



CITY OF WAUWATOSA
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BOARD OF REVIEW

Wednesday, December 15, 2010 – 1:39 p.m.

PRESENT: Messrs. Benz, Duffey, Rice -3

ALSO

PRESENT: Mr. Miner, City Assessor; Ms. Aldana, Asst. City Attorney/HR Director

Mr. Benz in the Chair

**Personal Property Account 162325
2500 N. Mayfair Road**

Mr. Miner stated that the objections to the personal property assessments for years 2008, 2009 and 2010 have been filed. Assessed values for the three years are as follows:

2010	\$15,389,940
2009	\$10,035,120 (omitted)
2008	\$11,127,250 (omitted)

Atty. Don Millis, Reinhardt Boerner Van Deuren SC, 22 E. Mifflin Street, Madison, was present on behalf of Macy's, Inc., and disagreed that there is omitted personal property. The petitioner has reviewed its records and has filed amended returns where necessary. At issue is whether the leasehold improvements are part of the real estate assessment or the personal property assessment.

Amended leasehold improvement information filed in October listed what the petitioner feels is part of personal property, and identified other leasehold improvements that the petitioner believes to be part of real property. The lease in place on this property is a below-market lease and is an encumbrance on the property. The lease provides that Macy's is leasing from the landlord the leasehold improvements. Macy's, like Marshall Field's before it, has the right to make leasehold improvements that become the property of the landlord. These leasehold improvements are real – not personal – property and are not properly assessable as such.

Amy Seibel, 11518 N. Port Washing Road, Mequon, counsel for the Assessor's office, opined that under Wisconsin law (70.17) assessors can choose to tax leasehold improvements as real property or as personal property. In Wauwatosa, the assessor adopted the policy that all tenant leasehold improvements are assessed as personal property. That office investigates each leasehold improvement to assure that it is not double-counted. Leasehold improvements have not been included in the Macy's real estate assessment; only 'vanilla shell' improvements must be included in real property assessment. The *Wisconsin Assessor's Manual* describes the term 'vanilla shell' improvements, and based upon that information, the assessor's office does not believe the

improvements in question meet that description. Ms. Seibel stated that the assessor's office does not have complete information, however, and has worked with the data provided on Macy's fixed asset general ledger.

Ms. Seibel asked the Board to consider the improvements Macy's installed and purchased (\$5.6 million dollars' worth) in 2005 from the prior tenant. Macy's operates under a bargain lease at \$1.00 per square foot that does not include leasehold improvements because Macy's owns them. As the tenant changed from Marshall Field's, to May's, and to Macy's, there was an allocation to the leasehold improvements of \$5.6 million dollars. Macy's then installed another \$4-5 million dollars' worth of improvements since 2005.

The following exhibits were entered into the record:

- Exhibit 1 Macy's 2010, 2009, and 2008 Personal Property Tax Assessment Summaries
- Exhibit 2 Macy's Corporate Services Real Estate Fixed Asset Classes/Descriptions
- Exhibit 3 Real Property Leasehold Improvements Disclosure (2010 Real Property)
- Exhibit 4 Real Property Leasehold Improvements Disclosure (2009 Real Property)
- Exhibit 5 Real Property Leasehold Improvements Disclosure (2008 Real Property)
- Exhibit 6 Excerpts from 10/31/56 Lease Amendment and 10/31/56 and 8/22/86 Amendments
- Exhibits 7-10 Photos of lower level of current store illustrating examples of trade fixtures, personal property, and real property (tiles, lights, etc.)
- Exhibit 11 Copy of 2011 City of Wauwatosa General Information for Personal Property handout

Stephen Wollenhaupt was sworn in and stated that he is employed by Macy's to manage the personal property. He reviewed Exhibits 1 through 6.

Ms. Seibel referred to Schedule H (personal property, leasehold improvements) of the 2010, 2009, and 2008 Statements of Personal Property, noting that Mr. Wollenhaupt signed the returns as preparer and as an employee of the company, and further noting that some leasehold improvements were reported.

Ms. Seibel inquired whether the amended returns and disclosure statement which were filed in November 2010 as required by the Board contained identical information to that appearing in Exhibit 3. Mr. Wollenhaupt indicated that while not identical, the information was the same. He added that he considered them real property and this was why they were not reported. For property tax purposes, Macy's lists some personal property items in real estate.

Ms. Seibel noted that in #3, many list furniture and fixtures, not the account information.

In Exhibit 5, \$5,469,400 is the acquisition price for leasehold improvements (LHI) acquired in the May purchase. Ms. Seibel observed that they (\$5,469,400 LHI) were not in the purchase of real estate from the owner. Therefore, they did not own them to sell them.

Mr. Wollenhaupt explained that they believe the LHI are part of the real estate, so they would not be reported on the personal property return schedule H.

In response to Ms. Seibel's query, Mr. Wollenhaupt replied that he did not know whether the rent charged to Macy's includes the value of the leasehold improvements. He reiterated that the leasehold improvements are part of the real estate and, therefore, owned by the landlord.

Ms. Seibel noted that it was reported to shareholders that these assets were owned. The balance sheet reflects these assets, but the company does not own the assets.

Mr. Wollenhaupt confirmed that statement.

Recess 2:35 p.m. – 2:42 p.m.

Ms. Seibel observed that many accounts in Exhibits 3, 4, and 5 are listed as ‘furniture and fixtures’, but Mr. Wollenhaupt stated they are not necessarily furniture and fixtures in the traditional sense.

Exhibit 12 Assessor’s 3-ring binder

Exhibit 13 Summary of Assessed and Omitted Values for Years 2010, 2009, 2008

Mr. Millis referred to tab #15 of the Assessor’s Exhibit 12 and opined that information on pages 15-28 and 15-29 refers to a ground lease and is, therefore, not applicable to this case since Macy’s lease covers land and building.

In response to a question by Mr. Duffey, Mr. Wollenhaupt explained that terms used in Exhibit 3 were borrowed from the Macy’s general ledger. He feels the *items* listed on Exhibit 3 all fall under the ‘vanilla shell’ description. Upon further questioning, Mr. Wollenhaupt confirmed that the 2005 sale was a stock acquisition purchase. The \$5,469,400 figure was a number established by Deloitte and Touche for the fixed assets.

Responding to a question by Mr. Rice, Mr. Wollenhaupt explained that the assets identified as personal property in schedule H of the amended Statement of Personal Property return were included therein based upon descriptions and definitions in the *Wisconsin Property Assessment Manual* for ‘vanilla shell’ items.

Mr. Millis added that when amended returns were filed, it was done with the intent of disclosing assets, not necessarily agreeing they are assessable.

Mr. Wollenhaupt reiterated an earlier point that Macy’s did spend money on improvements, but the costs are listed on the books as a fixed asset. This is an accepted accounting practice; Macy’s reports fixed assets in accordance with GAAP (general accepted accounting practices). However, Macy’s does not have unlimited authority to do what it wants with the assets that improve the landlord’s building.

Philip Didion, director of pre-construction services at Macy’s, was sworn in and stated that he is involved in estimating costs related to construction. He discussed in some details the contents of Exhibits 3-10, explaining what types of improvements were included under certain broad categories used in the exhibit documents.

Ms. Seibel reported that the assessor’s office will be asking the Board to reduce the assessment based upon new information received.

Mr. Millis reiterated that certain improvements should not be considered personal property, and some should. That is why amended returns have been filed. The tax amounts owed for 2008 and 2009 have been paid. It would be useful to have the 2010 statement amended so accurate taxes can be paid based upon correct assessments.

Ms. Seibel stressed that the improvements can be considered either personal property or real property, but not both. The City has not included these improvements in the real property assessment. And they were missed initially because the assessor's office didn't even know of their existence.

Mr. Millis stated that Mr. Miner does not accept their indexing since Mr. Wollenhaupt used a 10-year life and the assessor's office used 5, 10 or 15 years.

Ms. Seibel asked whether an amended list can be submitted of what the petitioner agrees is personal property. Mr. Millis countered that Exhibits 3, 4, and 5 are that. Take the Schedule H attachments and disclosure statement and that includes all of the improvements.

Ms. Seibel added that another unanswered question is the useful life of these improvements. What should be used for depreciation purposes? Only broad categories, i.e., walls were provided; what does that include?

Ms. Aldana summarized the issue as being whether it matters if something is classified as real property or personal property. The city is saying it can be either; Macy's disagrees.

RECESS 4:20 p.m. to 1:00 p.m. on December 17, 2010.

The Board reconvened at 1:00 p.m. on December 17, 2010. Messrs. Benz, Duffey, and Rice were present. Also present were Ms. Aldana, Asst. City Atty./Human Res. Dir.; Mr. Miner, City Assessor; Mr. Lenski, Dep. City Assessor. Mr. Benz in the Chair

Amy Seibel, counsel for the Assessor, described a timeline of the hearings to date on this property. Mr. Miner noted that he had a meeting with Mr. Don Millis, attorney for Macy's, Inc., during which Mr. Millis submitted a one-page summary of the store's personal property. Mr. Miner requested any leasehold information and was told that he would be provided with the information, but Macy's didn't follow through.

Ms. Seibel noted that the next time the Assessor received a Statement of Personal Property was in 2010. Mr. Miner explained that assessors are not required to use information that is not readily given to them. When he didn't receive a response multiple times from Macy's, they rejected a certain portion of the sections and created a doomage assessment which is used when a portion or all of the personal property information is rejected.

Ms. Seibel added that when a person has failed to file a personal property form a doomage assessment would be assessed. Mr. Miner explained that they are assessing for the unknown part. He noted that Personal Property forms are self-providing. Assessors accept the numbers that are given to them. He has also taken into account additional information that was submitted in July and this past Wednesday.

Ms. Seibel asked Mr. Miner if he had communicated with Macy's. Mr. Miner answered 'yes' and the following day Mr. Millis called to say that he would be submitting more information and when the information didn't arrive on June 30th, Mr. Miner was told that the information was not ready yet.

Mr. Miner requested that the Board issue a subpoena July 18, 2010. There were three appraisals done. He went on to describe the number of responses Macy's sent. He noted that they have been an ongoing store with ongoing renovation. On August 18th a meeting was held, but they still didn't have

the information. Mr. Miner continued to describe the numerous contacts he had with Macy's in the process of gathering information.

Mr. Miner explained that a ground lease tenant owns the structure and the contents, but not the land. He explained how a situation similar to that is assessed. Ms. Seibel asked if the Assessor's approach is consistent with Wisconsin law in the Darnell decision. Mr. Miner answered in the affirmative. Mr. Miner commented that they discussed the aspect of life expectancy indicators with regard to Macy's improvements and used those as a basis for calculations.

The Board recessed at 2:30 p.m. and reconvened at 2:44 p.m.

The following exhibits were submitted into the record:

- Exhibit 15 Copy of 2010 paid personal property tax statement for Acct. #162325
- Exhibit 16 Excerpt from Chapter 74, Property Tax Collection, *Wisconsin Statutes*
- Exhibit 17 1991 Wisconsin Act 293
- Exhibit 18 *The CPA Journal* article by Andrew D. Sharp entitled, "A New Lease on Life"
- Exhibit 19 February 7, 2005 letter to Robert J. Kueppers, American Institute of Certified Public Accountants from Donald T. Nicolaisen, US Securities and Exchange Commission
- Exhibit 20 Excerpt of blog on <http://blog.accountingcoach.com> concerning differences between land improvements and leasehold improvements

The Board reviewed Exhibit #13 which showed current assessments (no depreciation allocated) in column 1, Values shown in Exhibit 12 (useful lives estimated) in column 2 and December 16, 2010 Revised Values (useful lives per Macy's) in column 3. Mr. Miner noted that they had changed the last two columns due to Macy's estimated useful life of 15-25 years. They discussed the comparison of the useful life expectancy between materials such as hard wood floors (longer life) and carpet (shorter life).

Ms. Seibel asked about the practice when tax payers replace existing property. Mr. Miner responded that the replacement is worth more than the original.

Mr. Millis noted that a distinction was made between being provided a fully furnished store and a shell. He further noted that all alterations, upon completion, shall become property of the landlord. Mr. Miner agreed, saying that it is assumed that any improvements made would go to the leaseholder.

A discussion continued regarding two previous sales of the property Macy's is located on and the question of how the assessments were dealt with in those cases. Mr. Millis noted that in 1986 the lease was converted to a 'vanilla shell' lease.

Mr. Miner pointed out that many components that were not part of the lease at the time and many of the terms changed between the parties. The rent structure was \$.75 to \$1.00 per square foot. The owner benefits from the success of the store. He added that the tenant can assign and sublease the space, but only to a subsidiary corporation. They reviewed the aspects of the previous lease. Mr. Millis thought that lease was not a shell lease

Mr. Millis asked about provisions in the *Wisconsin Assessor's Manual* relating to leasehold improvements. He contended that the building and the improvements should be taxed to the land owner.

A discussion continued regarding amortization of leasehold improvements and the information included in the personal property disclosure form.

The Board agreed to continue this hearing the week of January 10th.

<u>Stipulations</u>	From	To	Change
<u>110 N. 121st Street, Acct. No. 000556</u>			
Machinery	0	0	0
Furniture & Fixtures	0	0	0
Other	<u>1,030</u>	<u>0</u>	<u>-1,030</u>
Total	1,030	0	-1,030
 <u>6005 W. North Avenue, Acct. No. 050930</u>			
Machinery	0	0	0
Furniture & Fixtures	0	0	0
Other	<u>71,570</u>	0	<u>-71,570</u>
Total	<u>71,570</u>	0	<u>-71,570</u>

It was moved by Mr. Rice, seconded by Mr. Duffy to approve the foregoing stipulations – 3

The Board recessed at 4:20 p.m. to a date uncertain in January 2011.

Carla A. Ledesma, Secretary to the Board

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