



CITY OF WAUWATOSA
MEMORIAL CIVIC CENTER
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BOARD OF REVIEW

Thursday, June 11, 2009 – 9:00 a.m.

PRESENT: Messrs. Benz, Rice, and Schilling -3

ALSO Mr. Miner, Assessor; Mr. Lenski, Deputy Assessor; Ms. Aldana, Asst. City Atty./
PRESENT: HR Director; Ms. Ledesma, Board Secretary

Mr. Schilling in the Chair

Mr. Miner submitted the signed 2009 assessment roll to the Board, noting that it is complete except for corrections and omitted properties as noted.

Four residential Stipulations and Determinations were read into the record reflecting changes to the 2009 assessments as a result of open book discussions and property inspections:

<u>2521 Wauwatosa Avenue (332-0157-00)</u>	<u>From (2008)</u>	<u>To (2009)</u>	<u>Change</u>
Land	72,800	72,800	-0-
Improvements	120,100	62,000	-58,100
Total	192,900	134,800	-58,100
<u>1929 N. 84th Street (342-0079-00)</u>	<u>From (2008)</u>	<u>To (2009)</u>	<u>Change</u>
Land	64,500	64,500	-0-
Improvements	156,900	135,200	-21,700
Total	221,400	199,700	-21,700
<u>1848 N. 84th Street (343-0434-01)</u>	<u>From (2008)</u>	<u>To (2009)</u>	<u>Change</u>
Land	68,500	68,500	-0-
Improvements	123,300	101,500	-21,800
Total	191,800	170,000	-21,800
<u>1423 Lombard Court (369-0007-00)</u>	<u>From (2008)</u>	<u>To (2009)</u>	<u>Change</u>
Land	57,400	57,400	-0-
Improvements	179,100	158,100	-21,000
Total	236,500	215,500	-21,000

Moved by Mr. Rice, seconded by Mr. Benz
to accept the four foregoing stipulations. -3

The Board next considered acceptance or denial of the following objection forms; 48-hour notice of intent to file had not been provided to the Board, nor had objection forms been submitted within required deadlines:

10101 W. Capitol Drive (260-9996-01). Atty. Susan Sager, Michael Best & Friedrich LLP, 100 E. Wisconsin Avenue, Milwaukee, was present on behalf of the property owner, Max Lubotsky Trust. Having been recently retained by the owner, she did provide some information to the Assessor's office for review. An objection form was filed; however, for an unknown reason, the faxed objection did not go through on the first attempt and was not received by the Board Secretary until 9:54 a.m., on June 9, 2009, 54 minutes after the deadline. She accepted full responsibility for the tardy objection form and indicated this was not how she generally conducts business. Ms. Sager asked that her client not be penalized because of this situation.

Mr. Miner concurred that he had spoken with Ms. Sager one week prior to the submission deadline. He attempted to contact Ms. Sager on June 8th to advise that the office would be unable to review the property prior to the submission deadline, and to recommend that a notice of intent (to file an objection) be submitted.

Moved by Mr. Benz, seconded by Mr. Rice
to accept the objection form. -3

6103 W. North Avenue (345-0026-00). Agent Jeff Howard, 6508 S. 27th Street, Oak, Creek, was present on behalf of the property owner, GParcel LLC. He was advised by the City Clerk's office on June 10th that the objection form he mailed on May 28th by regular mail had not been received. He added that he mailed in the objection form upon receipt of assessment information from the Assessor's office. (Ms. Ledesma confirmed receipt of his phone call by the Clerk's office on June 10th.)

Mr. Lenski stated that assessment information was mailed out on May 26th. Mr. Miner added that in spring, either the owner or the agent had requested a property review. An appraiser subsequently inspected the property and a reduction in the assessment was made as a result.

Moved by Mr. Rice, seconded by Mr. Benz
to accept the objection form. 2-1 (Schilling)

3333 N. Mayfair Road (296-9999-01). Agent John Matheson was present on behalf of the property owner. He advised the property has been in receivership with Polski & Associates of Milwaukee. It is his understanding that that note was purchased in the last week. Mr. Matheson further stated that he had given verbal notice of intent to file with the Clerk's office.

Ms. Ledesma confirmed that she did speak to an unknown caller on June 9th, who inquired whether an objection form had been filed for this property. Since it had not been, she recommended to the caller that personal appearance at this morning's Board meeting be made in the hopes of submitting the completed objection form at that time.

Mr. Miner stated this property was brought to his attention late in 2008 by attorney John Galanis. Whenever an agent speaks to the Assessor's office on behalf of a property, a Letter of Agency is requested. Mr. Galanis provided this and several conversations ensued. Mr. Galanis had never mentioned a note or other representation to Mr. Miner. Mr. Galanis had been informed of the Board's submission deadline in the event he wished to pursue this option. Mr. Miner stated he received a phone call (believed to be on June 9th) from a new agent, who knew nothing of John Galanis.

Moved by Mr. Benz, seconded by Mr. Rice
to deny acceptance of the objection form. -3

**2602 N. 88th Street
333-0331-00**

City Clerk Ledesma swore in property owner Brian Randall and Rhett Tuff, city appraiser.

Mr. Tuff stated that assessed value as of January 1, 2009 was:

Land	72,300
Improvements	172,300
Total	244,600

The total assessed value and estimated fair market value are the same for 2009.

Mr. Randall stated the fair market value should be \$225,000. An April 13, 2009 appraisal performed by Kelly Barriman (unable to attend) set the value at this amount. He reviewed the comparable properties cited by the appraiser and the adjustments made for differences with the subject property. Mr. Randall also reviewed nine properties (comparable, in his estimation) from the assessment module of the city's website, but acknowledged he did not tour any of them when they were for sale. He noted that Mr. Tuff did perform an interior inspection of his property, and added that he could not sell the property now at the current assessed value, nor for the 2002 purchase price of \$242,500.

Mr. Tuff's objection at the appraiser's absence was noted, since she was unavailable for cross examination. He pointed out that two of the appraiser's comparables are listings only, not actual sales. Furthermore, this appraisal was done for refinance purposes, not specifically to establish value. The Assessor's office operates on a mass-appraisal basis, looking for trends in the market, and not just an individual sale.

Mr. Tuff confirmed that he performed an interior inspection of the property which indicated that the property is in above-average condition. The best indicator of value is what a property sells for; this property sold for \$242,500. The city's 2009 assessment ratio (set by the state) is at 100%, which is identical to the 2006 assessment ratio (the last year a city-wide revaluation was performed.) Properties selling for less than assessed value tend to be under duress, in foreclosure, or have other mitigating circumstances. This property, by contrast, has been

updated since it was purchased. The property was valued in accordance with state statutes and the Wisconsin Property Assessment Manual.

Mr. Randall countered that the best evidence of value is from the *recent* sale (e.g., 3-4 years) of a property. Three or four years ago would have been 2006 or 2005. This property was sold in 2002 in a very different market. Mr. Tuff is contending that the 2006 revaluation, which incorporated the 2002 purchase price, is still valid justification for the current January 2009 value. The Assessor's office is reaching back to 2002 for value verification. In 2006, the \$244,600 valuation was probably appropriate, but comparable sales are not close to assessed value. And comparable sales are the next best indicator of value if the subject property has not recently sold. The nine properties cited previously all sold in the last year for prices more in line with a subject value of \$225,000 than \$244,500.

The following exhibits were presented and entered into the record:

Exhibit 1 Petitioner's objection form and appraisal

Moved by Mr. Benz to hold the matter pending appearance by the appraiser. Motion failed for lack of a second.

Testimony was closed. Mr. Benz acknowledged some concern with the Assessor's value on the property, since he is very familiar with the subject neighborhood. There have been very few sales, which is perhaps reflective of the lack of 2008 sales in the Assessor's presentation.

Mr. Rice expressed comfort with considering a re-finance appraisal, and acknowledged that this market makes establishing value especially difficult. His inclination is to side with the petitioner in terms of having provided adequate proof of incorrectness of valuation.

Mr. Schilling stated he was concerned with reliance on sales that occurred prior to the real estate bubble. While the 2006 assessed value may have been correct then, he questioned whether it was still valid. However, concrete evidence is scant; testimony today relied on arguments and estimates. He suggested Mr. Randall may wish to review the appraisal in greater detail with the Assessor's office in anticipation of the 2010 valuation.

Moved by Mr. Benz, seconded by Mr. Rice to find that the tax payer's objection should be sustained. The tax payer has presented sufficient evidence to rebut the presumption of correctness of the Assessor's valuation. The \$225,000 valuation is reasonable in light of the evidence presented. –

Moved by Mr. Rice, seconded by Mr. Benz to amend the motion to provide that the adjustment be made to the value of the improvements. -3

Vote on motion as amended, 2-1 (Schilling)

The adjusted assessment is as follows:

Land	72,300
Improvements	152,700
Total	225,000

2641 N. 117th Street
337-0021-00

City Clerk Ledesma swore in Ms. Chabron, city appraiser, and property owner Joe Heder. City Attorney Alan Kesner present in Ms. Aldana's stead.

Ms. Chabron stated the assessed value as of January 1, 2009 was:

Land	105,700
Improvements	143,900
Total	249,600

The total assessed value and estimated fair market value are the same for 2009.

Mr. Heder was present, as was his attorney Judith Paulick. Atty. Paulick stated that her client purchased the property in 1996 for \$140,000. There is deferred maintenance on the property; pictures were submitted to support this statement. Sales of Cape Cod style homes between the period May 2008 and May 2009 were researched. The average sale price was \$198,000. Mr. Heder has attempted unsuccessfully to sell the property.

Mr. Heder stated he believes the assessed value to be \$205,000. Four different realtors since September 2008 have told him the sales price ought to be between \$200,000 and \$225,000. The home has not had any updates; the fixtures are original. People tell him there is too much updating that is required. The house needs siding, windows, kitchen cabinets and counters. The property is close to the freeway and hears the noise therefrom. He attempted to sell the property at \$279,000 and later reduced it to \$250,000.

Ms. Chabron stated that Mr. Heder requested a property review, and she conducted an inspection on January 20, 2009. No data changes needed to be made as a result of the inspection. Current condition rating is average. While in original condition, the property has been maintained. The lot size is very large, over 35,000 square feet. The neighbor to the north has an identical lot size which is valued at \$121,000. The value of the subject property's land was reduced in the past due to concerns. The home to the north is larger, in better condition, and has a higher assessment. There have been no recent sales of Cape Cod homes in this neighborhood, so sales of Cape Cods city-wide were reviewed.

Mr. Lenski added that staff has been to the property several times; the reduced land value reflects surrounding issues. The 'average' rating reflects the house's condition. He noted the house has

not been listed for sale below \$250,000, which seems to indicate the owner's opinion of value. The valuation reflects the asking price. Ms. Chabron's analysis of 2008 sales only was an attempt to portray the market just prior to January 2009. Mr. Heder has previously received two reductions in his assessment.

Testimony was closed. Mr. Benz noted with favor that staff comparables are 2008 sales. Mr. Rice concurred that he appreciated the more recent sales information. Mr. Schilling observed that the Assessor's office assessed in accordance with state statutes and the Wisconsin Property Assessment Manual.

Moved by Mr. Benz, seconded by Mr. Rice to sustain the Assessor's valuation. -3

BREAK 12:45 p.m. – 1:10 p.m.

**2400 N. Mayfair Road
335-9998-16**

City Clerk Ledesma swore in agent Atty. Terrence Griffin, Eugene L. Griffin & Associates, Ltd., 29 N. Wacker Drive, Chicago, present on behalf of the property owner, Bonstores Realty One, LLC, and Michael Kelly, Real Estate Analysis Corporation, 205 N. Michigan, Chicago.

Mr. Miner stated that the assessed value as of January 1, 2009 was:

Land	13,682,300
Improvements	9,768,400
Total	23,450,700

The total assessed value and estimated fair market value are the same for 2009.

The following exhibits were presented and entered into the record:

Exhibit 1	Petitioner's objection form
Exhibit 2	Appraisal of Boston Store #527 performed by Real Estate Analysis Corporation
Exhibit 3	Uniform Standards of Professional Appraisal Practice, 2008-2009 edition (USPAP)
Exhibit 4	Excerpt from Wauwatosa Plan Commission minutes, April 11, 2005
Exhibit 5	Assessor's 2009 real estate assessment of 2400 N. Mayfair Road
Exhibit 6	Excerpt from Wauwatosa Municipal Code, Chapter 24.45
Exhibit 7	Complete Appraisal of Real Property (2400 N. Mayfair Road) prepared by Cushman & Wakefield of Illinois, Inc., for Bank of America, N.A., as of December 15, 2005

Mr. Griffin stated that the fair market value as of January 1, 2009 should be \$11,000,000, as supported by a 2009 appraisal performed by Real Estate Analysis Corporation.

Mr. Kelly stated that the appraisal was performed to determine the fair market value in anticipation of this appeal. The income, sales, and cost approaches were used, with most emphasis being placed on the income approach. Each approach was explained in great detail. Valuations based on the three approaches were as follows: Income capitalization approach, \$11,120,000; sales comparison approach, \$10,535,000; cost approach, \$10,720,000. The final opinion of value is \$11,000,000.

Atty. Amy Seibel was present on behalf the Assessor's office. She briefly reviewed criteria under which municipal assessors value properties. Ms. Seibel directed the Board's attention to several pieces of data within the Assessor's supporting documentation, beginning with the Real Estate Transfer Return (RETR) form received by the Assessor's office in May 2006. The RETR referred to a sale for over \$1.1 billion dollars between Parisian, Inc., and Bonstores Realty One, LLC; the subject property was part of this arm's length transaction.

Considerable discussion ensued over whether to admit to evidence the Cushman & Wakefield appraisal, and, if admitted, what weight to give to the December 2005 appraisal since it had been prepared for financing purposes for the transaction mentioned above, and not prepared as part of preparations for this appeal. The document had been subpoenaed by the Board at the request of the Assessor and listed a market value for the subject property of \$32,700,000. The argument was made that since the appraiser was not present, no cross-examination was possible concerning the December 2005 appraisal document.

Ms. Seibel opined that the current use of the property (a mall anchor store) is not the highest and best use of the property. Based on the representations made in the December 2005 appraisal to the lender, it appears that opinion is shared by Cushman & Wakefield.

Mr. Miner noted that the current owner of the property paid the real estate transfer fee based upon a total value of \$32,700,000. He further noted that the current assessment on the property does not meet the sales price because the former assessor was unsuccessful – despite requests in 2007 and 2008 – to obtain a copy of this 2005 appraisal. Consequently, the former assessor was never able to understand the whole transaction. Since (as a result of the Board's subpoena) he has had the opportunity to review documents that she did not, he now feels the \$23,450,700 assessment is too low.

Mr. Griffin countered that the 2005 appraisal reflected *allocated value* of this property as part of a larger sale, not necessarily market value. He objected to testimony being made concerning the contents of the 2005 appraisal, noting that their appraiser, Mr. Kelly, could not be expected to comment on it. The appraisal had been done as part of the 2006 sale.

Discussion ensued concerning the advisability of subpoenaing a representative of the Cushman & Wakefield appraisal, or a corporate official involved in securing the loan for the sale for which \$260,000,000 was borrowed. The purpose would be simply to verify that the appraisal was prepared for the purchase.

RECESS 5:03 p.m. to Friday, June 12, 2009 at 9:00 a.m.

The Board reconvened at 9:28 a.m. with Messrs. Benz, Rice, and Schilling present. Also present, Asst. City Attorney/HR Admin. Aldana, Assessor Miner, and Board Secretary Ledesma.

Mr. Schilling addressed the 2005 appraisal, noting he would permit this document, but would not permit testimony on it. There is no indication the document is not what it purports to be.

Mr. Miner reviewed letters received by the former assessor in 2007 from Robert Johnson, Eugene L. Griffin & Associates, Ltd., in which Mr. Johnson argued against the 2006 assessment increase (based on the 2005 sale) because this was not an arm's length sale, but a sale between affiliated companies. However, the landlord and tenant are not the same entities.

Mr. Miner addressed at length land values within the neighborhood of the subject property, as well as negatives of the site. He also reviewed the comparables cited by the petitioner, opining why they are good or bad choices, and how they differ from the subject property.

Mr. Miner noted that discussions have been held with the city planning department and between Mayfair shopping center management and Boston Store's owner concerning relocation of the store within the mall property. It appears the highest and best use of the current store may be its renovation into a series of small shops as a way of expanding the mall, and building a new and larger Boston Store building on site. Mr. Miner added that Boston Store's owner currently controls three access points into the mall property, which gives the owner considerable negotiating power with the mall.

Mr. Miner explained that the Cheesecake Factory, Crate and Barrel, and McCormick and Schmick lease a total of 59,000 square feet of outlying mall property at a value of about \$66.00 per square foot. By contrast, the nearby Dave & Buster's restaurant south of the mall on Mayfair Road leases for about \$32 per square foot, and Pick 'n Save on Mayfair Road, about \$25 per square foot. Therefore, based upon this market data, the \$10 per square foot discussed by the petitioner does not match what the market data seems to indicate in terms of value.

Mr. Miner added that Boston Store currently has sales of about \$180 per square foot. By contrast, small specialty shops in the mall garner about \$450 per square foot in sales, lending credence to the opinion that the highest and best use of this property would be redevelopment of the space into specialty shops. With this in mind, Mr. Miner said that the value of the shell of the Boston Store building is \$4.5 million dollars. When added to the land value, the total valuation is at \$29.5 million dollars. In summary, the value of the subject property is \$30 million dollars.

In response to a query by the Chair about the equity of increasing an assessment for one property, Ms. Seibel explained that to make a uniformity challenge, evidence must be presented to the court of appeals showing that the inequality affects an entire assessment district. If a community does not have a general under-valuation, there is no constitutional uniformity challenge. The city's roll was submitted at 100% valuation.

Discussion turned once again to the 2005 appraisal. Mr. Griffin stated that it was provided to the Assessor's office as a result of a subpoena. It was prepared by a third party for a particular use.

Over Mr. Griffin's objections, Mr. Schilling ruled that it would be entered into evidence and subject to cross examination.

Mr. Griffin reviewed information on the March 2006 real estate transfer form, pointing out that the transaction occurred between affiliated companies (Parisian, Inc., and Bonstores Realty One, LLC), and was not an arm's length sale. The master lease shows that Bonstores immediately leased the property back to Parisian. The same person signed that lease as landlord and tenant, and that same person signed on behalf of both parties on the special warranty deed. Mr. Griffin argued that that the Assessor is determining value based upon what 'could' or 'might' be done to the property in terms of redevelopment. He contended that the Assessor's land value is based upon a four-acre sale in 2005; the subject property is on 15 acres. Mr. Griffin reminded the Board that Mr. Kelly's appraisal valued the property based upon three widely accepted methods; all three support a similar assessment number. Their comparable properties are located across the Midwest, and not limited to Wauwatosa or Brookfield.

Ms. Seibel noted that the owner of the property would not try to sell it for the \$11,000,000 figure, and reiterated that the owner's agent attempted for three years to distract the Assessor's office from looking at the 2005 appraisal which values the subject property at \$32,700,000. She contended that the comparable properties cited by the owner's appraiser were stores located in struggling malls.

Testimony was closed. Mr. Benz commented that based upon the information presented, the valuation should, at a minimum, stay at the January 1, 2009 amount. He felt he could also support an assessed value of \$30,000,000.

Mr. Rice stated that he preferred not to use the Best Buy property across the street (from the mall) when comparing land values. Neither did he support the \$11,000,000 proposed valuation. He felt comfortable with a valuation between the Assessor's current amount, and something less than \$30,000,000. Sales are declining. General Growth Properties (mall owner) is in bankruptcy. The real estate market is not good. The Assessor's office has reviewed a lot of new material in just a few days and has work yet to do to further substantiate a \$30,000,000 valuation.

Mr. Schilling summarized that there seems to be some agreement that the Assessor's valuation is not correct, and that a higher valuation may be appropriate. Mr. Schilling agreed that he did not support the \$11,000,000 figure.

At the urging of counsel, the Board explained their lack of support for the property owner's \$11,000,000 assessed value figure. Mr. Schilling stated that he felt the comparable properties used by the owner's appraiser were not good comparables since none of them appears to be in thriving locations. Mr. Benz opined that General Growth Properties' bankruptcy filing has no effect on the value of Boston Store. He further noted that the \$32,700,000 value in the loan agreement (and on the Real Estate Transfer form) does not support a valuation of \$11,000,000; a bank would not have loaned the larger amount based upon a much smaller valuation. Mr. Rice expressed concern with the conclusions concerning the land value portion of the owner's valuation, while acknowledging that the two components cannot be considered separately.

Moved by Mr. Rice, seconded by Mr. Benz to find the presumption of correctness by the Assessor is rebutted, and to further find the proposed \$11,000,000 valuation of the property owner is not reasonable despite evidence submitted. The Board hereby sets the new assessment as follows:
Land, \$21,220,600, Improvements 4,372,700, for a total of 25,593,300. -3

There being no further business, the Board recessed until June 23, 2009 at 8:30 a.m.

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Carla A. Ledesma, Board Secretary