FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: MPBP Enterprises, LLC
DOCKET NO.: 12-24210.001-I-2
PARCEL NO.: 09-30-300-059-0000

The parties of record before the Property Tax Appeal Board are MPBP Enterprises, LLC, the appellant(s), by attorney Joanne Elliott, of Elliott & Associates, P.C. in Des Plaines; the Cook County Board of Review by Cook County Assistant State's Attorney Cristin Duffy; the Des Plaines C.C.S.D. #62, and Maine Twp. H.S.D. #207, intervenors, by attorney Ares G. Dalianis of Franczek Radelet P.C. in Chicago.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds ***A Reduction*** 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:	$143,305
IMPR.:	$ 59,195
TOTAL:	$202,500

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 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

The subject property is located on a 134,876 square foot parcel of land in unincorporated Des Plaines and consists of a 6,000 square foot industrial building. The property is located in Maine Township, Cook County. The property is a class 5-93 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 an appraisal completed by Gary Peterson (Peterson) estimating the subject property had a market value of $690,000 as environmentally clean and of $0 in "as-is" value as of January 1, 2013. Peterson's appraisal also concludes that the market value of the subject property as of January 1, 2012 would be essentially the same.

Peterson testified that he is a certified commercial real estate appraiser and holds the designation of Member of the Appraisal Institute (MAI). He further testified that he has been an appraiser for roughly 26 or 27 years and has held the MAI designation for about 20 of those years. Peterson also testified that he is the president of Peterson Appraisal Group. He testified that he has appraised hundreds of commercial properties and has previously testified before the Board on a couple of occasions. Peterson was offered as an expert in real estate theory and practice and after no objection by opposing counsels was accepted as such by the Board.

Peterson performed an interior and exterior inspection of the subject property on May 28th, 2013. He testified that the subject's real land-to-building ratio of 22.48:1 is very high, but because he considers most of the land to be excess land, he found the "more economic" land-to-building ratio to be 3:1. Peterson testified that the subject was constructed in 1980 and is a lower-quality, uninsulated metal building with five overhead doors and a small office that uses well and septic water. He also found that the current use is the subject's highest and best use. In the alternative, Peterson found that the highest and best use for the subject property as vacant would be "speculative investment in anticipation of future industrial development." Finally, Peterson testified that he relied on the five-page letter from KD Engineering when reaching his conclusions of value.

In his report, Peterson utilized the cost and sales comparison approaches only. He testified that he did not include the income approach to value because of the seven percent building-to-land ratio, which he stated was atypical for this type of property and would make it very difficult to find good rental comparables. Peterson also stated that typically industrial properties similar to the subject range from 10 to 15 percent in building-to-land ratio. Furthermore, he testified that he did not use any current lease data because he did not find it to be reliable.

In his cost approach to value, Peterson assumed the subject site to be clean and found comparables that were not specifically contaminated. The six comparables that he used sold between October, 2009 and September, 2012 for unadjusted prices ranging from $3.57 to $7.64 per square foot of land area. After adjusting for sale date, size, and other pertinent characteristics, Peterson reached a final conclusion of value for the subject's land of $3.75 per square foot of land. Then, Peterson testified that he used improved land sales to calculate a land value for the subject's improved land that he considered non-excess. Using the Market Value Calculator Cost Method, Peterson estimated indirect costs at 10% as well as accrued depreciation from all sources at 33%. These deductions resulted in a market value of $725,000. He then deducted an estimated clean-up cost of $730,000 referencing the addendum for the environmental report and remediation estimates. However, the addenda environmental report states that thermal treatment to remediate would have an estimated cost of $800,000, while an alternative remediation would cost $662,000.

Under the sales comparison approach, Peterson used five suggested sales comparables. Those comparables ranged: in size from 4,545 sq. ft. to 10,850 sq. ft. of building area; in sale date between March, 2011 and December, 2012; in age from 1973 to 1988; and in price per square foot from $40.00 to $45.70 per square foot of building area. After adjustments for pertinent factors, Peterson reached a conclusion of value for the subject of $42.00 per square foot of building area or a total of $252,000, which he rounded to $250,000. He then added what he

considered excess land at a value of $440,000 for an overall total value for the subject property of $690,000.

In his reconciliation between the two approaches to value, Peterson gave more weight to the sales comparison approach. He testified that he concluded that the subject is worth $0 in “as is” condition based on the environmental report prepared by KD Engineering. The environmental report gave two estimates for projected cleanup and Peterson testified that he used the middle, or $730,000, of the two for purposes of determining the value of the subject in “as is” condition.

On cross examination, Peterson testified that he worked on the appraisal with Steve Bickett, who is an employee of Peterson Appraisal Group. Peterson testified that Bickett has worked for him for over 10 years, but does not possess the MAI designation. Peterson testified that Bickett wrote the report, and Peterson reviewed it and performed the inspection. When asked whether he selected the comparables used in the report, Peterson could not recall, but stated that he does not believe that he did. Peterson also testified that he has appraised hundreds of commercial properties and hundreds of them were contaminated. He further testified that contaminated properties do sell, but contamination is a difficult unit for comparison because of the uncertainty of the level of contamination.

Peterson testified that the current owner of the subject told him that there was a large fire in 1993, but Peterson was not aware of the extent of damage, if any, to the metal structure as inspected in 2013. As far as the levels of contamination and cost of remediation, Peterson testified that he relied entirely on the 5-page report prepared by KD Engineering. He stated that he did not discuss the letter with anyone from KD Engineering or request any supplemental documentation, like the full report prepared in 1999. He stated that he would not know of any contamination either on the subject or any other property unless he is told about it or he sees visible signs of such contamination on site. He also testified that there were no hazard signs or precautions that he had to take when inspecting the property.

On cross by intervenor’s counsel, Peterson stated that he relied on KD Engineering’s report for environmental cleanup estimates even though the report specifies “residential cleanup objectives.” Peterson testified that the property was not zoned for residential use and there was no information to his knowledge of any possibility of residential use. Furthermore, he testified that the properties surrounding the subject are primarily industrial. Peterson also explained that his understanding is that residential cleanups are more comprehensive than industrial and therefore more expensive. Further, he testified that he did not know whether the US Environmental Protection Agency’s (EPA) prior cleanup of the site in the late 90s did not already remediate to industrially permissible standards. Peterson agreed with intervenor’s counsel that he would have preferred when preparing the report to use industrial cleanup standards. Finally, Peterson stated that he did not investigate whether any of his comparable sales had any contamination issues.

In addition to the Peterson appraisal, the appellant submitted a five-page soil investigation report prepared by Donald E. Butzen (Butzen), owner of KD Engineering. The appellant’s second witness, Butzen, testified that he is an environmental consultant and has worked in the field for about 28 years. His job duties include Phase I, Phase II, soil remediation, and tank removal. He further elaborated that Phase I investigation is a site inspection as well as reviewing all available

records. Phase II is the soil investigation performed through the use of a photoionization detector (PID) to drill and analyze soil samples to determine the extent of the actual ground contamination. Finally, Phase III is the tank removal and or soil remediation. Butzen testified that there is no licensing for his position but over the years he has taken and taught continuing education courses. Butzen was offered as an expert in environmental contamination and soil remediation and after no objections by opposing counsels was accepted as such by the Board.

Butzen testified that he was first contacted by the current owner of the subject property, Marty Hadle, in October, 1999. At the time, Butzen testified that he believed Mr. Hadle was in the process of purchasing the property and hired him to perform a Phase II soil investigation of the subject. Butzen drilled 12 Geoprobes at 16-foot depth and submitted them for laboratory analysis. He testified that he tested the levels of semi-volatile, volatile, and metal compounds. He also stated that he did not perform any groundwater testing. Butzen testified that his samples indicated that the horizontal contamination is 220 feet by 70 feet, for a total of 15,400 square feet of surface area or roughly 11% of the subject's square footage, with a vertical contamination of 16 feet. Of the three types of compounds, Butzen testified that only the semi-volatile organic compounds exceed applicable limits. He also stated that the legal limits were exceeded to such a degree that it would not have made a difference which standard he used.

In addition to the soil samples obtained through drilling, Butzen testified that he submitted a Freedom of Information Request (FOIA) to the federal EPA. From that FOIA request, Butzen found out that the federal government performed a cleanup operation in which about 1,000, 55-gallon drums were removed from the property. In addition to removing a large number of chemical contaminants, the federal government treated roughly 88,220 gallons of aqueous wastewater on the property.

After determining that the soil samples collected from the subject exceeded legally permissible levels, Butzen testified that he used the Tiered Approach to Corrective Action (TACO) and the residential standard in making his cleanup estimates. He also testified that he was aware that the property was used and zoned for industrial use only. Butzen explained that the residential standard is used to avoid stigmatizing the property or having to put a commercial deed restriction on the property, which is the requirement if commercial cleanup standards are used.

Butzen testified that his 1999 cleanup estimate was based on two different types of remediation. The first type of remediation, he explained, is using the thermal method, which would entail the excavation of the contaminated soil. After excavation, the soil would be run through an oven to burn off any contaminants and then returned back to the site. The other method that Butzen priced out was excavating the soil, replacing it with clean soil, and taking the contaminated soil to a landfill to be permanently disposed of. Butzen testified that for purposes of pricing out the second method he used the special waste classification. He explained that contaminated soil is classified either as special waste or hazardous waste. Butzen testified that if landfill sampling revealed that the soil was hazardous waste, the price for the second method would be much higher because the landfill would charge more to accept the contaminated soil.

On cross examination by the board of review, Butzen testified that he performed his initial inspection in 1999 and prepared a detailed report pricing out remediation options for the owner of the subject property. He further testified that his five-page letter in 2013 to Peterson was

entirely based on the ’99 report because to his knowledge no remediation of any kind had taken place from 1999 to 2013. The only other time when Butzen could recall coming out to the property was at the request of the owner to inspect some leaking trucks from a tenant. He also stated that the EPA took the necessary steps to remediate the property to their standards and no further action was required legally from the owner of the subject.

On cross examination by intervenor’s counsel, Butzen testified that he does not believe any of the owner’s employees to be endangered by being on the property without protective gear because the contamination is “in the ground and 2 or 3 feet down.” Butzen further testified that neither the state nor the federal EPA require any other steps to be taken by the owner unless he wants to receive a no-further-remediation (NFR) letter. He also testified that one of the options that is sometimes utilized is to cover the contaminated portion with concrete or a building and thereby create a deed restriction.

On redirect, Butzen testified that even if hypothetically the groundwater was contaminated it would still pose potential risk to employees only if they drink it. In addition, he testified that if the owner was to obtain a NFR letter it would make the property much more marketable.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $247,178. The subject's assessment reflects a market value of $988,712 or $164.79 per square foot of building area, including land, when applying the 2012 level of assessments for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 25%.

In support of its contention of the correct assessment the board of review submitted information on five suggested sales comparables. Those comparables varied in size from 16,336 square feet to 20,000 square feet of improved area and sold between April, 2007 and June, 2009 for prices ranging from $61.41 to $90.76. The board of review also submitted EPA Title 35 under BOR Exhibit #1 in two separate volumes for the purpose of showing the two separate plans of attack for cleaning up residential and industrial property. At closing, upon request by the board of review and after no objection by opposing counsels, the Board took judicial notice of the Board’s Techalloy decision, a courtesy copy of which was identified as BOR Exhibit #2 of Techalloy Co. v. Property Tax Appeal Board, 291 Ill.App.3d 86 (2nd Dist. 1997). The board of review requested, based on Techalloy, that the Board find the taxpayer’s case to be insufficient to render a value of zero because it failed to reproduce the entire environmental report as well as evidence of a consent decree with the EPA or an order for any other additionally required remediation.

The intervenors submitted a brief in support of the subject’s valuation. Within the brief were included three suggested sales comparables of properties that sold between November, 2008 and April, 2011 for prices ranging from $86.57 to $155.38 per square foot of building area. The intervenor’s suggested sales comparables also ranged in age from 11 to 40-year-old and in size from 12,129 to 18,615 per square foot of building area. The intervenor’s brief also included four suggested land sales that ranged: in sale date from May, 2010 to May, 2012; in square footage from 330,185 to 1,045,440 square feet of land; and in price per square foot of land from $9.60 to $12.21 per square foot. At closing, upon request by the intervenors, the Board took judicial notice of two prior Board decisions docket numbers 2002-01244 and 2003-00880. Counsel for

the intervenors' argued that the 2002 and 2003 Board decisions adopt the Techalloy ruling requiring an order for remediation by a government agency.

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 that the evidence reflects that a reduction in the subject's assessment is warranted.

In determining the fair market value of the subject property for tax year 2012, the Board closely examined the reports prepared by Peterson and Butzen. The Board accords little weight to the board of review's evidence submission for it lacked the preparer's testimony concerning qualifications, methodology regarding data used therein, and conclusions of value. The Board then looks to the remaining evidence that comprises of the Peterson report and testimony; Butzen's report and testimony; and the intervenor's suggested comparables.

The Board finds that Peterson's appraisal is decidedly speculative and gives the adjustments and conclusions of value no weight. Peterson testified that no remediation is required from the owner in "as-is" condition, and ad valorem taxation value of a property is in "as-is" condition. The Board also finds that Peterson failed to provide sufficient explanation as to why current income data is unreliable. Testimony at hearing revealed that the property is currently utilized by the owner for his own business and also that parts of the property were rented to a third party. Therefore, the Board finds Peterson's testimony of income unreliability, backed by a brief description in the report stating that the income approach was omitted based on an agreement with the owner and because it is not "critical" to the development of market value, to be insufficient and contradictory.

The Board further finds that Peterson lacked sufficient knowledge and assumed speculative data as to when the subject was built and which part of the subject, if any, burned down in the 1993 fire. In addition, Peterson testified that he was not aware of whether any of the comparable properties utilized in his report, which he was also not certain whether he personally selected, were contaminated, to what extent, and whether any deed restrictions were placed on them. The Board also finds that Peterson speculated as to how much of the subject property is excess land, particularly when some of that property was leased by a third party for the purpose of parking their vehicles.

The Board is also not convinced that the appropriate methodology for contaminated property valuation is simply to deduct the cleanup costs from the uncontaminated market value on a dollar per dollar basis. Especially when, as here, only a small portion of the subject property is contaminated. Furthermore, there was no showing that the property is unmarketable or suffers from a severe decrease in market value due to the contamination. Peterson himself testified that contaminated properties sell all of the time and his estimate of market value was based on sale comparables that he was not sure whether they had any contamination either. Finally, there was no evidence in the record that the current owner of the subject property experienced any loss of

revenue as a result of the contamination. Appellant's own expert testified that the owner's operations did not appear to be inhibited in any way and there were no necessary precautions to working at the subject property by either owner or renter.

The Board gives no weight to Butzen's environmental report. Butzen testified that the owner is not legally required to perform any further remediation by any government agency, either state or federal. The Board further finds that the environmental report incorrectly utilized the speculative residential cleanup standard. In Bloomington Public Schools, District #87, McLean County, Illinois v. The Illinois Property Tax Appeal Board, 379 Ill.App.3d 387, 394, the Court cited In Re Rosewell, 120 Ill.App.3d 369, 375, 75 Ill.Dec. 953, 458 N.E.2d at 126 wherein the court ruled that values which are future in character may not be taken into consideration…where they are so elusive and difficult to ascertain that they have not affected the present market value of the property. Further, this Bloomington court cited State of Illinois v. Illinois Central Railroad Co., 27 Ill. 64, 79 Am.Dec.396 (1861) wherein the Illinois Supreme Court stated that property should be valued for the purposes for which it was constructed and not for any other purpose for which it…might be used. Bloomington at 394. In the present matter, the Board finds that the appellant failed to disclose any evidence to indicate that the subject property was being considered for an alternative use and necessitated the more comprehensive yet speculative residential standard of cleanup. While Peterson's appraisal refers to this speculative residential standard, his testimony was that the subject's highest and best use was its current industrial use and its highest and best use as vacant is for commercial and industrial development. Therefore, the Board finds any discussion of a residential use as mere speculation. Finally, the Board finds that the five-page letter relied upon by Peterson was based on a 1999 report prepared in an attempt to garner the appellant's business rather than for ad valorem purposes.

The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207 (2nd Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989). Therefore, the Board will consider the raw sales data from all parties.

As to the parties 13 comparable sales, the Board finds the appellant's sales comparables #1, #2, #3, #4, and #5, the board of review's comparable #1, and the intervenors' comparable sales #1 and #2 to be similar and most probative in determining the subject's market value. These eight properties sold for prices ranging from $40.00 to $150.42 per square foot of building area. In comparison, the subject assessment value reflects a market value of $164.79 per square foot of building area, which is above the range. After adjustments to the comparables for pertinent factors, the Board finds that the subject's improvement was overvalued and a reduction in the subject's market value is justified.

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. Pursuant to Section 1910.50(b) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(b)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.

Chairman

Member

Acting 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: December 19, 2017

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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

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