



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

APPELLANT: Target Corporation
DOCKET NO.: 09-20535.001-C-3 through 09-20535.002-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Target Corporation, the appellant(s), by attorney Huan Cassioppi Tran, of Flanagan/Bilton LLC in Chicago; the Cook County Board of Review Cook County Assistant State's Attorney John Coyne; and the intervenors, Eisenhower Public Library, Norridge Park District, Norridge S.D. #80, Norwood Park Fire Protection District, and Ridgewood H.S.D. #234 by attorney Scott L. Ginsburg of Robbins Schwartz Nicholas Lifton Taylor 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
09-20535.001-C-3	12-13-416-011-0000	150,985	2,604,116	\$2,755,101
09-20535.002-C-3	12-13-416-014-0000	91,410	651,029	\$742,439

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of two parcels of land totaling 155,134 square feet with a 12-year old, two-story, single-tenant retail, commercial building of concrete construction and parking garage attached to the adjacent shopping mall. The retail store contains approximately 174,877 square feet of building area while the parking structure contains 148,966 square feet.

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, Joseph Thouvenell of Madison Appraisal, LLC. Mr. Thouvenell testified he is the chief appraiser for Madison

Appraisal and owns his own appraisal company. He testified he has been appraising property for 42 years, is an Illinois certified general real estate appraiser, and holds the MAI designation from the Appraisal Institute as well as CRE and FRICS designations. He testified he has appraised hundreds of retail and commercial properties. 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. Thouvenell as an expert witness in property valuation.

Thouvenell testified he did not inspect the subject property, but that two staff appraisers inspected the interior and exterior of the subject. This inspection was done on November 26, 2007. Thouvenell testified he valued the subject as of January 1, 2007.

The witness briefly described the subject property and its environs and more thoroughly described the parking garage after questions by the Property Tax Appeal Board. Thouvenell testified the subject's zoning requires one parking place for every 300 square feet of building area over the first one thousand square feet. He opined this would require 579 parking spaces. Thouvenell testified that the configuration of the property and its parking structure affect the subject's value. He opined that parking at the subject's mall is horrendous because the site is not very large. He testified that Target has rooftop parking and there is access to the parking for the rest of the mall. Thouvenell was shown Appellant's Hearing Exhibit #2, a color, aerial photograph of the subject parcels. In red pen Thouvenell circled the area he testified was rooftop parking and in blue pen he circled the deck parking which is the parking garage.

Thouvenell opined the highest and best for the subject as vacant is commercial development and the highest and best use as improved is its existing use. He testified that, based on the inspection of the property, the subject has an effective age of 12 years.

Thouvenell developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of \$12,400,000, rounded, while the income approach indicated a value of \$12,800,000, rounded. The sales comparison approach indicated a value of \$13,100,000, rounded. The appraiser concluded a market value of \$13,000,000 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 \$14.00 per square foot or \$2,170,000, rounded. In doing so, Thouvenell testified he considered five land sales of commercial properties that he opined were comparable to the subject. These properties sold from May 2004 to October 2005 for prices ranging from \$8.00 to \$18.15 per square foot.

Using the R.S. Means Square Foot Costs Manual, the appraiser estimated the replacement cost new to be \$13,565,000 for the building and \$4,600,000 for the portion of the parking structure included in the appraisal. In establishing a rate of depreciation, Thouvenell testified he used the age/life method and applied some external obsolescence for the building and used the age/life method for the parking garage to arrive at total depreciation of \$5,748,765. Adding the depreciated value of the building of \$7,816,235 and the depreciated value of the parking garage of \$2,392,000 and the land value resulted in a final value estimate of \$12,400,000, rounded, under the cost approach.

Under the income approach, Thouvenell testified he reviewed the rental rates of five rental comparables. These properties ranged in size from 2,880 to 93,729 and have lease rates of \$4.13 to \$13.25 per square foot of building area. Thouvenell described the rental comparables and acknowledged that the comparables were smaller than the subject. After adjustments, the appraiser estimated the market rent for the above grade space at \$8.00 per square foot and the basement space at \$4.00 per square foot of basement area. This resulted in a potential net income (GPI) of \$1,276,044. Vacancy and collection loss and management fees were estimated at 10% of GPI resulting in a net income of \$1,148,440.

In determining the appropriate capitalization (CAP) rate, Thouvenell testified he utilized the band of investment technique as well as analyzed the five sales used in the sales comparison approach. He testified these sales indicated an overall range from 10.2% to 11.5%. He described the band of investment method and estimated a range from that technique of 10.6%. Thouvenell testified he applied an overall CAP rate of 11% to the net income to estimate the market value for the improvement of \$10,440,364. The depreciated value of the parking garage as arrived at in the cost approach was added to estimate a value for the subject under this approach at \$12,800,000, rounded.

The final method developed was the sales comparison approach. Thouvenell testified he look at five comparable sales and described each sale. The properties range in building size from 42,900 to 188,000 square feet and sold from January 2004 to March 2006 for prices ranging from \$2,800,000 to \$9,200,000, or from \$48.94 to \$81.59 per square foot of building area, including land. The properties ranged in effective age from 10 to 35 years and in land to building ratio from 1.04:1 to 7.98:1.

Thouvenell opined these were the best sales available that came closest to showing a fee simple value. He testified he made qualitative adjustments based on pertinent factors such as land to building ratio, time, location, building age and size. He estimated a value for the subject under the sales comparison approach of \$75.00 per square foot of building area, including land or \$13,100,000, rounded.

In reconciling the various approaches, Thouvenell testified he gave the most emphasis to the sales comparison approach to

estimate the value for the subject property as of January 1, 2007 to be \$13,000,000. Thouvenell testified that the real estate market declined between 2007 and 2009.

Under cross examination by the intervenors, Thouvenell acknowledged that he did not inspect the property, but that Catherine Brochur did on November 26, 2007. He testified that she no longer works for Madison Appraisals and the last time he spoke to her was in 2008. He stated that Robert Cruz also worked on the appraisal. He testified that he consulted with the analysts and reviewed their work to ensure that the comparables were correct, that they performed the right analysis, and that their value conclusions made sense and related to the market.

Thouvenell testified the appraisal is a self-contained appraisal and opined that it met the Uniform Standards for Professional Appraisal Practice standards for a self-contained appraisal. He acknowledged the cover letter is not clear on the existence of the parking garage. Thouvenell testified that the parking garage can be used by all mall customers. He testified he did not review any documents in regards to the cost to construct the garage or consideration provided for the exchange between the users and owners of the parking garage. Thouvenell acknowledged that there was a portion of the property that he was unclear of as to whether it was valued or not and that the appraisal does not clarify what this property is.

Thouvenell testified that he concluded the replacement cost new of the parking garage to be 25% of the total replacement costs of the improvements and 19% of the total value arrived at under the cost approach. Thouvenell acknowledged that none of the rental comparables analyzed in the income approach have parking structures. He testified he added the depreciated value of the parking garage to arrive at the estimate of value for the subject under the income approach. In addition, Thouvenell testified that none of the comparables in the sales comparison approach have parking structures and that for this approach he did not add the depreciated value of the parking garage.

As to the cost approach, Thouvenell acknowledged that all the land sales were less than 100,000 square feet and sold prior to 2006. He acknowledged that he did not make any adjustments for time of sale or market conditions. He testified he did not include entrepreneurial profit in developing the replacement cost for the improvements. He acknowledged the rooftop parking surface is concrete and that he valued this at \$425,000 which is slightly more than the cost for the sprinklers. Thouvenell opined that the subject contains approximately 330 parking spaces. He testified that he found adding the value of the parking garage appropriate in arriving at an estimate of value under the cost approach.

Thouvenell testified that the subject is located in a very desirable commercial area, but acknowledged that he concluded \$2,439,165 in external obsolescence. He testified this was due to

a potential loss and achievable income as a result of recessionary market conditions.

As to the sales comparables, Thouvenell testified these sales occurred between January 2004 and March 2006 and that the only adjustments for market conditions were positive adjustments.

After a review of an aerial map of the subject, Thouvenell could not testify as to whether the subject was completely rebuilt from the ground up or if there was a substantial remodel of the subject. He then acknowledged that the building was brand new in 2003.

As to the income approach, Thouvenell acknowledged that his rental comparables are all over 100,000 square feet smaller than the subject and four are older than the subject. He acknowledged that page 49 of the appraisal is the first page that the report indicates basement space of 30,743 square feet of building area and that the report does not indicate what the present use of the basement space is. In addition, Thouvenell did not know what the present use of the basement space was. He testified the report does not include any analysis of rental rates for basement spaces and that he just cut the \$8.00 above grade rental rate for the subject in half for a rental rate of \$4.00 per square foot of basement area for the below grade basement area.

Thouvenell acknowledged that the appraisal does not contain any analysis of the vacancy and collection or the management fee and allowance estimated for the subject property. Thouvenell acknowledged that in developing a capitalization rate based on the market extraction method that two of the sales were from 2004. He testified he added the depreciated value of the parking garage to the capitalized value of the improvement.

As to the sales comparison approach, Thouvenell acknowledged that the actual age of sale #1 was more than double the actual age of the subject and is smaller than the subject by 65,000 square feet of building area. He was shown *Intervenors' Hearing Exhibit #1*, a copy of the PTAX-203 Illinois Real Estate Transfer Declaration for sale #1. Thouvenell testified that sale #1 was not advertised for sale and was the fulfillment of an installment contract executed in 2003.

Thouvenell was then shown, *Intervenors' Hearing Exhibit #2*, a copy of the CoStar Comps printout listing characteristics and sales information for sale #2. This exhibit lists the property as containing 166,000 square feet of building area. Thouvenell acknowledged the appraisal lists this comparable as containing 188,000 square feet of building area. He testified this comparable was fully leased at the time of sale and that the appraisal does not indicate this property right.

As to sale #3, Thouvenell acknowledged this property was 54 years old which is 20 years less than the subject's effective age. He also testified that this property was less than one-third the

size of the subject. This property contained multi-building, multi-tenant improvements at the time of sale. Thouvenell was shown *Intervenors' Hearing Exhibit #3*, a copy of the CoStar Comps printout listing characteristics and sales information for sale #3. He acknowledged that the report indicates this property was 100% leased at the time of sale and that the appraisal report does not address this property right. He admitted that no adjustments were made for the difference in property rights between this property and the subject. Thouvenell testified that a negative adjustment was made for land to building ratio because this comparable was determined to be superior.

As to sale #4, Thouvenell was shown *Intervenors' Hearing Exhibit #4*, copy of the CoStar Comps printout listing characteristics and sales information for sale #4. He acknowledged that this property contained six separate buildings of an auto dealership that combined comprise one-fourth the subject's improvement size. After reviewing *Intervenors' Hearing Exhibit #5*, a copy of the PTAX-203 Illinois Real Estate Transfer Declaration for sale #4, Thouvenell acknowledged that this property was not advertised for sale and that it was 100% leased at the time of sale. He also acknowledged this sale was transferred in lieu of foreclosure which is not detailed in the appraisal.

Thouvenell was shown *Intervenors' Hearing Exhibit #6*, a copy of the PTAX-203 Illinois Real Estate Transfer Declaration for sale #5. Thouvenell acknowledged the actual sale price for this property was \$28,235,000 and that the \$7,875,000 as listed in the appraisal was based on the transfer tax paid. Thouvenell was also shown *Intervenors' Hearing Exhibit #7*, a copy of the CoStar Comps printout listing characteristics and sales information for sale #5. He acknowledged that CoStar lists a different square footage size for the improvement on this property. Thouvenell testified this property was a multi-tenant building that was 100% leased at the time of sale.

Thouvenell testified he did not include the parking garage in the description of the subject property in the sales comparison approach. He testified he adjusted each sale comparable downward as a result of the superior land to building ratios of these comparables, but did not make any upward adjustments to these sales for the subject's parking garage. He acknowledged he did not include the parking garage anywhere within the sales comparison approach.

Under cross-examination by the board of review, Thouvenell discussed the inspection of the subject. He acknowledged that the parking garage had an actual age of four years, but that he estimated the effective age at 12 years. He opined that the subject's value depreciated by 50% because of the excessive use of the structure. He was unaware if the appellant received a fee from the mall or any other stores for their use of the parking garaged owned by the appellant.

On redirect, Thouvenell testified he added back the depreciated value of the parking garage in the cost approach. He opined that his value for the subject estimated under the sales comparison approach would not change even though the size of sale #2 was decreased based on the intervenors' exhibit.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$3,934,727 was disclosed. This assessment reflects a fair market value of \$15,738,908 or \$90.00 per square foot of building area, land included, when the Cook County Real Property Assessment Classification Ordinance level of assessments of 25% for Class 5 property is applied.

In support of this market value, the notes included raw sales information on seven properties suggested as comparable to the subject. These properties range in size from 94,915 to 263,000 square feet of building area. They sold between April 2004 and July 2007 for prices ranging from \$10,861,297 to \$18,620,000 or from \$69.76 to \$133.94 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 intervenor's position, the intervenors submitted a summary appraisal of the subject prepared by Dale J. Kleszynski of Associated Property Counselors, Ltd. Kleszynski testified he is president of Associated Property Counselors, Ltd. and that he has been an appraiser for over 30 years. He testified he is a member of the Appraisal Institute (MAI) and holds the NRSI designation. Kleszynski testified to his leadership positions within appraising organizations and the appraisal courses he taught. He testified he has appraised hundreds of retail properties and two parking garages over the last two years. Kleszynski was accepted as an expert appraiser in retail and parking garage properties without objection from the parties.

The appraisal utilized the three traditional approaches to value to estimate the value of the subject property at \$15,575,000 as of January 1, 2009.

Kleszynski testified that there were no changes from his testimony for the 2007 appeal in regards to pages 1 to 20 of the 2009 appraisal. In regards to the 2007 appeal he testified he performed inspections of the subject several times with the first occurring in February 2010. Kleszynski described the subject property and its environs. Kleszynski opined that the subject's parking garage was a positive feature because it maximizes the square footage of the parking with only a limited amount of ground area.

Kleszynski testified that the subject's highest and best use as vacant would be development consistent with the zoning and that the continuation of its existing use is its highest and best use as improved.

Under the cost approach, Kleszynski first valued the land. He described the land sales analyzed to estimate a land value for the subject. These five sales sold from February 2005 to January 2008 for prices ranging from \$7.30 to \$14.01 per square foot. Kleszynski testified as to his opinion of the arm's length nature of sales #2 and #5. He testified that after adjustments were made to each sale he estimated a value for the land at \$13.00 per square foot or \$2,015,000, rounded.

Using the Marshall and Swift Cost Services for an average retail building, Kleszynski testified he applied adjustment factors and multipliers to arrive at an adjusted cost of \$96.47 per square foot of building area or \$16,870,384. Kleszynski testified this cost includes a 15% entrepreneurial profit because the market would include this type of profit and that the percentage amount was based on interviews with builders and developers.

In establishing a rate of depreciation, Kleszynski opined that the subject had an effective age between 10 and 15 years and a building life in the range of 50 to 60 years. He testified that his methodology in estimating depreciation remained the same for the 2007 appeal. As part of earlier testimony, he opined that the structural components needed to use the roof as a parking garage which would give the improvement a longer life. Kleszynski estimated physical deterioration at 30%. He testified he applied functional obsolescence of 10% because of the unused space where elevators are located and other such areas. He again testified he did not apply any economic obsolescence because there were no outside forces that were having a negative impact on the property.

Kleszynski also used the extraction method to estimate the subject's depreciation. He testified the sale comparables have a different replacement cost new per square foot than the subject because these properties are all one-story without the capacity to store vehicles on their roof. A final depreciation rate of 40% was applied to the retail improvement for a depreciated value of \$10,122,231.

Kleszynski testified he valued the parking structure by computing the cost to construct from Marshall and Swift Cost Services using the component for parking garages to arrive at a value of \$5,559,411. He testified he added an additional 5% of depreciation to his 2007 appraisal which then depreciated this value by 40% to account for wear and tear for a final estimate of value of \$3,335,000. He opined that the subject has in excess of 300 parking spaces. Adding all the components together, Kleszynski estimated a value for the subject under the cost approach of \$15,675,000, rounded.

Under the income approach, Kleszynski testified he analyzed the rent or asking rent on five retail stores. He described these rental comparables. These properties range in rental size from 88,305 to 144,425 square feet of rentable area and had asking or rental rates from \$7.00 to \$10.66 per square foot of rentable area. Kleszynski testified that after a review of these properties compared to the subject he concluded a rent for the subject at \$8.75 per square foot of building area for a rental income of \$1,530,173. The appraisal also estimated tenant reimbursements at \$921,306 for a total potential gross income of \$2,451,479.

The appraisal estimated vacancy and collection loss (V&C) at 10% based on a review of the market data which resulted in an effective gross income (EGI) of \$2,206,331 for the subject. Kleszynski testified he did not make a deduction for leasing commissions because it was presumed the subject was occupied at a market rate with no need to re-tool the building. Kleszynski testified to the deduction for reserves for replacement. Deductions for both reimbursable and non-reimbursable expenses were also calculated for a total deduction of \$1,055,087. The estimated expenses were deducted from the EGI resulting in a net operating income (NOI) of \$1,151,244 for the subject.

To estimate the capitalization rate, Kleszynski testified he reviewed *Korpacz* as well as Appraisal Institute material which had estimates from 6.8% to 10%. He also applied the band of investment method which estimated a rate of 9.45%. Kleszynski applied a 9.5% rate to the subject property's NOI. He then added the depreciated value of the parking garage to arrive at a value for the subject under the income approach of \$15,450,000, rounded.

In addition, Kleszynski testified he reviewed the value of the subject when the real estate tax is excluded from the expenses. He testified the tax burden or "load" is then added back into the capitalization rate to arrive at a final value. Kleszynski testified this method is commonly applied when valuing a property for real estate tax purposes. The changed the NOI of \$1,879,672 was divided by the increased capitalization rate of 14.2% to arrive at a value of \$13,363,887. Again the depreciated value of the parking garage was added in to arrive at a total value of \$16,700,000, rounded.

The appraisal uses the lower value of the two methodologies to arrive at a value for the subject under the income approach of \$15,450,000, rounded.

Kleszynski testified he added the value of the parking garage in the income approach because the garage is an integral part of the operation of the subject. He testified he added the depreciated value estimated in the cost approach in the income approach to be consistent between the approaches.

To estimate a value for the subject through the sales comparison approach, Kleszynski analyzed six sales. He described each property. The properties range in size from 88,305 to 114,000 square feet of building area and sold from October 2004 to May 2009 for prices ranging from \$5,800,000 to \$12,712,730 or from \$50.26 to \$143.96 per square foot of building area.

Kleszynski testified to the adjustments made to the comparables. He testified that sales #1 and sale #3 were leased at the time of sale. He opined that sale #1 was below market and needed an upward adjustment and sale #3 was above market and needed a downward adjustment. Kleszynski also testified that sales #3, #5, and #6 were part of bulk sale transactions, but opined that the sale prices allocated to these properties were reflective of the market. He testified he made no adjustments for land to building ratio.

After adjustments to the comparables for pertinent factors, the appraiser opined a value for the retail improvement under the sales comparison approach of \$70.00 per square foot of building area or \$12,241,390.

Kleszynski then added the depreciated value of the parking garage to the estimated value of the retail improvement. He had testified that he used the same process for valuing the subject property in 2009 as he did in the 2007 appraisal. Earlier he testified it is a struggle to value the garage. He testified the sales used, because they are suburban locations, have more land when compared to the subject and this needs to be taken into consideration. He further testified that the parking garage basically creates a land area that is based on four levels. Kleszynski testified the parking garage essentially increases the subject's footprint by five times. He testified he could have easily made no adjustment for land to building ratio because the parking garage for the subject accounts for the land. He testified he included the depreciated cost of the garage to account for the enormous cost associated with the construction of the garage for the convenience of the retail improvement. Therefore, the appraisal adds the depreciated value of the parking garage of \$3,335,000 to arrive at a final value under the sales comparison approach of \$15,575,000, rounded.

In reconciling the approaches to value, Kleszynski testified he selected the value in the sales comparison approach as the strongest indicator of market value. The appraisal gave greatest consideration to the sales comparison approach with supportive weight to the cost and income approaches to estimate a value for the subject of \$15,575,000 as of January 1, 2009.

Under cross-examination by the appellant, Kleszynski testified he uses CoStar reports for gathering data. He testified that CoStar is not 100% accurate.

Kleszynski testified that the subject is multi-story to maximize floor space within an urban area. He presumed the basement was

being used for storage. Kleszynski testified the appellant does not charge customers for the use of its parking garage. He acknowledged he used the basement square footage within the total square footage within the appraisal report.

In the cost approach, Kleszynski testified further in regards to the location of sale #5 to residential housing. Kleszynski previously testified he used the average cost retail for a mall anchor to estimate the replacement cost new. He testified that the parking garage has an accelerated depreciation and a shorter life because it is exposed to the elements differently than the store. He acknowledged that a store needs parking in a convenient and usable fashion for a retail space to work appropriately.

Kleszynski acknowledged that the sales analyzed in the sales comparison approach include parking. He testified that sale #1 has 475 spaces, sale #2 has 449 spaces, sale #3 has 535 spaces, sale #4 has 1,199, and sale #6 has 1,155 parking spaces. He opined that all the sales had ample parking spaces. He testified that the subject's rooftop parking above the retail improvement has at least 75 parking spaces.

Kleszynski testified he made no adjustments for economic obsolescence nor did he perform an economic analysis.

As to the income approach, Kleszynski earlier testified he did not include the parking garage within the expense items, but added the parking garage's depreciated value to the estimated value of the retail improvement as a separate line item. He acknowledged that his reserves for replacement expense of \$.45 per square foot of building area for the replacement of short term items. He testified that the cost to replace the retail improvement roof would be included in that expense, but testified he did not include the parking structure in expenses because he added the depreciated value of the parking garage from the cost approach to the final value of the retail improvement in the income approach.

Kleszynski testified he could not complete a market extraction method to arrive at a capitalization rate because the sales within the sales comparison approach were either owner users or the lease information was not available. He opined that any data would be speculative on his part. Kleszynski testified he performed a tax load analysis for the capitalization rate to test the value he arrived at under the income approach. He further testified as to how the tax rate is determined and how the variables are used to establish taxes.

In the sales comparison approach, Kleszynski testified he made no locational adjustment to the comparables.

In redirect, Kleszynski testified he used the same rental rate for the above ground square footage as the below ground square footage because the tenant would be renting the entire building and because the building is multi-story, there needs to be a

place for storage. He opined that the rental rate for a suburban location would not differ between the retail area and the back room space.

As to the parking garage, Kleszynski testified that the number of parking spaces for the comparable properties do not impact the analysis for the subject. He testified that the existence of the parking garage provides the subject property with an identical amount of utility when compared to the flat surface parking that exists in suburban locations.

In rebuttal, the appellant called Catherine Courteau. Ms. Courteau testified she is a senior manager with Target Corporation in the Property Tax Department. She testified that her job responsibilities include reviewing real property assessments, budgeting, and overseeing bill payments. She described her previous work in the real estate business. Ms. Courteau testified she is familiar with the subject property and involved in establishing new stores within the Midwest. She testified that Target has never built or renovated a store without parking and that Target would not operate a store without parking. She further testified that Target does not charge a parking fee for use of its parking.

On cross-examination by the board of review, Ms. Courteau testified she has no personal knowledge as to the subject's parking garage and has never seen the subject property. She testified that Target does not charge the other mall owners for use of the subject's parking garage by their customers.

On cross-examination by the intervenors, Ms. Courteau testified the subject was purchased in 2003 or 2004. She testified that Target needed to maintain a certain number of parking spaces in order to build the store. She testified she had no knowledge as to the construction of the parking structure or the costs to construct. She testified there are no agreements between the mall ownership and Target regarding the parking garage. She reviewed Appellant's Hearing Exhibit #2 and testified that the lower portion of this picture shows the mall owner's office and that portion is not owned by the appellant.

The appellant then called Michael S. MaRous as a witness. Mr. MaRous testified he is president of MaRous & Company and has been an appraiser for 37 years. The parties then stipulated to Mr. MaRous' qualifications and he was accepted by the PTAB as an expert witness in appraisal practice and review.

MaRous testified he is familiar with the subject property and he made several inspections of the subject property as part of his assignment to review the 2009 Kleszynski appraisal. He testified to the process he uses in reviewing an appraisal. MaRous was shown *Appellant's Hearing Exhibit #3*, the appraisal review report he prepared of the Kleszynski appraisal.

MaRous opined that the 2009 Kleszynski appraisal did not contain an analysis of the economic conditions or the general real estate market as of the date of value. He testified that the cost approach is not generally used to value these types of properties so his concerns in the cost approach are not testified to. The review opines that some of the land sales are not similar to the subject or are not arm's length transaction. It opined that the replacement cost new base rate chosen by Kleszynski is \$20.00 higher than what is supported in the Marshall Valuation Service. It indicated the multiplier for cost date should be lower to account for the lower costs to build in 2009 than in 2012 when the data was looked at by Kleszynski. The report indicates an entrepreneurial profit is not called for when the property is constructed by the owner/user. The report opines that the depreciation was incorrectly calculated for both the retail improvement and the parking garage. The report opines that the value estimated in the cost approach is poorly supported.

As to the income approach, MaRous opined that the rental rate of one-story, big-box facilities would not compare to the multi-level subject property. The appraisal indicates rentals #4 and #5 are active listing for rental rates that are not reflective of 2009. The report indicated the active listing supports a higher vacancy rate in the appraisal. MaRous testified he is concerned that there is an underestimation of the vacancy rate and expenses which result in a higher net operating income estimation.

The review indicates the capitalization rate should only be loaded as to the vacant portion of the building that was determined by the vacancy rate because the rent is estimated on a triple net basis. The report opines that the parking garage should not be added within the income approach because the garage does not produce any income. In addition, the report opines the value of the parking garage arrived at in the cost approach is flawed.

As to the sales comparison approach, MaRous testified that the Kleszynski insufficiently considered the inutility of the multi-story subject as compared to the one-story, big-box construction. He testified this lack of utility due to escalator and elevators is seen in larger department stores, but is very unusual for big-box stores.

MaRous testified that Kleszynski's sales comparables all have large land to building ratios. He opined that when you add the value of the parking garage into the estimated value of the retail improvement it brings the value to \$89.00 per square foot of building area which is above the range of the comparables when the leased fee properties are removed.

MaRous testified it would be difficult to adapt the subject property for other users because of the multi-level and mall entrance on the first floor only.

More specifically, MaRous testified that Kleszynski's sale comparables #2, #3, and #6 are located in less urban areas than the subject and the appraisal lack a demographic comparison or analysis to the subject. He testified sales #1 and #3 are leased fee sales and call into question if the sales are at market value. He opined that Kleszynski could not make adjustments for these property rights without knowing the lease terms involved in the sales. As to sale #3, MaRous testified Kohl's was in the sixth year of a lease that expired in 2021 which indicates it needed significant adjustments downward. He further testified that the comparables are all one-story which is more desirable than the subject's configuration.

MaRous testified the sales have much larger land areas and significant on-site parking on ground level which he opined is a trade off with the subject. He testified that the larger land to building ratios and the subject's parking garage perform the same function.

As to the remaining sales, MaRous opined that sale #4 was fairly comparable to the subject and sale #5, while in the same development as sale #4, is a better property than the subject. These properties sold for \$50.26 and \$56.36, respectively. He testified sale #6 is a relevant sale that occurred in similar market conditions in a very desirable location. MaRous opined that the value arrived at in the sales comparison approach is unsupported and overstated.

On cross-examination by the intervenors, MaRous acknowledged that Kleszynski does consider land sale #1's visibility and access when he made locational adjustments. He agreed he opined that land sales #2 and #5 are not arm's length, but testified that the report does not state the sales prices are not at market value.

MaRous acknowledged that some of the multipliers that he opined were not fully explained were not wrong. He agreed that some entrepreneurial profit is applicable in this appraisal, but not to the degree Kleszynski used. In Kleszynski's market analysis for depreciation, MaRous testified that the comparables have a construction cost of \$75.00 per square foot while the subject has a cost of \$96.47 per square foot, but acknowledged that the comparables do not have rooftop parking. He testified he agreed with Kleszynski's base cost for the parking garage prior to any adjustments.

MaRous acknowledged that rental comparables of anchor stores or power centers are good comparables to the subject, all other things being equal. He further testified to the comparability of the rental comparables to the subject. He earlier opined that Kleszynski should have used the lease information from his two leased fee sales in the sales comparison approach as rental comparables. He also agreed that Kleszynski indicates they were not at market rates. He acknowledged that he has no criticism of Kleszynski's use of a 9.5% capitalization rate. He does opine that Kleszynski incorrectly loaded the capitalization rate. He

acknowledged when he loads the capitalization rate the way he would prepare the appraisal he would arrive at a value of \$12,258,800.

As to Kleszynski's sales, MaRous acknowledged Kleszynski made adjustments for the time of sale to sale #1. He agreed that sale #2 which was built in 1976 may have an inferior condition and construction when compared to a store built in 2003. MaRous testified that when appraising a fee simple interest the use of a leased fee sale needs to be adjusted downward when there are favorable terms or above-market rates. He confirmed that sale #3 was adjusted downward. He also confirmed that sale #4 which was a Target was adjusted downward for sale date. MaRous acknowledged that Kleszynski made upward adjustments to sales #4, #5, and #6 for age.

MaRous testified that land to building ratios are a significant factor when looking at parking and that it's like a parking adjustment.

On re-direct, MaRous testified he did not agree with the 10% deduction for vacancy and collection and opined it should be higher based on the size of the subject and its obsolescence in the market. He opined that basement space is not in demand in the suburban market and that there can be different level of rental rates for the different floors.

As to entrepreneurial profit, MaRous testified that in a weak market, for a special purpose tacitly the market may not pay anything for entrepreneurial profit and if they do it would be three to seven percent. He opined that anything above single digits is very aggressive.

In rebuttal, the intervenors submitted the CoStar Comps printout listing characteristics and sales information, PTAX-203 Illinois Real Estate Transfer Declarations, and deeds for the properties analyzed within the Thouvenell appraisal. Thouvenell was shown these documents in cross examination as Intervenor's Hearing Exhibits #1 through #7 and testified concerning the sales.

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, 331 Ill.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).

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 and intervenors' 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, the rebuttal documents, and all testimony to determine the best evidence of the subject's market value.

The PTAB finds that Kleszynski applied an inappropriate level of entrepreneurial profit in the cost approach for an owner user property. The PTAB finds MaRous's testimony that an owner user would not apply entrepreneurial profit in the double digits credible. In the cost approach, the PTAB again finds MaRous's testimony that only the vacant portion should have been loaded for a loaded capitalization rate. These approaches were given less weight by the appraisal and will also be given less weight by the PTAB.

In the Thouvenell report, the PTAB finds Thouvenell did not support the cost to construct sufficiently and added economic obsolescence without fully supporting the credibility of these amounts. The PTAB finds Thouvenell did not support the rental rate of \$4.00 for the subject's below grade square footage which created an unreliable potential gross income. The appraiser gave these approaches less weight and will also be given less weight by the PTAB.

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). Both appraisers testified that most weight was given to the sales comparison approach. Therefore, the PTAB will give this approach the most weight.

The PTAB finds the two appraisers used differing methods within the sales comparison approach to value the parking garage. In the appellant's appraisal, Thouvenell includes the parking garage as a value within each sale. The Kleszynski appraisal applies the depreciated value of the parking garage from the cost approach to the estimated value arrived at for the retail improvement.

Kleszynski acknowledged that the garage creates a large land area and essentially opined there is five times the footprint available for parking which is a critical issue for urban, retail locations. He further testified that the existence of the garage provides identical amount of utility when compared to a flat surface. He acknowledges he could have easily accounted for the parking garage in the land to building ratio and make adjustments to the comparables based on a larger land to building ratio for the subject. The PTAB finds he commingled the cost and sales comparison approaches when he added the depreciated value of the parking garage arrived at under the cost approach to the value of the retail improvement arrived at under the sales comparison approach. In addition, MaRous testified that the larger land to building ratios and the subject's parking garage perform the same function.

The PTAB finds the appellant's methodology of including the value of the parking garage within the estimate of value based on the sales most credible under the sales comparison approach. However, the PTAB finds Thouvenell failed to adequately account for the parking garage square footage within the land to building ratio and make adjustments based on this larger land size. Therefore, the PTAB will adjust the subject's land to building ratio within the sales comparison approach to 1.74:1 to account for the garage, consider the raw sales data of both appraisals and make adjustments.

The PTAB finds Thouvenell's sales #2, #3, #4, and #5 were leased fee properties and sold with differing property rights than the subject. Thouvenell testified he did not make adjustments for this difference in property rights. Sale #1 was not advertised for sale and is the fulfillment of an installment contract from 2003. Therefore, the PTAB gives these Thouvenell's sale comparables diminished weight.

As to Kleszynski's sales comparables, the PTAB gives diminished weight to sales #1 and #3 as these properties were leased at the time of sale. Therefore, these sales are given diminished weight.

The remaining sales were given significant weight by the PTAB and have unadjusted raw sales prices ranging from \$50.26 to \$62.61 per square foot of building area, including land. The subject property's assessed value equates to a market value of \$90.00 per square foot of building area, including land which is above the unadjusted range of comparables. After considering adjustments and the differences between the subject and the comparables, the PTAB finds that the subject property had a market value of \$80.00 per square foot of building area or \$13,990,160. Since market value has been determined, the Cook County Real Property Assessment Classification Ordinance level of assessments of 25% for Class 5 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.

Donald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

Member

J. R.

Member

DISSENTING: _____

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

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

Date: August 23, 2013

Allen Castrovillari

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing

complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.