



CITY OF WAUWATOSA
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BOARD OF REVIEW
Tuesday, August 25, 2009 – 10:00 a.m.

PRESENT: Mr. Benz, Mr. Lemke, Ms. Wakefield

ALSO PRESENT: Mr. Kesner, City Attorney; Mr. Miner, City Assessor; Mr. Lenski, Dep. City Assessor; Ms. Aho, Appraiser; Ms. Seibel Attorney for the Assessor

Mr. Benz in the Chair

2500 N. Mayfair Road
Tax Key: 335-9998-12

Deputy City Clerk Van Hoven swore in Assessor Miner, Deputy Assessor Lenski and the a representative for Macy's department store, Don M. Millis, Reinhart Boerner Van Deuren, 22 E. Mifflin Street, Madison.

The assessed value as of January 1, 2009 was: \$20,722,900

Mr. Miner noted that Mayfair Properties, Inc. owns several properties. The parcel in questions is owned by Mayfair Properties, Inc. Macy's occupies part of that parcel and pays rent to Mayfair Properties. Boston Store is the only other property owner in the Mayfair Mall parcel. On the objection form filed by Macy's there is no agent listed. The form is signed by Kevin Shevlin, Senior Manager Property Tax for Macy's Inc. The tenant's stated opinion of value is \$12,800,000.

Mr. Miner mentioned that he had spoken with Dave Swinkle, Senior Director of Tax Services for Mayfair Properties, Inc. Mr. Swinkle told him that they were not authorizing Macy's to represent Mayfair Properties, Inc. Mr. Miner commented that Mr. Swinkle also told him that Mayfair Properties, Inc. is not appealing their assessment for any of their properties. Mr. Swinkle felt the assessment was more than fair for any of the values in the Mayfair Mall development.

Mr. Miner referred to a map included in the original lease from 1954 which details the footprint of the building. He noted that the tenant has the right to make repairs to the exterior of the building. He added that the lease covers the building and land under the building, but not the parking.

Mr. Miner referred to McCormick and Schmick and noted that this restaurant, Crate and Barrel and the Cheesecake restaurant all lease the land, but have built their own buildings. They pay approximately \$364,000 in rent for the land only. The parking is shared by all the properties. Mr. Swinkle explained what the various types of leases are how they are trying to maximize drawing people to the mall.

Mr. Miner reported that a notice of assessed property was sent to Mayfair Properties, Inc. which showed an actual decrease in their assessment. He added that the subject property does not have curb cuts to Mayfair Road. One reason is the Department of Transportation is trying to minimize easements into the Mayfair Mall.

Mr. Seibel noted that assessors are allowed to value properties together if it is difficult to assess them separately. She noted that in 1991 Marshall Field's requested to be valued separately. Now the ground leases are affecting the relationships. Even though Macy's is paying the taxes on their parcel, the rent goes to Mayfair Properties, Inc. She observed that it seems logical to value all the properties as one given the relationships in place. Ms. Seibel asked if a tenant pays the lease hold agreement how does that work in the State of Wisconsin. Mr. Millis asked how the question pertained to the matter at hand. Ms. Seibel explained that the entire picture needs to be looked at.

Mr. Miner reported that he had reviewed all the leases. Macy's leases only the building and not the footprint or the full acreage. Macy's pays a base rent amount which is a percentage of the rent and common area charges in excess of \$800,000. The lease has been amended several times. This is a long term lease in its first extension. The landlord paid for the building.

Mr. Miner went on to explain that Macy's has what looks like a triple net lease in which the tenant is willing to pay everything associated with using the property. He can't say that it is typical because nothing about the mall is typical. The common area charges make up almost \$300,000 of the \$800,000 rent. Many of the items contained in the lease have changed over a period of time.

Mr. Millis noted that the tax bills go to Macy's and Macy's is responsible for paying real property taxes. The mall owner does not pay the taxes. The landlord is also obligated for providing parking to 2,000 cars and other amenities.

Mr. Millis asked if the objection form was not entirely filled out. Mr. Miner answered yes. Mr. Millis asked if the Assessor rules against complainants if the form is not fill out correctly.

Mr. Miner responded that he talked with Mr. Swinkle and with the Community Development Director, Nancy Welch and noted that the parcel does not have access to the road. Ms. Welch spoke of zoning requirements and the ability to get an occupancy permit. The idea of combining parcels did come up. He also talked with Mr. Swinkle about providing an appointment of agent.

Mr. Millis noted that Mayfair Properties, Inc. is happy with the assessment because they don't have to pay it. He asked why the properties can't be valued separately. Mr. Miner responded that part of the problem is that Boston Store owns the land as well as the building and the configuration of agreements makes it too difficult. Mr. Miner pointed out that when new stores come in like Crate and Barrel and Cheesecake Factory, the mall owners usually ask for the approval of the anchor stores.

Mr. Millis noted that other development could not occur without Macy's giving permission. He was troubled by the conclusion that their property can't be assessed separately. Mr. Miner noted that the way the statute reads, he has the ability to decide to assess the property as one parcel.

Ms. Seibel stressed that only the person who owns the land can file an objection. The state does not give an occupant or tenant that right. They have to take their concern to the property owner. She further explained that the Board of Review does not address property exemption questions. They focus on valuation questions. She added that Macy's does not have a right to a hearing. It is unmanageable for the Assessor to assess parcels separately in a mall setting and the legislation says that in that case the Assessor is allowed to value the parcels together. It would set a precedent. She asked the board to take that into consideration.

Mr. Millis believed that the statute did not state anywhere that a tenant can't appeal the property owner's assessment. He felt that when the statute is not clear the law must allow people to have their day in court. He cited examples of other challenges.

Ms. Seibel stressed that the city doesn't disagree as long as the tenant has the permission of the property owner. In this case the property owners have not given their permission.

Mr. Lemke asked why the property tax bill is sent to Macy's and not Mayfair Properties, Inc. Mr. Miner explained that the bills are sent where the parcel owner designates them to be sent.

Ms. Wakefield asked what would happen if Macy's doesn't pay their tax bill. Mr. Miner said the treasurer sends the bill to the county and then Mayfair Properties, Inc. would have to pay the bill. He added that the practice for paying the taxes is not clear. They would have to subpoena that information.

Mr. Millis noted that assessors have powerful weapons at their disposal. They have the ability to get that information.

Mr. Kesner explained that the situation comes down to interpreting Chapter 70.47. Clearly Macy's doesn't have control over the entire property; neither does Crate & Barrel or Cheesecake Factory. Beneficial ownership has really only been used in property exemption cases. The parties of interest are the property owners.

Mr. Lemke acknowledged that the board's hands are tied. Ms. Wakefield added that Mayfair Properties, Inc. did not appoint Macy's as their agent.

In the matter of whether to allow a hearing for Objection for Real Property Assessment at Macy's department store, the board rejected the request. The board found that Macy's was not the property owner therefore not entitled to file an objection form – 3

**2031 Martha Washington Drive
345-9584-00**

Deputy City Clerk Van Hoven swore in Assessor Miner, Deputy Assessor Lenski and Robert and Karen Freiberg, 2031 Martha Washington Drive, Wauwatosa.

Mr. Freiberg referred to his letter in which he explained that he was out of town when the Assessor's letter came to his home. Since he and his wife don't open each other's mail, his mail wasn't opened until he got home. By that time the deadline for filing an objection form was passed. He noted that the Assessor's office never changed their records to include his wife on property tax mailings. That mistake caused her to not open the envelope. He said that since then one of the people in the Assessor's office made sure both their names were on the address.

Mr. Lenski noted that the envelope the information is sent in has "dated material enclosed" printed on the front. Mrs. Freiberg could have called Mr. Freiberg to ask about opening it when it arrived.

Mr. Lemke was inclined to let them hear their case. Ms. Wakefield agreed.

Mr. Kesner noted that state statutes talk about when objections can be filed such as if someone appears on the first day and they provide good reason. He added that at any time up to the 5th day of the Board of Review meetings they can be reconsidered if they have an extraordinary reason for having waited that long.

In the matter of whether to allow a hearing for Objection for Real Property Assessment for Robert and Karen Freiberg, the board rejected the request. The board found that too much time had passed after the deadline for filing – 3

**11020 W. Plank Court
375-9990-13**

Deputy City Clerk Van Hoven swore in Assessor Miner, Deputy Assessor Lenski and the a representative for Liberty Property Trust, Gilbert M. Licudine, Paradigm Tax Group, 30 N. LaSalle Street, Chicago, IL.

The assessed value as of January 1, 2009 was: \$6,118,700
The Taxpayers estimate: \$4,906,100

Mr. Licudine noted that the factors involved in his client's decreased estimate were a downturn in the real estate market, and the building being multi-tenant industrial.

Mr. Miner asked if the representative had done any comparables around the county. Mr. Licudine responded that they focused mainly on Wauwatosa. Mr. Minor asked if the representative was a certified Wisconsin assessor or appraiser. Mr. Licudine responded that he has certification as an assessor in Indiana, but he is not an appraiser.

Mr. Miner noted that he is certified as an Assessor II and III by the Department of Revenue and he has been an assessor for Wauwatosa and other municipalities in Wisconsin. He stressed that a sale of the property is the best evidence of value. If there has been no sale then the comparables are the next best indicators. The building is primarily office and lab space. There is sufficient parking. The building is located at the end of Plank Court. There are several docks in the back.

Mr. Miner described a chart that showed how an assessment is determined. He commented that they use three approaches: 1) the cost approach which was done at the last time of revaluation; 2) the income approach in which they used 13% vacancy as a factor as well as Milwaukee's 9.5% cap rate to include taxes; and 3) the market approach comparing office buildings between 39,000 and 82,000 square feet. He felt the property should be assessed at market value as the most reliable indicator.

Mr. Licudine felt that with all the data, it was a judgment call as to establishing property value in the end. He felt that he was as objective as possible.

Mr. Miner stressed that the Markarian Hierachy is required by assessors. Tier 2 information should be used. Tier 3 should not be used with a 9.5% cap rate.

Mr. Lemke commented that Mr. Licudine hadn't demonstrated that the Assessor's numbers are incorrect.

Mr. Miner thought that since the assessment for this property hadn't changed in six years and was the same this year, the current assessment should stand.

It was the consensus of the board to uphold the City Assessor's assessment of the property.

<u>Stipulations</u>	From	To	Change
<u>Banc of America Leasing & Capital</u>			
Account No. 021480			
Machinery	0	0	0
Furniture & Fixtures	0	0	0
Other	45,040	91,160	46,120
Total	45,040	91,160	46,120
<u>Competitive Mortgage</u>			
Account No. 023738			
Machinery	0	0	0
Furniture & Fixtures	0	70	70
Other	0	60	60
Total	0	130	130
<u>2751 N. Mayfair Road</u>			
Account No. 058400			
Machinery	0	8,670	8,670
Furniture & Fixtures	0	7,350	7,350
Other	200,000	78,620	-121,740
Total	200,000	94,280	-105,720
<u>2500 N. Mayfair Road</u>			
Account No. 139249			
Machinery	0	0	0
Furniture & Fixtures	0	0	0
Other	20,000	0	20,000
Total	20,000	0	20,000
<u>Automotive Imports Inc.</u>			
Account No. 17410			
Machinery	0	24,480	24,480
Furniture & Fixtures	0	1,760	1,760
Other	32,860	0	32,860
Total	32,860	26,240	-6,620
<u>10233 W. North Avenue</u>			
Account No. 217550			
Machinery	0	0	0
Furniture & Fixtures	0	70	70
Other	250	20	230
Total	250	90	-160

10701 W. Research Drive
Account No. 272450

Machinery	0	0	0
Furniture & Fixtures	449,510	449,510	0
Other	36,330	76,830	40,500
Total	485,840	526,340	40,500

2111 N. Mayfair Road
Account No. 273700

Machinery	116,340	116,340	0
Furniture & Fixtures	9,300	9,300	0
Other	154,280	106,550	-47,730
Total	279,920	232,190	-47,730

It was the consensus of the board to approve the foregoing stipulations.

The board recessed at 1:30 p.m.

Susan Van Hoven, Deputy City Clerk

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