



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

APPELLANT: Charles Van Fossan
DOCKET NO.: 09-21360.001-C-1
PARCEL NO.: 01-01-101-021-0000

The parties of record before the Property Tax Appeal Board are Charles Van Fossan, the appellant, by attorney David S. Martin, of Neal, Gerber & Eisenberg 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: \$ 10,262
IMPR.: \$ 113,237
TOTAL: \$ 123,499

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Cook County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2009 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of a one-story, commercial building containing 2,380 square feet of building area, operating as a Starbucks Coffee shop. It is situated on a 2,783

square foot site and was constructed in 1951. The property is located in Barrington, Barrington Township, Cook County. The property is a class 5-17 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a summary appraisal report containing a brief recapitulation of the appraiser's data, analyses, and conclusions. Supporting documentation was retained in the appraiser's file as indicated on page 3 of the appraisal. The report was signed by Joseph T. Thouvenell, MAI as well as Robert Kruse, who was identified as a staff appraiser on the certification page, page 25 in the appraisal. Robert Kruse inspected the property as part of this assignment.

Each valuation approach was dedicated one page, or less, of analysis in the appraisal. The cost approach utilized sales data that ranged from \$36.41 to \$63.13 per square foot using land sales that occurred between March 2005 and May 2007. Additionally, while the subject site contains 2,783 square feet of land, the land sale comparables ranged in size from 13,334 to 18,500 square feet. The appraiser then concluded a value for the subject land of \$50.00 per square foot, or \$140,000, and a market value of \$270,000, for the subject property, under the cost approach.

The sales comparison approach analyzed comparables ranging in size from 4,700 to 12,900 square feet in area, while the subject contains 2,380 square feet. Furthermore, the suggested comparables were described as follows by way of color photographs: sale #1 was a rug store in Lincolnwood; sale #2 was a strip center in Schaumburg; sale #3 was a coin and collectible shop in Glenview; and sale #4 was a leather/motorcycle garment store in Niles. These sale comparables are located between 10 and 30 miles from the subject property. Additionally, the dates of sale ranged from November 2004 through February 2007, while the subject's valuation date is January 1, 2009. The appraiser failed to provide any quantitative or qualitative details regarding the adjustments for conditions of sale, use, age, size or location. The appraiser then concluded a market value for the subject under the sales comparison approach of \$125.00 per square foot, including land, or \$300,000.

The income approach failed to include a listing of any rental comparables utilized or any rationale as to how the

capitalization rate was developed. The appraiser concluded a value for the subject of \$330,000 under the income approach.

The appraiser then reconciled the three approaches to value and estimated the subject property had a market value of \$325,000 as of January 1, 2007.

The board of review submitted its "Board of Review-Notes on Appeal" disclosing the total assessment for the subject of \$123,499. The subject's assessment reflects a market value of \$493,996 or \$207.56 per square foot of building area, including land, when applying the 25% assessment level for commercial properties under the Cook County Classification of Real Property Ordinance. In support of the subject's assessment, the board of review also submitted a property record card for the subject, which noted that the subject has previously undergone extensive remodeling. The photographs also indicate the property has been updated. The board also submitted raw sales data for two retail/storefront properties located in Barrington. The sales range: in size from 4,332 to 5,280 square feet of building area; in sale date from July 2006 to December 2007; and in price from \$900,000 to \$3,750,000, or \$270.11 to \$710.23 per square foot, including land. The evidence indicates sale #1 is part of an assemblage. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Prior to the hearing, on Friday, February 6, 2015, the appellant, represented by attorneys Joshua A. Boggioni and David S. Martin, both of Neal, Gerber & Eisenberg LLP., filed a Motion for Continuance of the hearing that was scheduled for Tuesday, February 10, 2015. The request for continuance was based on the following: the departure of Joseph Thouvenell from Madison Appraisal; the fact that additional time would permit the appellant to better prepare for the hearing; and Joshua A. Boggioni accepted a position at another law firm and was in the process of transitioning files, including this appeal. The Administrative Law Judge entered an order denying the motion on February 9, 2015, indicating: the parties were notified of the hearing on January 6, 2015 and had more than one month to prepare for the hearing; multiple signatories were on the appraisal if Joseph Thouvenell was unavailable to testify; and another attorney at Neal, Gerber & Eisenberg could conduct the hearing if Joshua Boggioni were unavailable due to his transitioning to a new law firm.

One day prior to hearing, on February 9, 2015, the appellant filed a Motion to Reconsider. The appellant indicated that

multiple attempts were made to contact Josphe Thouvenell, as he was the only licensed appraiser that signed the file. The motion argued that Robert Kruse, the additional signatory [who signed the appraisal as "Staff Appraiser"] was not qualified to provide expert testimony and had never testified in the capacity of an appraiser. At hearing, both attorneys noted their attempts to settle this case, unsuccessfully, prior to hearing. Mr Martin vehemently argued that the taxpayer was being treated unfairly as Robert Kruse did not hold appropriate appraisal credentials. The Administrative Law Judge referred Mr. Martin to Rule 1910.67(1) of the Official Rules of the Property Tax Appeal Board (the "Rules"). Rule 1910.67(1) states, in its entirety:

Appraisal testimony offered to prove the valuation asserted by any party shall not be accepted at the hearing unless a documented appraisal has been timely submitted by that party pursuant to this Part. **Appraisal testimony offered to prove the valuation asserted may only be given by a preparer of the documented appraisal whose signature appears thereon.** (emphasis added).

86 Ill.Admin.Code § 1910.67(1).

During their case-in-chief, Mr. Boggioni reviewed the written appraisal, while the board of review's representative rested on their written submission.

Mr. Boggioni confirmed that the board's two sale comparables were unadjusted.

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

Initially, as there was a second signatory to the appraisal in compliance with the Property Tax Appeal Board's rules, the appellant's Motion to Reconsider is denied. The Board finds

that the appellant had ample time to contact an appraisal signatory of their choice, prepare their case for hearing, and provide adequate counsel for their client.

The Board also finds that the appellant's appraiser was not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. 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." Id. at 344.

In Novicki an action was brought under the provisions of the Retailers' Occupation Tax Act that contained a section providing in part that: "In the conduct of any investigation or hearing, neither the department nor any officer or employee thereof shall be bound by the technical rules of evidence and no informality in any proceeding, or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made or approved or confirmed by the department." The Court stated that this section permits the asking of leading questions and other informalities, but that the General Assembly did not intend to abrogate the fundamental rules of evidence. Id.

Similarly, in Grand Liquor Co., Inc. v. Dept. of Revenue, 67 Ill.2d 195 (1977), the Supreme Court of Illinois, following Novicki, again asserted that the rule against hearsay evidence is founded on the necessity of an opportunity for cross-examination, and is a basic and not a technical rule of evidence.

Furthermore, in Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887 (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 court found the appraisal was not competent evidence stating: "it was an unsworn ex parte statement of opinion of a witness not produced for cross-examination." This opinion stands for the proposition that an unsworn appraisal is not competent evidence where the preparer is not present to provide testimony and be cross-examined, and in this case, as to adjustments made regarding date of sale and condition of property.

Based on this case law, the Board finds that the appraisal in this case is hearsay. While the Board's rules allow for informal

procedures that eliminate formal rules of evidence (see 35 ILCS 200/16-180 and 86 Ill.Admin.Code §1910.92(a)), the Novicki court unambiguously stated that the opportunity to cross-examine a witness is fundamental, and was not abrogated by the informal evidentiary process employed by the Illinois Department of Revenue in that case. Similarly, the Board finds that the Board's permissive evidentiary rules do not allow for fundamental evidentiary processes, such as cross-examination, to be disregarded at hearing.

Even if the Board were to find the appraisal was not hearsay or did not fall into a hearsay exception, the Board notes that the appraisal lacked: any qualitative and quantitative reasoning for any adjustments; details regarding the sale conditions of the comparables; and any evidence that the sales were arm's-length transactions. Additionally, the sales comparables ranged in building size from 4,700 to 12,900 square feet, with the subject containing only 2,380 square feet of building area. Furthermore, the comparables were located 10 to 30 miles away from the subject. The Board further finds that the income approach is lacking in rental data or capitalization rate analyses as well. Finally, the cost approach analyzes land sales that range in size from 13,334 to 18,500 square feet, with the subject containing 2,783 square feet. Overall, the appraisal lacks reasoning, data, analysis and credibility. Accordingly, the Board accords diminished weight to this appraisal and finds that the estimate of value for the subject property is unreliable.

The Board notes that the parties submitted a total of six sale comparables in the record. These unadjusted sale comparables range in value from \$83.72 to \$710.23 per square foot, including land. The subject's current assessment reflects a market value of \$207.56 per square foot, including land, which is within the range of the comparables contained in the record. The Board notes that the appellant's comparables are not similar in use, building size, date of sale, or location to the subject property. While the board of review's comparables are similar in size and location, it is unclear if these sales were arm's-length transactions. The board of review's sales do call into question the quality of the sale comparables contained in the appraisal, however. Therefore, the Board gives all six of the unadjusted comparables little weight.

Accordingly, in determining the fair market value of the subject property, the Board finds that the appellant failed to submit sufficient evidence to show the subject was overvalued. The Board finds that the appellant has not met its burden of proving

overvaluation by a preponderance of the evidence and that the subject does not warrant a reduction based upon the market data submitted into evidence.

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.

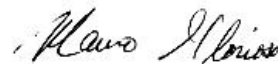
Chairman




Member



Member



Member



Acting 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: June 26, 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.