



CITY OF WAUWATOSA
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BOARD OF REVIEW

Tuesday, December 14, 2010 – 1:00 p.m.

PRESENT: Messrs. Benz and Duffey; Ms. Wakefield -3

ALSO Mr. Kesner, City Attorney; Mr. Miner, City Assessor; Mr. Lenski, Deputy
PRESENT: Assessor; Ms. Ledesma, City Clerk

Mr. Benz in the Chair

**2500 N. Mayfair Road
335-9998-12**

City Clerk Ledesma swore in Scott Brown, director of property tax with Macy's, Inc., 7 W. Seventh Street, Cincinnati, Ohio, and Mr. Miner.

The assessed value as of January 1, 2010 was \$24,458,000.

Amy Seibel, 11518 N. Port Washington Road, Mequon, counsel for the Assessor's office, stated that the purpose of the meeting was to give the Board of Review an opportunity to decide whether to grant a valuation hearing inasmuch as Macy's, Inc., is not the property owner of the subject property, but a tenant. Neither is Macy's, Inc., an authorized agent of the property owner. Macy's, Inc.'s, lease does not grant the tenant the right to object to the property assessment. In fact, the property owner does not wish to object to the property assessment. This same issue was considered by the Board in 2009; the Board determined then not to grant a valuation hearing.

Ms. Seibel distributed a number of documents supporting the Assessor's position, cited certain state statutes, and referenced court cases supporting the point that only a person who *owns* land may object to the aggregate valuation of that land and improvements. She also observed that the *owner* of the property had not signed the property assessment valuation objection form. In fact, the form lacks any signature. The assessor's office cannot deal with submitted objection forms if it does not know for a fact whether the submitter is either an authorized agent, or the owner himself.

Attorney Don Millis, Reinhardt Boerner Van Deuren SC, 22 E. Mifflin Street, Madison, was present on behalf of Macy's, Inc. He noted that this issue is still under consideration in circuit

court. Mr. Millis submitted a December 14, 2010 memorandum to the Board upholding Macy's right to a hearing and cited instances in Wisconsin law where beneficial owners have certain rights. In his memo, Mr. Millis referenced several court cases supporting his client's position. He opined that Macy's has standing to challenge the assessment in part because it pays the real property taxes assessed against the subject parcel.

Ms. Seibel presented the City's position and spoke in some detail concerning the original lease executed in 1954 between Mayfair Mall and Macy's predecessor, and subsequent amendments to that original document. The subject property currently includes about 15 ½ acres, and houses the Macy's store, the McCormick & Schmick restaurant, and some general mall parking. General Growth Properties, or rather, Mayfair Property, Inc., owns the parcel. McCormick & Schmick pays its lease to General Growth, and not Macy's. The original lease only included the Macy's store itself and the ground on which it stands. The lease has been amended many times, with significant changes occurring with the August 22, 1986 amendments, but nowhere does it give specific permission for a tenant to protest a property assessment on behalf of the owner.

Under questioning by Ms. Seibel, Mr. Miner confirmed that the triple net lease under which Macy's now operates is typical of this sort of lease in that the tenant pays all or most of the expenses related to the property. The rent currently exceeds \$800,000 per year and includes percentage rents (based on gross sales in excess of \$30 million), base rent, and CAM (common area maintenance) charges. These changes to the original lease occurred with the sixth lease amendment in August 1986.

Responding to further questions from Ms. Seibel, Mr. Miner confirmed that Mayfair Property, Inc., would be held responsible were property taxes to go unpaid on the subject property. Mr. Miner then addressed 25 points concerning Macy's 'beneficial ownership' status of the parcel. While verifying Macy's position on a few points, Mr. Miner also pointed out on several others that the 'beneficial ownership' referred to was simply consistent with the typical provisions of a triple net lease.

Mr. Millis presented his client's position concerning Macy's ability to object to the property assessment on the subject property. He questioned the lease abstract prepared by Mark Kenney from American Valuation Group, Inc., that was included in the assessor's information packet since Mr. Kenney was not present to answer questions about that document. Mr. Millis pointed out that in 1990 a separate tax parcel was created for the subject property, creating a separate tax bill. The tax bill includes the demised premises; Macy's is responsible for this bill and, until the December 2009 bill, was mailed the bill. There is no incentive for Mayfair Property, Inc., to appeal an assessment since it does not pay the resulting taxes. Mr. Millis noted that the City believes Macy's should be paying for a part of the total tax liability of the mall based upon the sixth lease amendment (1986).

Mr. Millis noted that in 2009 (Board of Review) there was discussion about whether the Mall authorized Macy's to file an objection form. There was the question of whether review of the subject parcel might somehow cause a review of the entire Mall's assessment to also occur.

Mr. Millis questioned Mr. Miner's qualifications to analyze the contents of the lease and lease amendments and the conclusions drawn by the Assessor's office with respect to the 25 points concerning Macy's position of being a beneficial owner.

Mr. Millis directed several questions to Scott Brown, director of property taxes for Macy's, Inc. He verified that he became involved with the assessment and taxes in 2009. Mr. Brown further stated that his supervisor asked representatives of General Growth Properties whether a lease amendment could be drawn up to permit Macy's to protest property assessments. The response was affirmative and the document was drafted by Macy's legal department. The amendment was sent to General Growth Properties' legal department. Macy's was subsequently informed that the amendment would not be executed because of tax concerns. Upon further discussion, it was revealed there was concern that if General Growth Properties approved Macy's separate appeal of the subject property's assessment, it might open the entire Mall up to revaluation consideration.

Mr. Brown verified that since 2005 they have directly paid the property taxes to the taxing jurisdiction. Macy's pays 100% of the taxes levied against the subject property, not a portion; beginning in 2008, however, a portion of the taxes was charged against the McCormick & Schmick restaurant.

Ms. Seibel asked some clarifying questions of Mr. Brown with respect to the lease for the McCormick & Schmick restaurant located on the subject property. Mr. Brown stated it is his understanding that an arrangement is in place with General Growth Properties such that Macy's receives a reduction in the CAM costs in exchange for the ground lease rent from McCormick & Schmick.

In response to questions by Ms. Seibel and by Mr. Millis, Mr. Miner stated that separate consideration of the assessed valuation of the subject property would not necessarily result in a review of the Mall's assessment.

In response to a query by Mr. Duffey, Mr. Kesner advised that that statutes do not clearly and specifically state that no one except a property owner can file an objection to a property's assessment.

Responding to questions by Mr. Duffey, Mr. Miner clarified that it was his decision to send tax bills to Mayfair Property, Inc., instead of Macy's, in an effort to emphasize who is the responsible property owner. The owner of record is the responsible party. Mr. Miner further stated that McCormick & Schmick pays taxes on its building and improvements, but not on the land. The parcel on which the McCormick & Schmick building stands was created in 1991 for Macy's.

Summaries were presented by both sides:

Ms. Seibel referenced state statutes 70.47(7)(a) in arguing that only owners or authorized agents can file a property assessment objection. Furthermore, there are court cases which provide that only objection forms completed in their entirety (i.e., signed by the *owner*) need be accepted for hearing by a Board of Review. The property owner has stated in writing that Macy's is not

acting on the owner's behalf in this issue. Ms. Seibel cited a 2003 case of *Fee vs. Board of Review for the Town of Florence* whereby the Wisconsin Court of Appeals ruled that a board of review may dismiss an objection form that is not properly or fully completed.

Mr. Millis stated that Macy's wants to have its 'day in court' to argue this assessment since Macy's is responsible for the annual tax payments. He discounted the *Fee vs. Board of Review* case, pointing out that the issue was failure to list an opinion of value; that case did not discuss who can properly sign and submit an objection form. He dismissed the applicability of 70.47(7)(a), noting that the statute does not provide that every blank on the objection form be completed. The recent Great Lakes Quick Lube case in the City of Milwaukee cited by Ms. Seibel has nothing to do with whether the tax payer is the agent.

Mr. Kesner advised the Board that it can decide on the motion based upon testimony given at this hearing. The right to object is part of the ongoing litigation between the City and Macy's. As counsel to the Board, Mr. Kesner informed those present that he not directly involved in this ongoing litigation. Outside counsel is handling this matter.

Mr. Duffey expressed concern that Macy's is the 'only one with skin in this issue'. If the Board declines to hear Macy's property assessment objection, General Growth Properties (mall owner) doesn't care. The taxing authority is not kept honest with this situation. This is a one-of-a-kind situation. The argument of proper completion of the form is a matter of form over substance. Mr. Duffey acknowledged in that in most instances a property owner would file the objection form; the form assumes this point. He stated that he was struggling with the City's motion not to allow Macy's to object to the assessment.

Ms. Wakefield suggested that the assessment issue should perhaps have been negotiated at the lease level. Perhaps it is better not to have multiple taxing parcels at Mayfair, as it does pose a potentially confusing situation for the assessor's office. She tended to believe, however, that it is the prerogative of Macy's to question the property assessment.

It was moved by Mr. Duffey to deny the request by
by the assessor's office to deny Macy's a hearing
before the Board. –Motion failed for lack of a second.

It was moved by Ms. Wakefield, seconded by Mr. Benz
to uphold the city's motion to deny the hearing on the
property assessment. Ayes 2, Noes 1 (Duffey)

Over an objection by Mr. Millis that the assessor's three-ring binder contains much hearsay, Mr. Benz ordered it admitted to the record.

Stipulations

The following stipulations were read into the record reflecting changes to the 2010 assessments:

	<u>From</u>	<u>To</u>
6334 Cedar Street, tax key #384-0518-00	\$241,800	\$188,000

9730 W. Blue Mound Road, tax key #409-0042-01	\$756,700	\$619,000
12132 W. Capitol Drive, account #102600	\$ 63,420	\$ 34,100
12132 W. Capitol Drive, account #102600	\$112,680	\$ 32,000

It was moved by Mr. Duffey, seconded by Ms. Wakefield
to approve the four stipulations as submitted. -3

The Board recessed at 4:00 p.m. until 1:00 p.m. on Wednesday, December 15, 2010.

Carla. A. Ledesma, Secretary to the Board

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