



FINAL ADMINISTRATIVE DECISION ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: BMO Harris NA
DOCKET NO.: 13-21359.001-C-2
PARCEL NO.: 02-15-200-032-0000

The parties of record before the Property Tax Appeal Board are BMO Harris NA, the appellant(s), by attorney Patrick C. Doody, of the Law Offices of Patrick C. Doody in Chicago; the Cook County Board of Review; the Palatine Twp. H.S.D. #211 intervenor, by attorney Michael J. Hernandez of Franczek Radelet P.C. in Chicago.

Based on the facts and exhibits presented in this matter, 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: \$ 103,449
IMPR.: \$ 253,342
TOTAL: \$ 356,791

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 2013 tax year. The Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject consists of a one-story branch bank building of masonry and glass construction with 4,532 square feet of building area. The building is 23 years old. The subject has a 40,000 square foot paved parking lot, and five drive-thru lanes. The property has a 48,682 square foot site, and is located in Palatine, Palatine Township, Cook County. The subject is classified as a class 5-28 property under the Cook County Real Property Assessment Classification Ordinance.

At the commencement of the hearing, the Board found that the 2013, 2014, and 2015 appeals involve common issues of law and fact, and that a consolidation of these appeals for hearing purposes would not prejudice the rights of the parties. Therefore, pursuant to Section 1910.78 of the Official Rules of the Property Tax Appeal Board, the Board consolidated docket numbers

13-21359.001-C-2, 14-24052.001-C-2, and 15-21458.001-C-2 solely for hearing purposes, while noting that distinct decisions would be rendered for each appeal year. 86 Ill.Admin.Code § 1910.78.

THE APPELLANT'S APPRAISAL AND TESTIMONY OF JOHN C. WAGNER

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a copy of a summary appraisal report of the subject property prepared by Terrance P. McCormick, M.A.I., and John C. Wagner, both of McCormick & Wagner, LLC (the "Wagner Appraisal"). The appellant began its case in chief by calling Mr. Wagner as an expert witness. Mr. Wagner testified that he is a principal at McCormick & Wagner, LLC, and that he is an Illinois certified general real estate appraiser, and an Illinois licensed real estate broker. He further opined that he has been an appraiser for 23 years, and that he has appraised over 100 properties that are similar to the subject. He stated that he has testified as an expert witness before the Board prior to the instant appeal. After *voir dire* of Mr. Wagner, counsel for the appellant offered Mr. Wagner as an expert in appraisal theory and practice. The Board accepted Mr. Wagner as an expert in appraisal theory and practice without objection from the board of review or the intervenor, but subject to the board of review's cross-examination of Mr. Wagner.

The Wagner Appraisal addressed all three of the traditional approaches to value, while opining an estimated market value for the subject of \$640,000 as of January 1, 2013. Mr. Wagner testified that he inspected the interior and exterior of the subject in April 2011 and November 2013. Mr. Wagner described the subject property and its environs, including that the subject was a one-story, single-user branch bank building built in 1990, that it has 4,484 square feet of building area, and that it has a canopy with five drive-thru lanes.

Highest and Best Use

Mr. Wagner testified that the subject's highest and best use as vacant would be to hold the property for future development as a commercial development, and that the subject's highest and best use as improved was continued use as a branch bank building.

Sale of the Subject

The witness testified that the subject was purchased in November 2012 for \$1,761,500; however, the Wagner Appraisal states that the sale "represents the transfer of the leased fee estate of the subject property as created by the long-term lease." Mr. Wagner testified that this transaction was for the leased fee interest of the subject, and that Illinois law requires the subject's fee simple interest to be valued for *ad valorem* real estate tax purposes. He further testified that, at the time of the sale, the subject was encumbered by a lease that started in January 1991. The Wagner Appraisal further states that the initial term of the lease was from January 1, 1991 to December 31, 2010, and that the lease agreement included two consecutive five-year renewal options. Since January 1, 2001, up to and including the date of value, the rent was \$10,164 per month, triple net. Thus, the Wagner Appraisal concluded that the "subject's property rights being appraised are the fee simple estate; therefore, minimal weight is being placed on this transaction."

The Cost Approach

The initial step under the cost approach was to estimate the value of the land. In doing so, Mr. Wagner testified he considered five sales of vacant land that sold between June 2010 and October 2012 for \$6.47 to \$15.09 per square foot of land area. After making adjustments for sale date, land size, shape, highest and best use, location, and market conditions, Mr. Wagner stabilized the subject's land value at \$10.00 per square foot of land, or \$490,000, rounded.

Using the Marshall Valuation Service, Mr. Wagner testified that the subject's reproduction cost new was \$890,279, or \$198.55 per square foot of building area. The appraiser further testified that the subject has \$110,000 worth of site improvements. In establishing a rate of depreciation, Mr. Wagner testified that he used the market extraction method utilizing the seven sales in the sales comparison approach to value, and that he made pertinent adjustments. Under this analysis, Mr. Wagner testified that the subject's total depreciation from all causes was 80.00%, resulting in a depreciated value of the improvements and site improvements of \$200,056. The land value of \$490,000 was added to the depreciated value of the improvements and site improvements of \$200,056 to arrive at a final estimate of value under the cost approach of \$690,000, rounded.

The Income Approach

Mr. Wagner testified that the subject's contract rent of \$10,164 per month, triple net, was given minimal weight in his analysis because, as the Wagner Appraisal states, it is based on "an old long-term lease that is not reflective of current market trends." The appraiser further testified that the subject was a "built to suit" property. Thus, Mr. Wagner looked to market leases on a triple net basis to determine a market rent for the subject. In doing so, Mr. Wagner found six properties that were offered for lease on a triple net basis. These rental listings ranged from \$11.75 to \$20.00 per month per square foot of building area, including land, triple net. After making pertinent adjustments, Mr. Wagner testified that he stabilized the subject's market rent at \$17.00 per month per square foot, including land, triple net, which results in a potential annual income of \$76,228. Vacancy and collection losses of 10.00% were subtracted from the potential annual income to arrive at an effective net income of \$68,605. A management fee of 2.00% and a reserve for replacement factor of 2.00% was subtracted from the effective net income to arrive at a net income of \$65,861.

In selecting an appropriate capitalization rate, Mr. Wagner testified that he used the band of investment technique and the comparative market method. Under the band of investment technique, the Wagner Appraisal states that the overall capitalization rate was 10.25%, when assuming a mortgage to equity ratio of 70% to 30%, a 7.00% interest rate, a term of 15 years, and a 9.00% equity yield. Under the comparative market method, Mr. Wagner testified that he looked to the seven sale comparables in the sales comparison approach, and found that their capitalization rates ranged from 9.90% to 11.30%. In reconciling these two methods, Mr. Wagner testified that he stabilized the subject's capitalization rate at 10.50%. The subject's net income of \$65,861 was then capitalized using the 10.50% capitalization rate to arrive at a total value for the subject under the income approach to value of \$630,000, rounded.

The Sales Comparison Approach

Mr. Wagner next testified that he used seven comparable sales in the sales comparison approach to value, and he described each of the seven comparables. The properties range in building size from 3,052 to 11,264 square feet of building area. They sold between December 2010 to August 2013 for prices ranging from \$320,000 to \$1,500,000, or from \$59.93 to \$182.26 per square foot of building area, including land. The properties ranged in age from 5 to 36 years and in land to building ratio from 3.93:1 to 13.69:1. Mr. Wagner testified that four of the comparables were branch bank buildings, and the remaining three comparables were office buildings located in Palatine or Wheeling.

Mr. Wagner testified that he made adjustments to the comparables for market conditions, location, building size, land to building ratio, age, and building type. In particular, Mr. Wagner made no adjustments to the comparables for market conditions, stating in the appraisal:

An adjustment for changes in market conditions between the date of valuation of the subject (January 1, 2013) and date of sale of the comparable property may be required. The properties listed for comparison sold between December of 2010 and August 2013 and require little or no adjustment for differences in market conditions.

After making these adjustments, the appraiser found all of the comparables to be inferior to the subject except sale comparable #6, which he found to be superior to the subject. After applying these adjustments, Mr. Wagner concluded that the subject's market value under the sales comparison approach to value was \$140.00 per square foot of building area, or \$630,000, rounded.

Reconciliation and Final Estimate of Value

In reconciling the three approaches to value used, Mr. Wagner testified that he gave primary consideration to the sales comparison approach to value due to the ample amount of sales. He further testified that he gave secondary consideration to the income approach to value, and minimal consideration to the cost approach to value. After reconciling the three approaches to value, Mr. Wagner concluded that the subject's market value as of January 1, 2013 was \$640,000. Finally, the witness testified that his opinion was formed in compliance with the Uniform Standards of Professional Appraisal Practice.

Cross-Examination

Upon cross-examination from the board of review, Mr. Wagner testified that the subject is located in Palatine, which is part of the Northwest Suburban submarket. This submarket also includes Inverness, Kildeer, Arlington Heights, and Barrington.

Mr. Wagner also testified that he requested a copy of the subject's lease agreement, but that he did not receive it; however, the property owner gave him the terms of the lease. He also admitted that the Wagner Appraisal does not state that the subject was "built to suit," and that he

did not know what the rent was from 1991 to 2001. The witness further testified that the appellant-tenant exercised its five-year option under the lease in 2010.

Mr. Wagner stated that all of the rental comparables in his report were located in the subject's submarket, except for rental comparable #6, which was located in the South Suburban submarket, and he admitted that all of these comparables were rental listings. The witness also testified that if he used the subject's actual rent of \$27.00 per square foot of building area, per month, triple net, instead of the market rent derived in the income approach to value of \$17.00 per square foot of building area, per month, triple net, then the subject's net income would be \$93,272. Mr. Wagner also testified that if the capitalization rate was changed in his analysis, then the estimate of market value under the income approach would also change.

The appraiser next testified that he did not include interior photographs of the subject, because, generally, commercial property owners, especially banks, do not want photographs taken of the interior of the improvements. Based on his report and his memory, Mr. Wagner was able to describe certain aspects of the subject's interior, but could not recall other aspects.

The witness testified that if the depreciation for the subject were changed, then his conclusion of value under the cost approach to value would also change.

The assistant state's attorney then introduced board of review exhibits #1, #2, #3, #4, and #5, which were printouts from the CoStar Comps service for sale comparables #1, #2, #3, #4, and #6 found in the Wagner Appraisal's sales comparison approach, respectively. Upon questioning from the Board, Mr. Wagner testified that he relied, in part, on the CoStar printouts for identified for the record as board of review exhibits #1, #2, #3, #4, and #5. Therefore, the Board allowed the assistant state's attorney to use these CoStar printouts for impeachment purposes.

Mr. Wagner then testified as to several characteristics of these sale comparables based on the information in the exhibits. In particular, Mr. Wagner testified that, according to the CoStar printouts: sale comparable #1 was located in the Northwest City submarket and was 26 miles away from the subject; sale comparable #2 was located in the Schaumburg Area submarket; sale comparable #3 was located in the Central North submarket; sale comparable #4 was located in the Southwest Suburban submarket, and was at least 43 miles away from the subject; and sale comparable #6 was located in the Southwest Suburban submarket, and was approximately 46 miles away from the subject. Mr. Wagner also admitted that sale comparable #5 was located in the Southwest Suburban market, and was approximately 38 miles away from the subject.

The witness reiterated that the subject was purchased in November 2012 for \$1,761,500, or \$419.40 per square foot of building area. When asked if the actual capitalization rate for the subject based on the purchase price was 7.29%, Mr. Wagner replied, "I guess so."

During cross-examination from counsel for the intervenor, Mr. Wagner testified regarding the land sale comparables used in the cost approach to value. The witness admitted that if the estimated figures in the Wagner Appraisal's depreciation analysis were changed, the conclusion of value under the cost approach would also change. Mr. Wagner also reiterated that all of his rental comparables were rental listings. Finally, the appraiser testified that he was unaware that

sale comparables #6 and #7 sold subsequent to the sales detailed in the sales comparison approach.

Re-Direct

Mr. Wagner testified that the Northwest Suburban market was a depressed market in 2013, with a lot of uncertainty and risk, which resulted in high vacancy, low rental rates, and high capitalization rates.

Upon questioning from the Board, Mr. Wagner testified that the sale price of the leased fee interest in a property is typically higher than the price would be if the sale was for the fee simple interest in the property. Mr. Wagner explained that the leased fee interest includes both the income from the lease and possession of the property after the lease expires, whereas the fee simple interest merely gives the purchaser possession of the property. None of the parties had any further questions for Mr. Wagner after the Board's inquiry.

Based on this evidence, the appellant requested a reduction in the subject's assessment to 25.00% of the appraisal's estimate of market value, or \$160,000.

BOARD OF REVIEW'S EVIDENCE

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$356,791. The subject's assessment reflects a market value of \$1,427,164, or \$314.91 per square foot of building area, including land, when applying the 2013 statutory level of assessment for commercial property under the Cook County Real Property Assessment Classification Ordinance of 25.00%.

In support of its contention of the correct assessment, the board of review submitted information on four comparable sales of branch bank buildings from the CoStar Comps Service. These comparables were all located in the Northwest Suburban submarket, and sold between September 2008 and December 2012 for \$531,400 to \$2,837,000, or \$317.63 to \$608.15 per square foot of building area, including land.

The board of review also submitted a printout from the CoStar Comps Service showing details of the sale of the subject in November 2012 for \$1,761,500. This CoStar printout states that the initial list price for the subject was \$1,875,000, and that the appellant, BMO Harris, N.A. occupied the subject both prior to and after the sale transaction. The CoStar printout further states that the "seller was motivated to sell the property because he is in the process of retiring and wanted to divest the property." According to the CoStar printout, both the buyer and the seller verified the details of the transaction.

At the hearing, the board of review did not call any witnesses and reaffirmed the evidence previously submitted. As a result of its analysis, the board of review requested that the subject's assessment be maintained at \$356,791.

INTERVENOR'S EVIDENCE

In support of its contention of the correct assessment, the intervenor submitted information on three comparable sales of retail buildings from the CoStar Comps service. These comparables sold between September 2008 and March 2010 for \$835,193 to \$2,600,000, or \$245.00 to \$363.64 per square foot of building area, including land.

At the hearing, the intervenor did not call any witnesses and reaffirmed the evidence previously submitted. As a result of its analysis, the intervenor requested that the subject's assessment be maintained at \$356,791.

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.

The board accorded the sale of the subject in November 2012 diminished weight. The appraiser testified that the appellant's lease began on January 1, 1991 and ended on December 31, 2010; and that the lease agreement included two consecutive five-year renewal options. Prior to the date of value found in the appraisal of January 1, 2013, the appellant exercised the first of these five-year options, and the parties were operating under that option as of January 1, 2013. For at least the 12 years prior to January 1, 2013, the rent charged was \$10,164 per month, triple net. Thus, when the option was exercised in January 2010, the monthly rent was not changed. Less than two years after the first option was exercised, the leased fee interest in the subject was sold for \$1,761,500. This sale price included the remaining three years on the first option, and the possibility of an additional five-year option. The fact that the appellant exercised the first option less than two years prior to the sale and did not renegotiate the monthly rent, leads to the conclusion that the lease terms are in line with current market conditions; and that the subject's leased fee interest and fee simple interest are identical or nearly identical. However, the Board is unable to determine the value of the subject's lease fee interest, because, as discussed *infra*, neither party submitted sufficient market rental data to show that the lease terms (and, hence, the purchase price) are in line with the market. As such, while it seems highly likely to the Board that the subject's leased fee interest and fee simple interest were identical or nearly identical as of the appraisal's effective date of January 1, 2013, there is no reliable evidence in the record to corroborate the subject's leased fee interest value. Therefore, the subject's sale price in November 2012 was given diminished weight in the Board's analysis.

Next, the Board finds that the Wagner Appraisal is not credible, and is given no weight in this analysis. First, the income approach to value utilized six rental *listings*, and no actual lease agreements. Rental listings are not market transactions, as they are simply one party's offer to lease a property at a particular price. Marketing a property for lease does not require any negotiated agreement with another party, which is the foundation of a market based transaction.

As such, the Board finds that the “market rent” derived in the Wagner Appraisal’s income approach to value is not credible.

Second, the Board finds the sales comparison approach to value is not credible. Three of the sale comparables were located in or near the Northwest Suburban submarket, but none of these properties were branch bank buildings. The remaining four sale comparables were located in different submarkets, and were from 26 to 46 miles away from the subject. During redirect testimony, Mr. Wagner testified that the Northwest Suburban submarket was a depressed market in 2013 with a lot of uncertainty and risk. These depressed market conditions necessarily warranted comparables from the subject’s submarket, or similarly depressed submarkets, to take into account the uncertainty and risk which was present in the subject’s submarket as of the Wagner Appraisal’s effective date of January 1, 2013. Using comparables from other submarkets, especially distant submarkets, would not take into account these market conditions, without adjustments. While the appraisers made adjustments for locational differences, there were no adjustments made for market conditions. Moreover, in explaining why no adjustments were made for market conditions, the appraiser did not even discuss the market conditions in the comparables’ submarkets. Indeed, there was no evidence submitted or testimony elicited to show what the market was in the submarkets where these four comparables are located. In the instant appeal, such an explanation is necessary to explain the market conditions in the comparables’ distant submarkets when compared to the depressed market conditions in the subject’s submarket. As such, the Board finds that the use of these four comparables, without an explanation regarding their submarkets’ market conditions, renders the appraisal’s conclusion of value under the sale comparison approach unreliable. Moreover, the board of review submitted four sale comparables of branch bank buildings located in the Northwest Suburban submarket. Indeed, the subject itself sold less than two months prior to the Wagner Appraisal’s effective date of January 1, 2013. Thus, it is apparent to the Board that there was enough market activity of branch bank buildings in the subject’s depressed submarket around January 1, 2013 to be able to complete a credible sales comparison analysis. The Wagner Appraisal does not do so, and the Board finds it is not credible. Therefore, the Board accorded no weight to the Wagner Appraisal’s conclusion of value in this analysis. However, the Board will analyze the raw sales data submitted by the parties.

The Board finds the best evidence of market value to be board of review comparable #4. The appellant’s sale comparables, found in the sales comparison approach to value in the Wagner Appraisal, were given diminished weight for the reasons delineated in the previous paragraph. The remaining three sale comparables submitted by the board of review, as well as intervenor comparables #1 and #2, were given diminished weight in the Board’s analysis because they occurred too remote in time to accurately depict the market for the subject as of the relevant lien date of January 1, 2013. Intervenor’s comparable #3 was given diminished weight because it was not a branch bank building. Since there is only one sale comparable in the record that is similar to the subject, the Board is unable to set a range to determine whether the subject is overvalued. Thus, the Board finds that the appellant has not proven, by a preponderance of the evidence, that the subject is overvalued, and a reduction in the subject’s assessment is not 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(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) 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



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:

April 23, 2019



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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