



CITY OF WAUWATOSA

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BOARD OF REVIEW

Thursday, May 24, 2012 – 1:00 p.m.

PRESENT: Messrs. Benz and Van Bibber; Ms. Wakefield -3

ALSO Mr. Kesner, City Attorney

PRESENT: Mr. Miner, City Assessor

Mr. Benz in the Chair

Rules and Procedures. Held from the last meeting was the proposed draft Rules and Procedures for the Wauwatosa Board of Review. Minor changes recommended at the last Board meeting have been incorporated into the document.

It was moved by Mr. Van Bibber, seconded by Ms. Wakefield to adopt the Rules and Procedures effective this date. -3

Stipulations. Mr. Miner presented several stipulations for Board concurrence. Three involve value changes:

<u>336-9994-06</u>	<u>2011</u>	<u>2012</u>	<u>Change</u>
Land	\$3,983,500	\$3,983,500	-0-
Improvements	\$3,619,900	\$1,346,600	-\$2,273,300
Total	\$7,603,400	\$5,330,100	-\$2,273,300

<u>336-9994-07</u>			
Land	\$4,291,100	\$4,291,100	-0-
Improvements	\$3,944,800	\$3,408,900	-\$ 535,900
Total	\$8,235,900	\$7,700,000	-\$ 535,900

<u>196996</u>	<u>From</u>	<u>To</u>	<u>Change</u>
Machinery	-0-	-0-	-0-
Furniture & Fixtures	-0-	-0-	-0-
Other	\$32,240	-0-	-\$ 32,240

Mr. Miner explained that the following stipulations are all similar in that both parties agree not to appear before the Board of Review in a hearing format, and the property owners are not giving up any rights to further appeals in so doing: real property objections for 335-9998-16, 296-9999-05,

375-9989-02, 331-0777-01, 258-0001-09, 406-0177-00, 379-9999-06, 339-9999-00, 384-0009-02, 256-0075-07, and personal property objection for 162325.

It was moved by Mr. Van Bibber, seconded by Ms. Wakefield to accept the foregoing stipulations as submitted. -3

2578 Wauwatosa Avenue (331-0792-00). The property owner, Ronald Collison, stated that his witnesses are unable to attend the hearing today; he cannot effectively present his case without the witnesses.

It was moved by Mr. Van Bibber, seconded by Ms. Wakefield to grant a continuance to a later date yet to be determined. -3

2500 N. Mayfair Road (335-9998-20). Attorney Don M. Millis, Reinhart Boerner Van Deuren s.c., 22 E. Mifflin Street, Madison, Wisconsin, was present on behalf of American Multi-Cinema, Inc./ AMC Showplace Theatres, Inc. Mr. Millis had provided an agent authorization form signed by Brooks Ranier, Vice President-Tax, American Multi-Cinema, Inc., when submitting the real property objection form.

Attorney Amy Seibel, 11518 N. Port Washington Road, Mequon, was present as counsel for the assessor's office. Atty. Seibel stated that the purpose of today's appearance was not a valuation hearing, but to request that the Board determine whether the objector has the legal right to object the assessment.

The Chair observed that the objection form does not appear to have been completed by the property owner, but by a tenant (American Multi-Cinema, Inc./AMC Showplace Theaters, Inc.)

Exhibits

- #1 Objection form for real property assessment signed by Don M. Millis
- #2 Nine-tab document from the assessor's office
- #3 Lease agreement between Mayfair Property, Inc., and General Cinema Corp.
- #4 March 21, 2012 letter from Mr. Millis to Mayfair Property, Inc., pursuant to Sec. 6.8 of the lease agreement between Mayfair Property, Inc., and AMC
- #5 March 21, 2012 letter from Mr. Millis to David Swinkle, General Growth Properties, enclosing a courtesy copy of a Notice pursuant to Section. 6.8 of the aforementioned lease
- #6 Copy of USPS return receipt for material mailed to Mayfair Property, Inc.

Ms. Seibel noted that the property tax bill (tab 3) for the subject property is listed as "Mayfair Property Inc. General Growth Properties".

Referencing tab 2, Mr. Miner reviewed a map showing the Mayfair Mall complex and the subject property therein. AMC is one of many tenants within the subject property; it leases its facility from General Growth.

Tab 4 is an email from Ms. Seibel to David Pursel, counsel for General Growth Properties, Inc., wherein Mr. Pursel confirmed that neither 'Mayfair' nor 'GGP' has authorized American Multi-

Cinema, Inc./AMC Showplace Theaters, Inc., to act on its behalf with respect to property taxes or assessments.

Ms. Seibel also reviewed tabs 7 and 8 which contain applicable statutory provisions concerning authority to file objections to real property assessment, and excerpts from the *Wisconsin Property Assessment manual*, respectively.

In summary, Ms. Seibel stated that it is staff's contention that the objection form was not submitted by the owner or authorized agent. Staff is asking that the Board dismiss the objection form.

Mr. Millis contended that the city has accepted objection forms in the past from tenants with a lease. For example, Walgreens has submitted several objection forms and the assessor's office has not sought their dismissal. Walgreens has authorized the firm Mr. Millis works for as the authorized agent.

Mr. Miner responded that the Walgreens properties are single-tenant properties; he reiterated that the property owner in this particular case has stated that American Multi-Cinema has no authorization to act on behalf of the owner.

Mr. Millis pointed out that one of the Walgreens properties is a multi-tenant location; he then cited page 22 of the lease agreement which gives the tenant the right to contest taxes. Point (a) ("*the Demised Premises are not separately assessed*") applies to AMC. Point (b), Mr. Millis explained, is the section under which AMC is allocated taxes by the landlord. Point (c) of the lease grants the Tenant certain rights to seek abatement or reduction of real estate taxes.

Mr. Millis next referred to his March 21, 2012 letters to Mayfair Property, Inc., and to General Growth Properties wherein the Tenant made proper notification to the appropriate parties of its intentions to seek relief. Since AMC has not received indications that Mayfair Property, Inc., filed an objection, they feel they can proceed.

On page 19 of the lease, clause (b) of Section 6.3, sets forth payment of property taxes to the Landlord, rather than directly to the city. AMC occupies 8.5% of the subject property, but pays 10.6% of the taxes. Clause (b) details how this apportionment occurs. Mr. Millis emphasized that they are challenging the value of the entire parcel because this determines what share the Tenant pays for taxes. The lease provides that this can be done in certain circumstances.

Ms. Seibel contended that this situation is unique as there are 160 other tenants in the mall. AMC does not have a triple-net lease and does not pay taxes directly to the city.

Mr. Kesner opined that the statutes do not provide clear answers concerning who can lawfully file objections, though it is likely that only owners and authorized agents can object; certain others may be able to object in limited situations. Recent circuit court findings pertaining to a case involving Macy's are not binding here due to the former nature of Macy's parcel. In this instance, the Board needs to look at the lease language.

Section 6.3 of the lease refers to the ability to seek abatement of real estate taxes on separately-assessed parcels; page 22 of the lease clarifies that for parcels not separately assessed, a tenant may proceed to seek abatement on that portion of taxes for which it is responsible. However, the Board of Review cannot review the assessment on only a portion of a parcel.

Section 6.8 of the lease pertains to the right of the tenant to contest taxes upon prior written notice to the landlord and, if successful, to receive from the landlord any refund to the extent attributable to the taxes due from the tenant. It is not, however, the Board of Review's place to determine what percent of total taxes AMC ought to be paying.

Ms. Wakefield stated that she does not see where it is permitted by law for a tenant to proceed (to seek an assessment change on an entire parcel) without owner authorization.

Mr. Kesner reiterated that the Board needs to look at the lease language, and not necessarily the General Growth counsel's email. Mr. Millis has not claimed there is authorization (to file an objection) outside of the lease. Additionally, portions of the assessment manual referenced by the assessor concerning denial of a hearing before the Board may not necessarily be an all-inclusive list.

It was moved by Ms. Wakefield, seconded by Mr. Van Bibber to uphold the request to dismiss this objection as made by the assessor's office. Roll call vote, Ayes 3.

It was moved by Mr. Van Bibber, seconded by Ms. Wakefield to accept the exhibits as enumerated. Ayes 3.

The meeting recessed at 2:28 p.m. to a date yet to be determined.

Carla A. Ledesma, Secretary

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