



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

APPELLANT: MPBP Enterprises, LLC
DOCKET NO.: 13-22202.001-I-2
PARCEL NO.: 09-30-300-059-0000

The parties of record before the Property Tax Appeal Board (“PTAB”) 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 Assistant State’s Attorney Cristin Duffy (“ASA”) of the Office of the State’s Attorney of Cook County; the Maine Twp. H.S.D. #207 intervenor, by attorney Ares G. Dalianis of Franczek 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.: \$29,195
TOTAL: \$172,500

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 2013 tax year.¹ 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 33 years-old and contains a one-story, single-tenant, owner-occupied industrial building of metal clad construction on a slab foundation. The building contains 6,000 square feet of gross area. Features of the building include five overhead garage doors and a small office area of 400 square feet. The property has a 134,876 square foot site in unincorporated Des Plaines, Maine Township, Cook County. The property is a Class 5 property under the Cook County Real Property Assessment Classification Ordinance.

¹ The PTAB granted the appellant’s Motion to Consolidate three consecutive lien year appeals for the subject, docket numbers 13-22202.001-I-2; 14-23375.001-I-2; and 15-21970.001-I-2.

The appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal with a January 1, 2013, effective date. The appraiser developed the cost and sales comparison approaches to value. The appraisal disclosed the subject property contained environmental contamination that would cost \$730,000 to remove. Consequently, the appraiser valued the subject in two alternative ways: 1) \$690,000 as environmentally clean; and 2) of zero value in an “as is” condition. On the face of its Industrial Appeal Petition, the appellant requested a total assessment reduction to zero. As an alternative, the appellant waived at hearing the claim of zero value in an “as is” condition and requested a market value reduction to \$690,000 as if the subject property were environmentally clean when applying the 2013 level of assessment of 25.00% for Class 2 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant retained Peterson Appraisal Group, Ltd., to prepare an appraisal of the subject. Appraiser Gary Peterson (“Peterson”), with the assistance of appraiser Steven Bickett, inspected the subject in May 2013 for a January 1, 2013, effective date of market opinion. Peterson’s scope of work was to appraise the subject as a fee simple property for ad valorem tax assessment purposes. Peterson identified the property as containing a one-story industrial building of 6,000 gross square feet on a 134,876 square foot site in unincorporated Des Plaines, Maine Township. He noted substantial environmental contamination reported by Kd Engineering & Associates (“Kd Engineering”). A copy of the report was appended to Peterson’s appraisal. However, Peterson appraisal was also predicated on the subject being free of environmental contamination and in compliance with applicable building, health and safety codes. Peterson developed the cost and sales comparison approaches to valuation. Peterson did not develop a market value based on the income capitalization approach for three reasons: 1) he and the client, the appellant herein, did not agree on necessity of that approach; 2) Peterson considered the sales comparison approach most relevant and reliable for the subject’s type of characteristics; and 3) that approach would be most useful for a property that would normally be purchased for investment. Peterson considered the highest and best use as improved was its continuing industrial usage, not as an investment. Only for the subject’s highest and best use as vacant would it be a speculative investment.

To determine the land-only market value, Peterson selected six land-only sales of comparable properties that sold from October 2009 through September 2012 and one active listing. Peterson disregarded the listing from his opinion of the subject’s value. The closed sales ranged from 24,999 to 367,835 square feet of land and for prices ranging from \$3.57 to \$7.64 per square foot of land. These properties were in Elk Grove Village, Addison, Streamwood and Schaumburg, Illinois. Peterson’s appraisal report included a Land Sale Adjustment Grid disclosing the adjustments he made to the comparable sale properties for various key property characteristics. The entire site of 134,876 square feet of land included 116,876 square feet of what Peterson deemed excess land that he defined as not necessary to support the current improvement. However, he valued the excess land at the same price per square foot as the 18,000 square feet of land used to support the improvement. Based on his analysis, Peterson opined the subject’s total land-only market value was \$505,000, rounded, or \$3.75 per square foot of land. Of this total land-only market value, Peterson determined the market value of the excess land was \$440,000,

rounded (*see* Sales Comparison Approach conclusion). This opinion was assuming the land did not require environmental remediation.

For the cost approach to valuing the improvement, Peterson used the cost estimating service established by Marshall & Swift to calculate the subject's replacement cost new ("RCN") value. By using the Calculator Cost Method from Marshall & Swift, Peterson opined the RCN of the improvement was \$328,693. Peterson estimated the subject's effective age at 15 years and its economic life at 45 years to arrive at a 33.00% overall estimated total accrued depreciation. After subtracting the 33.00% total accrued depreciation from the RCN and adding back the \$505,000 land value, Peterson opined the subject's cost approach market value was \$725,000 as environmentally clean. For an additional calculation, Peterson subtracted the Kd Engineering report estimate of \$730,000 for environmental remediation to conclude that the subject had a zero market value in an "as is" condition.

For the sales comparison approach, Peterson selected five improved industrial use properties that sold from March 2011 through December 2012. They ranged from 4,545 to 10,850 square feet of gross building area and for prices ranging from \$40.00 to \$45.70 per square foot of building including land. Each of these properties was in Elk Grove Village, Illinois. Peterson's appraisal report included an Improved Sale Adjustment Grid disclosing the adjustments he made to the comparable sale properties for various key property characteristics. Based on his analysis, Peterson opined the sales comparison approach market value of the building was \$250,000, rounded, or \$42.00 per square foot, including the land supporting the improvement. After adding the \$440,000, as rounded, excess land value calculated from the development of the cost approach, Peterson concluded the subject's total market value according to the sales comparison approach was \$690,000 as environmentally clean. For an additional calculation, Peterson subtracted the Kd Engineering report estimate of \$730,000 for environmental remediation to conclude that the subject had a zero market value in an "as is" condition.

Peterson calculated a final resolution opinion of market value by giving most emphasis to the sales comparison approach. His conclusion was the subject's value was \$690,000 as environmentally clean and zero in an "as is" condition.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$237,027. The subject's assessment reflects a market value of \$948,108 when applying the 2013 level of assessment of 25.00% for Class 5 property under the Cook County Real Property Assessment Classification Ordinance. In support of its contention of the correct assessment, the board of review submitted information on five unadjusted suggested comparable properties that sold from January 2008 through April 2011 for prices ranging from \$50.75 to \$184.82 per square foot including land. Each of these properties was in Des Plaines, Illinois. The board of review also submitted the subject's property record cards dated December 1986 and the 2013 face sheet grid. It valued the land at \$4.25 per square foot. The property record cards disclosed the subject contained numerous buildings for a total of 18,916 square feet of gross building area. Based on the assumption that the subject contained that amount of gross building area, the board of review's documentary evidence asserted the subject had a \$50.12 square foot market value including land.

Maine Township High School District No. 207 (“Maine THSD”) intervened in the instant 2013 appeal.² The intervenor submitted information on three unadjusted suggested comparable properties that sold from November 2008 through April 2011 for prices ranging from \$86.57 to \$155.38 per square foot. These properties were in Des Plaines, Chicago and Elk Grove Village, Illinois. The intervenor also submitted four unadjusted suggested comparable land-only properties that sold from May 2010 through May 2012 for prices ranging from \$9.60 to \$12.21 per square foot of land. These properties were in Elk Grove Village and Franklin Park, Illinois.

In rebuttal, the appellant argued that the comparable properties submitted as evidence by the board of review and the intervenor should be given diminished weight because they were dissimilar to the subject in various key property characteristics and were based on raw, unadjusted sales data. The appellant reaffirmed the request for an assessment reduction.

The parties stipulated to consolidate the 2013, 2014 and 2015 appeals for a unified hearing on February 1, 2018.³ Peterson was called to testify as to his appraisal of the subject. The parties stipulated to his qualifications as an expert in the theory and practice of the appraisal of commercial real estate. The Administrative Law Judge (“ALJ”) accepted the stipulation. Peterson recited the history of his employment as appraiser, how he inspected the entire subject on May 28, 2013, and his research into the history of the subject. Peterson learned that prior to a fire in 1993 there were other buildings on the subject property, but that after the fire only the currently existing 6,000 square foot industrial building remained. Peterson confirmed from the photographs he took of the subject and from aerial photographs recently obtained from the internet that the subject contained only one 6,000 square foot industrial building at the time he made his May 2013 inspection. Appellant’s counsel offered into evidence a four-page copy of the 1986 property record card disclosing the subject contained 18,916 square feet of building area. The ALJ allowed it into evidence as Appellant’s Exhibit #1. Peterson observed from page three that a “pole building” was constructed on the subject five years prior to the December 10, 1986, date of the property record card. Peterson said that the age of the pole building is approximately the age of the currently existing 6,000 square foot industrial building. Page four depicts a diagram of one building with 6,000 square feet of area. Peterson testified that this page-four diagram depicts the sole building on the subject as of the date of his appraisal report.

Peterson testified as to how he developed the cost approach of the subject’s valuation. Since there were not many sales of industrial land-only parcels, Peterson had to expand the geographical search area. He selected five recent land-only sales and adjusted them to account for differences. He valued the subject’s total land at \$505,000, or \$3.75 per square foot as if it were environmentally clean. Peterson made a second step to appraise the land in an “as is” condition with environmental contamination. Peterson developed the cost approach for the value of the building by using Marshall Valuation Service. After applying a depreciation factor of

² Maine THSD was the only intervenor in the #13-22202 appeal. Maine THSD and Des Plaines Community Consolidated School District No. 62 (“DPCC”) intervened in #14-23375 and #15-21970.

³ Peterson testified as to the appraisals he prepared for the 2013, 2014 and 2015 lien years in the same hearing.

33.00% to the building and adding the land value, Peterson opined the subject's value was \$725,000 based on the cost approach.

Peterson selected five recent sales of comparable industrial properties to develop the sales comparison approach. After adjusting them for various key property characteristics, Peterson opined the subject's sales comparison method market value was \$690,000 in an environmentally clean condition.

Peterson gave most weight to the sales comparison approach. He did not develop the income capitalization approach because the subject contained an owner-occupied small building on a very large parcel that included mostly excess land. Peterson did not believe that approach would be predictive of value since the most likely purchaser would be an owner-user. After reconciling his opinions of value, Peterson concluded the subject's market value as of January 1, 2013, was \$690,000 in an environmentally clean condition.

Prior to cross-examination of Peterson, the ASA offered into evidence the transcript of the hearing proceeds in the PTAB docket #12-24210.001-I-2. The ASA stated that the 2012 appeal was for the same subject as in the instant appeal, that Peterson testified in that hearing proceeding, and that the transcript contained testimony on the same comparable properties Peterson selected for the instant appeal. The ASA argued that admitting into evidence in the proceedings for the instant lien year would be expeditious. Counsel for the intervenor joined in on the ASA's motion. The ALJ found the transcript as substantive evidence was hearsay; that it was not being offered into evidence for impeachment purposes or any hearsay exception; and that it was for a different lien year in a prior general assessment period. Consequently, the ALJ denied the motion to admit the 2012 transcript into evidence.

During cross-examination by the ASA, Peterson confirmed that he appraised the subject in 2012 as well as the three years consolidated with the instant lien year appeal. He testified that not much had changed about the subject during those three years and that he opined substantially the same cost approach value for each lien year. He inspected the subject only in 2013 but reviewed various public records about it, including property record cards and the Assessor's office. The ASA questioned Peterson about page one of his 2013 appraisal cover letter stating the subject's site of approximately "18,000 square feet is the improved main site." Peterson responded by explaining his reference to 18,000 square feet was not for the improvement but was an estimate of how much of the land was improved as opposed to how much land, 116,876 square feet, was unimproved excess. Peterson explained that the number was only an expression of an estimated land-to-building ratio and that any similarity to the 18,916 square feet of improvements disclosed by the December 1986 property record card was purely random. Peterson testified that he relied on the Kd Engineering report when learning about the subject's history and for developing an opinion of the "as is" environmentally contaminated condition of the land. He confirmed that his 2013 appraisal report disclosed a total land-only cost approach value of \$505,000 as environmentally clean. He testified that he had no independent knowledge of whether the land was contaminated, but that the Kd Engineering report stated it was contaminated and that he relied on that conclusion when making a valuation opinion of the subject in an "as is" condition. The ASA moved to admit the Kd Engineering report as substantive evidence. The ALJ denied

the motion to admit since the report was hearsay offered to prove the truth of the matters asserted therein, but noted it had already been submitted as an appendix to Peterson's appraisal report. Peterson acknowledged that a business had been operating at the subject and that, in theory, he could have developed an income capitalization approach.

During cross-examination, the intervenor asked Peterson about why he did not develop an income capitalization approach. Peterson responded that he knew he had to develop the sales comparison approach and developed the cost approach because of the amount of excess land at the subject site. He did not develop the income capitalization approach in part because his client, the property owner, did not want to spend the money for that and because Peterson did not believe he needed to develop that approach to do a credible appraisal. The intervenor asked Peterson questions about the color photograph of an aerial view of the subject in his appraisal report immediately after his two-page transmittal letter. Peterson obtained that photograph from Google Earth but does not know when it was taken. Peterson acknowledged that the property owner stored some trucks on the subject property but did not know if the owner derived income from them. However, Peterson stressed that he did not consider the income capitalization approach to be a relative indicator of value. The intervenor asked, hypothetically, if the owner had leased some of his land to store trucks, if that would affect Peterson's opinion of value. Peterson answered that it would be very difficult to find comparable properties that are leased only for the land to determine an appropriate capitalization rate. He stated that parties typically would lease property to use it rather than leasing it for storage, and that there are too little data on market driven capitalization rates for land leases.

On re-direct examination, Peterson testified that he did not complete appraisals of the subject for 2012 and 2016. He also testified that to produce a credible appraisal for a property with as much land as the subject, he would have to do a cost approach as well as a sales comparison approach. He would not have needed to do an income capitalization approach to produce a credible report. Peterson reiterated that he referred to the Kd Engineering report only to opine a value of the property in an "as is" condition and that he did not need to rely on it to opine a value as if environmentally clean. Peterson reiterated his calculations to opine that 18,000 square feet of the land was used to support the improvement and that the remainder land was excess.

The ASA offered into evidence a copy of the PTAB's decision in #12-24210.001-I-2. The ALJ allowed it into evidence as BOR Exhibit #1 to accord to it whatever weight it deserved. Both the ASA on behalf of the board of review and the intervenor rested on the documentary evidence they submitted. The appellant's attorney objected to that documentary evidence as hearsay. The ALJ took the objection under advisement.

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 of review and the intervenor submitted separate briefs to which were appended various comparable properties. The Board accords these properties little weight since there was no evidence of how these properties were selected, what methodology was used to compare them to the subject or of how conclusions of value were determined.

In contrast, the appellant presented a compelling argument in favor of an assessment reduction based on the appraisal report and the appraiser's testimony. Peterson developed the cost and sales comparison approaches to value. Peterson was cognizant of the Kd Engineering report that the subject's land contained environmental contamination and appended it to the back of his appraisal. However, he appraised the subject in an environmentally clean condition as well as in its "as is" condition with the contamination. Peterson explained his methodology in appraising the subject with each assumption of condition. He also explained how and why he was not constrained to use the engineering report. In his opinion, Peterson did not need to develop an income capitalization approach to accurately appraise the subject's value since he was able to do so with the sales comparison approach. Peterson recognized that he had to appraise the subject by that approach and could dispense with it only by explaining why the sales approach could not reliably value the property. Since Peterson was able to find ample market data from which to select similar comparable properties, he was able to opine the subject's sales comparison approach market value was \$690,000. Peterson also testified that the property owner requested that he not spend the time and the expense to develop the income capitalization approach. Peterson stated that such a request from a property owner was common. He believed he had enough data to reliably appraise the subject with the other approaches and comply with the owner's request.

The ASA for the board of review and counsel for the intervenor made the absence of an income approach one of their central arguments that Peterson's appraisal report was not reliable. They pointed out that there was some evidence the subject's owner operated a business on the property by leasing some of the land for truck and trailer storage. Peterson testified that he did not know if the owner derived income from a business, but stressed that he did not consider the income capitalization approach to be a relative indicator of value because it would be very difficult to find comparable properties that are leased only for the land to determine an appropriate capitalization rate. He stated that parties typically would lease property to use it rather than leasing it for storage, and that there are too little data on market driven capitalization rates for land leases.

In Cook County Board of Review v. Illinois Property Tax Appeal Board and Omni Chicago, 2008 WL 2924308 (Ill.App.1 Dist.), *citing* United Airlines, Inc. v. Pappas, 348 Ill.App.3d 563 (1st Dist. 2004), the Appellate Court held "[i]n the absence of market value set by a contemporaneous arm's-length sale, 'the sales comparison approach ... is the preferred method and should be used when market data [are] available.'" *Id.* In the instant case, as in Omni, there was no evidence that the subject was a special purpose property for which there would be no reliable market data. Instead, Peterson clearly wrote in his appraisal report and testified at

hearing that sufficient market data existed to support the development of a sales comparison approach. Neither the board of review nor the intervenor cited any authority that would require an appraiser to develop an income capitalization approach. Yet, Peterson went further and clearly explained he could not develop an income approach because of a lack of similar comparable properties for large parcels of leased land necessary to opine a reliable capitalization rate. Therefore, the Board finds the board of review's and the intervenor's arguments without merit.

At the beginning of the hearing, counsel for the appellant withdrew the argument that the subject was contaminated and stated that the appellant would proceed in the appeal as if the subject land was environmentally clean. Neither the board of review nor the intervenor objected to the withdrawal of this issue, even if they would have had any standing to object. Instead, they argued that Peterson's appraisal was unreliable because he relied on the Kd Engineering report, even though Peterson explained that he did not rely on it when opining a market value of the subject as if it were environmentally clean. Peterson testified that he was able to value the subject accurately without the contamination by disregarding the report. In support of its argument that Peterson predicated his appraisal totally on the disregarded report, the ASA sought to enter into evidence the testimony transcript for the 2012 lien year hearing. The ASA did not seek to use this transcript for the limited purposes of impeachment, but wanted it entered as substantive evidence of the issues raised in the instant 2013 lien year appeal. The ALJ denied this motion to enter the transcript as substantive evidence since it was hearsay of prior out-of-court statements used to prove the truth of the matters asserted therein. It is axiomatic that hearsay is not admissible to prove the truth of the matters asserted. *See* Ill. R. Evid. 802. The general rule is that hearsay is inadmissible in an administrative hearing. Spaulding v. Howlett, 59 Ill.App.3d 249, 251 (1st Dist. 1978), *citing* Novicki v. Department of Finance, 373 Ill. 342 (1940). The ASA for the board of review did not cite any authority for the admission of the 2012 transcript as either substantive evidence or as one of the enumerated exceptions to hearsay. *See* Ill. R. Evid. 803. Instead, the entire thrust of both the board of review and the intervenor was to back-door inadmissible evidence of an issue rendered immaterial by counsel for the appellant withdrawing, without objection, the argument for an assessment reduction resulting from environmental contamination. As for the Kd Engineering report, the Board notes that it was already submitted long before the hearing as documentary evidence appended to the appraisal report. Since the appellant withdrew the issue of value resulting from contamination and Peterson testified that he did not rely on the Kd Engineering report to opine a market value of the subject in an environmentally clean condition, the report is not significant to the issues raised.

The ALJ took official notice of the Board's decision in #12-24210.001-I-2 and entered a copy of it into evidence. The ALJ stated that the Board would give that decision whatever weight it deserved. Upon further analysis of that decision, the Board finds it to be of no help in the instant case. The 2012 appeal was not simply of a prior year, it was in a prior general assessment period. Of greater import, the 2012 appeal involved the material issue of reduced market value due to environmental contamination. In the instant 2013 appeal, the only material issue pertaining to market value, and the resulting assessment, was the subject's value as if it were in an environmentally clean condition. Accordingly, the Board accords its 2012 decision little significance to the issues raised in the instant 2013 lien year appeal.

After considering all documentary evidence submitted, the credibility of witnesses and their testimony, exhibits and arguments made by all parties, the Board finds the best evidence of market value to be the appraisal submitted by the appellant. The Board finds the subject property had a market value of \$690,000 as of the January 1, 2013 assessment lien date. Since market value has been established, the 2013 level of assessment of 25.00% for Class 5 property under the Cook County Real Property Assessment Classification Ordinance shall apply.

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: _____

CERTIFICATION

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 18, 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.

PARTIES OF RECORD

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