



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

APPELLANT: Bear Estates #1, LLC
DOCKET NO.: 14-30746.001-C-1
PARCEL NO.: 15-29-300-026-0000

The parties of record before the Property Tax Appeal Board are Bear Estates #1, LLC, the appellant(s), by attorney Herbert B. Rosenberg, of Schoenberg Finkel Newman & Rosenberg LLC in Chicago; and the Cook County Board of Review.

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: \$ 95,135
IMPR.: \$ 64,865
TOTAL: \$160,000

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 2014 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 contains a 20-year-old, one-story commercial building utilized as a McDonald's fast food restaurant of masonry construction with 3,854 square feet of gross building area. The property has a 36,242 square foot site located in Proviso Township, Cook County. The property is a Class 5 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 based on the sales comparison, income capitalization and cost approaches. The appraisal estimated the subject property had a reconciled market value of \$640,000 as of January 1, 2014.

The appellant submitted a brief summarizing the appraiser's conclusions for the three appraisal approaches. He reiterated the appraisal's conclusion for the sales comparison approach that for a restaurant building, the sale of the building as vacant or as put to a second generation use was the best evidence of its fair cash value. To illustrate this argument, the appellant cited and summarized an article entitled, *You Can't Get the Value Right if You Get the Rights Wrong*, written by David C. Lennhoff. A copy of the article was appended to the brief. The appellant noted that the appraiser selected many comparable properties outside the subject's immediate geographic area. The appellant argued that selecting an out-of-area comparable property that was similar to the subject was preferable to selecting a comparable in closer proximity but that was dissimilar to the subject. The appellant requested a total assessment reduction to \$160,000 when applying the 2014 level of assessment of 25.00% for Class 5 property under the Cook County Real Property Assessment Classification Ordinance.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$216,785. The subject's assessment reflects a market value of \$867,140, or \$225.00 per square foot of gross building area including land, when applying the 2014 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 sale comparables. Sale comparables #1 and #2 were for the same property.

In rebuttal, the appellant argued that the comparables submitted as evidence by the board of review 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 submitted a report prepared by appraiser Nicholas Pellecchia to rebut the board of review's five suggested sale comparables. . Pellecchia opined that the board of review's five comparable sales included business or investment value, and were not only for the real estate, or were leased-fee sales. The appellant reaffirmed the request for an assessment reduction.

At hearing, counsel for the appellant stated that he would produce Lennhoff for expert testimony for appraisal methodology only. He conducted *voir dire* of Lennhoff's expert qualifications. The Administrative Law Judge accepted Lennhoff as an expert for testimony about appraisal methodology. The parties stipulated that Lennhoff's qualifications as an expert witness and his testimony would be admitted into evidence and made part of the record for one other appeal containing the same issues and type of subject property.¹

Lennhoff testified that to appraise a fast food restaurant custom built with specific standards, an appraiser should select comparables that involve just the fee simple transfer of the real estate market value component and exclude the enterprise component. To accomplish that, Lennhoff explained that the comparables used in the sales comparison approach should be limited to either vacant properties or second-generation transactions, which would be sales from the person for whom the McDonald's restaurant was built to an owner who would use the property in some other manner. Lennhoff gave examples: A sale from one McDonald's owner/operator to another

¹ The appellant filed two appeals for which Lennhoff's testimony was made part of the record. The docket numbers for those appeals are: #14-27059 and #14-30746.

would involve the business operation and personal property, not just the real estate component; a sale from a McDonald's operator to, say, a Wendy's operator would not necessarily include the business component because it would be a different business model with different special standards and financial aspects.

As to the income approach using rental revenues, vacancy/collection allowances, and stabilized expenses, Lennhoff testified that an appraiser should look for comparables with just the rent for the property without the business operation revenue. If the income approach focuses on capitalization rates, the appraiser must use comparable sales of only the real estate component that exclude the business enterprise component. These comparable properties could be for another fast food operation or another type of retail operation.

Lennhoff testified that an appraiser must be cautious if applying the cost approach because it would not adequately account for the specific standards and features that were included in the property for the initial owner. The appraiser must account for the depreciation present in fast food restaurants in a resale under the cost approach of valuation.

Counsel for the appellant and the board of review stipulated as to the expert qualifications of Nicholas Pellecchia and Audrey Davis to testify as experts in the field of real estate appraisal. The Administrative Law Judge accepted them as experts for testimony about the subject's valuation. Davis reviewed Pellecchia's appraisal report. Pellecchia applied the sales comparison, income capitalization and cost approaches, giving most emphasis to the sales approach. He expanded his search for comparable properties in support of the sales and income approaches to south and southwest suburban areas because he wanted to select fast food restaurants that sold only for the real estate and as vacant or second generation sales, rather than sales that included business and investment value. Pellecchia testified that the subject had an estimated reconciled market value of \$640,000, or \$165.00 per square foot of gross building area including land, as of January 1, 2014.

The board of review rested on the evidence it previously submitted with its Notes on Appeal. Pellecchia testified as a rebuttal witness regarding the board of review's five suggested sale comparable properties. He was the appraiser who prepared the report reviewing the board of review's evidence. Pellecchia testified as to the property rights transferred in the sales and whether the comparables were not only for the real estate. Several of the board of review's suggested comparables were sales including on-going business operations and also included an investment value.

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds the best evidence of market value to be the appraisal submitted by the appellant. The Board finds the subject property had a market value of \$640,000 as of the assessment date at

issue. Since market value has been established, the 2014 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: July 17, 2018



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

Bear Estates #1, LLC, by attorney:
Herbert B. Rosenberg
Schoenberg Finkel Newman & Rosenberg LLC
222 South Riverside Plaza
Suite 2100
Chicago, IL 60606-6101

COUNTY

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