**FINAL ADMINISTRATIVE DECISION**
**ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Heartland Automotive
DOCKET NO.: 08-29854.001-C-1
PARCEL NO.: 29-33-301-025-0000

The parties of record before the Property Tax Appeal Board are Heartland Automotive, the appellant, by attorney Michael D. Gertner, of Michael D. Gertner, Ltd. in Chicago; and the Cook County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds ***no change*** in the assessment of the property as established by the **Cook** County Board of Review is warranted. The correct assessed valuation of the property is:

| | |
|---|---|
| **LAND:** | $ 64,877 |
| **IMPR.:** | $ 219,375 |
| **TOTAL:** | $ 284,252 |

Subject only to the State multiplier as applicable.

## ANALYSIS

The subject property consists of one parcel of land consisting of 28,455 square feet, which is improved with a one-story, masonry, commercial building used as a oil change facility. The building contains 2,438 square feet of building area.

The appellant argued that the market value of the subject property is not accurately reflected in the property's assessed valuation as the basis of this appeal.

In opening argument, the appellant's attorney stated that the subject property contains two improvements thereon with the appellant owning and appealing only one of those improvements. He asserted that the Jiffy Lube is owned by his client. He stated that it represents 47% of the subject property, while the gas station also on this land parcel is not owned by his client without any property or parcel division. He asserted that his client leases the 47%, while another party leases the remaining 53% of the subject. Further, he asserted that the submitted evidence addresses the market value of his client's 47% lease of the subject.

In support of the market value argument, the appellant submitted a copy of a summary appraisal report with an effective date of January 1, 2008 and an estimated a market value for the subject with fee simple property rights of $250,000, based upon development of the sales comparison approach to value. The appraisal indicated that an inspection was undertaken on January 26, 2009 and that the subject's improvement was four years old. In addition, there are repeated points wherein the appraisal stated that "the adjoining parcel encroaches on the subject property lot, thereby reducing the net usable lot area" without further explanation.

In the sales comparison approach, the appraisal identified five sale properties that ranged in improvement size from 1,500 to 11,300 square feet of building area. The properties sold from January, 2005, to April, 2008, for prices that ranged from $75.93 to $104.87 per square foot. The appellant's attorney did not call the appraiser as a witness at this hearing.

At hearing, the appellant's attorney called as a witness his assistant, Flowlice Leinecke. She stated that she gathered evidence for the taxpayer's pleadings referred to in this appeal. She stated that Appellant's Hearing Exhibits #1 and #2 were documents obtained via a freedom of information request from the assessor's office. She stated that Appellant's Hearing Exhibit #1 is a one-page printout from the assessor's database reflecting different classifications accorded to the subject property. She testified that she obtained the printout in March, 2007, and it reflects data from tax year 2006. The printout indicated the property was accorded various designations: class 5-17, class 5-23 and class 5-90 designations. This breakdown all related to parcel number 29-33-301-025. There were handwritten circles and underscoring on the document with the word "our" with an arrow to the 38% level of assessment notation. Further, the printout, on its face, indicated the following data: a 5-17 class designation without any proration factor; a 5-23 designation with a 53% proration factor; and a 5-90 designation with a 40% proration factor. There was no explanation as to the rationale behind any proration factor.

Appellant's Hearing Exhibit #2 was a copy of a page of the subject's property record card obtained from the county assessor's office reflecting limited data regarding the subject's Jiffy Lube building accorded a class 5-17 designation and contained 2,438 square feet of building area.

Based upon this evidence submission, the appellant's attorney requested a reduction in the subject's 47% total assessment to $184,253 and rested on the written evidence submissions.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment was $284,252. The subject's assessment reflects a market value of $748,032 or $306.82 per square foot of building area using the Cook County

Ordinance level of assessment for class 5A, commercial property of 38%.
In support of the subject's market value, raw sales data was submitted for nine properties via Costar Comps printouts. The data from the CoStar Comps service sheets reflect that the research was licensed to the assessor's office, but failed to indicate that there was any verification of the information or sources of data. The properties were identified as either service gas stations or service gas station/mini mart facilities. The improvements ranged in improvement size from 500 to 3,500 square feet of building area. They sold from January, 2003, to November, 2005, in an unadjusted range from $198.68 to $2,420.00 per square foot of building area.

Moreover, the board of review submitted a seven-page printout with numerous handwritten notations thereon. The printout reflected limited descriptive and assessment data regarding 35 parcel numbers. As a result of its analysis, the board requested confirmation of the subject's assessment.

At hearing, the board's representative rested on the written evidence submissions. The board's representative testified regarding the assessor's ASIQ printouts for the subject in tax year 2008 which he had in his possession. He testified that these printouts would show the various structures on the subject and the level of assessment. He stated the printouts show class 5-90, 5-23, and 5-22 designations for the subject in tax year 2008. Under cross-examination, he indicated that there was no class 5-17 designation for tax year 2008. To his personal knowledge, he testified that a 5-23 designation refers to a gas station and that a 5-90 designation refers to a minor improvement, while he was unaware of the definition of a 5-22 designation.

The Board gave the board of review leave to submit clean copies of the subject's property characteristic printouts or ASIQ printouts for tax year 2008 which would be identified and marked for the record as board of review Hearing Exhibit #1. These printouts were timely received and included in the record. They indicate a proration factor of 53% for class 5-23 property and a proration factor of 40% for a class 5-90 property without further explanation.

The Board also accorded the appellant an opportunity for response. Appellant's response was timely received reiterating the prior assertion that the appellant, Heartland Automotive, owned 47% of the subject's parcel number -025, while 53% was apportioned to a gas station. Thereby, asserting that the appellant was only responsible and/or appealing a portion of the subject's property.

In rebuttal argument, the appellant's attorney asserted that the subject parcel was split in tax year 2009.

Lastly, the board's representative asked whether the appellant's attorney would concede that in tax year 2008 the 5-22 designation refers to the Jiffy Lube owned by the appellant. At hearing, appellant's attorney agreed to that statement. Thereby, the board's representative argued that the appellant should withdraw his case because the total assessment for that designation for tax year 2008 is $72,397.

After considering the arguments and or testimony as well as reviewing the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the market value evidence presented, the Board finds that the appellant did not meet this burden and that a reduction is not warranted.

The Board finds that the subject property has been valued as a whole prior to any allocations applicable to any portion of the property. At best, the appellant's argument is unsupported and contradictory. The appellant's appraisal fails to explain: the property rights applicable to the subject in submitting a fee simple appraisal, while the appellant's attorney asserts that the appellant has a leased fee interest in a portion of the subject; that the property is split between two taxpayers-leasees; the apportioned ownership or taxpayer percentage applicable to each leasee; the alleged encroachment and how it effects the subject property as a whole; and whether or not similar circumstances and/or encroachments affect the suggested sale properties and/or whether appropriate adjustments were accorded for this alleged factor.

Further, the Board finds that the appellant failed to provide this appraiser at hearing to testify to these lapses in data, inconsistencies and/or contradictions.

Since the appellant's appraiser was not present at hearing to testify as to his qualifications, identify his work, testify regarding the contents of the evidence, the conclusions or be cross-examined by the board of review and the Board. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373

Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The appellate court found the appraisal to be hearsay that did not come within any exception to the hearsay rule, thus inadmissible against the defendant, and the circuit court erred in admitting the appraisal into evidence. Id.

In Jackson v. Board of Review of the Department of Labor, 105 Ill.2d 501, 475 N.E.2d 879, 86 Ill.Dec. 500 (1985), the Supreme Court of Illinois held that the hearsay evidence rule applies to the administrative proceedings under the Unemployment Insurance Act. The court stated, however, hearsay evidence that is admitted without objection may be considered by the administrative body and by the courts on review. Jackson 105 Ill.2d at 509. In the instant case, the board of review has objected to the appraisal as hearsay. Therefore, the Board finds the appraisal hearsay and the adjustments and conclusions of value are given no weight. However, the Board will consider the raw sales data submitted by the parties.

The Board finds appellant's sales #1 and #4 as well as the board of review's sales #3 and #8 the most probative. These sales occurred from May, 2004, to September, 2006, for unadjusted prices ranging from $100.00 to $621.44 per square foot of building area. The buildings ranged in size from 1,000 to 2,766 square feet of building area. In comparison, the appellant's assessment reflects a market value of $306.82 per square foot of building area which is within the range established by the sale comparables. After considering adjustments and the differences in the comparables when compared to the subject, the Board finds the subject's per square foot assessment is supported and a reduction is not warranted.

Lastly, the Board finds that the appellant failed to provide any written evidence or testimony at hearing to support the 'proration' argument asserted solely by the appellant's attorney. The actual appellant-leasee was not called as a witness nor was a copy of the lease submitted into evidence. The only witness presented at hearing was the employee of the appellant's attorney who had no personal knowledge of the subject property other than that acquired from other sources in preparing the property tax appeal. Therefore, the Board finds this argument is unsupported and unpersuasive.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

Chairman

Member

Member

Member

Member

DISSENTING:

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: February 20, 2015

Clerk of the Property Tax Appeal Board

**IMPORTANT NOTICE**

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing

complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.