

**VILLAGE OF PLEASANT PRAIRIE
BOARD OF REVIEW
9915 39th Avenue
Pleasant Prairie, WI
June 6, 2019
9:00 a.m.**

A meeting of the Pleasant Prairie 2019 Board of Review was held on Thursday, June 6, 2019 and called to order at 9:00 a.m. Present were Board members Jill Sikorski, Lena Schlater, William Morris, Mark Riley and Jim Bilotti. David Hildreth was excused. Also present were Rocco Vita, Village Assessor, Ed Judt, Deputy Assessor, Attorney Tom Camilli, Attorney Amy Seibel and Jane C. Snell, Village Clerk.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. MINUTES OF MEETINGS - JULY 11, 2018, AUGUST 8, 2018, SEPTEMBER 20, 2018
OCTOBER 11, 2018, OCTOBER 30, 2018 AND MAY 23, 2019.**

Jane Snell:

I'm looking for a motion and a second if all in order.

Lena Schlater:

I hereby make a motion.

William Morris:

I will second the motion.

Jill Sikorski:

All in favor?

Voices:

Aye.

Jill Sikorski:

The representatives for Prime Outlets are not yet here so we will go into recess until they are here.

Jane Snell:

I just want to note on the record it's 9:10 a.m. and we will be in recess until 9:30 a.m.

Jill Sikorski:

It is 9:30 a.m. and the Pleasant Prairie 2019 Board of Review is back in session.

4. CONSIDER/ACT ON PREMIUM OUTLETS NOTICES OF INTENT TO FILE OBJECTION AND WAIVER OF BOARD OF REVIEW.

Jill Sikorski:

I will now ask the Clerk to read the Objection into the record.

Jane Snell:

Pleasant Prairie Premium Outlets LLC, 225 W. Washington Street, Indianapolis, IN 45204 by its agent, Attorney Alan Marcuvitz of von Briesen & Roper S.C., 411 E. Wisconsin Avenue, #1000, Milwaukee, Wisconsin 53202 filed with the Village Clerk's office on May 8, 2019 and Objection to Real Property Assessment. Property address is 11211 120th Avenue and 11601 108th Street, Pleasant Prairie, Wisconsin, Parcel Nos. 92-4-122-303-0220, 92-4-122-302-0107, 92-4-122-302-0350, 92-4-122-302-0375, 92-4-122-303-0210, 92-4-122-303-0211, 92-4-122-302-0108 and 92-4-122-302-0126. Assessment value shown on notice of \$220,000,200 and their opinion of assessed value of \$135,705,800. Reason for their objection is assessment is in excess of fair market value. Basis for their opinion of assessed value is assessment does not reflect fair market value based on market rents, comparable sales or uniformity with similar properties in the Village. How was the property acquired? By purchase in 1993 and 2005. Were there any changes made to the property? Yes. Various over time. During the last five years, was the property listed/offered for sale? No. Was the property appraised within the last five years? No. Signed by agent, Alan Marcuvitz and dated May 8, 2019.

Rocco Vita:

[Inaudible] last year it was the year of revaluation in the Village, and we had a sizeable increase to their assessed value from prior years to January 2018. They objected to the value. We had a number of Board of Review meetings to delay their request at that time for a waiver. And our purpose was to attain enough information to determine a correct value for 2018. Eventually they did provide us the information that we felt was necessary and could use to determine a good value for 2018. And this Board approved their request for a waiver for 2018. Consequently, they did file in Kenosha County Circuit Court, and there is a pending claim for excessive assessment based upon that value.

We made a slight change to the value this year of \$200 in an attempt to have them provide us additional information to ensure that our value wasn't overstated, that we were using the best information to determine a fair and equitable value for Pleasant Prairie Premium Outlets LLC. They again objected to the value and asked this Board to waive this objection to Circuit Court. And we again requested that they provide us some additional information. And just recently they have done so. And with us today I have Attorney Amy Seibel who represents the Village and our office in this matter. And I'm going to then turn this over to her, and she can let you know exactly what our process was this year and where this stands right now.

Amy Seibel:

Thank you, Rocco. I'm looking at the Board rules. And in Rule 12 it states that the Board may consider any or all of the following in determining whether to grant or deny request to waive a Board of Review hearing. And so the Board at the first meeting of the Board looked at the waiver request, and at the request of the assessor's office was asked to hold off on acting on the waiver request because no information had been provided by the taxpayer relative to the 2019 assessment.

The first item under Rule 12 is a request by the assessor to deny a hearing waiver because the objector or objector's representative has not been in contact or provided information to the assessor in support of the opinion of value. Well, that was the case as of the first meeting of the Board of Review. The assessor's office on March 12, 2019 had sent out a request for information, and the assessor is under Wisconsin Statute 70.47 (7) (a), and under that statute if the taxpayer does not provide the requested information within seven days prior to the first meeting of the Board of Review, the assessor can ask the Board to dismiss the objection. And if the Board dismisses their objection then the taxpayer cannot file a subsequent case in Circuit Court.

As of seven days before the first meeting of the Board of Review the taxpayer had not provided the requested information from March. But because we were already in court and we knew the 2019 case was going to be consolidated into the 2018 case pursuant to the court's scheduling order, the Village decided to ask the Board to postpone acting on the waiver and to give the taxpayer an opportunity to provide requested information that was requested back in March. By the way, a copy of the information request was sent by certified mail to the taxpayer, and a copy was sent to opposing counsel, Attorney Marcuvtiz.

In the time between the meeting of the first Board and today's meeting, I can report that there has been substantial compliance with the request for income and expense information, not full compliance. One of the things that we had asked for besides detailed income and expense information was detailed information regarding reimbursement of property tax expenses. The leases at the Outlet Mall is what is referred to as a triple net lease which means that the tenants then tenants then reimburse the landlord for their pro rata share of property taxes.

I won't go into all the details about how that plays into the valuation, but it's an important component of determining the value of the property via the income approach. And since property taxes had increase substantially last year because of the increase in assessment, we were very curious to see how much of the increased taxes were reimbursed by the tenants. That information was not given. But we are not going to ask the Board to deny the waiver request. We are going to not oppose it. But I just want the record to be clear that the 2019 valuation work up which Ed Judt did was based on the best information available and did not include that information which would have been better information. However, based on their income statements we were able to get an idea of property tax reimbursement. And based on their financial statements it looks like they were able to recover most of the increase in tax from the tenants.

So we have an obligation each year if information is requested of the taxpayer to analyze it. And Ed Judt did so. I have a packet here. We can't hand it out to the Board members because we're subject to confidentiality provisions under Village Ordinance and State Statute. But I do want the

Board to know that there was an extensive analysis done by Ed Judt all of the updated income and expense information for 2018 from the Outlet Mall. And based on the analysis using the same format and the income approach and the template that was used last year to determine the 2018 assessment the assessment would go up if he had the opportunity to have the assessment increased.

However, we're not going to ask the Board, even though the Board has the power to increase an assessment after a valuation hearing, we are not going to ask the Board to increase the assessment based on the improved financial condition at the Outlet Mall because based on a uniformity concern. No other taxpayer in the Village is being increased based on appreciation and better economic performance, and so this one should not either. But we're happy to say with the valuation that was done the Village is comfortable with its position in court because in effect the 2019 valuation if anything is too low based on the income approach.

So I just wanted the record to be clear that the assessor did look at the information, did carefully consider it. And if the information would have shown that perhaps a reduction was in order we probably would have been coming back to the Board today and asked for a valuation hearing so that the Board can look at the information and consider any recommendation from the Village to reduce the assessment. But we are not going to ask the Board to have a valuation hearing to increase the assessment.

And so with that explanation, which by the way we're required to give the Board since all of this is before the Board under Wisconsin Statute 70.48, the Village Assessor is required to provide information to the Board as to what was done with the process of the 2019 assessment so that the Board can make an informed decision on acting on the waiver request that is before it today. And so with that explanation we don't object to the Board accepting the waiver request for the 2019 assessment for the subject property. Thank you.

Jill Sikorski:

Thank you very much, Amy. Your comments were very insightful. I'll open it up to any questions for the Board that they may have for Ms. Seibel.

Mark Riley:

Just a couple questions on the taxes. If these are triple net leases all the taxes do flow through, correct?

Amy Seibel:

Correct.

Mark Riley:

So the tenants would be picking up all the taxes?

Amy Seibel:

Well, there's variations. Each lease might be slightly different. There are a few gross leases at the mall. And then some of the tenants have caps on their [inaudible] reimbursement and their property tax reimbursement. So it's not a guarantee -- that's why we wanted to see the details tenant by tenant and that's why we asked for it. We wanted to see exactly how much was allocated to each tenant and how much was paid and whether there were caps. We wanted that detail, and we'll need that in court. So I'll just have to get it through the court proceedings.

Mark Riley:

But if you have their income statements obviously whatever doesn't pass through the tenants becomes an expense to them and it would show up on their income statements. So if you have their correct income statements you really don't need to know anything about the taxes passing through.

Amy Seibel:

And that makes absolute sense but here's the problem. Yes, we have the income statement, and the amount of property tax that they showed was higher than what the property tax bill was for last year. And so we compared the amount of property tax, the actual property tax that was billed, and we compared that number to the reimbursements which is an income item. And so when we made that comparison not looking at what they showed for property expense but what we knew what the property expense was, it appeared that there had been 100 percent recovery.

Mark Riley:

Or higher? Did I hear you say it was even higher?

Amy Seibel:

It was maybe about \$20,000 more. The reimbursement was about \$20,000 more?

[Inaudible]

Amy Seibel:

Well, let's look.

Ed Judt:

So I can share this detail?

Amy Seibel:

No, we can't.

Ed Judt:

The tax reimbursement was slightly higher than the actual tax expense.

Amy Seibel:

By \$6,000.

Ed Judt:

What Amy was getting at, though, is their reported tax expense, we're not talking about tenant reimbursements now, the tax expense that they report was substantially higher than the actual property tax.

Amy Seibel:

And we're not sure why.

Ed Judt:

We don't have an explanation for that.

Amy Seibel:

If we would have got the detail, we would have been able to figure it out. But they did not give us the detail.

Mark Riley:

I guess my other question is you're using the income approach, and I don't know how far back that there was a substantial difference in the value of this property, was it '16 the valuation? When did the big jump happen and what was the big jump?

Amy Seibel:

2018 was the big jump. And the assessment changed from about \$140 million to \$220 million.

Mark Riley:

Okay, so from '16's assessment to '18's assessment it jumped substantially, is that correct?

Amy Seibel:

Correct.

Mark Riley:

And in the previous one in 2016 were you using the income approach?

Amy Seibel:

The assessor was using the income approach, but in all prior years the taxpayer refused to provide actual income and expense information. The first time the Village got actual income and expense information was in 2018, and that's because this Board subpoenaed the information from Premium Outlet. And they would not have been able to have a Board of Review hearing or appeal in court if they didn't provide that information to the assessor.

Mark Riley:

Okay, so you didn't have --

Ed Judt:

Let's just say this property owner, the Simon Property Group, never gave us income and expense information until they got that big increase in 2018. The last time we got reporting was when Prime Retail, the [inaudible] Group still owned the property in 2008. Simon bought the property in 2010, and in all those years we received nothing from them. They ignored every request we sent them.

Mark Riley:

Okay, that makes sense. I guess that's it. Yeah, that's it. No, I do have one more thing. Do they come back to you and say why they don't agree with you? If they give you the income, you're doing it with the income approach, what is their argument?

Ed Judt:

Let's just say this. I mean you saw on the objection form they listed a value of what again?

Amy Seibel:

\$140 million or so.

Ed Judt:

\$135,705.

Mark Riley:

And what's that based on?

Ed Judt:

Well, we've asked them.

Mark Riley:

They won't tell you.

Ed Judt:

We want to know how they get to that number.

Mark Riley:

And they won't tell you.

Ed Judt:

And they don't give us anything, no.

Mark Riley:

So they say you're not right, we're right, but they won't give you any basis?

Ed Judt:

Nope, right.

Mark Riley:

Does that summarize it?

Amy Seibel:

Well, we have an idea. They did provide a summary of the income and expense, and they view some of the deductions differently than how we view them. For example, what we consider capitalized expenditures like replacing the parking lot is not an operating expense. And so they've taken -- in their summaries to us they take replacing the parking lots which they've done in the last several years at considerable expense they treat that as an operating expense and deduct it to arrive at net operating income. We have not allowed that. We disallowed that. So we've made adjustments to their summary of what they think the net operating income is. And we've based it on what the Wisconsin Property Assessment Manual provides for typical operating expenses. And we don't know what their capitalize rate is. Of course, the capitalize rate in the income approach makes a big difference as to the ultimate conclusion. And so we have substantial support for the capitalization rate that the Village has accepted and has used. And we just have gross generalities as far as the capitalization rate that they might be thinking.

Mark Riley:

Can you say what that capitalization rate is?

Amy Seibel:

I can, sure. That we can disclose because that's not confidential information. The assessor used a base rate, so this is before loading and affecting for any property taxes of 6.7 percent for the capitalization rate. And that is consistent with -- the Outlet Mall we are classifying as a Class A mall because their retail sales per tenant on a square foot base are considerable and they're high. The mall performs very well. And so capitalization rates for Class A mall, Class A malls are the best malls and they're less risky because they have good strong tenants.

The capitalization rates -- just last year I represented the City of Wauwatosa in the Mayfair Mall litigation which took a month. We were in trial for one month. And that was one of the big issues in the Mayfair Mall cases is Mayfair Mall a Class A mall. The city believed it was. Class A malls, regional malls, are sometimes selling for cap rates four and a half percent. I know, it's incredible. So we believe that there's substantial support for the capitalization rate of 6.7, the base rate based on the quality of the outlet mall and it being institutional grade property and that's Class A mall.

Mark Riley:

What's the average length of their leases?

Ed Judt:

I would say the leases that are being signed now about five years. They've gotten shorter over time.

Amy Seibel:

Their occupancy levels, though, have remained high. Do you recall what their occupancy is? It's always above 95 percent, isn't it?

Ed Judt:

Yeah, it's always in a range of like -- I think the entire time they've been here their highest vacancy has been eight percent. And they're generally somewhere between three and six percent I would say.

Amy Seibel:

And the industry as a whole --

Ed Judt:

Remember they always have some vacancy, but that vacancy tends to be transitional. They don't have chronic vacancy. They have tenants leave, tenants come, and the vacancy is generally that interim period when those spaces remain empty.

Mark Riley:

So less than ten percent vacant.

Amy Seibel:

And the industry as a whole, the outlet mall industry is performing very well in these economic times. You read about some retailers going out of business, and so since the outlet malls are discounted they're doing very well.

Mark Riley:

Okay, no more questions.

Jill Sikorski:

Thank you, Mark. So the Board will now act upon waiving the request for Prime Outlets Mall LLC to the Circuit Court. Does that take a motion and then a roll call vote? All right.

William Morris:

Madam Chair, I would ask that because I am involved with their attorney in another matter in another community that I would abstain from this vote.

Jill Sikorski:

Thank you, Mr. Morris. Mr. Morris will abstain from this vote. Do we have a motion?

Mark Riley:

I can make a motion to waive it to the court.

Lena Schlater:

Second.

Jill Sikorski:

All right, we have a first and a second motion. We'll do roll call?

Jane Snell:

Jill Sikorski?

Jill Sikorski:

Aye.

Lena Schlater:

Aye.

Mark Riley:

Aye.

Jim Bilotti:

Aye.

Jill Sikorski:

All right, the motion is carried. The objection will now be moved to the Circuit Court.

5. CONSIDER/ACT ON SCHEDULING ADDITIONAL BOARD OF REVIEW DATE(S)

Jane Snell:

Madam Chair, the Clerk's office does not have any further business.

6. ADJOURN

Lena Schlater:

Motion to adjourn.

William Morris:

I will second.

Jane Snell:

And you just want to clarify that we're adjourning for the 2019. No further business by the Board of Review.

Rocco Vita:

So closing the Board today, adjourning today would close the assessment roles effectively for the 2019 assessment year. All values would be set for the 2019 tax rolls, and there would be no value change until the 2020 assessment year.

Jill Sikorski:

Thank you, Rocco. All right, the Board of Review for 2019 for the Village of Pleasant Prairie is adjourned.