



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

APPELLANT: 1150 W Irving Park RE, Inc.
DOCKET NO.: 16-05751.001-C-1
PARCEL NO.: 03-07-103-016

The parties of record before the Property Tax Appeal Board are 1150 W Irving Park RE, Inc., the appellant, by attorney William J. Seitz of the Law Offices of William J. Seitz, LLC in Chicago; and the DuPage 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 **DuPage** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$123,990
IMPR.: \$59,325
TOTAL: \$183,315

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the DuPage County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2016 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 a gas station/convenience store and a car wash with 1,488-square feet of building area, including the car wash.¹ The improvements were constructed in 1988. Features of the subject property include a 912-square foot canopy-covered gas station/convenience store with a 10-foot ceiling height in addition to a 576-square foot car wash. The property has a 28,750-square foot site located on a corner lot equating to a land to building ratio of 19.32 to 1. The subject property is located in Itasca, Addison Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board through the owner and by counsel contending overvaluation as the basis of the appeal. At the beginning of the hearing, the

¹ The parties differ as to the size of the subject's total building size which includes the car wash. The Board finds the slight discrepancy will not impact the Board's decision nor its analysis in this appeal.

appellant made a Motion to Strike from admission into the evidence all documents submitted by Township Assessor. In support of his Motion, the appellant submitted a brief along with an Appendix containing documents and exhibits in support of his motion. The appellant argued that the township assessor is not a licensed appraiser and therefore has no statutory authority to make specific adjustments to the sale comparables and give an opinion of market value of the subject property. Appellant argued that “[i]n setting forth an opinion of value, [the Chief Deputy Township Assessor, Frank A. Marack, Jr., C.I.A.O.] is seeking to perform the role of an appraiser without the experience, training, and state license to do so.” (p.7 of the Appellant’s Motion to Strike).

The board of review filed a “Response of the DuPage County Board of Review to Appellant’s Motion to Strike” arguing that the Marack report (including his adjustments made to the comparable sales in order to arrive at the subject’s market value) does not purport to be an appraisal. Rather, it provides material and relevant documents commonly relied upon to arrive at the value of the property for assessment purposes.

The Board finds that the documents prepared by Marack (including his “Market Approach to Value”) are within the scope of his authority as the Chief Deputy Township Assessor. A well-grounded exception in the Illinois Real Estate Licensing Act allows assessors to testify regarding the value of subject property as well as the comparables. Section 5-5(e) of the Real Estate Appraiser Licensing Act states as follows:

This Act does not apply to a county assessor, township assessor, multi-township assessor, county supervisor of assessments, or any deputy or employee of any county assessor, township assessor, multi-township assessor, or county supervisor of assessments who is performing his or her respective duties in accordance with the provisions of the Property Tax Code.

225 ILCS 458/5-5(e)

The appellant argued that the above exception is not applicable because Marack was not performing duties under the Property Tax Code. The Board finds this argument unpersuasive. As the Chief Deputy Township Assessor, Marack’s job is to assess values of properties. The "Market Approach to Value" prepared by Marack was prepared pursuant to his duties as an assessor under the Property Tax Code in support of the assessment of the subject property. There is no evidence in the record that Marack was purporting to perform an "appraisal" of the subject property. Moreover, the Board finds that the documents prepared by the Chief Deputy Township Assessor and submitted by the board of review (including any assessment of market value) goes to the weight of the evidence, not its admissibility. As will be shown below, the Board has given little weight to the “plus” or “minus” adjustments presented by Marack. Therefore, the Board finds that examination of the sale comparables presented in support of the subject's assessment is permissible.

Consequently, the Board finds that the appellant’s Motion to Strike is denied.

In support of overvaluation argument, the appellant, Mr. Binu Poothurail, appeared and testified before the Property Tax Appeal Board. Poothurail testified that he purchased the subject property in 2012. Subsequent to the purchase, the municipality constructed a median in the street in front of the subject gas station making it more difficult for customers driving in westbound lanes to turn into the gas station. This resulted in noticeable loss of traffic flow and therefore business income which reduced the overall value of his property. The appellant also testified that the height of the convenience store is limited by the canopy above it resulting in lower height and less space for merchandize, advertising and appeal. The convenience store is also smaller in square feet of building area and shorter in height than most gas station convenience stores, thus reducing the potential gross income and market value of the subject property.

In further support of the overvaluation argument, the appellant submitted a summary appraisal report of the subject property prepared by Andrew G. Harigan, MAI and reviewed by Susan Z. Ulman, MAI of Zimmerman Real Estate Group, LTD. The purpose of this appraisal assignment is to estimate market value as defined by the Uniform Standards of Professional Appraisal Practice (USPAP). The intended use of the appraisal is for the sole purpose of assisting the client in connection with the estimate of market value of the subject property in order to arrive at an equitable assessed valuation for purposes of real estate taxation. The interest valued is the fee simple estate. The final conclusion was that the subject property had a market value of \$550,000 or \$370.00 per square foot of building area or \$19.00 per square foot of land inclusive of the building as of January 1, 2016. The appellant called as its second witness Susan Z. Ulman, MAI.

Ulman is a State of Illinois Certified General Real Estate Appraiser, designated as an MAI by the Appraisal Institute and has been appraising real estate for over 35 years. Ulman testified at the hearing that she conducted a review appraisal of the subject property. She described the subject property as consisting of two buildings; a gas station with a convenience store containing approximately 912 square feet of building area and a car wash with approximately 576 square feet of building area. Ulman testified that being a gas station, land per square foot would be a measure that she would be looking at in doing her report. In order for someone to purchase gas, they have to drive into the gas station, and there has to be someplace for them to drive onto the site. Once the parking lot is full, it can no longer accommodate any additional customers. The indicator of how many customers it could accommodate is different than a retail store which may accommodate more bodies into the store itself. Ulman testified that she has personally conducted an exterior inspection of the subject property in January 2017.

Ulman determined the highest and best use of the property as improved was continued use as a gas station. In estimating the market value of the subject property, the cost approach and the sales comparison approach were developed.

In developing the cost approach, Ulman did a valuation of land separate from the valuation of the building. In valuating the land, Ulman evaluated three land sales and two listings. Ulman testified that the two listings eventually sold two years after the subject's assessment date of January 1, 2016. Board of review objected to the additional evidence being introduced on two grounds; 1) using comparable sales after the lien date (assessment date) is inappropriate and 2) the subsequent sales constitute new evidence not previously provided. The Property Tax Appeal Board finds that the comparable sales after the assessment date are typically admissible and go to

the weight of the evidence, not admissibility. However, the evidence of the two comparable listings being subsequently sold was new evidence not submitted with original evidence nor provided to the board of review prior to the hearing and thus inadmissible. The Board finds a party to an appeal may not introduce new evidence at hearing and thus board of review's objection is sustained. Section 1910.67(k)(1) of the rules of the Property Tax Appeal Board provide:

k) In no case shall any written or documentary evidence be accepted into the appeal record at the hearing unless:

- 1) Such evidence has been submitted to the Property Tax Appeal Board prior to the hearing pursuant to this Part;

(86 Ill.Admin.Code §1910.67(k)(1))

In further analysis of the cost approach, Ulman testified that the subject property had an estimated land value of \$9.39 per square foot of land area or \$270,000. In addition, she estimated the cost of parking lot and other site improvements to be \$30,000. In estimating the replacement cost new of the building improvements, the appraiser used the *Marshall Valuation Computerized Cost Service*. The subject property was described as an average quality class C gas station, with a base cost of \$121.49 per square foot of gross building area. The estimated effective age was 30 years old. The subject also has a Class C canopy with an area of approximately 19,500 square feet with a base cost of \$39.72 per square foot. Given the average economic life of this type of canopy being 20 years, and the estimated effective age of the canopy of 8 years, this equated to a remaining economic life of 12 years. In addition, the subject has a class C car wash with a building area of approximately 576 square feet with a base cost of \$115.94 per square foot. Car washes tend to have an economic life of 20 years. The estimated effective age of the subject car wash was 8 years, equating to a remaining economic life of 12 years. Deducting the total amount depreciated attributable to the subject from all causes, the cost of improvements was estimated to be \$247,654. Adding to this the estimated land value of \$270,000 plus site improvements of \$30,000 equates to an estimated market value under the cost approach of \$550,000, rounded.

Ulman testified that she also developed the sales comparison approach in arriving at the value of the subject property. Ulman identified comparable gas station sales which were similar in terms of location, age, building size, lot size, land-to-building ratio and condition. Ulman testified that she had considered the three sale comparables submitted by the board of review but excluded them due to all three being leased properties and “[p]eople pay differently for leased properties”. In addition, board of review comparables #1 and #2 were portfolio sales or sales of several parcels bundled together and thus not a good indicator of market value in comparison to the subject property.

Under the sales comparison approach to value, Ulman utilized five comparable sales and one listing. The comparables were located in Downers Grove, Naperville, Carol Stream, and Addison. These properties were improved with a gas station with a convenience store that ranged in size from 792 to 7,566 square feet of building area and were constructed from 1971 to 2000. One of the properties' age was not disclosed. The comparables had a land-to-building ratio

ranging from 6.31 to 55.11. Comparables #1 through #5 sold from May 2013 to October 2016 for prices ranging from \$400,000 to \$1,140,000 or from \$96.80 to \$921.72 per square foot of building area, including land. Comparable #6 had a listing price of \$450,000 or \$210.38 per square foot of building area, including land. The comparables also had sales prices or listing prices ranging from \$15.34 to \$17.16 per square foot of land with building. The appraiser made adjustments for such items as sale conditions, size of convenience store, location, age/condition, car wash, land-to-building ratio and lot size. The appraiser estimated the subject property had an indicated value under the sales comparison approach of \$550,000 or \$370.00 per square foot of building area, including land.

In reconciling the two approaches to value, most weight was given the sales comparison approach, with cost approach given secondary value. The income approach was considered unreliable indicator of value in this case due to the predominance of full or partial owner occupancy, and the accompanying limited impact income and expense considerations have on the decision-making process for buyers and sellers.

Based on this evidence the appellant requested the subject's assessment be reduced to \$183,315 to reflect the appraised value.

Under cross-examination, Ulman first testified as to the distance the comparables were to the subject. She also testified about the various adjustments she made to the comparables taking into account location, site size, building size and age. She personally conducted an interior and exterior inspection of the subject property. Ulman also testified under cross-examination that she had experience appraising gas stations and that she analyzed the locations of the comparables along with car count or car traffic to determine if one location is inferior or superior and that she considered this information but did not present any data in her report. Ulman also testified that the subject's convenience store had a relatively short ceiling height due to the Canopy above the building. She stated that in her professional opinion, a taller ceiling height is a more desirable feature of a convenience store due to the ability to display larger advertisements as well as sell more merchandise such as candy and bubble gum.

On re-direct exam, Ulman clarified that she emphasized price per square foot of land area by calculating 28,750 square feet of land area and multiplying this number by \$19 per square foot to arrive at the market value. Alternate way of arriving at the market value is to multiply the total square feet of the convenience store plus the car wash (1,488) by \$370 per square foot of building area, including land which equates to approximately the same market value as the former method of calculation.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$283,260. The subject's assessment reflects a market value of approximately \$850,886 or \$571.83 per square foot of building area, land included, or \$29.60 per square foot of land, including building, when using the 2016 three-year average median level of assessment for DuPage County of 33.29% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment, the board of review submitted information on three comparable sales located in Bensenville, Elmhurst and Elk Grove Village. These properties were improved with a gas station and a convenience store that ranged in size from

1,924 to 2,960 square feet of building area and were constructed from 1971 to 2002. One of the properties also featured a car wash. The comparables had sites ranging in size from 15,780 to 32,321 square feet resulting in land-to-building ratios ranging from 8.20:1 to 13.09:1. The comparables sold from July 2013 to June 2016 for prices that ranged from \$1,250,000 to \$1,525,000 or from \$1,924 to \$2,960 per square foot of building area, including land, or \$40.82 to \$95.06 per square foot of land area inclusive of building. The board of review also submitted the property record card for the subject property and the PTAX-203 Illinois Real Estate Transfer Declaration form for the subject property and the three comparable sales.

In addition, the board of review submitted a “summary of salient facts” prepared by the Chief Deputy Assessor for Addison Township, Frank a. Marack, Jr., C.I.A.O. Marack also prepared a “Market Approach to Value” describing the adjustments he made to the sale comparables in arriving at the subject’s price per square foot and the market value. For the subject and each of the comparables, Marack compiled descriptive facts and a grid analysis. Finally, Marack prepared a summary sheet of adjustments made to the comparables in the form of “plus”, “minus” or “equal” symbols to reflect whether a particular feature of the comparable sale is superior, inferior or equal to the subject, respectively. The sale comparables grid contains three sales with various degrees of similarity to the subject property. With adjusted prices ranging from \$55.92 to \$133.56 per square foot of land area inclusive of building, Marack arrived at an estimated value of \$1,625,000 or \$56.52 per square foot of land area inclusive of building.

The board of review called as its witness Frank A. Marack, Jr., C.I.A.O., Chief Deputy Assessor for Addison Township. Marack testified that he prepared all the evidentiary documents submitted on behalf of the board of review. He testified that the three comparable sales support the assessment. On cross examination, Marack was questioned about his qualifications and it was confirmed that he is not a licensed appraiser. Marack testified that the purpose of the report and the documents he prepared was to “estimate fair market value” of the subject property as of January 1, 2016. His final estimate of value was estimated to be approximately two times that of the subject’s current assessed value but that there were no increases in the subject’s assessment in the following two years.

Further on cross-examination, Marack testified that out of hundreds of sales in his office, he considered the three comparable sales as most similar to the subject and, therefore, most reflective of market value. Upon further cross examination regarding the PTAX-203 Illinois Real Estate Transfer Declaration form for the three comparable sales, it was established that board of review comparable #2 was sold via a Quit Claim Deed by the appointed Bankruptcy Trustee pursuant to Chapter 11 of the US Bankruptcy Code. Board of review comparable #3 was likewise sold via a Quit Claim Deed as a fulfillment of an installment contract. Marack testified that based on the comparables he chose and the adjustments he made, the fair cash value of the subject property (which is different from “market value”) as of January 1, 2016 was \$1,625,000. He distinguished “fair cash value” which is based strictly on the three comparables to “market value” which is based on a specifically-defined arm’s length transaction. Therefore, he was not concerned what a sale price would be between a willing buyer and a willing seller.

On re-direct examination, Marack stated that he made appropriate adjustments (just like the appellant’s appraiser) based on a number of factors such as research of the market, experience, comparable sales, and many more factors taken together. The value conclusion for the subject

property was greater than the assessed value of the subject because it was done on an individual basis on its own merits for the purpose of preparing a report, unlike the assessed value of the subject which is based on a mass appraisal of approximately 32,000 parcels of property. The assessed value of the subject fits right in with uniformity. Based on this evidence, the board of review requested a confirmation of the subject's assessment.

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. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002), 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 along with the testimony provided by the appraiser, Susan Z. Ulman, MAI of Zimmerman Real Estate Group, LTD. She estimated the subject property had a market value of \$550,000 or \$370.00 per square foot of building area, including land, or approximately \$19.00 per square foot of land inclusive of the building as of January 1, 2016. The subject's assessment reflects a market value of \$850,886 or \$571.83 per square foot of building area, land included, or \$29.60 per square foot of land area including building which is above the appraised value.

The appraisal contained two approaches to value to support the market value conclusion. With respect to the cost approach the appraisal included land sales to support the land value. The appraisal also included a detailed description of the cost new calculations and an analysis of the physical depreciation and external obsolescence the subject improvements suffered. In contrast, the board of review provided no land sales and no descriptive evidence with respect to developing the cost new and the depreciation analysis to rebut this aspect of the appellant's evidence. The Board finds the cost approach developed by the appellant's appraiser, although given minimal weight, was more credible than the information contained on the subject's property record card submitted by the board of review.

With respect to the sales comparison, the appraiser made adjustments to the five sales and one listing for sale conditions, location, height of convenience store, car wash, age, condition and land-to-building ratio. In contrast, the board of review provided three sale comparables, two of which were Quit Claim Deeds, one sold by a Bankruptcy Trustee and the other a fulfillment of an installment contract entered into three years prior. Although the Chief Deputy Township Assessor made adjustments for differences when compared to the subject property, the Board gave reduced weight to the specific dollar amount adjustments and his opinion of value considering the nature of the comparable sales. The appellant's appraiser testified that all three comparables were leased sales and thus calling into question whether their purchase prices are reflective of market value. Furthermore, comparables #1 and #2 were portfolio sales or sales of several parcels bundled together and thus not a good indicator of market value in comparison to the subject property. Finally, comparables #2 and #3 were Quit Claim Deeds, one sold by a Bankruptcy Trustee and the other in fulfillment of an installment contract and therefore not

reflective of market value. Based on this record, the Board finds the sales comparison approach developed by the appraiser was better supported and more credible than the three comparable sales provided by the board of review.

After considering the evidence and testimony provided, the Board finds the best evidence of market value in this record was presented by the appellant. The Board finds that the appellant has demonstrated by a preponderance of the evidence that the subject was overvalued and, therefore, a reduction in the subject's assessment is 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

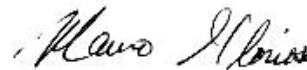
Member

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: July 16, 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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