

No. 1-11-0460

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BOARD OF EDUCATION OF TOWNSHIP)	Appeal from the Illinois Property
HIGH SCHOOL DISTRICT NO. 211, COOK)	Tax Appeal Board.
COUNTY, ILLINOIS, and BOARD OF)	
EDUCATION OF CONSOLIDATED SCHOOL)	
DISTRICT NO. 54, COOK COUNTY, ILLINOIS,)	
)	
Petitioners-Appellants,)	
)	
v.)	PTAB Docket Nos.
)	04-25471.001 thru .002-C-3
)	05-26543.001 thru .002-C-3
)	06-26516.001 thru .002-C-3
ILLINOIS PROPERTY TAX APPEAL BOARD,)	
COOK COUNTY BOARD OF REVIEW, and)	
SEARS, ROEBUCK & COMPANY,)	
)	
Respondents-Appellees.)	

Justice Murphy delivered the judgment of the court.
Neville and Salone, JJ., concurred in the judgment.

ORDER

¶ 1 *HELD:* Where the property tax appeal board considered appraisals and testimony of experts, including testimony that the cost approach method was not suitable for the subject property, it did not error in accepting appraised values that did not present a separate land value estimate and rejecting the petitioners' appraiser's land value estimate.

¶ 2 *HELD:* Where the property tax appeal board considered evidence of comparable sales of property outside of the immediate area of the subject property, it did not error where appraiser testified to the reasoning and made adjustments to calculations based on various pertinent factors.

¶ 3 *HELD:* Discrepancy between decisions by the property tax appeal board is not grounds for reversal where the evidence of record supports the agency's final administrative decision and decisions of the administrative agency are not binding on this court.

¶ 4 This appeal arises from an administrative review proceeding before the Illinois Property Tax Appeal Board (PTAB). The PTAB considered a consolidated appeal of the valuation for the tax years 2004, 2005 and 2006 by the Cook County Board of Review (BOR) of respondent Sears, Roebuck & Company's (Sears) property at Woodfield Mall Shopping Center in Schaumburg, Illinois. The BOR certified an assessed value of \$9,352,131 for the property for all tax years in question, representing a market value of \$24,610,871 and Sears sought review. Petitioners, Board of Education of Township High School District No. 211 and Board of Education of Community Consolidated School District No. 54 (school districts), intervened in the matter as a matter of right to protect the interests of the taxing district.

¶ 5 The school districts, Sears and the BOR each submitted appraisals to the PTAB. Sears and the school districts presented testimony of their own experts at a consolidated hearing of the three appeals on July 22 and 23, 2009. Final administrative decisions on all three appeals were entered on January 21, 2011, finding the market value of the property to be \$12,286,080 for the department store and \$2,298,840 for the automotive center building for a total market value of \$14,585,000 for the assessment dates at issue. This resulted in a reduction of the certified assessed value of the property to \$5,542,300. The school districts filed a petition for review with this court. For the following reasons, we affirm the decision of the PTAB.

¶ 6

I. BACKGROUND

¶ 7 The property at issue is comprised of two parcels of land located in Schaumburg, Illinois, containing a land area of 1,393,337 square feet. The property is improved with a two-story, 307,152 square foot masonry building with a 57,471 square foot, two-story automotive center and retail building. Both were constructed in 1971 and are part of the Woodfield Mall Shopping Center. Sears operates an anchor department store and automotive center on the property.

¶ 8 For the tax years 2004, 2005, and 2006, the BOR certified an assessed value of \$9,352,131 for the property, representing a market value of \$24,510,871. Sears appealed this assessment, claiming that the assessment should be \$4,740,500, or a market value of \$12,475,000. The parties failed to reach a settlement and the PTAB held a hearing.

¶ 9 Sears presented an appraisal of the property prepared by Joseph M. Ryan, MAI, of LaSalle Appraisal Group, Inc. The parties stipulated to Ryan's credentials as an appraiser and he was accepted as an expert. He testified that he did a complete interior and exterior inspection of the property. Ryan testified that Woodfield Mall is a super-regional mall, and the vast surrounding land at the property was required to support the mall and could not be redeveloped.

¶ 10 As addressed in his appraisal report, Ryan did not consider the cost approach to valuation. Ryan explained that the market development and forces in retail indicated that mall properties were losing market share to stand-alone, lifestyle center and big box retail stores and the design was obsolete by industry standards. He was unable to find any sales of anchor department store sites.

¶ 11 Ryan also noted that these types of stores have very close relationships with developers that are unique to the owner-user. Further, he noted that no shopping center developers he has

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interviewed utilized the cost approach in their investment decisions. Accordingly, he found the sales comparison and income approach were most applicable to valuing the property. He stated that this did not affect the final opinion of value for the subject property in any way because the present use was the highest and best use of the property.

¶ 12 Ryan explained that the income approach began with estimating the potential gross income for the property. The second step is to estimate the vacancy and collection loss for the property. Third, the effective gross income is factored from the first two steps and operating expenses are factored in to determine a net operating income which is capitalized into a value estimate. Because the property is owner-occupied there is no income or expense derived from operation of the property, therefore Ryan's income approach calculations were market-based.

¶ 13 Ryan obtained median rental rates for several similar department stores in Illinois, Indiana and Michigan, avoiding use of any big box retail stores. He explained that anchor department stores frequently set rent at a per square foot rate based on a percentage of sales. Because of the large size of the property and the land to building ratios compared to most other retail units, Ryan had to make numerous adjustments. Ryan also reviewed "Dollars & Cents of Shopping Centers, 2004," to estimate a lease rate as well as actual sales at the Sears store, which declined from 1999 to 2003, to determine per square foot rates. Based on the rents at the comparable sites and adjusting for lease date, size, location, condition of the property and the auto center, Ryan concluded the property would have a rental rate of \$4 per square foot.

¶ 14 Ryan estimated the potential gross income of the property to be \$1,228,608. He surveyed market data and determined credit losses and a vacancy allowance of 7.0%, deducting the total from the potential gross income to determine the effective gross income. Estimated expenses

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were then deducted to arrive at an estimated net income of \$1,081,175. Ryan estimated a capitalization rate of 10%, which added to an effective tax rate of .51% resulted in a total capitalization rate of 10.51%. Ryan concluded that the property had a market value of \$10,300,000 million for the years in question. Adding the contributory value of the automotive center building, Ryan determined a value of \$12,000,000, rounded, under the income approach.

¶ 15 Under the comparable sales approach, Ryan identified several similar properties in Illinois, Ohio and Michigan because local comparable properties were sale of leasebacks, financing mechanisms, or big box stores that could not be used. He indicated that he verified all terms and conditions of the sales and adjusted for location by demographics, competitive market conditions, population density and median household income. Ryan noted some out of market sales in Colorado and Texas to show that there is a defined market for department stores. Ryan settled on a market value of the property for \$35 per square foot, or \$10,750,000, rounded, for the department store building and an additional \$1,725,000 for the automotive center for a total market value of \$12,475,000 for the years in question.

¶ 16 Ryan took the two values and, giving more weight to the comparable sales approach because the property is owner-occupied and not leased, concluded the property had a final market value estimated at \$12,475,000. Ryan stated that his opinions were formed in conformance with the standards and ethics of his profession. Ryan also admitted that he did not form an opinion of the value for the land. Ryan noted that his data excluded vacancy rates for regional malls and that there could be a market for big box stores for vacated anchor department stores. Ryan also further explained how he weighted the properties of the comparables he used.

¶ 17 The BOR entered into evidence a copy of its notes on appeal, which included an

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appraisal for the property prepared by Jeffery M. Hortsch for the Cook County Assessor's Office. The Hortsch appraisal provides the effective date of valuation of January 1, 2004. The BOR did not present Hortsch as a witness.

¶ 18 As with Ryan, Hortsch also did not utilize the cost approach. In preparing his report, he reviewed Ryan's report and conducted a site investigation. Hortsch determined that the property had an estimated value of \$26,200,000 under the income approach and \$25,220,000 under the sales comparison approach. Hortsch concluded that the property had a value of \$25,000,000 as of that effective date.

¶ 19 The school districts presented the report and testimony of their appraiser, Eric W. Dost, MAI, of the Dost Valuation Group, Ltd., who concluded that the property had an estimated market value of \$26,000,000. Dost concurred that the highest and best use of the property was the continuation of the existing commercial improvements. Unlike the other two appraisers, Dost utilized all three approaches to value, although he did not complete a full cost approach because he opined that potential buyers of the property would not be interested in the depreciated replacement cost of the property as improved.

¶ 20 Under the cost approach, Dost used four land sales from the area to arrive at the estimated value of the land of \$16,700,000. Under the income capitalization approach, Dost found the property to have an estimated market value of \$25,600,000. Finally, he found that the property had an estimated market value of \$26,200,000 under the sales comparison approach.

¶ 21 Under the income capitalization approach, Dost examined two sets of rent comparables, one of four comparables for the department store and one set of five comparables for the automotive center. After adjustments, Dost estimated rent for the property at \$6.50 per square

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foot of building area for the department store and \$9 per square foot for the automotive center.

After determining a vacancy and collection rate of 3% and a capitalization rate of 8.5% for the property, he concluded that the property has an estimated market value of \$26,000,000 under the income capitalization approach.

¶ 22 For the sales comparison approach, Dost utilized five comparable properties from the north and northwest suburbs of Chicago, Illinois. One rental was a single-tenant rental store, the second was purchased by the mall owner and demolished to be rebuilt as a lifestyle center, two were single-tenant buildings within a larger shopping center and one was within the same submarket area. Dost opined that location was the most important variable and, comparing sales rates for the property to the comparables, Dost found that the property had an estimated market value of \$70 per square foot for the department store, coming to a total of \$21,500,000, and \$75 per square foot of rentable area for the automotive center, or \$4,100,000. Together, this comprised his market value of \$25,600,000 under the sales comparison approach. In conclusion, Dost considered the three values and gave primary consideration to the income and sales comparison approaches to reach his estimated market value of \$26,000,000 as of January 1, 2004, and opined this value would hold for 2005 and 2006.

¶ 23 For the 2006 year appeal, Sears submitted an appraisal review of Dost's appraisal performed by Gary A. Battuello, MAI, of Ramsland & Vigen, Inc. Battuello testified as a rebuttal witness that he was of the opinion that Dost failed to fully take into account the fact that the property was a very large anchor store, especially in relation to current standards. Further, he felt that Dost utilized comparables that were deficient because of the attendant circumstances of the individual properties. Battuello opined that Dost's calculations of the capitalization rate and

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vacancy rate were well supported; however, based on the poor comparables, he found Dost's approach unreliable.

¶ 24 The PTAB considered the evidence and testimony and determined that a reduction in the assessment of the property was warranted. No weight was afforded the Hortsch appraisal because the appraiser was not presented as a witness to testify to his qualifications and the contents and conclusions of his report. In addition, the PTAB gave little weight to Dost's appraisal's land value because it did not include the value of the improvement. The PTAB noted that case law provides that where comparable sales are available, the sales comparison approach provides the best valuation method. The PTAB detailed the strengths and weaknesses of the remaining two appraisals and Batuello's review and testimony.

¶ 25 The PTAB noted that the experts submitted 13 suggested sales comparables for the department store and 7 for the automotive center. It gave little weight to four of Dost's five department store comparables because they were not owner-occupied properties. Noting the experts' testimony that location and the same property type, regional department store, were the most important and reliable indicators of value, the PTAB accepted the experts' comparables that were anchor department stores from regional or super-regional malls.

¶ 26 Incorporating the one Dost comparable sale and Ryan's eight comparable sales, the PTAB concluded that the range of sales was \$25.45 to \$50.07 per square foot, including land. After adjusting for pertinent factors, the PTAB determined that the department store on the subject property had a value of \$40 per square foot of building area, or \$12,286,080. As for the automotive center, the PTAB noted that both Ryan and Dost testified to the difficulty of finding proper comparables and utilized auto dealerships as comparable properties. The PTAB gave

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weight to both experts' comparables to find a range of sales from \$28.38 to \$152.24 per square foot of building area, including land. Citing Dost's testimony, the PTAB adjusted the comparable values and concluded that the automotive center had a value of \$40 per square foot of building area, including land, or \$2,298.840.

¶ 27 Utilizing these values from the income approach, the PTAB concluded that the property had an estimated market value of \$14,585,000. This resulted in a reduction of the certified assessed value of the property to \$5,542,300. This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 The school districts argue that the PTAB failed to: utilize the appropriate valuation methodology in determining the estimated market value and assessed value by failing to consider the evidence of the land value; properly account for differences in location for properties used in comparable sales and rentals; and give consistent weight to similar evidence in other PTAB decisions.

¶ 30 We review PTAB decisions under the Administrative Review Law. Factual determinations by an administrative agency are held to be *prima facie* true and correct and will stand unless contrary to the manifest weight of the evidence. 735 ILCS 5/3-110 (West 2010); *Bloomington Public Schools, Dist. No. 87 v. Property Tax Appeal Board*, 379 Ill. App. 3d 387, 390 (2008). However, questions of law, such as whether the PTAB considered the proper methodologies for valuation, are subject to *de novo* review. *Cook County Board of Review v. Property Tax Appeal Board*, 384 Ill. App. 3d 472, 479 (2008) ("*Omni*").

¶ 31 The school districts argue that, pursuant to the Property Tax Code, every property in Illinois must be given an assessment that includes an assessed value for the land and an assessed

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value for the improvements that are then added together to obtain a total assessed valuation for the property. 35 ILCS 200/9-155 (West 2010). The school districts argue that the second district of this court has held that "it [is] necessary to calculate the entire assessment by valuing the improvements as well as the land..." *Showplace Theater Company v. Property Tax Appeal Board*, 145 Ill. App. 3d 774, 777 (1986). The school districts cite to Connecticut state court cases, including one unreported case, that have followed this "precedent" to conclude that it was fatal error to not determine a specific land value. See, *National Amusements v. Town of East Windsor*, 84 Conn. App. 473 (2004).

¶ 32 We agree with appellees that this is a misconstruction of *Showplace Theater* and Illinois case law does not have such an absolute requirement. In *Showplace Theater*, the taxpayer objected to the assessed value of the land but not of the improvements. *Showplace Theater*, 145 Ill. App. 3d at 776. The court rejected the taxpayer's attempt to limit review of the tax assessment, instead it noted that the statutes under which the appeal was made were clear that an appeal required consideration of all calculations necessary to a final determination. *Id.* at 777. The court continued to hold that the PTAB, having statutory authority to recompute the value of improvements, made its determination based on competent evidence and affirmed the PTAB's findings. *Id.* at 777-78.

¶ 33 Accordingly, *Showplace Theater* holds that review of an assessed value of real property requires consideration of all the factors. In Illinois, this requires valuation at fair cash value at a fair, voluntary sale. Where there is no contemporaneous arms length sale, there are three valuation methods to use: the comparison approach, the income approach, and the reproduction cost approach. *Omni*, 384 Ill. App. 3d 472. As highlighted by the PTAB, and addressed by the

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Omni court, the sales comparison approach is the preferred method, but each of the approaches should be utilized where reliable information is available to serve as a check on the value. *Id.* at 480-81.

¶ 34 Where the evidence supports the use of one valuation method and the appraiser supports exclusion of a method of valuation by citation to this evidence, it is sufficient for the PTAB, and the courts, to follow. *Id.* at 487-88; see also *Board of Education of Meridian Community Unit School District No. 223 v. Illinois Property Tax Appeal Board*, 2011 IL App. (2d) 100068, ¶¶ 46-48. In the instant matter, Ryan provided an explanation of why he did not utilize the cost approach to valuation that would provide a specific valuation for the land both in his appraisal and his testimony. Likewise, Dost testified that potential buyers would not likely rely on the cost approach for the property, but maintained establishing a land value was important. Accordingly, Ryan undertook the other two valuation approaches to come to his conclusion and provided sufficient detail of record to support his findings. Therefore, his failure to follow the cost approach and provide a value for the land was not fatal.

¶ 35 The PTAB detailed the testimony and appraisals explaining the results of these methods, concluding that the sales comparison approach provided the proper valuation. The school districts also complain that Ryan improperly focused on several comparable sales from other states and the PTAB ignored sales prices cited by Dost of nearby properties. The issue of whether comparable properties establish the uniform assessment and valuation of properties is a question of fact. *DuPage County Board of Review v. Illinois Property Tax Appeal Board*, 284 Ill. App. 3d 649, 653-54 (1996).

¶ 36 In this case, Ryan did consider properties from out-of-state as comparables. However, he

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adjusted for different variables including location and demographic data. The PTAB took this into account, as well as the types of properties, in accepting five of the properties utilized by Ryan and one of the three used by Dost, rejecting the use of big box stores. The record indicates that the discrepancies inherent in utilizing properties from different locations were considered, the PTAB understood and addressed this, and followed the evidence of record to accept the best comparable properties. Its decision is not against the manifest weight of the evidence.

¶ 37 Finally, the school districts argue that the PTAB has ruled inconsistently in this case than other matters, in particular a companion case before this court involving a Sears store in the Chicago Ridge Mall in Chicago Ridge, Illinois. The school districts argue that PTAB accepted evidence of sales prices of comparable properties in one appeal, but did not in the other. It maintains that these inconsistent findings raise legitimate questions concerning the methods used by PTAB in ascertaining value. The school districts do not cite to any authority binding on this court, but cites PTAB decisions where comparable sales from outside Cook County were disfavored to conclude that PTAB's methodology requires reversal.

¶ 38 We again agree with Sears and the PTAB that the previous PTAB decisions are not grounds for reversal. This court is not bound by decisions of an administrative agency. As noted above, factual decisions of the PTAB are reviewed under the manifest weight of the evidence standard. Sears further notes that, under the Illinois Property Tax Code, the PTAB is charged with making a decision on an appeal that "shall be based upon equity and the weight of evidence and not upon constructive fraud, and shall be binding upon appellant and officials of government." 35 ILCS 200/16-185 (West 2010). Under this standard of review and authority, Sears argues that each decision by the PTAB is necessarily fact specific and based upon the

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particular record of each case. Therefore, we find, as addressed above, based on the evidence of record, the PTAB's decision is not against the manifest weight of evidence of record.

Accordingly, the finding of the PTAB is affirmed.

¶ 39

III. CONCLUSION

¶ 40 For the foregoing reasons, the decision and order of the PTAB is affirmed.

¶ 41 Affirmed.