



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

APPELLANT: F & P Hospitality (Wyndham Garden)
DOCKET NO.: 15-22309.001-C-2
PARCEL NO.: 08-26-401-038-0000

The parties of record before the Property Tax Appeal Board are F & P Hospitality (Wyndham Garden), the appellant(s), by attorney Frederick F. Richards III, of Thompson Coburn LLP in Chicago; the Cook County Board of Review; the C.C.S.D. #59 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 **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: \$ 338,617
IMPR.: \$ 401,082
TOTAL: \$ 739,699

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 2015 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 four-story hotel of masonry and steel construction with 93 guest rooms and 51,924 square feet of building area. The building is 25 years old, and is currently flagged as a Wyndham Garden Hotel. The property has a 180,596 square foot site, and is located in Elk Grove Village, Elk Grove Township, Cook County. The subject is classified as a class 5-29 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 estimating the subject property had a market value of \$2,430,000 as of January 1, 2014. The appraisal states that the subject was purchased in September 2012 for \$3,500,000, and that a *lis pendens* was filed on the subject in September

2009. The appraisal further states that after the sale of the subject in September 2012, the subject was renovated, and was reopened in March 2013. 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.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$739,699, which includes the application of a 56.8% occupancy factor for the improvement. The subject's assessment, excluding the occupancy factor, reflects a market value of \$4,179,004, or \$80.48 per square foot of building area, including land, and \$44,935.52 per guest room, when applying the 2015 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 five comparable sales of hotel/motel properties from the CoStar Comps Service. These comparables sold between January 2011 to December 2015 for \$2,450,000 to \$5,000,000, or \$51.34 to \$131.58 per square foot of building area, including land, and \$18,015 to \$48,404 per guest room.

The intervenor submitted the printout from the CoStar Comps Service for the sale of the subject in September 2012 for \$3,500,000. This printout states that the seller was American Enterprise Bank, and that the subject was renovated in March of 2013. Under "Sale Conditions" the printout states "High Vacancy Property, REO Sale." Moreover, it states that there was a non-arm's length conveyance of the subject in June 2010. The intervenor argued that the sale of the subject in September 2012 for \$3,500,000 represents the best evidence of the subject's market value as of January 1, 2015.

At hearing, Donald P. DiNapoli, MRICS testified on behalf of the appellant. Mr. DiNapoli testified that he is a licensed real estate appraiser, that he has been an appraiser for 32 years, and that he has appraised over 200 hotel properties. Counsel for the appellant offered Mr. DiNapoli as an expert witness in the valuation of real estate, and the Board accepted him as such, without objection from the board of review or the intervenor.

Mr. DiNapoli stated that he completed the appraisal submitted by the appellant, and began by testifying as to the subject's description and its environs. He also testified that the subject's highest and best use as vacant would be to hold the site for future development, while, as improved, the highest and best use would be continued use as a hotel.

The appraiser testified that he used the income approach to value in determining an estimate of the subject's market value. Mr. DiNapoli testified that he stabilized the revenue and expenses for the subject by looking to a competitive set in the market. The revenue analyzed included room rentals, food and beverage, telecommunications, and "other operated departments." The expenses analyzed included costs associated with operating the revenue producing items, administrative costs, franchise fees, marketing, property maintenance, utilities, management fees, reserves for replacement, and insurance. The appraiser concluded that the subject's stabilized operating revenue was \$1,669,031, and its stabilized expenses were \$1,227,648, for a net operating income of \$441,383. Using the band of investment method, the appraiser concluded that the subject's capitalization rate was 9.4%. This capitalization rate was compared against

two market surveys, and was determined to be adequate. A real estate tax load factor of 5.71% was added to the capitalization rate for a loaded capitalization rate of 15.11%. The subject's net operating income was then divided by this loaded capitalization factor to arrive at a final estimate of value under the income approach to value of \$2,430,000, rounded.

Under the sale comparison approach to value, Mr. DiNapoli testified that he used six sale comparables in his analysis. These comparables sold between August 2010 and August 2013 for \$2,950,000 to \$7,000,000, or \$24.88 to \$104.17 per square foot of building area, including land, and \$22,469 to \$30,537 per guest room. The witness testified that he adjusted the comparables to arrive at a range of \$17,284 to \$22,204 per guest room, and estimated the subject's market value under the sales comparison approach was \$26,000 per guest room, or \$2,120,000, rounded.

In reconciling the two approaches to value, Mr. DiNapoli testified that he gave primary emphasis to the income approach to value, and secondary emphasis to the sales comparison approach to value, and estimated that the subject's market value as of January 1, 2014 was \$2,430,000.

Mr. DiNapoli also testified that the sale of the subject in September 2012 for \$3,500,000 was an REO sale, and that he did not think it was indicative of the subject's fair market value. Mr. DiNapoli also testified that the subject was flagged as Comfort Inn sometime prior to the sale.

During cross-examination from the board of review analyst, Mr. DiNapoli testified that comparable #1 in the sales comparison approach to value in the appraisal was an REO sale, but that, due to it being exposed to the market for 687 days, he believed the sale price was at this comparable's fair market value. Mr. DiNapoli also testified that comparable #4 was probably located more than ten miles from the subject, and that comparable #5 was sold approximately five years prior to January 1, 2015.

During cross-examination from counsel for the intervenor, Mr. DiNapoli testified that when the subject was purchased in September 2012, it was shut down, and had no business value associated with it at the time of the sale.

Upon questioning from the Board, Mr. DiNapoli testified that the subject was open and operating in 2010, closed sometime prior to the sale in September 2012, and was reopened and operating again by 2014.

The board of review rested on the evidence previously submitted, while the intervenor reaffirmed the evidence previously submitted.

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.

For the following reasons, the Board finds that the appraisal submitted by the appellant is not credible, and gives it no weight in this analysis. At hearing, Mr. DiNapoli testified that the sale of the subject in September 2012 for \$3,500,000 was an REO sale, and that he did not believe it was indicative of the subject's fair market value. If the appraiser's reliance on the fact that the subject's sale was an REO sale, and, thus, not reliable as to the subject's fair market value, is to be believed, then, such reliance is directly contradicted by the inclusion of sale comparable #1. During cross-examination, the appraiser testified that sale comparable #1 in the appraisal was an REO sale. Even so, Mr. DiNapoli testified as to why sale comparable #1 was, in his expert opinion, an arm's-length transaction (it was exposed to the market for an extended period of time). There is no evidence or testimony in the record to indicate why the sale of the subject was not indicative of the subject's fair market value, other than the appraiser's testimony that it was an REO sale.

Moreover, sale comparables #1 and #5 in the appraisal occurred in March 2011 and August 2010, respectively, while the sale of the subject occurred after these two sales in September 2012. Sale comparable #3 occurred only two months later in November 2012. Thus, the appraiser found these sales (including one REO sale) that occurred around the time of the subject's sale to be relevant enough to include as comparables in the sales comparison approach, but barely mentioned the sale of the subject, other than to make the conclusory statement that it was not indicative of the subject's fair market value.

Furthermore, the appraisal's final conclusion of value is over \$1,000,000 *less* than the subject's sale price of \$3,500,000. At the time of the sale, the subject was closed, had no flag, no income, and was in need of renovation. On the effective date of the appraisal, January 1, 2014, the subject was open, was flagged as a Wyndham Garden Hotel, was generating income, and had just been renovated.

Therefore, due to the appraiser's (1) summary dismissal of the REO sale of the subject, while still using an REO sale as a comparable in the sales comparison approach to value, (2) using sale comparables that sold around the time as the subject's September 2012 sale, while, again, summarily dismissing the sale of the subject, and (3) arriving at an illogical market value for a newly renovated, flagged and open hotel when compared to a shuttered, unflagged hotel, the Board finds that the appraisal lacks credibility, and gives it no weight in this analysis.

The only remaining evidence in the record of the subject's market value is the sale of the subject in September 2012 for \$3,500,000. The Board finds that this sale was a "compulsory sale." 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.

35 ILCS 200/1-23. The Board finds that the sale of the subject in September 2012 is a compulsory sale, in the form of a foreclosure, based on the printout from the CoStar Comps service submitted by the intervenor, which states that the sale of the subject was an REO sale, and that the seller was a financial institution, namely, American Enterprise Bank. See id.

Finding that the sale of the subject was a compulsory sale, the question then becomes, whether the compulsory sale of the subject is an arm's-length transaction such that the sale price reflects the subject's fair cash value. In Calumet Transfer LLC v. Property Tax Appeal, Bd., 401 Ill.App.3d 652 (1st Dist. 2010), the court upheld the Board's decision, wherein the Board allowed the intervenor to challenge the arm's-length nature of the sale of the property, through the submission of sale comparables, pursuant to Section 1910.65(c)(4) of the Official Rules of the Property Tax Appeal Board. Calumet Transfer, 401 Ill.App.3d at 655-56; 86 Ill.Admin.Code § 1910.65(c)(4) (“[p]roof of the market value of the subject property may consist of the following: 4) documentation of not fewer than three recent sales of suggested comparable properties together with documentation of the similarity, proximity and lack of distinguishing characteristics of the sales comparables to the subject property.”). The intervenor in Calumet Transfer submitted sale comparables to show that the purchase price was below fair market value, and, consequently, the transaction was not at arm's-length. Id. at 656. The court stated that, “There is no provision in the Property Tax Code that restricts [the Board's] authority to consider such evidence. To the contrary, paragraph (4) of section 1910.65(c) specifically allows evidence of comparable property sales to prove fair market value.” Id.

In looking at the sale comparables submitted by the appellant (in the sales comparison approach to value in the appraisal) and the board of review, the Board finds appellant comparables #4 and #6, and board of review comparable #4 to be most similar to the subject. These comparables sold for prices ranging from \$45.10 to \$91.55 per square foot of building area, including land, or \$28,972 to 48,404 per guest room. The subject's sale price reflects a market value of \$67.41 per square foot of building area, including land, or \$37,634 per guest room, both of which are within the range established by the best comparables in this record. Therefore, the Board finds that the sale of the subject in September 2012 for \$3,500,000 was an arm's-length transaction that is supported by market data. Additionally, while most sales of hotel properties include business value in the transaction (such as the flag), that is not the case in this instance. As Mr. DiNapoli testified at hearing, when the subject was purchased in September 2012, it was shut down, and had no business value associated with it at the time of the sale. Thus, the Board further finds that this sale represents the best evidence in the record of the subject's fair market value. This market value is lower than the subject's current market value of \$4,179,004, when omitting the occupancy factor. As such, the Board finds 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 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

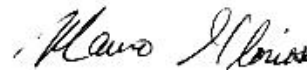
Member

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: October 15, 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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