



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

APPELLANT: Three Step Holdings, LLC
DOCKET NO.: 13-33841.001-C-2
PARCEL NO.: 06-07-302-078-0000

The parties of record before the Property Tax Appeal Board are Three Step Holdings, LLC, the appellant, by attorney Michelle Broughton-Fountain of the Law Office of Michelle Broughton-Fountain in Flossmoor; the Cook County Board of Review by ASA Beth Novy; and the Elgin S.D. #U-46, Intervenor, 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 **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: \$182,784
IMPR.: \$155,952
TOTAL: \$338,736

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 finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property is improved with a one and part two-story, masonry constructed, medical office building with 44,070 square feet of gross building area and 40,647 square feet of net rentable area. Of the net rentable area, 17,348 square feet is below grade. It was built in phases and has an effective age of approximately 35 years. The building is situated on a mostly rectangular site that contains 132,954 square feet, and includes 150 parking stalls. It is located in Elgin, Hanover Township, Cook County and is class 5 property under the Cook County Real Property Assessment Classification Ordinance.

At the commencement of this hearing, the Board found that the 2013, 2014 and 2015 appeals involved common issues of law and fact and a consolidation of these appeals for hearing purposes did not prejudice the rights of the parties. Therefore, pursuant to Section 1910.78 of the rules of

the Property Tax Appeal Board (86 Ill.Admin.Code 1910.78), the Board consolidated the above appeals solely for hearing purposes, while noting that distinct decisions would be rendered for each appeal year.

As to the basis of this appeal, the appellant argued that the fair market value of the subject was not accurately reflected in its assessed value. The appellant's pleadings included a copy of a summary report of a complete appraisal undertaken by Frank Urban, MAI ("Urban"). The Urban appraisal addressed the three traditional approaches to value, while opining an estimated market value of \$850,000, or \$19.29 per square foot of building area, including land as of the effective date of January 1, 2013. This appraisal was identified for the record as Appellant's Exhibit "1".

The appraiser indicated on page 9 of the appraisal that the subject property was transferred to the appellant on November 9, 2012 for \$677,500 via special warranty deed. As a *lis pendens* was filed on this property, the appraiser indicated that the seller was under duress, therefore, the sale price was not necessarily indicative of the subject's fair market value as of the valuation date.

In his appraisal Urban indicates that he is a Certified General Real Estate Appraiser and a designated Member of the Appraisal Institute. He has appraised numerous properties including hundreds of commercial and industrial properties. He has been an appraiser since 1995 and is currently the president of Frank C. Urban & Co. The appraisal indicated Michael Urban inspected the interior and exterior of the subject property while Frank Urban inspected the exterior only. Urban testified that there were no significant physical changes to the subject nor changes to the subject's market for similar properties from January 1, 2013 to January 1, 2014.

Urban testified that he utilized the cost approach to value. He estimated the land value using four sales of improved commercial property plus the sale of one parking lot. These comparables sold in 2012 and 2013 and ranged in size from 174,240 to 877,298 square feet of land area and in sale price per square foot from \$2.50 to \$10.79. He then estimated the building value by opining an estimate of the replacement cost of the subject building and deducting for depreciation. Urban testified the depreciated cost of the building was \$52,378 and his estimate of the market value of the subject's land and building combined was \$820,000.

Urban also utilized the income capitalization approach to estimate a market value for the subject property. Urban testified he considered market rent of comparable properties, the subject's rent roll (as actual leases were not available), the subject's vacancy and physical problems with the subject building such as a leaking HVAC system and removed building finishes. The rental comparables are all located in Elgin, however, Urban indicated that Comparable #1 is located in Cook County while Comparables #2 through #6 are located in Kane County. They have rental rates on a gross basis ranging from \$9.00 to \$14.15 per square foot of building area. Urban further testified that although the subject's actual vacancy as of January 1, 2013 was 59%, he utilized a 25% vacancy rate as dictated by market data. The appraisal also indicates on page 56 that below-grade space in the subject was leased for \$12.00 per square foot, gross, in April 2014 with no tenant improvement allowance. Urban testified he stabilized the subject market rent slightly below the lease at \$10.00 per square foot of building area on a gross basis, resulting in potential gross income for the subject of \$406,470. After deductions for vacancy and operating expenses, Urban indicated a net operating income for the subject property of \$150,393.

A capitalization analysis was documented in the appraisal that employed three different methods of analysis: market extraction, band of investment and industry review. CoStar reported median overall capitalization rates between 6.0% and 11.0%, averaging 8.0%. The band of investment analysis resulted in an overall rate for the subject property of 9.7%. Industry publications for both commercial and retail properties ranged between 5.5% and 13.0%

Due to the subject's high tax rate, the appraiser felt a 10.0% capitalization rate was appropriate although slightly higher than market indicators. After calculating a tax load of 8.228%, a loaded capitalization rate of 18.2% was established. Urban testified that his market value for the subject under the income capitalization approach was \$830,000, rounded.

Under the sales comparison approach, Urban testified he considered the sales of properties located only within Cook County. He stated the Kane County tax rate is significantly lower than the Cook County tax rate, thus properties in Kane County generally have higher sale prices. He excluded potentially comparable properties in Kane County as they did not have physical characteristics similar to the subject.

Urban analyzed the sales of five office properties located in either Schaumburg, Palatine or Hoffman Estates. They ranged: in sale date from January 2011 to January 2014; in size from 20,000 square feet to 109,392 square feet; and in sale price per square foot from \$11.84 to \$34.75. Based on the sales of comparable properties, the appraiser opined the subject's market value under the sales approach was \$880,000.

Lastly, the appraiser testified as to the circumstances surrounding the sale of the subject on November 9, 2012. It sold for a price of \$677,500, or \$15.37 per square foot of building area, including land. The appraiser stated that the subject sold one month prior to the date of valuation and was a distressed sale with the subject's high vacancy rate playing a factor. As previously stated in the written report, there was a *lis pendens* on the property.

In reconciling the approaches to value, the appellant's appraisal indicates the cost approach was given minimal weight, the income approach was given primary consideration, and the sales comparison approach was afforded ample consideration. Urban concluded a final estimate of value for the subject of \$850,000 as of January 1, 2013.

Under the Intevenor's cross examination, Urban testified that he only made an exterior inspection of the subject property that was actually a drive-by inspection. Urban could not recollect any of the businesses surrounding the subject property and he did not author the description of the subject in the appraisal. He also corrected numerous geographical errors that were contained in his report, as the subject is not located at the corner of Randall Rd. and Thornwood Avenue as indicated in the appraisal. It is located East of that location on the East side of the Fox River. Urban stated he did not consider the subject's traffic count.

Furthermore, he affirmed that he completed the appraisals valuing the subject as of January 1, 2013 and January 1, 2014 at the same time. He testified that although there may have been some market data fluctuations, he arrived at the same conclusion for both appraisals.

Urban further testified that the subject was close to foreclosure when it sold in November 2012 and the price was not indicative of the subject's fee simple market value as the sale was under duress.

Urban stated the subject's highest and best use is as an office building. As the subject is a medical office building, its tenants are almost all doctors and dentists. He further stated that comparable properties are generally obtained from the CoStar Comps service in his appraisal business. Upon questioning from the Intervenor's attorney, Urban reviewed the comparable sales listed in the appraisal's cost approach to value. Specifically, Urban said the subject has approximately five acres of land while comparable #1 has 20 acres of land and that this comparable property sold for a price of \$5.53 per square foot. Mr. Dalianis presented a CoStar report of the sale of this comparable. The printout was marked Intervenor's Exhibit "B" and indicated this comparable sold for \$11.06 per square foot and not \$5.53 as indicated in the appraisal. Urban acknowledged his report was incorrect and further testified that as this property was developed with a Walmart, it was not the same highest and best use as a medical office building.

As to Comparable #2 Urban testified that a Sam's Club superstore is not the same highest and best use as the subject property.

As to Comparable #3, Urban testified that a retail furniture store is not the same highest and best use as the subject property.

As to Comparable #4, Urban testified that he did not select that comparable himself and did not know for what purpose the parking lot was used. He further indicated that an auto dealership parking lot was not the same highest and best use as the subject property.

As to Comparable #5, Urban testified that a gas station is not the same highest and best use as the subject property. Urban then conceded that four of his five properties were located in Kane County, that he did not even develop a land value, and that he just accepted the assessor's land value which constituted 86% of the total market value of the subject property.

Upon further questioning regarding cost approach, Urban stated the subject's total accrued depreciation was 99.2% as of January 1, 2013 and there was no further depreciation between January 1, 2013 and January 1, 2014, indicating he felt the building had very limited value.

In turning to the income approach to value, Urban stated that four of the six rental comparables he utilized, specifically Comparables #3, #4, #5 and #6, were asking prices and not actual leases. Urban confirmed that the subject's actual rental rates at the time of his reports were \$17.16 and \$17.23 per square foot in 2013 and 2014, respectively.

Regarding the lease for Rental #1, Mr. Dalianis clarified that this was located across the street from the subject property and presented a Multiple Listing Service ("MLS") printout that indicated this was a net and not a gross lease as Urban indicated in his report. The printout was marked Intervenor's Exhibit "C".

Regarding Comparable #2, Urban conceded this comparable is located in an area of Elgin that has a higher vacancy rate than the subject's location. It also does not have any on-site parking and is not a medical office building.

Urban testified that Comparables #3, #4 and #6 were listings, not actual leases, and were not medical office buildings. Comparable #5 was a listing of a medical office building. Based on these properties Urban developed a rental rate of \$10.00 per square foot gross which he conceded is below the rental rate of a lease in the subject property for below-grade space and below the rental rate of the property located across the street from the subject.

Urban further testified that when he was completing these appraisals, the subject property was listed for sale for \$1,800,000.

Urban then continued his testimony, stating his capitalization rate was based on the band of investment technique as well as market extraction. The Intervenor then indicated those sales were averaging 8.4% with which Urban agreed.

As to the sales comparison approach, Urban stated he relied on the sales of five comparable properties. Mr. Urban was presented with a CoStar comps list of the occupancy rates of these properties. Before reading the rates, Urban stated they are frequently incorrect. Upon questioning, the appraiser conceded his Comparable #1 sold as part of a foreclosure REO sale; Comparable #2 was part of a portfolio of four buildings; Comparable #3 was general office space and may have been in foreclosure; Comparable #4 was an REO sale and had approximately \$500,000 in unpaid tax liability. It sold for a price of \$1,100,000 in January 2014 then resold twelve months later for \$3,200,000. A printout from CoStar Comps evidencing this transaction was accepted as Intervenor's Exhibit "D"; and Comparable #5 had a 40% vacancy rate and not a 20-30% vacancy rate as indicated in the Urban appraisal.

On re-direct, Urban explained he could not confirm with the current owner the nature of the *lis pendens* filed on the subject property prior to its transfer in November 2012. Urban then repeated that the subject had a 59% vacancy rate as of January 1, 2013 and a 70% vacancy rate as of January 1, 2014.

Ms. Broughton-Fountain then called Sundeep Oberoi as her next witness. Oberoi was the managing partner and now the sole owner of the subject property in 2013 and 2014. He testified that the subject property was listed for sale on LoopNet for approximately two years and that a realtor was paid a commission at purchase. He stated the subject was approximately 40% occupied at the time of his purchase. The vacancy rate stayed the same throughout 2013 but increased in 2014 as leases expired. Oberoi stated in 2015 he tried to sell the subject property for a price of \$1,000,000, but there were no offers or inquiries.

Ms. Broughton-Fountain asked Oberoi about the condition of the property and the actual profit and loss in 2013, 2014, and 2015. The Intervenor objected as there were no written reports in the record regarding these issues, and the objection was sustained. As there were no further questions from the parties, the witness was excused.

The Intervenor briefly reviewed his written submission which included nine sales of medical office buildings, four of which were located in Elgin. Comparables #1 through #4, which included medical office buildings located in Elgin, sold in 2011 or 2012 for sale prices ranging from \$71.99 to \$393.54 per square foot, including land. Comparables #5 through #9 sold from 2007 through 2010 for prices ranging from \$283.69 to \$353.62 per square foot, including land. These comparables were located throughout the greater Chicago metropolitan area. The Intervenor also argued that the sale of the subject in 2012 should be given no weight as it was a compulsory sale and therefore distressed, as evidenced by the appraiser's statements on page 9 of his appraisal.

The board of review submitted its "Board of Review-Notes on Appeal" wherein the subject's total assessment of \$338,736 was disclosed. This assessment reflects a fair market value of \$1,354,944 when the Cook County Real Property Assessment Classification Ordinance level of assessment of 25% for Class 5 commercial property is applied. In support of this market value, the board of review submitted a memorandum authored by Frank Wojkowski stating comparable sales indicate an unadjusted range from \$69.20 to \$368.42 per square foot of building area, including land. The memorandum indicates that these comparables were not adjusted for any market conditions. The board of review also included: an aerial view of the subject property; the subject's property record card; and a list of five commercial properties located in the subject's vicinity. Four of the properties were located in Elgin, two of which were medical office buildings. The analyst also attached a descriptive printout for those five sales. At hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions. As a result of its analysis, the board requested confirmation of the subject's assessment.

Ms. Broughton-Fountain rested on the written submission of her rebuttal evidence. In her rebuttal, she emphasized the fact that the majority of sale comparables submitted by the board of review and the Intervenor were located in Kane County, although a plethora of sales of medical office properties existed in Cook County. She also argued that the best evidence of market value was the sale of the subject in 2012 even though it was a compulsory sale. The rebuttal also included a chart listing 11 new sale properties with supporting evidence.

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 finds that the sale of the subject in November 2012 for \$677,500, or \$15.37 per square foot of building area, including land, was a "compulsory sale" through the documentation submitted by the appellant and the appraiser's testimony. A "compulsory sale" is defined as:

- (i) the sale of real estate for less than the amount owed to the mortgage lender or mortgagor, if the lender or mortgagor has agreed to the sale, commonly referred to as a "short sale" and
- (ii) the first sale of real estate owned by a financial institution as a result of a judgment of foreclosure, transfer pursuant to a deed in lieu of

foreclosure, or consent judgment, occurring after the foreclosure proceeding is complete.

Additionally, real property in Illinois must be assessed at its fair cash value, which can only be estimated absent any compulsion on either party.

Illinois law requires that all real property be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is likewise ready, willing, and able to buy, but is not forced to do so.

Bd. of Educ. of Meridian Cmty. Unit Sch. Dist. No. 223 v. Ill. Prop. Tax Appeal Bd., 2011 IL App (2d) 100068, ¶ 36 (citing Chrysler Corp. v. Ill. Prop. Tax Appeal Bd., 69 Ill.App.3d 207, 211 (2d Dist. 1979)).

However, when there is a recent sale of the subject, and that sale is compulsory, the Board may consider evidence which would show whether the sale price was representative of the subject's fair cash value. See 35 ILCS 200/16-183 ("The Property Tax Appeal Board shall consider compulsory sales of comparable properties for the purpose of revising and correcting assessments, including those compulsory sales of comparable properties submitted by the taxpayer."). Such evidence can include the descriptive and sales information for recently sold properties that are similar to the subject. See Id.

The parties did submit market data so the Board is able to determine if the compulsory sale was reflective of the subject's actual market value. The Board, however, gives little weight to the conclusions of value contained in the Appellant's appraisal authored by Urban for numerous reasons.

Urban did not conduct an interior inspection of the subject property and testimony indicated that his inspection was a brief drive-by where he paid little or no attention to the environs of the subject property. This included an incorrect description of the subject property's location in his written report and no knowledge, as per his testimony, of the neighboring businesses located adjacent to the subject property.

Urban's cost approach utilized five sale comparables, none of which were vacant land comparables. Four of the comparables were improved with either a superstore, retail furniture store or a gas station, while the fifth comparable was used as an auto dealership parking lot. Accordingly, none of these suggested comparables had the same highest and best use as the subject property. Urban then did not develop a land value for the subject, instead he just asserted the proposition that the Assessor's land value was acceptable. Urban's depreciation was also calculated to be over 99% which would indicate very little value attributable to the subject improvement, however, the subject is actively being leased as a medical office building.

As to the income approach, Urban only offered two comparables that were actual leases. Comparable #1 was an actual lease across the street from the subject property wherein Urban designated the lease as gross when it was actually a net lease. Urban further testified that Comparable #2 was located in a depressed area of Elgin with higher vacancy rates than the

subject's location. Not only did the only two rental properties command higher rental rates than Urban opined in his appraisal, the actual rental rates of the subject's most recent lease, as well as its average rental rates for 2013 and 2014, were substantially higher than the \$10.00 per square foot, gross, rate that Urban relied on in his income analysis. Urban's capitalization rate was also higher than indicated by the market comparables. Although Urban relied on an income analysis based on only two rental comparables, he gave this approach primary consideration in determining the subject's market value.

Urban's sales comparison approach was also wrought with errors and omissions as disclosed in the Intervenor's cross-examination, including omissions regarding conditions of sale, inaccurate vacancy rates and sales history of the comparables. Overall, the Board finds Urban's analysis flawed and his testimony lacking in credibility.

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 give this approach the most weight and analyze the best sale comparables contained in the record.

The sales introduced in the appellant's rebuttal evidence were given no consideration in the Board's analysis pursuant to Section 1910.66 (c), which states:

"Rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. A party to the appeal shall be precluded from submitting its own case in chief in the guise of rebuttal evidence."

The Urban appraisal offered five sale comparables, the board of review offered five sale comparables, and the Intervenor offered nine sale comparables for the Board's analysis. The board of review's Comparable #3 and the Intervenor's Comparable #4 are identical to each other. The subject property is currently valued at \$30.75 per square foot, including land while the 18 unadjusted sale comparables ranged in a sale price per square foot value, including land, from \$11.84 to \$393.54.

The Board finds the best evidence of market value to be the following unadjusted sale comparables for the following reasons:

- 1) The appraiser's sale comparable #1: This was a compulsory sale of an office building containing 20,000 square feet of building area. It was located in Palatine, Cook County and sold in 2012 for a sale price per square foot of \$24.25.
- 2) The appraiser's sale comparable #3: This was a compulsory sale of an office building containing 109,392 square feet of building area. It was located in Schaumburg, Cook County and sold in 2011 for a sale price per square foot of \$30.17.
- 3) The board of review's sale comparable #3, which is identical to the Intervenor's sale comparable #4: This was a non-arm's length sale of a medical office building containing 5,000 square feet of building area. It was located in Elgin, Kane County and sold in 2012

for a sale price per square foot of \$108.00. The Board notes that non-arm's length transactions typically sell at below market value prices.

- 4) The Intervenor's sale comparable #2: This was an REO sale of a medical office building with a continued use as a medical clinic, containing 8,960 square feet of building area. It was located in Elgin, Kane County and sold in 2011 for a sale price per square foot of \$71.99. The Board considers this comparable to be the best sale comparable contained in the record.

Although three of the four comparables chosen were compulsory sales, the Board "shall consider compulsory sales of **comparables properties** (emphasis added) for the purposes of revising and correcting assessments, including those comparable sales of comparable property submitted by the taxpayer." 35 ILCS 200/16-183 (2013).

The comparables chosen by the Board sold at a date proximate in time to the January 1, 2013 valuation date and were either office buildings or medical office buildings. They had unadjusted sale prices ranging from \$24.25 to \$108.00 per square foot of building area, including land. The subject's sale price reflects a market value of \$15.37 per square foot of building area, including land, which is below the range established by the best comparables in this record. Moreover, the subject's current assessment reflects a market value of \$30.75 per square foot of living area, including land, which is within this range. After considering adjustments to the comparables as compared to the subject for various factors including size, location, use and conditions of sale, the Board finds that the appellant has not proven, by a preponderance of the evidence, that the subject is overvalued. Based on the evidence contained in the record, and exhibits and testimony presented at the hearing, the Board finds that a reduction in the subject's assessment is not warranted.

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

AGENCY

State of Illinois
Property Tax Appeal Board
William G. Stratton Building, Room 402
401 South Spring Street
Springfield, IL 62706-4001

APPELLANT

Three Step Holdings, LLC, by attorney:
Michelle Broughton-Fountain
Law Office of Michelle Broughton-Fountain
19150 S. Kedzie Avenue
Suite 103B
Flossmoor, IL 60422

COUNTY

Cook County Board of Review
County Building, Room 601
118 North Clark Street
Chicago, IL 60602

INTERVENOR

Elgin S.D. #U-46, by attorney:
Ares G. Dalianis
Franczek P.C.
300 South Wacker Drive
Suite 3400
Chicago, IL 60606