STATE OF MINNESOTA | TAX COURT
FOURTH JUDICIAL DISTRICT
COUNTY OF HENNEPIN | REGULAR DIVISION

Macy's Retail Holdings, Inc.,

Petitioner,

vs.

County of Hennepin,

Respondent.

FINDINGS OF FACT
CONCLUSIONS OF LAW AND
ORDER FOR JUDGMENT

File Nos. 27-CV-07-07774
27-CV-08-13026
27-CV-09-15232

Dated: November 28, 2011

(Men's and Home Store)

The Honorable Kathleen H. Sanberg, Judge of the Minnesota Tax Court, heard this matter,[1] on February 7, 8, 9, 10, 23, 24, 25, and March 7, 2011, at the Hennepin County District Court facilities, in Minneapolis, Minnesota.

Thomas R. Wilhelmy, Attorney at Law, represented the Petitioner.

Lisa Hahn-Cordes, Assistant Hennepin County Attorney, represented the Respondent.

Both parties submitted post-trial briefs and the matter was submitted to the Court for decision pursuant to Minn. Stat. § 271.20.

The Court, having heard and considered the evidence adduced at the hearing, and upon all of the files, records and proceedings herein, now makes the following:

[1] This Decision is for the Macy's Men's and Home Store, also referred to as Ridgedale Macy's East Department Store, located in the Ridgedale Center and is issued concurrently with the decision for the Macy's Women's and Children's Store, also referred to as Ridgedale Macy's West Department Store, also located in the Ridgedale Center. These cases were consolidated by the Court's Order dated June 21, 2010.

FINDINGS OF FACT

1. Macy's Retail Holdings, Inc. ("Petitioner") has sufficient interest in the property to maintain the petitions. All statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject property and the parties.
2. The Subject Property is a two story anchor department store located at 12411 Wayzata Boulevard, Minnetonka, Minnesota[2] ("Subject Property"). It is attached to the northwest side of the Ridgedale Center, which is a super-regional shopping center.[3] The Subject Property contains the Macy's Men's and Home Store.
3. The Subject Property consists of 11.27 acres.[4] It has good to very good visibility[5] and superior visibility when compared to other department stores at Ridgedale Center.[6] The Subject Property has easy access from I-394, Plymouth Road and Ridgedale Drive.[7] The Subject Property is zoned Planned I-394 District.[8] The Subject Property is encumbered by an easement agreement with the mall and other anchor stores.[9]
4. The building is concrete and steel framed[10] and was constructed in 1975.[11] The building was last remodeled in 1995.[12] The building has a remaining

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[2] PID No. 02-117-22-32-0003 and PID No. 02-117-22-32-0004.
[3] Ex. 1, p. 1, 17; Ex. 101, p. 53. Ex. 95A, p. 3.
[4] Ex. 1, p. 1; Ex. 101, p. 50.
[5] Ex. 1, p. 18; Ex. 48.
[6] Ex. 101, p. 48.
[7] Ex. 1, p. 18; Ex. 101, p. 52.
[8] Ex. 1, pp. 2, 17; Ex. 101, p. 52.
[9] Ex. 1, p. 19; Ex. 101, p. 52.
[10] Ex. 1, p. 22; Ex. 101, p. 53.
[11] Ex. 1, p. 1; Ex. 101, p. 53.
[12] Ex. 1, p. 1.

useful life of 50 years.[13] The gross building area ("GBA") is 128, 271 square feet ("sq. ft.")[14] The building is in average to good condition.[15] The finished area is of a quality that is commensurate with other better-quality anchor stores of similar age.[16]

5. The Subject Property was last sold in July 2004 as part of a $3.2 billion dollar acquisition of 62 stores. The transaction was not an open market transaction and, therefore, does not influence our analysis.[17]
6. The highest and best use for the Subject Property is as improved, a two-level anchor department store attached to Ridgedale Center.
7. The Hennepin County Assessor placed a January 2, 2006, and January 2, 2007, estimated market value on the Subject Property of $8,346,000.
8. The Hennepin County Assessor placed a January 2, 2008, estimated market value on the Subject Property of $7,396,000.
9. Petitioner's appraiser, Rodger L. Skare, MAI, opined that the January 2, 2006, value of the Subject Property was $6,750,000; the January 2, 2007, value was $6,825,000; and the January 2, 2008, value was $6,650,000.
10. Respondent's appraiser, Paul G. Bakken, MAI, opined that the January 2, 2006, value of the Subject Property was $9,600,000; the January 2, 2007, value was $9,900,000; and the January 2, 2008, value was $7,700,000.

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[13] Ex. 1, p. 27.
[14] Ex. 1, p. 22.
[15] Ex. 1, p. 25.
[16] Ex. 1, p. 23.
[17] Ex. 101, p. 72.

CONCLUSIONS OF LAW

1. The Hennepin County Assessor's estimated market value for the Subject Property as of January 2, 2006, shall be decreased on the books and records of Hennepin County from $8,346,000 to $7,650,000.
2. The Hennepin County Assessor's estimated market value for the Subject Property as of January 2, 2007, shall be decreased on the books and records of Hennepin County from $8,346,000 to $7,800,000.
3. The Hennepin County Assessor's estimated market value for the Subject Property as of January 2, 2008, shall be increased on the books and records of Hennepin County from $7,396,000 to $7,500,000.
4. Real estate taxes due and payable in 2007, 2008, and 2009 shall be recomputed accordingly and refunds, if any, paid to Petitioner as required by such computations, together with interest from the original date of payment.

IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF FIFTEEN DAYS IS HEREBY ORDERED. THIS IS A FINAL ORDER.

BY THE COURT,

Kathleen H. Sanberg, Judge
MINNESOTA TAX COURT

DATED: November 28, 2011

Memorandum

Background

This property tax case concerns the market value of the Macy's Men's and Home store at Ridgedale Center ("Subject Property"). Ridgedale Center is a super regional shopping center. The Subject Property is an owner-occupied, two-level, anchor department store in Minnetonka.

Facts

The Subject Property is a two story anchor department store located at 12411 Wayzata Boulevard, Minnetonka, Minnesota ("Subject Property"). It is attached to the northwest side of the Ridgedale Center, which is a super-regional shopping center. The Subject Property contains the Macy's Men's and Home Store. The Subject Property consists of 11.27 acres. It has good to very good visibility and superior visibility when compared to other department stores at Ridgedale Center. The Subject Property has easy access from I-394, Plymouth Road and Ridgedale Drive. The Subject Property is zoned Planned I-

394 District. The Subject Property is encumbered by an easement agreement with the mall and other anchor stores.

The building is concrete and steel framed and was constructed in 1975. The building was last remodeled in 1995. The building has a remaining useful life of 50 years. The gross building area (“GBA”) is 128, 271 square feet (“sq. ft.”). The building is in average to good condition. The finished area is of a quality that is commensurate with other better-quality anchor stores of similar age. The Subject Property was last sold in July 2004 as part of a $3.2 billion dollar acquisition of 62 stores. The transaction was not an open market transaction and, therefore, does not influence our analysis.

Burden of Proof

The assessor’s estimated market value is *prima facie* valid.[18] The petitioner may overcome the presumption by introducing credible evidence that the assessor’s value is incorrect.[19] After considering all the evidence, the Court makes a determination of value based upon the preponderance of the evidence.[20]

Here, we find Macy’s Retail Holdings, Inc. (“Petitioner”) presented sufficient credible evidence through the testimony of its appraiser to rebut the presumption. We first turn to the highest and best use.

[18] Southern Minnesota Beet Sugar Coop. v. County of Renville, 737 N.W.2d 545, 558-60 (Minn. 2007).
[19] Id.
[20] The Pep Boys v. County of Anoka, File Nos. C2-01-2780 et al. (Minn. Tax Ct. Oct. 26, 2004); Gregorich v. County of Anoka, File No. C6-02-4557 (Minn. Tax Ct. Oct. 8, 2004).

Highest and Best Use

Both appraisers concurred that the highest and best use of the Subject Property is as improved, as a two-level, anchor department store attached to Ridgedale Center.[21] We agree and find that the highest and best use for the Subject Property as improved is for a two-level, anchor department store.

Valuation

This Court considers the three traditional approaches to valuation (cost, income and sales) in determining market value.[22] The Court, however, is not required to give weight to all three valuation approaches.[23] The Court may place greater emphasis on a particular approach or approaches to valuation.[24] Although it is preferable to give weight to more than one approach to value, under rare circumstances a single approach may be used to determine value.[25] Here, both appraisers considered all three approaches but did not complete a cost approach analysis due to the significant amount of accrued depreciation in the improvements.[26] We agree that the cost approach would not accurately reflect the value of the Subject Property and, therefore, will not consider a cost approach analysis.

Petitioner's appraiser, Mr. Skare, conducted a sales comparison approach analysis and an income approach analysis. He gave significant consideration to both approaches.[27] Hennepin County ("Respondent") appraiser,

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[21] Ex. 1, p. 49; Ex. 101, p. 75; Tr. at 570.
[22] *See* Equitable Life Assurance Soc'y v. Ramsey County, 530 N.W.2d 544, 552 (Minn. 1995).
[23] Id. at 554.
[24] Id. at 553.
[25] Id. at 554.
[26] Ex. 1, pp. 111-12; Ex. 101, p. 8.
[27] Ex. 1, p. 112.

Mr. Bakken, also conducted a sales comparison approach analysis and an income approach analysis. He relied only on his income approach[28] and gave no weight to his sales comparison approach.[29]

We will discuss each approach in turn.

Sales Comparison Approach

The sales comparison approach is normally the best approach when valuing an owner-occupied commercial property.[30] The reliability of this approach is dependent on the quality and quantity of recent transactions.[31] When selecting sales comparables, appraisers should consider the highest and best use, property type, size, location, quality of construction and other characteristics of the property.[32] While the appraisers considered many sales, they only analyzed a total of five comparable properties. We are mindful of the somewhat limited market but are satisfied that the initial selection of comparables will provide a useful measure of value.

Petitioner's expert, Mr. Skare, used four comparable sales in his sales comparison approach analysis. After making adjustments and weighting his comparables, he arrived at a unit value of $51.00 per sq. ft. for 2006,[33] $51.50 per sq. ft. for 2007,[34] and $52.00 per sq. ft. for 2008.[35] Mr. Skare gave equal weight to his Comparable Sale Nos. 1 and 2.[36] He gave less weight to

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[28] Tr. at 604.
[29] Tr. at 873.
[30] The Appraisal of Real Estate, 300 (13th ed. 2008).
[31] The Appraisal of Real Estate, 300 (13th ed. 2008).
[32] The Appraisal of Real Estate, 301 (13th ed. 2008).
[33] Ex. 70, p. 57.
[34] Ex. 70, p. 61.
[35] Ex. 70, p. 63.
[36] Ex. 1, p. 59.

Comparable Sale No. 4 due to the large gross adjustment.[37] Finally he gave his Comparable Sale No. 3 considerably less weight because it was part of a two-property sale and a large gross adjustment was required.[38]

Hennepin County ("Respondent") expert, Mr. Bakken, used six comparable sales in his sales comparison approach analysis. Mr. Bakken determined a reconciled unit value of $65.00 per sq. ft.[39] Mr. Bakken then made a final adjustment for superior economics, resulting in a value of $65.00 per sq. ft. for 2006.[40] Mr. Bakken used statistical consumer confidence changes to determine a value of $65.00 per sq. ft. for 2007 and $55.00 per sq. ft. for 2008.[41] The experts concluded to values (rounded) under the sales approach as follows:

	Mr. Skare	Mr. Bakken
2006	$6,550,000	$7,300,000
2007	$6,600,000	$7,300,000
2008	$6,700,000	$6,000,000

Mr. Bakken gave no weight to his sales comparison approach. Those reasons are discussed below.

We will address the comparables that the experts had in common. Because Mr. Bakken gave no weight to his sales approach, we will not consider the comparables that were not used by Mr. Skare.

[37] Ex. 1, p. 59.
[38] Ex. 1, p. 59.
[39] Ex. 102, p. 118.
[40] Ex. 102, p. 118
[41] Ex. 102, p. 118.

Eden Prairie Mall Comparable

Mr. Skare's Comparable Sale No. 1 is the former Mervyn's at Eden Prairie Center. This is the same as Mr. Bakken's Comparable No. 2. It is a two-story mall-anchor department store property connected to Eden Prairie Center, a super-regional shopping center.[42] This comparable was sold to the mall owner in 2004 when Mervyn's went out of business and sold a number of properties in Minnesota.[43] The building was vacant at the time of sale.[44] Comparable Sale No. 1 is substantially smaller than the Subject Property in terms of gross building area.[45] It is approximately the same age as the Subject Property, being built in 1976 and was last renovated in the same year as the Subject Property.[46] The overall condition and construction quality of this comparable are considered "average."[47] After making adjustments for time, location, visibility, size, quality, and parking/land features, Mr. Skare arrived at a net adjustment of 15%,[48] a gross adjustment of 17%[49] and a GBA unit price of $50.72 for 2006,[50] $51.22 for 2007 and 2008. [51]

Mr. Bakken's Comparable Sale No. 2 is the same as Mr. Skare's Comparable Sale No. 1.[52] They do not agree on the condition of the property.[53]

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[42] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, pp. 1-3.
[43] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 1.
[44] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 2.
[45] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 1.
[46] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 2.
[47] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 2.
[48] Ex. 70, pp. 55-56.
[49] Ex. 1, p. 58.
[50] Ex. 70, pp. 55-56.
[51] Ex. 70, p. 59.
[52] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 1-3; Ex. 101, p. 103.
[53] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 2; Ex. 101, p. 103.

Mr. Bakken reports the condition of the property to be "good"[54] and Mr. Skare reports the overall condition to be "average to good."[55] Mr. Bakken made adjustments for location, visibility, mall quality, size, store quality, mall orientation and best use.[56] After a time adjustment, Mr. Bakken calculated a GBA unit price of $53.36 for 2006.[57] The net adjustment was 27% and gross adjustment, before making a superior economic adjustment (discussed below) was 27%%. After making his 20% superior economic adjustment, the gross adjustment was 47%.[58] Time adjustments were then used to determine the GBA unit prices for 2007 and 2008.[59]

The parties disagree about how renovations or modifications to the Eden Prairie Mall Comparable should be considered. There were two renovations or modifications to the property. The first renovation was a new loading dock built as part of the subsequent lease to J.S. Penney. The second renovation consisted of interior renovations and creating a J.C. Penney "trade dress," completed by the tenant, J. C. Penney. Petitioner argues that Mr. Bakken incorrectly included the costs to change the trade dress. Respondent, however, argues that Mr. Skare did not know that construction permits totaling over $4.0 Million dollars were taken out for the renovations and that the renovations included fire alarms, gas, piping, ductwork, fixtures, sprinkler systems, and

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[54] Ex. 101, p. 103.
[55] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 2.
[56] Ex. 101, pp. 119-20.
[57] Ex. 102, p. 118.
[58] Ex. 47.
[59] Ex. 101, p. 118.

general building and interior finishes. This work, Respondent argues, was more than trade dress.

While we agree with Respondent that the renovations were more than a change of trade dress, here we will not consider them in the analysis. J.C. Penney renovated the property two years after the sale to the mall owner. The loading dock was added in connection with the J.C. Penney lease. Although expenditures made after a sale should be considered, they should only be considered if both buyer and seller anticipated the costs.[60] Here, Respondent fails to show that the buyer or seller anticipated the renovation costs that took place two years after the sale. Respondent also provides no evidence that the interior renovations increased the value of the property.

We do not believe that Mr. Skare's adjustment for the size of the Eden Prairie Mall Comparable was appropriate, as he adjusted by only 5% when the Subject Property is considerably larger.

Burnsville Mall Comparable

Mr. Skare's Comparable Sale No. 2 is a two-story mall-anchor department store attached to the super-regional Burnsville Center.[61] It was a former Mervyn's. It was sold to the Burnsville Center mall owner in November 2004 and was vacant at that time.[62] This comparable is slightly smaller than the Subject Property in terms of GBA.[63] It is approximately the same age

[60] The Appraisal of Real Estate, 331 (13th ed. 2008).
[61] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 4.
[62] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 5.
[63] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 4.

as the Subject building.[64] It was renovated in 1995 and again sometime after 2004.[65] The overall condition and construction quality are considered "average."[66] The mall owner purchased Comparable Sale No. 2 with the intention of making it a multi-tenant building.[67] After making adjustments for time, location, visibility, size, quality, and parking/land features, Mr. Skare arrived at a net adjustment of 10%,[68] a gross adjustment of 30%[69] and a GBA unit price of $47.88 for 2006,[70] $48.35 for 2007[71] and for 2008.

Mr. Bakken's Comparable Sale No. 3 is the same as Mr. Skare's Comparable Sale No. 2.[72] Mr. Bakken made adjustments for location, visibility, mall quality, size, store quality, mall orientation and best use.[73] Mr. Bakken calculated a GBA unit price of $56.61 for 2006.[74] The net and gross adjustments were calculated, before making the superior economic adjustment, were 28% (net) and 27% (gross).[75] After making the superior economic adjustment, the gross adjustment was 48%. Time adjustments were used to determine the GBA unit prices for 2007 and 2008.[76]

The experts disagreed about the condition of the property, varying between "good" and "average to good."[77] They also disagreed about how much

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64 Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 5.
65 Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 5.
66 Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 5.
67 Ex. 1-A, Tab 4, p. 6.
68 Ex. 70, pp. 55-56.
69 Ex. 1, p. 58.
70 Ex. 70, pp. 55-56.
71 Ex. 70, p. 59.
72 Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 4; Ex. 101, p. 104.
73 Ex. 101, pp. 119-20.
74 Ex. 102, p. 118.
75 Ex. 101, p. 120; Ex. 47.
76 Ex. 101, p. 118.
77 Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 5; Ex. 101, p. 104.

weight to give this property as it was purchased for a highest and best use that was different than that of the Subject Property.

Maplewood Mall Comparable

Mr. Skare's Comparable Sale No. 3 is a two-story mall-anchor department store attached to the Maplewood Mall.[78] J.C. Penney purchased Comparable Sale No. 3 along with an additional store in Woodbury in August 2004. Both of these stores were former Mervyn's. This comparable was vacant at the time of sale.[79] The GBA is less than half that of the Subject Property's.[80] It is 20 years newer than the Subject building and has not been renovated.[81] This comparable was considered by Mr. Skare to be "average to good" in overall condition and "average" construction.[82] Mr. Skare made adjustments for time, area, visibility, size, age, quality, finish and parking/land features. He calculated a net adjustment of 35%,[83] a gross adjustment of 55%[84] and a GBA unit price of $42.89 for 2006,[85] and $ 43.30 for 2007[86] and 2008.[87]

Mr. Bakken's Comparable Sale No. 4a is a one-story freestanding department store located in a lifestyle development in Woodbury, Minnesota.[88] This property was purchased in conjunction with Mr. Bakken's Comparable Sale

[78] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 8.
[79] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 8.
[80] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 7.
[81] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 8.
[82] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 8.
[83] Ex. 70, p. 55-56.
[84] Ex. 70, p. 58.
[85] Ex. 70, pp. 55-56.
[86] Ex. 70, p. 59.
[87] Ex. 70, p. 59.
[88] Ex. 101, p. 105.

No. 4b (the same as Mr. Skare's Comparable No. 3.)[89] Comparable Sale No. 4a is less than half the building size and is substantially smaller in terms of land area than the Subject Property.[90] It was built in 1996, more than 20 years after the Subject Property.[91] The building was last renovated in 2005.[92] It is considered to be in "good" condition.[93] Mr. Bakken did not calculate a GBA unit price or make adjustments to Comparable Sale No. 4a. Instead, he used the combined GBA of Comparable Sale Nos. 4a and 4b, and then made adjustments.[94]

Mr. Bakken's Comparable Sale No. 4b is the same as Mr. Skare's Comparable Sale No. 3.[95] Once again, the parties disagree as to the condition of the property, reporting "good" and "average to good" respectively.[96] Mr. Bakken did not calculate a GBA unit price or make adjustments to Comparable Sale No. 4b. Instead, he used the combined GBA of Comparable Sale Nos. 4a and 4b, and then made adjustments.[97]

The combined GBA unit price for Mr. Bakken's Comparable Sale Nos. 4a and 4b is $53.30 for 2006.[98] Adjustments were made for location, visibility and mall quality.[99] The net and gross adjustments, before making his superior economic adjustment, were 2% (net) and 19% (gross). After he made his

[89] Ex. 101, p. 105.
[90] Ex. 101, p. 105.
[91] Ex. 101, p. 105.
[92] Ex. 101, p. 105.
[93] Ex. 101, p. 105.
[94] Ex. 101, pp. 108, 118-20.
[95] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 8; Ex. 101, p. 106.
[96] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 8; Ex. 101, p. 106.
[97] Ex. 101, pp. 108, 118-20.
[98] Ex. 102, p. 118.
[99] Ex. 102, p. 118.

superior economic adjustment, the gross adjustment was 39%. Time adjustments were used to determine the GBA unit prices for 2007 and 2008.[100]

We give no weight to this comparable. First, the fact that the sale was part of a package makes comparison and allocation difficult. Also, Mr. Skare's gross adjustments were 55%, showing that the buildings are not comparable. Further, the fact that the sale was part of a package makes comparison difficult because of problems in allocation. While Mr. Skare considered the buildings separately, Mr. Bakken considered the properties together. Due to the location differences of the two buildings, and the age, we find them not to be comparables on which we can rely in determining the value of the Subject Property.

Southdale Mall Comparable

The next comparable used by both experts was the former Mervyn's at Southdale Mall. This is Mr. Skare's Comparable Sale No. 4. It is a two-story mall-anchor department store and is attached to the super-regional shopping center, Southdale Mall.[101] This property was sold under a right of first refusal in a stand-alone sale in August 2004 to the owner of the mall.[102] The property was vacant at the time of sale[103] and was vacant at the time of trial.[104] Although the space was vacant at the time of sale, a substantial area of the basement was under a long-term lease.[105] Comparable Sale No. 4 is larger than the Subject

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[100] Ex. 101, p. 118.
[101] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 10.
[102] Ex. 1-A, Tab 4, p. 11.
[103] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 12.
[104] Ex. 1-A, Tab 4, p. 12.
[105] Ex. 1-A, Tab 4, p. 12; Ex. 101, p. 107.

Property in terms of GBA.[106] Comparable Sale No. 4 was built in 1955, nearly 20 years before the subject building.[107] It was renovated in 1995.[108] Mr. Skare considered this comparable to be of good overall condition and average construction quality.[109] Mr. Skare opined that an adjustment must be made to take into account the long-term lease of the basement to Macy's.[110] Mr. Skare made further adjustments for time, area, visibility, quality and finish. He calculated a net adjustment of 15%,[111] a gross adjustment of 35%,[112] and a GBA unit price of $59.39 in 2006,[113] $59.97 in 2007,[114] and the same value for 2008.[115]

Mr. Bakken's Comparable Sale No. 5 is the same as Mr. Skare's Comparable Sale No. 4.[116] Mr. Bakken made adjustments for location, visibility, mall quality, size, store quality, mall orientation and best use.[117] The net adjustment was calculated to be less than 1% and the gross adjustment was 21%, before making his superior economic adjustment.[118] Mr. Bakken calculated the GBA unit price of $58.16 for 2006.[119] Time adjustments were made to the

[106] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 10.
[107] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 11.
[108] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 11.
[109] Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 11.
[110] Ex. 1-A, Tab 4, p. 12.
[111] Ex. 70, pp. 55-56.
[112] Ex. 1, p. 58.
[113] Ex. 70, pp. 55-56.
[114] Ex. 70, p. 59.
[115] Ex. 70, p. 59.
[116] See supra note 101 (Ex. 1, pp. 57, 61; Ex. 1-A, Tab 4, p. 10-12); Ex. 101, p. 107.
[117] Ex. 101, p. 120.
[118] Ex. 101, p. 120.
[119] Ex. 101, p. 120.

2006 price to determine the GBA unit prices for 2007 and 2008, although they were not stated in his appraisal.[120]

Respondent argues that Mr. Skare should not have considered the 40,000 sq. ft. of leased basement space at Southdale. We disagree; the 40,000 sq. ft. of leased basement space should be included because the purchaser owns the basement. We disagree with Mr. Skare, however, in his adjustment for building quality and age as the Southdale building and mall were built in 1955. Even though there was a renovation in 1995 (the same as the Subject Property), the main part of the mall and the Subject Property are almost 20 years older than the Subject Property.

Mr. Bakken made an additional deduction for deferred maintenance in the amount of $1,100,000. Petitioner argues that there is no support for this deduction. We agree. Given the condition of the property as described, we see no reason to deduct for deferred maintenance, especially in such a high amount.

Sales Approach Reconciliation

The experts concluded to values (rounded) as follows

Year	Mr. Skare	Mr. Bakken
2006	$6,550,000	$7,300,000
2007	$6,600,000	$7,300,000
2008	$6,650,000	$6,000,000

Mr. Bakken gave his sales comparison approach no weight.[121] He opined that the Ridgedale Center was superior to the other malls and while he

[120] Ex. 101, p. 118.
[121] Ex. 102, p. 118.

reconciled to a unit value of $65.00 per sq. ft., he made a further superior economic adjustment of 20%.[122] Mr. Bakken claims that the initial adjustments were made as between the comparables and not with respect to the Subject Property.[123] We disagree and find that Mr. Bakken did in fact adjust his comparables with respect to the Subject Property and not with respect to the "best possible" comparable.[124] We note specifically that for the "location & neighborhood," "visibility & access," and "mall quality" attributes none of the comparables are considered excellent but each comparable is adjusted to an excellent level.[125] Mr. Bakken bases his superior economic adjustment on: (1) J.C. Penney allocation between the Maplewood and Woodbury stores; (2) the Subject Property's strong sales; and (3) Macy's existing sales.[126] We do not find these arguments persuasive. J.C. Penney allocated the total cost between the Maplewood and Woodbury stores based on projected sales levels. However, the adjustments made during the sales comparison approach are supposed to reflect changes to sales of property, not merchandise. As a result, the difference in the J.C. Penney allocation is already accounted for in the adjustment process and further adjustments are not needed. Although the Subject Property does have strong sales, the strong sales cannot be attributed to the property alone. The Macy's brand and good-will may influence the sales at the Subject Property and at other Macy's locations.[127]

[122] Ex. 101, p. 120.
[123] Tr. at 868.
[124] Ex. 101, pp. 119-20.
[125] Ex. 101, pp. 119-20.
[126] Ex. 101, p. 120.
[127] Ex. 128; Tr. at 867-70.

Petitioner's expert relied on the sales approach in determining the value for the Subject Property, while Respondent's expert did not. Rather, Mr. Bakken stated that he did not rely on his sales approach for three reasons. First, in his appraisal, he states that he placed little weight on the approach because of the "limited local primary department store sales at extremely well performing malls."[128] Second, in testimony, he believes Ridgedale Center to be far superior to all of the comparables; in a class all by itself.[129] Mr. Bakken also stated in testimony that he did not rely on the sales comparison approach because he could not bracket the subject.[130] In addition, Respondent argues that the sales comparison approach should be given no weight because the chosen properties were vacant when sold and are, therefore, not comparable.[131]

We find Mr. Bakken's first and second reasons to be unpersuasive. As noted above, we have determined that the properties chosen for comparables are sufficient to establish a range of value for the Subject Property. Further, we do not agree with Mr. Bakken's assertion that Ridgedale Center is so superior that it is in a class of its own. Although Ridgedale is a well performing mall, the evidence does not show Ridgedale is so superior that it is incomparable to other malls. The demographics do not support such a conclusion.[132] Nor do the traffic counts[133] or sales figures[134] provide clear evidence that Ridgedale is in a class of its own. In connection with these two reasons, we find Mr. Bakken's 20%

[128] Ex. 101, p. 124.
[129] Tr. at 604-05, 775.
[130] Tr. at 873.
[131] Resp. Post Trial Brief, pp. 6-8.
[132] Ex. 38; Ex. 74.
[133] Ex. 101, pp. 17-19.
[134] Ex. 59; Ex. 128.

"economic adjustment" to be unfounded. We note that Mr. Bakken's value, prior to making the superior economic adjustment, are very similar to Mr. Skare's concluding values.

We also note that Mr. Bakken's superior economic adjustment for the other Macy's (Macy's Women's and Children's) at Ridgedale Center was 50%. We find this inconsistent, given the similarities between the two Macy's properties.

We next consider Mr. Bakken's third reason for giving the sales comparison approach no weight. He testified that he gave the sales comparison approach no weight because his comparable sales did not bracket the Subject Property.[135] We agree with Respondent's premise that bracketing is very important in estimating a reliable value.[136] In this case, however, we have relied heavily on Mr. Skare's sales comparison approach, which does bracket the Subject Property.[137]

Finally, we are not persuaded by Respondent's argument that weight should not be given to the comparable sales because they were vacant at the time of the sales. Respondent's reliance on 444 Lafayette, LLC and Meritex Enterprises, Inc. vs. County of Ramsey[138] is misplaced. The subject property in that case was a unique property unlike the Subject Property, a department store. Also, unlike the vacancies in 444 Lafayette, the sales comparables here were vacant for a relatively short time.

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[135] Tr. at 873.
[136] The Appraisal of Real Estate, 321 (13th ed. 2008).
[137] Ex. 1, p. 57.
[138] File Nos. 62-CV-08-4369, et al. (Minn. Tax Ct. Apr. 7, 2011) Petition for Cert. filed June 7, 2011.

After careful consideration, we find that the sales comparison approach is useful for our value determination and, therefore, rely on this approach. After reviewing the two comparables that are most similar to the Subject Property, we find the Eden Prairie Mall Comparable and the Southdale Mall Comparable to be most similar, because the location, building size, footprint, and finished space is most similar to the Subject Property. We find the value (rounded) under the sales approach of: $7,100,000, for January 1, 2006; $7,150,000 for January 1, 2007; and $7,000,000 for January 1, 2008.[139]

We turn to the income approach.

Income Approach

Under the income approach, the value of the property is determined by looking at the present worth of the future rights to income by capitalizing the anticipated market level of rent less the market level of expenses.[140] The market rent for the subject had to be derived because the property is owner-occupied. Both appraisers estimated market rent using a percentage rent analysis and a rent comparables analysis. The appraisers disagreed as to the rent, the correct level of expenses and the capitalization rate ("cap rate.")

Percentage Rent

Percentage rent is a form of rent that is calculated as a percent of total retail sales.[141]

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[139] While the final number for 2008 is higher than both Mr. Skare's and Mr. Bakken's, we believe it is appropriate given the similarity to the Southdale Mall Comparable, which Mr. Skare valued at $7,700,000 ($59.39 x 128,271 sq. ft.) and Eden Prairie Mall Comparable, which Mr. Skare valued at $6,500,000 ($50.72 x 128,271 sq. ft.)

[140] Space Center Ent., Inc. v. County of Ramsey, File Nos. C4-97-336 et al. (Minn. Tax Ct. Nov. 4, 1999).

[141] The Appraisal of Real Estate, 455-56 (13th ed. 2008).

In Mr. Skare's analysis the Subject Property sales (Macy's Men's and Home) were combined with those of the other Macy's store (Macy's Women's and Children) at Ridgedale Center. These two properties were combined in order to be more comparable to other department stores, which are not segregated. After comparing the sales within Ridgedale Center and among other metro area malls, Mr. Skare determined the annual sales per sq. ft. in 2006 were $290, in 2007 were $270, and in 2008 were $250.[142]

Mr. Skare then used local leases and published investor surveys to determine an appropriate percentage rent.[143] After reviewing local lease agreements he determined that a graduated percentage rent should be applied. To determine the graduate rate Mr. Skare looked at four leases: the Von Maur lease at Eden Prairie Center, the J.C. Penny lease at Brookdale, the Nordstrom's lease at Mall of America and the Macy's lease at Mall of America. Based on this market analysis, Mr. Skare determines that 2.5% is an appropriate percentage rent for retail sales up to $150 per sq. ft., 2% for retail sales between $150 and $200 per sq. ft., 1.5% for retail sales between $200 and $250 per sq. ft., and a rate approaching 1% as sales increase beyond $250 per sq. ft. Mr. Skare opines that these rates are the same for 2007 and 2008. Given sales these are represented by a rental rate of $5.52 per sq. ft., $5.32 per sq. ft., and $5.12 per sq. ft. for 2006, 2007 and 2008, respectively.

[142] Ex. 1, p. 79.
[143] Ex. 1, p. 79.

Mr. Bakken estimated the retail sales based on the actual sales data.[144] He estimated annual retails sales per sq. ft. at $264 for 2006, $195 for 2007 and $180 for 2008.[145] Mr. Bakken also relied on a published investor survey and knowledge of previous tax court decisions to determine a percentage rent of 2.5%. The resulting rent per square foot is $5.81, $5.81 and $4.84 for the respective appraisal dates.[146]

In this case we adopt Mr. Bakken's estimated retail sales because he considers the actual retail sales of the Subject Property, whereas Mr. Skare considered the combined sales of the Subject Property, the other Macy's store at Ridgedale Center, and other Ridgedale anchor stores. We note that Mr. Skare's estimated retail sales are very similar to those of Mr. Bakken.[147]

We adopt a percentage rent of 2.5%. We are not persuaded by Mr. Skare's graduated percentage rent analysis. Mr. Skare only relies on four leases to develop this graduated analysis and we believe those four leases to be atypical in our market.[148] We are, however, persuaded by his use of combined retail sales of the segregated Macy's stores when comparing data found in Dollars and Cents of Shopping Centers ("Dollars and Cents") because this data represents full line department stores. We also agree with Petitioner's contention that this Court should not rely on the percentage rent found in other cases based on different evidence. We give no weight to the percentage rent found in other cases. We rely on the evidence and testimony before us. Our

[144] Ex. 101, p. 81.
[145] Ex. 102, p. 79.
[146] Tr. at 576-77; Ex. 102, p. 80.
[147] Tr. at 694.
[148] Ex. 1, pp. 79-80.

choice of 2.5% is supported by the super-regional data contained in Dollars and Cents, which indicates a range of percentage rent between 1.25% and 3% in 2006 and .95% and 3% in 2008.[149]

Rent Comparables

Both appraisers also analyzed actual leases. Mr. Skare uses four rent comparables in his market rent analysis while Mr. Bakken uses three rent comparables.

Mr. Skare's Comparable Rental No. 1 is the J.C. Penney lease of the former Mervyn's at Eden Prairie Center.[150] This is the lease of Mr. Skare's Comparable Sale No. 1 property with the addition of the new loading dock. Mr. Skare found that J.C. Penny leased the property "as is" for a base rent of $4.75. The mall owner contributed $200,000 toward a new loading dock. J.C. Penney went on to spend over $4 million transforming the former Mervyn's into a J.C. Penney. Mr. Skare did not consider the $4 million interior remodeling because it did not change the rent paid.[151] Mr. Skare arrived at a net adjustment of 15% and a gross adjustment of 15% with a 2006 adjusted rent of $5.59 per sq. ft.[152]

Mr. Skare's Comparable Rental No. 2 is the former Mervyn's at Burnsville Center.[153] Comparable Rental No. 2 has five tenants, Dick's Sporting Goods and Steve & Berry's being the largest.[154] Mr. Skare grouped the two largest leases together, determined their "as is" rate and then deducted tenant

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[149] Ex. 4.
[150] Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 1-2.
[151] Tr. at 390.
[152] Ex. 70.
[153] Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 3.
[154] Tr. at 579; Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 3-4

improvements ("TIs") of the whole property.[155] There are significant TIs of $8.38 million included in the renovation of the property.[156] After deducting the total amount of amortized TIs for the reconfiguration and making adjustments, Mr. Skare arrived at a net adjustment of 5% and a gross adjustment of 35% with a 2006 adjusted rent of $4.78 per sq. ft.[157]

Mr. Skare's Comparable Rental No. 3 is the former Mervyn's at Northtown Mall.[158] Comparable Rental No. 3 is substantially smaller than the Subject Property in terms of GBA and smaller in terms of land area.[159] It is approximately the same age as the Subject Property.[160] The lease is for a term of 15 years.[161] There are significant tenant improvements included in the lease.[162] The mall had several anchor tenants move out in recent years and has applied for a large tax rebate, which will be used to complete the lease deal and offset of Tenant Improvement costs.[163] The net adjustments and gross adjustments were calculated to be 30% and 50%, respectively.[164] Mr. Skare determined a 2006 adjusted rent of $5.47 per sq. ft.[165]

Mr. Skare's Comparable Rental No. 4 is the Kohl's at Northtown Mall.[166] Comparable Rental No. 4 is less than half the GBA and Land Area of the

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155 Tr. at 168-9; Ex. 1-A, Tab 5, p. 4.
156 Tr. at 168; Ex. 1, p. 71.
157 Ex. 70, p. 69.
158 Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 5-6; Ex. 60, p. 2.
159 Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 5.
160 Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 5.
161 Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 5.
162 Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 6.
163 Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 6.
164 Ex. 1, pp. 71-72.
165 Ex. 70, p. 69.
166 Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 7-8; Ex. 60, p. 2.

Subject Property.[167] It was built 9 years after the Subject Property.[168] The lease is for a term of 10 years.[169] The net and gross adjustments were calculated to be 20% and 60%, respectively.[170] Mr. Skare determined a 2006 adjusted rent of $5.00 per sq. ft.[171]

Mr. Skare's Reconciliation of Market Rental Analysis

Mr. Skare determined a reconciled rental value of $5.25 per sq. ft. for January 2, 2006.[172] Mr. Skare places the most weight on his Comparable Rental Nos. 1 and 2 as they are most similar to the Subject Property.[173] Only limited weight is given to Comparable Rental No. 3 because of its inferior location.[174] He gave only some weight is given to Comparable Rental No. 4 because of its inferior location, the gross adjustment needed and lack of information regarding the lease.[175] Mr. Skare determined that there were no significant rental rate changes in 2007 and 2008.[176] Therefore, rental values for 2007 and 2008 were calculated to be $5.25 per sq. ft.[177]

Mr. Bakken's Market Rent Analysis

Mr. Bakken uses three comparable rentals in his market rent analysis. Mr. Bakken's Comparable Rental Nos. 1 and 2 are the Dick's Sporting Goods and Steve & Berry's leases reflected in Mr. Skare's Comparable Rental No. 2. Mr.

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[167] Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 7.
[168] Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 7.
[169] Ex. 1, p. 71; Ex. 1-A, Tab 5, p. 7.
[170] Ex. 70, p. 69.
[171] Ex. 1, p. 71.
[172] Ex. 70, p. 71.
[173] Ex. 1, p. 73.
[174] Ex. 1, p. 73.
[175] Ex. 1, p. 73.
[176] Ex. 1, pp. 73-74.
[177] Ex. 70, p. 72

Bakken approaches these leases differently than Mr. Skare. Mr. Bakken considers these two leases separately. He, like Mr. Skare, found a base rent of $17.00 per square foot for Dick's and $16.50 per sq. ft. for Steve & Berry's.[178] Mr. Bakken deducts $41 per sq. ft. in TIs for Dick's gross leasable area and $35 per sq. ft. in TIs for Steve & Berry's gross leasable area.[179] The individual TIs for Dick's and Steve & Berry's were confirmed with the Burnsville mall manager.[180] Mr. Bakken concludes to an adjusted rent for Dick's of $14.27 per sq. ft. and for Steve & Berry's of $11.83 per sq. ft.[181]

Mr. Bakken's Comparable Rental No. 3 is the J.C. Penney's lease reflected in Mr. Skare's Comparable Rental No. 1. Mr. Bakken found the base rent to be $5.00 per sq. ft. and an average rent of $5.37 per sq. ft. due to a rent escalation clause.[182] After deducting TIs for the $200,000 loading dock, Mr. Bakken concludes effective rent of $5.29 per sq. ft., which he changed during testimony to $5.12 per sq. ft.[183] Mr. Bakken testified that J.C. Penney made further improvements that should be added to base rent because the base rent alone did "not allow them to open their doors as start selling product."[184] After amortizing these further improvements and adding that to the base rent, he concludes an $8.50 per sq. ft. "ready to sell product" rent.[185]

[178] Ex. 101, p. 83.
[179] Ex. 101, p. 83.
[180] Tr. at 583.
[181] Ex. 101, p. 83.
[182] Ex. 101, p. 83.
[183] Ex. 101, p. 83.
[184] Tr. at 581.
[185] Tr. at 582.

Mr. Bakken's Reconciliation of Market Rental Analysis

Mr. Bakken testified that he used the comparable rentals as a check to his percentage rent analysis conclusion of $7.42 per sq. ft. rent.[186] Mr. Bakken uses his comparable rentals to bracket his $7.42 per sq. ft. conclusion.[187]

We note that neither appraiser placed much weight on the Northtown Mall leases (Mr. Skare's Comparable Rental Nos. 3 and 4; Mr. Bakken only considered them). We agree that these leases should be given little weight due to the substantial adjustments that were required.

We place substantial weight on Mr. Skare's Comparable Rental No. 1 (J.C. Penney in Eden Prairie Center). We agree with Mr. Skare that the J.C. Penney's interior remodeling costs should not be considered in determining rent in this case. The interior remodeling did not increase the rent payments in any way.[188] We also note that Mr. Bakken did not consider these interior remodeling costs in his appraisal report nor did he provide an adjustment grid for his adjustments.

We ultimately place little weight on both appraisers' Burnsville analysis (Mr. Skare's Comparable No. 2 and Mr. Bakken's Comparable Nos. 1 and 2). We note that Mr. Skare's conclusion is too low. The total $8.38 million was used to reconfigure the property for the use of five tenants not just the two largest tenants. Petitioner provided no evidence to show how the $8.38 million was allocated. Mr. Bakken, however, testified that he verified the individual TIs with

[186] Tr. at 578.
[187] Tr. at 580-82.
[188] Tr. at 742.

the mall manager.[189] We find the individual leases to be of very little value given the significant difference in leasable area between the individual leases and the Subject Property.[190]

After examining the percentage rent and comparable leases analysis we find that the rent is $6.00 to $7.00 per sq. ft.

<u>Vacancy/Collection Loss</u>

Mr. Skare concludes a vacancy and collection loss rate of 5%. He bases this vacancy and collection loss rate on market volatility, increased competition and an empirical study of vacancy rates throughout the area.[191]

Mr. Bakken only considered the actual vacancy rates for Ridgedale stores and determined a vacancy rate of 2%.[192]

We are reluctant to rely on the actual vacancy rates because each of the anchor stores at Ridgedale Center is owner-occupied. We find Mr. Skare's analysis to be more thorough and accept his vacancy and collection loss rate of 5%.

<u>Operating Expenses and Replacement Reserve</u>

Mr. Skare finds a Common Area Maintenance ("CAM") fee of $2.00 per sq. ft. by averaging the CAM fees of both Macy's stores at Ridgedale Center. This fee is supported by Dollars and Cents. Mr. Bakken uses the actual CAM paid by Macy's Women's and Children. We accept Mr. Skare's CAM because it more accurately reflects what a new tenant would have to pay. In determining

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189 Tr. at 583.
190 Ex. 101, pp. 53, 83.
191 Ex. 1, pp. 81-82.
192 Tr. at 592.

the management fee we note that neither party supported their choice of management fees with any evidence.

Mr. Skare set the replacement reserve at $0.20 per sq. ft. Mr. Bakken sets the replacement reserve at $0.40 per square foot. We find a $0.20 per sq. ft. reserve to be appropriate.

Capitalization Rate

To begin our cap rate analysis we point out that there are no published surveys that collect cap rates for department stores. Further, a direct comparison analysis is not possible due to the lack of appropriate transactions.

Mr. Skare attempted a direct comparison analysis, completed a band-of-investment analysis, considered multiple published surveys and relied on his own survey. Mr. Skare used an 8.75% cap rate in 2006, an 8.5% cap rate in 2007, and an 8.25% cap rate in 2008.

Mr. Bakken used published surveys, an OAR study and local overall cap rate data to inform his decision. He found a 7.25% cap rate in 2006, a 7.00% cap rate in 2007, and a 7.50% cap rate in 2008.

We find a cap rate of 8.00% for 2006, a cap rate of 7.75% for 2007, and a cap rate of 7.50% for 2008. We find Mr. Skare's cap rates to be too high because his direct comparison approach is flawed. Both of the comparables he used were vacant when sold in 2004 and then leased several years later. We find that Mr. Bakken's cap rates were too low. The surveys used, deal with mall properties and not anchor department stores. We have recognized in the past that mall properties carry less risk than anchor department stores.[193]

The experts concluded to income approach values as follows:

Year	Mr. Skare	Mr. Bakken
2006	$6,600,000	$8,500,000
2007	$6,650,000	$8,800,000
2008	$6,500,000	$6,600,000

We conclude, therefore, to values (rounded) under the income approach as follows:

January 2, 2006	$8,200,000
January 2, 2007	$8,400,000
January 2, 2008	$8,000,000

Reconciliation

We reconcile our findings under the sales approach and income approach to determine the market value of the Subject Property. We agree that the market did not begin its dramatic decline until after the assessment dates at issue in this case and recognize that values were increasing until then. Thus, we concluded to value ranges under the sales and income approaches as follows:

Assessment Date	Sales Approach	Income Approach
January 2, 2006	$7,100,000	$8,200,000
January 2, 2007	$7,150,000	$8,400,000
January 2, 2008	$7,000,000	$8,000,000

193 Carson Pirie Scott & Co. (Ridgedale) v. County of Hennepin, File No. TC-15925 (Jan. 6, 1997).

We recognize that there were difficulties in both the sales and income approaches due to the few numbers of sales or rentals. We give each approach equal weight and conclude to a range of values and final values (rounded) under the approaches as follows:

Assessment Date	Final Value
January 2, 2006	$7,650,000
January 2, 2007	$7,800,000
January 2, 2008	$7,500,000

Conclusion

We have considered all three traditional approaches to valuing the Subject Property and appropriately relied on the sales comparison approach and the income approach. For all of the foregoing reasons, we find the market value of the Subject Property is $7,650,000 as of January 2, 2006, $7,800,000 as of January 2, 2007, and $7,500,000 as of January 2, 2008.

K. H. S.