



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

APPELLANT: RPK Capital XVII, LLC
DOCKET NO.: 15-25149.001-C-2 through 15-25149.002-C-2
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are RPK Capital XVII, LLC, the appellant(s), by attorney Robert W. Matanky, of Matanky and Matanky, Ltd. 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 **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:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
15-25149.001-C-2	20-18-300-032-0000	233,105	18,482	\$251,587
15-25149.002-C-2	20-18-300-034-0000	6,006	322	\$6,328

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

Findings of Fact

The subject property consists of two parcels of land totaling approximately 273,270 square feet and improved with a 15-year old, one-story, masonry movie-theater building containing 52,357 square feet of building area. The property is located in Lake Township, Cook County and is a class 5 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant's appeal is based on overvaluation. In support of the market value argument, the appellant submitted an appraisal undertaken by Arthur Murphy of Urban Real Estate Research, Inc. The appraisal indicated the subject has an estimated market value of \$450,000 as of December 4, 2014. The appraisal report utilized the sales comparison approach to value to estimate the market value for the subject property.

The appraisal opined that the subject's highest and best use as vacant was to hold the property for development and that the highest and best use as improved is the demolition of the existing building. The appraisal describes the vacant movie theater as in very poor condition.

Under the sales comparison approach, the appraisal analyzed six sales and two listings with six of the properties being vacant lots and one of the sales having an improvement that is to be demolished. These properties range in land size 7,265 to 304,920 square feet and sold from July 2011 to November 2014 for prices ranging from \$.71 to \$6.25 per square foot. The listing properties are available for \$1.45 and \$1.79 per square foot. The appraisal estimated a land sale for the subject of \$3.00 per square foot or \$820,000, rounded.

The appraisal then estimated a demolition cost of \$365,000 for the subject improvement which was subtracted from the land value to arrive at an estimated value for the subject of \$450,000.

The appellant also included sales documents which included copies of: the judicial sale deed; the PTAX-203 Illinois Real Estate Transfer Declaration; and the City of Chicago Real Property Transfer Tax Declaration and receipt.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment was \$257,915 which reflects a market value of \$1,031,660 when using the level of assessment for class 3 property of 10% under the Cook County Real Property Assessment Classification Ordinance.

The board also submitted raw sales information on seven properties suggested as comparable. The properties are described as general retail/supermarket, storefront, or freestanding and range in size from 30,757 to 54,963 square feet of building area. These properties sold from March 2011 to November 2015 for prices ranging from \$130.88 to \$174.30 per square foot of building area, including land. In addition, the board of review's memorandum discloses that the data is not intended to be an appraisal or estimate of value and should not be construed as such. In addition, it discloses that the information is assumed factual, accurate, and reliable, but has not been verified and does not warrant its accuracy. The board of review did not present any witness at hearing.

In rebuttal, the appellant submitted a letter addressing each of the board of review's comparables and submitted copy of the Cook County Circuit Court Order confirming the foreclosure sale of the subject.

At hearing, the appellant's attorney argued that the sale of the subject occurred eleven days after appraisal date as part of a foreclosure sale in which the appellant bid on the property. He asserted that there was a challenge to the sale and the owner of the property continued to attempt to sell the property during this court challenge. He argued that the courts confirmed the sale in October 2015 at the bid price as an accurate reflection of market value.

The board of review's representative, John GeoKaris, first argued that the subject's sale was a compulsory sale as part of a bidding process at a judicial sale and that this is not an arm's length transaction. He argued that the buyer controlled both the offer and the acceptance of the judicial sale. He argued that the courts in confirming a judicial sale are limited to elements that include

lack of notice; fraud; unconscionable; or justice would be otherwise not done, but that the courts cannot undo a judicial sale based on the fact that the sale is below market value.

Mr. Geokaris asserts that the comparables submitted by the board of review are more similar to the subject than the vacant parcels within the appellant's appraisal and that the sales support the subject's assessment.

Under cross-examination of Mr. GeoKaris, he testified that, to his knowledge, the board of review's comparables were not located next to railroad lines, gutted and unoccupiable, built with forward concrete stadium style seating, or lacked a tenant. He testified that the comparables are all class 5 properties, the same as the subject. He opined that the subject's improvement is not similar to the improvements of the comparables and that is why the subject is assessed below the range of these comparables.

Mr. GeoKaris then made a motion to dismiss the appraisal and the conclusions of value as the appraiser is not present to testify. The Board denied the dismissal of the appraisal as it was timely submitted into evidence but ruled that the adjustments and conclusions of value are hearsay.

Mr. GeoKaris testified that he could not comment on the length of time on the market needed for a judicial sale but did acknowledge that the owner of the property was attempting to sell the subject prior to the judicial sale. He opined that the subject improvement was an enhancement on the property. He acknowledged that he reviewed the photographs of the subject within the appraisal. Mr. GeoKaris moved that no weight be given to the photographs of the subject as the appraiser was not present to authenticate the photographs. No ruling was made at hearing on this motion.

Mr. GeoKaris acknowledged the locations of the board of review's comparables on arterial streets.

Conclusion of Law

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c).

In determining the fair market value of the subject property, the Board examined the appellant's appraisal report, the board of review's evidence, and testimony of one witness.

The appellant's appraiser was not present at hearing to testify as to his qualifications, identify his work, testify about the contents of the evidence, the conclusions or be cross-examined by the board of review and the Board. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness

may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The appellate court found the appraisal to be hearsay that did not come within any exception to the hearsay rule, thus inadmissible against the defendant, and the circuit court erred in admitting the appraisal into evidence. Id.

In Jackson v. Board of Review of the Department of Labor, 105 Ill.2d 501, 475 N.E.2d 879, 86 Ill.Dec. 500 (1985), the Supreme Court of Illinois held that the hearsay evidence rule applies to the administrative proceedings under the Unemployment Insurance Act. The court stated, however, hearsay evidence that is admitted without objection may be considered by the administrative body and by the courts on review. Jackson 105. The board of review objected to the appraisal as hearsay and to the photographs within the appraisal as the appraiser did not testify as to their authenticity. Therefore, the Board finds the appraisal hearsay and the photographs, adjustments and conclusions of value are given no weight.

In addressing the appellant's market value argument, the Board finds that the sale of the subject in November 2015 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. 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.

Board of Educ. of Meridian Community Unit School Dist. No. 223 v. Illinois Property Tax Appeal Board, 961 N.E.2d 794, 802, 356 Ill.Dec. 405, 413 (2d Dist. 2011) (citing Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207, 211, 387 N.E.2d 351 (2d Dist. 1979)).

The Board gives little weight to the appellant's argument that the confirmation of the sale by the court established the subject's market value at the sale price. The court reviewed the sale as to its value and proper notice to the defendant. The court did not find that the sale was at market value, but that the bid at the foreclosure was for the full amount of the appraisal which showed that the sale was not unconscionable. The fact that the courts gave weight to the conclusions of value in that court proceeding does not establish that this tribunal shall also give weight to those

conclusions of value. That court had the benefit of listening to testimony from the appraiser and weighing that testimony against different applicable law.

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 look to the raw sales data within the appraisal and the comparables submitted by the board of review.

The board of review submitted seven improved sales while the appraisal lists five land sales and 2 land offerings. The Board finds the best evidence of the subject's market value to be the improved sales. Although these improvements are in significantly better condition than the subject, they are more similar than to subject in that these properties are improved. The Board gives little weight to comparables #3 and #6 because these properties sold in 2011 which is too far removed from the lien date to reflect the subject's market value. The remaining comparables sold from November 2014 to November 2015 for prices ranging from \$130.88 to \$174.30 per square foot of building area. In comparison, the subject's assessment reflects a market value of \$22.44 per square foot of building area which is significantly below the range of comparables. After making adjustments to the comparables for the differences in pertinent factors, the Board finds that the appellant has failed to show by a preponderance of evidence that the subject is overvalued and a reduction 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: _____

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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