

No. 1-11-3574

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARSHALL FIELD'S-STATE STREET)	Appeal from the
(PREVIOUSLY TARGET CORPORATION AND)	Circuit Court of
MAY DEPARTMENT STORE CO.),)	Cook County.
)	
Petitioner and Appellant,)	PTAB Nos.
)	03-27588-C-3.001-.006
v.)	04-27177-C-3.001-.006
)	05-25650-C-3.001-.006
ILLINOIS PROPERTY TAX APPEAL BOARD,)	
COOK COUNTY BOARD OF REVIEW,)	
CHICAGO BOARD OF EDUCATION, AND)	
CITY OF CHICAGO,)	
)	
Respondents and Appellees.)	
)	

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* The Property Tax Appeal Board (PTAB) affirmed the decision of the Cook County Board of Review that the subject property was not overassessed for the years 2003-2005. This court affirmed PTAB's decision as it was not against the manifest weight of the evidence.

¶ 2 Petitioner Marshall Field's-State Street (Marshall Field's)¹ appeals from the Property Tax Appeal Board's (PTAB) decision, following an evidentiary hearing, affirming the Cook County Board of Review's (Board) \$26,600,002 yearly tax assessment of Marshall Field's property for 2003-2005. On appeal, Marshall Field's now challenges that assessment attacking PTAB's analysis of the property valuation methodology. Marshall Field's also contends PTAB erroneously treated the property disparately from other similar properties within the same taxing district. The Attorney General's Office, on behalf of the Board, and the City of Chicago have filed briefs in response. Having reviewed the briefs and record before us, we affirm.

¶ 3 BACKGROUND

¶ 4 The former flagship department store formerly known as Marshall Field's, at 111 North State Street in Chicago, is an official historic property occupying the entire city block (with a gross building area of 1,943,009 square feet) and comprising five separate multi-storied buildings, constructed between 1893 to 1914. About 40 percent of the space is used for selling merchandise. All or some of the floors 9, 10, and 11 occupy office space, while floors 12 through 14 are unused, and there is a full basement and two partial subbasements. From 2003-2005, the property was taxed as a class 5-97 special commercial structure under local ordinance and assessed at a rate of 38% of market value, which was \$70,000,005 (or about \$36 per square foot of building area). It was assessed each year at \$26,600,002. Marshall Field's appealed these assessments to the Board contending the property was overvalued and urging a total market value of \$39,000,000 for each year. The Board upheld the assessments, Marshall Field's appealed to PTAB, and an evidentiary hearing ensued. The City of Chicago and the Board of

¹ The 2003 appeal was filed in the name of the Target Corporation, the 2004 appeal in the name of May Department Store, and the 2005 appeal in the name of Marshall Field's, State Street. For the ease of understanding, the appellant is designated as Marshall Field's, State Street. In addition, the parties have not informed this court that the tax debts of Marshall Field's have been transferred to any other entity.

Education successfully intervened in the case. With the exception of the Board, the parties presented a number of witnesses who testified regarding the property value between 2003 and 2005. This case rested on the "fair cash value" of the property, which is synonymous with fair market value, or the amount the property would bring at a voluntary sale when the owner can willingly sell the property and the buyer can willingly buy it, both without being forced to do so. See 35 ILCS 200/1-50 (West 2010); *Walsh v. Property Tax Appeal Board*, 181 Ill. 2d 228, 230 (1998); *Chrysler Corp. v. State Property Tax Appeal Board*, 69 Ill. App. 3d 207, 211 (1979).

¶ 5 Marshall Field's Appraiser

¶ 6 Marshall Field's presented the testimony of real estate appraiser Michael Kelly, who had appraised over 100 department stores, including some six appraisals of the subject property.

Kelly testified that the highest and best use of the subject property was as a department store or, if vacant, as a mixed-use development. He testified that the State Street retail market for large department stores was in decline and that the large size of Marshall Field's made operating the store difficult. As there was no contemporaneous sale with which to value Marshall Field's, Kelly analyzed the value of the building under three traditional approaches to determine its fair market value: (1) the cost approach, which focuses on what it would cost to recreate real property with the same value (this approach should only be emphasized in the context of special property, which is so unique it cannot have a market value); (2) the income approach, which is based on the property's income-producing potential and divides the property's net income by a capitalization rate, as determined by market data and (3) the sales comparison approach, which relies on sales of comparable properties in the open market to reach a determination of the subject property's fair cash value. See *Kraft Foods, Inc. v. Illinois Property Tax Appeal Board*, 2013 IL App (2d) 121031, ¶ 43; *Chrysler Corporation*, 69 Ill. App. 3d at 211. In theory, the

different valuation approaches should lead to the same value. *Cook County Board of Review v. Property Tax Appeal Board and Omni Chicago*, 384 Ill. App. 3d 472, 480 (2008). Kelly placed minimum weight on the cost approach, moderate weight on the income approach, and substantial weight and reliance on the sales approach.

¶ 7 He testified that it was appropriate to examine the large Midwest department store market, rather than confining the analysis to downtown Chicago. He pointed to department store sales in Columbus, Ohio; Dearborn, Livonia, and Ann Arbor, Michigan; Normal, Peoria, and Aurora Illinois; and Milwaukee, Wisconsin. Analyzing sales at these stores from 1996 to 2003, Kelly concluded the comparisons were largely superior in terms of land-to-building ratio, building size, and age. He considered all these sales inferior to Marshall Field's ("in terms of a land value per square foot"). Using a gross income multiplier or retail sales multiplier, Kelly concluded that the value of Marshall Field's under the sales comparison approach would be \$20 per square foot. On cross-examination, Kelly acknowledged that one of the basic assumptions underlying this analytic tool for valuing a national anchor department store was that the merchandise and service was not that different in the varying locations. He also acknowledged that he did not make quantitative adjustments for locational differences in the comparison properties even though he acknowledged that it was a standard, and none of the comparison retail stores, which were smaller in size, came close to Marshall Field's sales volume.

¶ 8 In short, as of January 1, 2003, Kelly estimated that Marshall Field's had an estimated market value of \$39,000,000. He further testified there were no significant changes in that appraisal for the years 2004 and 2005.

¶ 9 City of Chicago Appraiser

¶ 10 The City of Chicago presented the testimony of appraiser Gregory J. Hatfield, who provided separate valuations for the years 2003-2005. He used the income and sales approaches, giving greater emphasis to the sales approach. He declined to use the cost approach because he did not believe it would provide meaningful value. Unlike Kelly, he testified that Marshall Field's was in an "excellent location" given the "rebirth of the Loop" with residential properties and the theater district, allowing for increased pedestrian traffic. The store was ideal in so far as it took up an entire block and had public transit nearby. For the 2003 appraisal, Hatfield compared four properties in downtown Chicago which were mixed-use office and retail, including the Sears department store. He testified the comparables reflected a similar age, size and "downtown market dynamics" as Marshall Field's, although it was difficult to find comparables that corresponded with the unique size of Marshall Field's as a department store. On cross-examination, he acknowledged that none of the comparables were large single-tenant department stores. After making various adjustments, he testified the estimated fair market value of Marshall Field's on January 1, 2003, was \$90,500,000; on January 1, 2004, it was \$98,500,000; and on January 1, 2005, it was \$120,000,000.

¶ 11 Board of Education Appraiser

¶ 12 The Chicago Board of Education presented the testimony of appraiser Susan E. Enright. Enright analyzed the property under all three approaches but found the sales comparison most accurately reflected Marshall Field's value. She also testified that the Loop where Marshall Field's was located was a dynamic business district with new retail stores arriving. To the extent possible, Enright considered comparable sales that were close in time, location, and zoning to Marshall Field's and its valuation years, also including Sears as a comparable. On cross-examination, she explained that she chose office building comparables because she believed

"proximity to the subject underlying land value was the overwhelming factor" and sales in these properties were more consistent with Marshall Field's than an outlying department store. She acknowledged that many of the comparables were smaller in size from Marshall Field's. Enright explained that she also considered outlying department stores, which supported her conclusions, but ultimately did not include them in her analysis because of their location. Enright estimated that the property's market value on January 1, 2004, was \$73,350,000.

¶ 13 Rebuttal

¶ 14 The respective parties called rebuttal witnesses who essentially testified that the appraisals submitted by the opposing party were either incredible or not reliable sources for the market value.

¶ 15 Marshall Field's called Joseph Ryan, who testified he had worked for the assessor's office and Board and had conducted department store appraisals. Ryan testified Enright's cited properties were not comparable in their physical characteristics or use because "only department stores are comparable to department stores." With respect to Hatfield's sales appraisals, Ryan testified that it was inappropriate for appraisers to take an "office building with a first floor retail tenant and compare it to a single tenant department store ***." On cross-examination, Ryan, however, acknowledged that land sales in downtown Chicago would be "more relevant" to valuing downtown Chicago property than land sales in Aurora, Illinois.

¶ 16 The City of Chicago presented the rebuttal testimony of Michael MaRous, an appraiser with some 30 years valuing property in different states with a focus on properties in the Chicago metro area. He testified he had appraised over one thousand retail properties; 10 properties since the year 2000 had been on State Street. MaRous testified that Kelly's appraisal was flawed in so far as State Street was not a dying market, but a very dynamic one close to Millennium Park, the

theater district and residential development. He testified Kelly had largely used outdated, pre-2000 sales, for his land valuation that did not reflect the trend of land value increases between 2000 and 2005 in the Loop area. As for the sales comparison approach, MaRous testified that Kelly had not used properties in downtown Chicago or from any "top ten tier downtown urban market in the [U]nited States." The properties would not appeal to the same type of buyer and lacked similar passing pedestrians, demographics, and population. MaRous testified the average retail sales Kelly's buildings betrayed were \$27-29 million, where as Marshall Field's was in the \$205 million range. In addition, MaRous criticized Kelly's use of a "retail sales multiplier" to support his sales comparison. MaRous was unfamiliar with it being used and believed it was too speculative. On cross-examination, MaRous stated that although Marshall Field's was principally a retail business, it had "a significant office component." He stated Kelly failed to value that available space.

¶ 17 PTAB Decision

¶ 18 In a 42-page opinion, PTAB rejected Marshall Field's petition to modify the assessments, thereby affirming the Board. In doing so, PTAB first summarized the witnesses' testimony and statements on cross-examination, noting that while various valuation methodologies were presented, Kelly, Hatfield, and Enright all agreed that the highest weight should be placed on the sales comparison approach. Moreover, PTAB observed that the witnesses largely agreed on the land area calculations, building improvements, and that the building was a flagship department store with the highest and best use being its current use. PTAB noted that when market value is the basis of an appeal, the challenger must prove the value of the property by a preponderance of the evidence but concluded Marshall Field's had not done so. PTAB found Kelly's valuation was not credible, in so far as he underestimated the property value, and Kelly's testimony did not

support a reduction in the assessments for 2003-2005. PTAB determined Kelly's cost approach land sales were outdated and his estimated depreciation lacked support. In particular, PTAB noted that under the cost approach, Kelly's two most recent land sales from 2000 (selling between about \$417 and \$480) were much higher than his land value estimate of \$185 per square foot. Hatfield and Enright, on the other hand, submitted more up-to-date land sales and therefore were more credible. PTAB explained: "Due to the fact that the cost approach can be used as a check on the validity of the estimates of value under the sales comparison approach and the income approach to value, Kelly's underestimate of value in the cost approach calls into question the credibility and validity of the ultimate value conclusion contained in the appraisal." After citing additional shortfalls under Kelly's cost approach, PTAB noted that Kelly's income approach suffered from similar defects. After reviewing the data, for example, PTAB found the rental comparables cited by Kelly to be too low and also found Kelly had overstated the deduction for management fee, vacancy, and collection loss, all of which resulted in understating the property's ultimate value. Finally, PTAB addressed Kelly's sales comparison approach, noting that Kelly had cited eight comparable sales of mall department stores. PTAB found the first four sales (occurring between 1996 and 1999) were too dated to serve as proper comparisons. PTAB found the remaining four sales (between 2002 and 2003) took place in geographic locations that were too dissimilar from Chicago and the sales lacked similar physical attributes, most being smaller, and sales volume to Marshall Field's. PTAB further noted that while Kelly had developed a unit of comparison based on retail sales multiplier, PTAB found there was conflicting testimony as to the particular validity of this analytic tool. PTAB found Kelly's "stabilized retail sales per square foot for each sale" methodology further undermined his conclusions.

¶ 19 PTAB, on the other hand, found both Hatfield and Enright had presented 10 sales of multi-story office buildings with some retail space that were similar to Marshall Field's.

Acknowledging that the sales differed "somewhat from the subject" property (in so far as some included office/residential space and leased-fee sales), PTAB concluded they were relevant to show that Marshall Field's was not overassessed. Taking all the evidence together, PTAB concluded that the assessment of Marshall Field's was not excessive.

¶ 20 Marshall Field's timely filed an appeal for direct review of PTAB's final administrative decision. See 35 ILCS 200/16-195 (West 2010).

¶ 21 ANALYSIS

¶ 22 Marshall Field's principal contention on appeal is that PTAB erroneously relied on the cost approach in reaching its property valuation judgment. Again, the cost approach focuses on what it would cost to redevelop real property with the same value. See *Chrysler Corporation*, 69 Ill. App. 3d at 211. Marshall Field's writes, "PTAB based its decision on a totally theoretical and speculative construct" because the experts all essentially agreed that redevelopment of the property was unlikely given its historic qualifications. Marshall Field's argues that in so doing, PTAB applied what courts roundly have considered a disfavored methodology, thus warranting our *de novo* review of the matter. See *Chrysler Corporation*, 69 Ill. App. 3d at 211-12 (noting, that among the cost, income, and sales approaches for property valuation, the cost approach is the least favored, while the sales comparison approach is the most favored).

¶ 23 We find Marshall's Field's contention disingenuous, especially since its own expert appraiser Kelly testified at some length regarding the cost approach. This simple fact greatly damages the credibility of Marshall Field's overarching argument in this court. Regardless, Marshall Field's contention is one that can easily be disposed of simply by reading PTAB's

decision, which also relies on the expert testimony regarding the sales approach for its ultimate determination regarding the Marshall Field's land valuation. PTAB analyzed Kelly's cost approach, in part, as a means of demonstrating why PTAB found Kelly's testimony incredible, which is a matter exclusively within the province of the administrative agency. See *Bloomington Public Schools, District No. 87, McLean County, Illinois v. Illinois Property Tax Appeal Board*, 379 Ill. App. 3d 387, 392 (2008); see also *Omni Chicago*, 384 Ill. App. 3d at 480 (noting, as did PTAB here, that one method of valuation may serve "as a check on the value reached by the other method or methods"); *Board of Education of Ridgeland School District No. 122, Cook County v. Property Tax Appeal Board*, 212 IL App (1st) 110461, ¶ 28 (accord). The PTAB decision nonetheless continued, noting that all experts agreed the highest and best use of the property was its current use as a department store and the sales approach was the best method for valuing the property. In analyzing Kelly's sales approach, PTAB found his testimony as to sales comparables also was incredible, which brings us to Marshall Field's next contention.

¶ 24 Marshall Field's argues in the alternative that PTAB's decision was against the manifest weight of the evidence because Kelly cited comparable sales of single-tenant department stores, while Enright and Hatfield cited comparable sales of mixed-use properties. Marshall Field's essentially argues PTAB should have credited Kelly's comparison sales testimony over that of the other appraisers. However, the scope of our judicial review in a case like the present is limited to determining whether the findings and orders of PTAB are contrary to the manifest weight of the evidence, which only occurs when the opposite conclusion is clearly evident; it is not this court's function to reweigh the evidence or to assess the credibility of the witnesses. *Kraft Foods Inc.*, 2013 IL App (2d) 121031, ¶ 51; *Bloomington Public Schools*, 379 Ill. App. 3d at 390. In particular, whether comparable properties used by an appraiser tend to establish the

value of the subject property is a question of fact for PTAB to resolve. *Board of Education of Ridgeland School District No. 122, Cook County*, 2012 IL App (1st) 110461, ¶ 31. Taking PTAB's fact findings and conclusions as *prima facie* true and correct, we cannot conclude the opposite conclusion was clearly evident. See 735 ILCS 5/3-110 (West 2010); *Bloomington Public Schools*, 379 Ill. App. 3d at 390.

¶ 25 Here, PTAB found four of the sales Kelly cited (occurring between 1996 and 1999) were too dated and that the remaining four sales took place in geographic locations too dissimilar from Chicago and that these sales lacked similar physical attributes, most being smaller, and sales volume to Marshall Field's. PTAB further noted that while Kelly had developed a unit of comparison based on retail sales multiplier, PTAB found there was conflicting testimony as to the particular validity of this analytic tool. PTAB found Kelly's "stabilized retail sales per square foot for each sale" methodology further undermined his conclusions. PTAB, on the other hand, found both Hatfield and Enright had presented 10 sales of multi-story office buildings with some retail space that were similar to Marshall Field's, thus determining that Marshall Field's had failed to prove its case by a preponderance of the evidence. See *National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board*, 331 Ill. App. 3d 1038, 1042 (2002). This case amounts to a battle between well-qualified expert appraisers to determine the fair market value of a relatively unique property given its large size and function as a department store. PTAB clearly credited the interveners' appraiser testimony demonstrating that the location of the mixed-use comparable sales served as a better determinant of Marshall Field's fair market value than single-use department stores in outlying areas. Where, as here, there is simply a difference of opinion regarding the actual value of the property, this court will not disturb PTAB's findings. See *Kraft Foods Inc.*, 2013 IL App (2d) 121031, ¶ 51; *Cook County Board of*

Review v. Property Tax Appeal Board, 334 Ill. App. 3d 56, 60 (2002). The fact that reasonable minds differ as to the value does not make a decision against the manifest weight of the evidence. *Cook County Board of Review*, 334 Ill. App. 3d at 60. To the extent Marshall Field's argues PTAB's conclusions regarding the cost approach were against the manifest weight of the evidence, we also reject that argument.

¶ 26 In reaching this conclusion, we reject Marshall Field's suggestion that Marshall Field's could not be compared to property used for both retail and office space because Marshall Field's was not then fully utilizing its office component. Clearly fair market value encompasses some future uses, otherwise unoccupied property would have no fair market value. *Cf. Deal v. Nelson*, 43 Ill. 2d 192, 199 (1969) (the tax must be in proportion to the land "value," not just the purpose for which it is currently being used); see also 35 ILCS 200/9-145(a) (West 2010). While it appears that a property cannot be taxed based on a future use that is so elusive as to be practically unascertainable (see *In re Rosewell*, 120 Ill. App 3d 369, 375 (1983)), Marshall Field's has not established that occurred here.

¶ 27 We also reject the Marshall Field's reliance on the previous PTAB decision regarding the subject property's valuation for the years 2001-2002. Marshall Field's notes that some of the same witnesses testified in that hearing, including Kelly, Hatfield, and Enright, regarding the valuation of Marshall Field's, only in that case PTAB concluded that Marshall Field's had proven by a preponderance of the evidence that it had been over-assessed for all three tax years. Marshall Field's argues the inconsistent results are unacceptable. Administrative review, however, is confined to the proof offered before the agency. See *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill.2d 351, 397 (2002). The prior PTAB case addressed different tax years, not all the same witnesses testified, and the determination was

based on the specific evidence presented before the administrative agency, which we are not privy to. Moreover, this court is not bound by the decisions of an administrative agency. See *Board of Education of Ridgeland School District No. 122, Cook County*, 2012 IL App (1st) 110461, ¶ 33. Marshall Field's contention fails.

¶ 28 Finally, Marshall Field's contends PTAB failed to tax the subject property in uniformity with other similar properties within the taxing district. The Attorney General and City of Chicago respond that Marshall Field's forfeited this specific argument by failing to raise it below or present evidence on it. We agree and therefore will not consider the matter further. See *National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board*, 331 Ill. App. 3d at 1044 ("It is axiomatic that if an argument or objection is not made in an administrative proceeding, it is waived and may not be raised for the first time on administrative review."); see also *Cook County Board of Review v. Property Tax Appeal Board*, 395 Ill. App. 3d 776, 785-86 (2009) (holding same).

¶ 29 CONCLUSION

¶ 30 For the reasons stated, we affirm the administrative decision of PTAB affirming the Board's property tax assessments of Marshall Field's for the years 2003, 2004, and 2005.

¶ 31 Affirmed.