land to building ratios which was different than the subject's 1:1 building ratio.

Overall, Battuello opined that the appraisal report, as written, was not reasonable nor did it give a credible indication of value.

Under cross-examination, Battuello testified he inspected the interior of the subject property and the mall after the completion of the appraisal review. He agreed that parts of the appraisal indicate the subject is a one-story, masonry-constructed, retail commercial building in the Ford City Mall. Battuello then pointed out the pages in the Gibbons appraisal where the appraiser indicates the subject is an anchor department store.

Battuello testified the goal of an appraisal was to use comparable properties that had consistent highest and best uses. He further stated that when the property is unique, it becomes more difficult. Battuello acknowledged that Gibbon's land sales were consistent for commercial development and that the improved sales were consistent with the subject's general highest and best use. He opined that Gibbon's conclusion of the highest and best use for the subject as improved was imprecise.

On re-direct, Battuello clarified that Gibbon's land sales did have a commercial use, but that they also enjoyed street access and an independent identity. He testified the subject has ingress and egress available to the site, but that it sits back from the street and does not have the identity associated with pure street frontage.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331Ill.App.3d 1038 (3rd Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 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, intervenor and the Property Tax Appeal Board. Without the ability to observe the demeanor of this individual during the course of testimony, the Property Tax Appeal Board gives the evidence from the board of review no weight.

The 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 McCormick correctly characterized the subject as an industrial building when developing the reproduction cost new in the cost approach to value. In contrast, Gibbons used a replacement cost for a commercial, retail building and could not identify if the fourth wall, shared with the attached industrial property, was owned by the subject, but still included this value in the cost. To estimate the subject's depreciation rate, McCormick correctly developed a replacement cost new specific to each sale comparable based on that comparable's characteristic. In contrast, Gibbons used the subject's replacement cost new and applied the value uniformly to each sale comparable without consideration to their individual characteristics. However, the PTAB finds the subject property is significantly aged and the cost approach is not the most reliable indicator of value.

In the income approach, The PTAB finds the Gibbons appraisal correctly used actual lease information while the McCormick appraisal used four asking rental comparables. However, the PTAB finds much of the actual lease data aged and not reflective of a rental rate as of the date of value. In addition, the PTAB finds Gibbons used retail sales for in-line stores which are not similar to the subject and would not reflect the subject's sales. The PTAB finds Battuello's testimony that a review of the anchor department stores at the Ford City Mall shows lower rental rates and should have been utilized when establishing the subject's rental rate. Moreover, the PTAB finds that both appraisals estimates of the capitalization rates included an analysis of estimated rental rates as opposed to actual rental information and that Gibbons incorrectly increased the actual rental rate for sale #2. 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. <u>Chrysler Corp. v. Illinois Property Tax Appeal Board</u>, 69 Ill.App.3d 207 (2nd Dist. 1979); <u>Willow Hill Grain, Inc. v. Property Tax Appeal Board</u>, 187 Ill.App.3d 9 (5th

Dist. 1989). Therefore, the PTAB will give this approach the most weight.

The PTAB finds Gibbon's sale comparable #2 is a leased fee property and sold differing property rights than the subject. In addition, the PTAB finds Gibbon's sale comparable #1 significantly newer and larger in land size than the subject and does not meet the principle of substitution for the subject. Therefore, the PTAB gives these comparables diminished weight.

As to McCormick's sales comparables, the PTAB gives diminished weight to sales #1 and #3 as these properties were also significantly newer than the subject and had large land to building ratios.

The remaining sales were given significant weight by the PTAB and have unadjusted sales prices ranging from $13.00 to $53.36 per square foot of building area, including land. The subject property's assessed value equates to a market value of $51.47 per square foot of building area, including land which is within the unadjusted range of comparables. However, the PTAB finds the most significant comparable to be McCormick's sale comparable #5. This property is similar to the subject in that both are located within a distressed mall that suffers vacancy from an anchor tenant. This comparable sold in April 2005 for $20.09 per square foot of building area, including land and this value is more reflective of the subject's market value. Therefore, 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 $30.00 per square foot of building area, including land, or $4,420,000, 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: November 30, 2012

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.