FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: First Midwest Bank
DOCKET NO.: 12-01959.001-C-2
PARCEL NO.: 11-29-300-253

The parties of record before the Property Tax Appeal Board are First Midwest Bank, the appellant, by attorneys John P. Fitzgerald and Mary Kathleen Fitzgerald of Fitzgerald Law Group, P.C. in Chicago; and the Lake County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds ***a reduction*** in the assessment of the property as established by the **Lake** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$143,433
IMPR.:	$183,767
TOTAL:	$327,200

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Lake County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2012 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

Pursuant to Property Tax Appeal Board rule 1910.78 (86 Ill.Admin.Code §1910.78) due to the common issues of law and fact despite some differences in the parties' evidence in the proceedings, Docket No. 12-01959.001-C-2 was consolidated with Docket No. 13-03096.001-C-2 for purposes of a single oral hearing. The Board shall issue separate decisions for each docket number.

The subject property consists of a one-story, single-tenant, owner-occupied, bank/office building with 4,810 square feet of building area. The building was constructed in 2000. The building has steel framing with masonry, brick and metal panel exterior walls. The building is fully sprinklered. Other features include central air conditioning, two washrooms and a 1,682 square foot canopy. The site has 40,000 square feet of asphalt paving for parking and drives. The property has a 105,415 square foot site and is located in Mundelein, Libertyville Township, Lake County.

Attorney Mary Kathleen Fitzgerald appeared before the Property Tax Appeal Board on behalf of the appellant contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by Thomas W. Grogan and John T. Setina of Sterling Valuation estimating the subject property had a market value of $1,000,000 as of January 1, 2012. (Appellant's Exhibit A). The appellant called as its witness Thomas W. Grogan.

Grogan is a State of Illinois Certified General Real Estate Appraiser and has the MAI designation from the Appraisal Institute. Grogan stated that he has appraised approximately 100 bank facilities within the past five years in the six county area. Grogan stated that when appraising a bank, he would be talking to bank managers, doing research through the internet, going to such publications as CoStar, Cushman & Wakefield, and other market companies. Grogan stated he had an opportunity to appraise the subject property and inspected or visited the subject on September 11, 2012. He observed that the property is a single-story bank office facility containing approximately 4,810 square feet of building area situated on approximately 105,415 square feet of land. The building was constructed in 2000 and was average in condition.

Grogan concluded the highest and best use of the property as vacant was for commercial use, and the highest and best use as improved was continued use as a bank facility. There are typically three approaches to estimating value for a property, cost approach, sales comparison approach, and income capitalization approach. The most weight is typically given to the sales comparison approach where Grogan asserted is usually the most data available and that’s what typical market user's use when estimating market value. Grogan stated that when looking for comparable sales, he would try to find a building that is most similar to the subject, similar size, similar age, similar land-to-building ratio and any other features that may be similar as well. As for the locations of the comparables, Grogan stated that he tries to stay as close to the subject property or within the county as possible.

Under the cost approach to value the appraisers first estimated the land value using three sales and one listing. The sales/listings occurred in October 2009 or January 2010. The comparables ranged in size from 6,334 to 442,570 square feet of land area. Adjustments were made to the comparables for conditions of sale, financing, economic trends, location, and land size. Based on this data the appraisers estimated the subject had a site value of $420,000 or $4.00 per square foot of land area.

The Marshall & Swift Valuation Guide was used to estimate the building's replacement cost at $150.11 per square foot of building area. The appraisers estimated the building to be a Class C average bank building with the base cost including sprinkler costs. The appraisers estimated entrepreneurial profit of 5% and estimated an additional 5% for indirect costs which could include such things as contracts to open and profit, workers' compensation, fire and building insurance. Again using Marshall & Swift, the typical economic life for this type of property would be 45 years. Based on observation, the appraisers estimated the effective age of the subject to be 15 years, which would result in a building depreciation of 33.33% or $320,485.

In concluding the cost approach, the appraisers added the $420,000 land value estimate to the improvements new estimate of $961,454. Subtracting the estimated depreciation of $320,485 and adding site improvements of $50,000 yielded an overall estimated value under the cost approach of $1,110,000, rounded.

Four sales and one listing were used in the sales comparison approach to value. The comparables were located in North Aurora, Vernon Hills, Buffalo Grove, Woodstock and Waukegan. These properties were improved with one-story or two-story bank or multi-tenant buildings that ranged in size from 4,650 to 25,500 square feet of building area. Comparable #1 had a full finished basement. The buildings were constructed from 1974 to 2001; however, comparable #5's age was not disclosed. The comparables had land-to-building ratios ranging from 2.58:1 to 23.42:1. Comparables #1 through #4 sold from March 2009 to December 2011 for prices ranging from $700,000 to $2,500,000 or from $122.59 to $210.21 per square foot of building area, including land. Comparable #5 had a listing price of $1,500,000 or $58.82 per square foot of building area, including land. Grogan testified that the listing was marketed for 703 days and has subsequently sold in 2014 for $750,000. The appraisers compared the comparables to the subject property and made adjustments for such items as sale conditions, financing, economic trends, location, building size, age/condition and land-to-building ratio. The appraisers estimated the subject property had an indicated value under the sales comparison approach of $200.00 per square foot of building area including land, or $960,000, rounded.

The final approach developed was the income capitalization approach. In estimating the subject's market rent Grogan stated that he was unable to find a significant number of comparable market rents of entire buildings, so he relied also on spaces within banking facilities. The appraisers relied on one actual lease and six listings, of which some were net and some were gross leases. The comparables were located in St. Charles, East Dundee, Lake in the Hills, Waukegan, Fox Lake, Geneva and Gurnee. The rental comparables were improved with bank facilities that ranged in size from 6,464 to 20,985 square feet and were built from 1952 to 2004. Grogan testified that he was not able to discern the age of comparable #7. The comparables had land-to-building ratios ranging from 1.27:1 to 9.72:1. Grogan testified that comparable #4 had a building size of 6,900 square feet with an available rental size of 3,450, but he was not able to determine the land-to-building ratio. The comparables had asking rents ranging from $9.00 to $28.00 per square foot of building area. Grogan testified that all of the rental listings were given downward adjustments, because typically listing rental rates are higher than the final contracted rental rates. Grogan further explained that comparables #4 through #7 were given downward adjustments because the leases were on a gross lease basis in which the owner of the building is responsible for all operating expenses. Other rental adjustments were made for location, age/condition and land-to-building ratio. The appraisers estimated the subject's market rent to be $22.50 per square foot on a net basis resulting in a potential gross income of $108,225.

The appraisal report stated that CB Richard Ellis 1st Quarter 2012 reported vacancy rates for North Suburban Office overall was 20.2%; for Class "A" properties was 15.6%, 21.6% for Class "B" properties and 25.7% for Class "C" properties. The appraisers also indicated in the report that typically single-tenant properties would not have significant vacancy losses; therefore, the appraisers concluded 7.50% of potential gross income or $8,117 resulted in an effective gross income of $100,108 for the subject.

The appraisers then deducted operating expenses for management fee, insurance and replacement reserves totaling $4,928 to arrive at an estimated net operating income of $95,180. As support for their conclusion of the various expenses the appraisers cited Korpacz Real Estate Investor Survey, First Quarter 2012.

The next step in the income approach was to estimate the capitalization rate. The appraisers considered the direct capitalization and the band of investment techniques when concluding an overall capitalization rate for the subject property. The direct capitalization rate was not obtained from the market due to the lack of actual capitalization rates, so the appraisers researched national surveys from Korpacz and RealtyRates.com. The appraisers concluded an appropriate capitalization rate for the subject property would be 9.50% using the direct capitalization method. The band of investment technique is another method of estimating a capitalization rate by researching mortgage and equity rates. The appraisers concluded an overall capitalization rate for the subject property derived from the band of investment technique would be 8.93%. The appraisers placed more weight on the direct capitalization technique and concluded the subject property would have a 9.50% overall capitalization rate. Capitalizing the net income of $95,180 resulted in an estimated value under the income capitalization approach of $1,000,000, rounded or $207.90 per square foot of building area including land.

In reconciling the three approaches to value least weight was given to the cost approach due to the need to estimate the existing physical, functional, and economic obsolescence within the subject. The appraisers gave significant consideration to the sales comparison approach, because the sale comparables, for the most part, were similar in most respects to the subject property and the information was considered to be highly reliable. The income capitalization approach received secondary consideration in the final analysis, since the property is owner-occupied. Grogan testified that he wanted to give some weight to the income approach, because if he placed all the weight on the sales comparison approach, he would have wound up with $960,000. The appraisers estimated the subject property had a market value of $1,000,000 as of January 1, 2012.

Based on this evidence the appellant requested the subject's assessment be reduced to $333,300 to reflect the appraised value.

Under cross-examination Grogan testified he agreed that the recession ended in June 2009, after hitting the banking sector first before hitting other sectors of the economy. Grogan further agreed that the commercial real estate market would have been at least stable, if not improving, since then. Grogan acknowledged that Sterling Valuation did an appraisal of the subject in 2009, but he was not there at that time and did not know what that valuation concluded.

Grogan answered questions as to the adjustments made to the appraisal comparables and the reasons the comparables were chosen to be included in the appraisal. Grogan acknowledged that there was one comparable included in the appraisal, which was also selected as a board of review comparable. This comparable was located in Buffalo Grove and sold in May 2010 for $740,000.

On re-direct, Grogan testified as to why he did not choose board of review comparables #1, #2, #4 and #5. Grogan explained that, at the time the appraisal was being completed, he was not aware of the resale of the common comparable located in Buffalo Grove that sold in January 2014 for $2,200,000.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $453,836. The subject's assessment reflects a market value of $1,387,029 or $288.36 per square foot of building area, land included, when using the 2012 three year average median level of assessment for Lake County of 32.72% as determined by the Illinois Department of Revenue.

The board of review called as its witness Peggy Freese, Libertyville Township Assessor. Freese testified that the subject property's 2009 assessment was lowered by the Lake County Board of review after an appeal was filed. The subject's 2009 assessment was reduced to reflect a market value of $1,345,000, which was supported by an appraisal from Sterling Appraisal. Freese further explained that the subject's assessment has been carried forward in subsequent years and the only changes have been due to the applications of township multipliers. Freese testified that the Assessor's Office does not look at comparable sales that occur outside of Lake County.

The board of review called as its next witness John Paslawsky, Chief Appraiser for the Lake County Chief County Assessor's Office. Paslawsky testified that he prepared a packet of information and reviewed it with Martin Paulson, Clerk of the Lake County Board of Review for submission to the Property Tax Appeal Board. (Appellee's Exhibit A). Paslawsky testified that he agreed that the recession ended around 2009 or 2010, but the commercial market is a long ways from where it was 10 years ago. Paslawsky testified that he chose the five comparables submitted by the board of review and the sales bracket the subject building's size. Paslawsky testified that board of review comparable #1 was a former Charter Bank building, which was converted, expanded, and put to commercial use after its purchase for $1,000,000 in July 2013. Board of review comparable #2 was a bank building located in McHenry County that was purchased for $1,270,000 in September 2011. Board of review's comparable #3, the parties' common comparable, was a former Bank of America building that sold in May 2010 for $740,000. The property was subsequently converted to office use and resold in 2014 for $2,200,000. The board of review's evidence did not include this property's record card. Board of review comparable #4 was a bank building located in Glen Ellyn that sold in June 2011 for $940,000. Board of review comparable #5 was a former bank building located in Wheaton that sold in October 2010 for $875,000.

With respect to appraisal comparable #5, Paslawsky testified that it's an older bank building, five times the size of the subject and has been converted into a medical office building. Paslawsky also indicated that appraisal sale #2 is a larger, dissimilar multi-tenant office building and has a different marketability, when compared to the subject's freestanding bank building. Paslawsky indicated that appraisal sale #4 was an old 2009 sale, which was a totally different market than the 2012 market that is the subject of this appeal.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under cross-examination, Paslawsky agreed that the parties' common comparable had substantial renovations prior to its January 2014 sale for $2,200,000, and due to its long-term lease, would certainly have appeal to an investor. Paslawsky also testified that board of review comparable #1 was a bank owned property at the time of its sale, but would not acknowledge that it was a short sale. Paslawsky acknowledged that the board of review comparables were not adjusted and he did not perform a full appraisal of the subject. Paslawsky also acknowledged that three of the five sales presented by the board of review were located outside of Lake County.

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 met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds the best evidence of market value to be the appraisal submitted by the appellant and the testimony provided by the appraiser, Thomas W. Grogan, estimating the subject property had a market value of $1,000,000 or $207.90 per square foot of building area, including land, as of January 1, 2012. The subject's assessment reflects a market value of $1,387,029 or $288.36 per square foot of building area, land included, which is above the appraised value.

The appraisal contained three approaches to value to support the market conclusion. With respect to the cost approach the appraisal included land sales to support the land value. The appraisal also included a detailed description of the cost new calculations and an analysis of the physical depreciation the subject improvements suffered. In contrast the board of review provided no land sales and no descriptive evidence with respect to developing the cost new and the depreciation analysis. The Board finds the cost approach developed by the appellant's appraiser, although given minimal weight, was more credible than the cost approach contained on the subject's property record card submitted by the board of review.

With respect to the sales comparison approach the appraiser made adjustments to the sales and listing for sale conditions, financing, economic trends, location, building size, age/condition and land-to-building ratio. In contrast, the board of review provided a grid of five sales but did not adjust for differences from the subject property and only one of the sales presented by the board of review sold for a price above $1,000,000, the appraised value of the subject. Additionally, the later sale of the parties' common comparable in January 2014 for $2,200,000 was given less weight by the Board due to insufficient evidence regarding upgrades to the property after being purchased in May 2010 for $740,000. Furthermore the testimony regarding the property's favorable lease detracts from this property's comparability to the subject property. Based on this record the Board finds the sales comparison approach developed by the appraiser was better supported and more credible than the raw sales provided by the board of review.

In the income approach to value the appraiser provided one actual lease and six listings to support the estimate of market rent and used two methods to estimate the capitalization rate to be applied to the net income. The Board finds the board of review provided no data or rental comparables to challenge the market rent, vacancy and collection loss or expenses used to calculate the net income. Furthermore, the board of review provided no evidence to challenge the capitalization rate developed by the appraiser. Based on this record the Board finds the board of review did not refute or rebut the estimate of value under the income approach developed by the appellant's appraisers.

Finally, the Property Tax Appeal Board gave no weight to the board of review's argument regarding a 2009 appraisal of the subject property by Sterling Valuation. The 2009 appraisal referenced by the board of review was not entered into evidence and the appraiser that authored the report was not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. Given that the main thrust of the board of review's argument was based on that appraisal's value conclusion, the testimony of the author is a critical factor. Without the testimony of the appraiser, the Board was not able to accurately determine the credibility, reliability and validity of the purported 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." 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 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. In light of these cases, the Board has given no weight to the board of review's reference to a 2009 appraisal of the subject. Moreover, the Board finds such a value conclusion would be dated as compared to the assessment date at issue of January 1, 2012.

In summary, after considering the evidence and testimony provided, the Board finds the best evidence of market value in this record was presented by the appellant. Based on this record the Board finds the subject property had a market value of $1,000,000 as of January 1, 2012. Since market value has been determined the 2012 three year average median level of assessments for Lake County of 32.72% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

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: July 24, 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.