

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Michael T. Murphy  
DOCKET NO.: 04-01373.001-C-1  
PARCEL NO.: 06-06-17-414-007

The parties of record before the Property Tax Appeal Board are Michael T. Murphy, the appellant, by attorney Michael Kraft of Quinn, Johnston, Henderson & Pretorius, Chtd., Peoria, Illinois, and the Tazewell County Board of Review.

The subject property is a 141,483 square foot parcel improved with a one-story masonry building originally constructed in 1970 with an addition constructed in 1999. The structure contains 37,319 square feet of partitioned building area situated on a concrete slab. Other amenities include a two-bay recessed loading dock and a fully sprinklered interior. The subject is located on a major thoroughfare in Morton, Morton Township, Tazewell County.

The appellant appeared before the Property Tax Appeal Board with counsel claiming the fair market value of the subject was not accurately reflected in its assessed value. In support of this argument an appraisal was submitted with an estimated fair market value of \$1,000,000 as of January 1, 2004 along with the presentation of witnesses.

Michael T. Murphy, the appellant, was first called as a witness and testified that he is also the owner of a car dealership which is adjacent to the subject parcel. Murphy testified he was under pressure from the automobile manufacturer to expand and update his car dealership facility. When Murphy purchased the subject property in May 2004, he owned an additional parcel which was not contiguous to the dealership, however, for the short term, it met his needs. Murphy testified it was more beneficial to his car dealership to purchase adjoining property wherein he could expand his dealership to meet the demands of the automobile manufacturer.

At the time of purchase the subject parcel was used as a grocery store. Murphy continued to lease the subject to the previous tenant on a month-to-month basis as a grocery store after the purchase. Murphy believed the previous owner, Russ Waldschmidt,

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Tazewell County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	\$	111,240
IMPR.:	\$	352,440
TOTAL:	\$	463,680

Subject only to the State multiplier as applicable.

was under no pressure to sell the subject when Waldschmidt ultimately approached Murphy with an offer to sell. In fact, Waldschmidt initially approached Murphy with an offer to purchase Murphy's property. The negotiations continued over a period of several years, until ultimately the negotiations turned to Murphy purchasing the subject from Waldschmidt. The offer for Murphy to purchase the subject property occurred sometime in the fourth quarter of 2003. Murphy believed there was a balance of negotiating power between the parties during negotiation of the subject's sale; however, Murphy believed he paid a premium for the subject property. The subject was purchased in May 2004 for \$1,400,000 or \$37.51 per square foot of building area, including land.

During cross-examination Murphy testified that the original asking price for the subject property was approximately \$2,000,000. Murphy further testified that in response to the pressure from the automobile manufacturer, he bought another parcel located in close proximity to the subject property, however, it did not have the adjoining effect he felt he needed to be competitive in the marketplace. Murphy further testified that he always asked to buy the adjoining property during the ongoing negotiation process from day one, but, during the initial negotiations the subject property was under a long term lease and was not being offered for sale to him. It was not until the lessee went into bankruptcy that Waldschmidt explored selling the subject property to Murphy. Murphy testified the current sub-lessee made an offer to purchase the subject property during the same time Murphy was negotiating his purchase of the subject property in late 2003. He was not aware if the subject's sale was advertised in any trade publications or journals. Russ Waldschmidt and his daughter, both real estate agents, were involved in the sale, with the daughter receiving a commission from the sale.

The second witness, appraiser James W. Klopfenstein, was called to testify regarding his appraisal methodology and final value conclusion using the three traditional approaches to value. He is a State Certified Senior Residential Appraiser certified in commercial, industrial and residential appraisals with 42 years experience. He inspected the subject parcel in November 2004.

Under the cost approach to value, Klopfenstein estimated the subject's site value of \$355,000 (rounded) or \$2.50 per square foot of land area. The data used to support this estimate was not contained within the appraisal. Klopfenstein used the Marshall Valuation Service Cost Manual to estimate a cost new for the improvements of \$1,567,398 or \$42.00 per square foot of building area. Physical depreciation was estimated using the age/life method at 50% or \$783,699. Klopfenstein subtracted external obsolescence of 10% or \$78,370. He next added a depreciated value of site improvements of \$50,000 to calculate an estimated depreciated value of all improvements of \$755,329. An estimated site value of \$355,000 was added to arrive at an

estimated value under the cost approach of \$1,110,329 or \$1,110,000, rounded.

Under the sales comparison approach, Klopfenstein examined six comparable sales. Five of the comparable sales were located in Peoria, Illinois and one was located in Morton. The sales consisted of one-story masonry or steel constructed industrial buildings situated on concrete slabs with brick and metal panel exterior walls. The interiors were partitioned into office and warehouse areas. The buildings ranged in size from 15,978 to 66,980 square feet and were situated on parcels ranging from 44,290 to 239,375 square feet of land area. The buildings, remodeled and/or renovated, and were originally built from 1969 to 1995. The comparables sold from August 2000 to September 2003 for prices ranging from \$650,000 to \$1,516,500 or from \$21.12 to \$42.25 per square foot of building area, including land. Klopfenstein adjusted the comparables for differences when compared to the subject for location, size, date of sale, condition and physical characteristics. Based on these adjusted sales, Klopfenstein estimated a value for the subject property under the sales comparison approach of \$1,050,000 or \$28.13 per square foot of building area including land.

Under the income approach to value, Klopfenstein relied upon his market experience and unidentified comparable rentals to estimate the subject's potential annual income of \$3.00 per square foot of building area or \$111,957, including land. Klopfenstein testified that the \$3.00 per square foot estimate was based on a full service supermarket in Peoria, approximately 12 years old and a 20,000 square foot improvement that was leased for \$3 per square foot on an absolute net basis with the lessor being responsible for structural and exterior repairs and maintenance. In addition, he testified that a 50,000 square foot supermarket approximately 20 years old, located in Washington, Illinois, leased for \$4 per square foot annually on an absolute net basis with the lessor being responsible only for structural repairs and maintenance and the lessee responsible for all other expenses. Klopfenstein estimated annual expenses for structural and exterior repairs, maintenance, management and replacement reserves at 12% of the potential annual income or \$13,435. After subtraction of the estimated expenses, the estimated net annual income was calculated at \$98,522. Klopfenstein applied a 10% overall capitalization rate, based on age and condition of improvements, mortgage terms and return on investments to estimate a value by the income approach for the subject property of \$985,000.

In reconciliation, Klopfenstein placed most weight and consideration on the sales comparison approach because it more nearly reflects the actions of typical purchasers and investors in the market. Therefore, he estimated a final market value of \$1,000,000 for the subject property as of January 1, 2004.

Klopfenstein testified that he did not consider the \$1,400,000 sale of the subject property in May 2004 to be an arm's length

transaction because the subject was purchased as a final assemblage of an existing parcel. He further testified that a purchaser will typically pay a premium amount for the final parcel when accumulating adjoining tracts of land. In addition, Klopfenstein testified that the purchase price typically does not have any relevance to the value of the property if it were exposed to the open market with numerous potential buyers having no interest in the assemblage. Based on this evidence the appellant requested a reduction in the subject's assessment to reflect the estimated market value of \$1,000,000 as set forth in the appraisal.

During cross-examination Klopfenstein testified that he prepared the appraisal in November 2004, subsequent to the sale of the subject in May 2004. However, his valuation date was based on January 1, 2004, therefore he mentioned the subject's sale in the appraisal, but it was not given much consideration because the sale occurred approximately five and one-half months after the valuation date of January 1, 2004. Klopfenstein explained that he calculated the capitalization rate using the band of investments technique because he was not able to extract the rates from the market. Using this method he gave consideration to the time in question in terms of available mortgage rates, loan to value term rates and equity dividend rates and expectations, which ranged from 9% to 12%. Klopfenstein investigated the subject's sale; however, he was unable to obtain detailed information from the seller. No information was provided to explain why the sales information was not readily available from the buyer, Michael Murphy. Klopfenstein testified that typically, these types of properties and the parties to the subject's sale do not advertise properties on the open market. The network of buyers, sellers and brokers in the subject's immediate locale all know each other and would typically call each other to exchange or sell property.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$466,670 was disclosed. The subject's assessment reflects a market value of approximately \$1,409,028 using the 2004 three-year median level of assessments for Tazewell County of 33.12%. In support of the subject's assessment, a letter from the board of review was submitted along with a letter from a private law firm supporting the assessment and a letter from the Morton Township Assessor, Leon Schieber.

Leon Schieber was called as a witness and testified that he personally made an exterior inspection of the comparable sales used in the appellant's appraisal. He disagreed with the characterization of the comparables used, as they were not retail grocery stores, but instead were warehouse type buildings. In addition, two of the comparables contained the name of the grantor on the building leading him to believe the sales were leaseback transactions and not arm's-length transactions. No further investigation, however, was performed to determine the nature of the sales transactions in question. Schieber did not

personally assess the subject property. The subject's assessment was originally based on an assessment performed in 2000 by an outside firm and subsequently increased by application of township multipliers.

Gary Pittenger, a Tazewell County Board of Review member, next testified that the subject's original 2004 assessment reflected a market value of \$1,800,000, however, the assessment was subsequently reduced based upon the subject's subsequent sale for \$1,400,000 in May 2004. Based on this evidence the board of review requested confirmation of the assessment.

At the request of the Property Tax Appeal Board, the appellant submitted the Real Estate Transfer Declaration sheet evidencing the sale of the subject property in May 2004.

After hearing the testimony and having considered the evidence, the Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant contends overvaluation as the basis of the appeal. 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 (3<sup>rd</sup> Dist. 2002). The Board further finds the best evidence of the subject's market value in the record is the sale of the subject in May 2004 for a price of \$1,400,000.

The Board first considered the appellant's appraisal submitted with a valuation date of January 1, 2004. The appraiser, James Klopfenstein, estimated the subject's market value of \$1,000,000 using the three traditional approaches to value. The Board finds the estimated value is not adequately supported by the evidence contained in this record.

The Board gave little weight to the appellant's cost approach analysis because it lacks sufficiently detailed supporting data to justify the percentages used to calculate depreciation or the stated conclusion of value. The appraisal report did not identify the land sales used to estimate the subject's site value of \$355,000 (rounded). Further, no evidence was presented to support the estimated 10% deduction for external obsolescence, other than a statement that it was because of a limited market for the property. In addition, nothing was presented into the record to support the estimated depreciated value of the site improvements of \$50,000.

Further, the Board gave little weight to the comparable sales used in the appraisal report. The Board finds it problematic that these comparables were located in Peoria, while the subject is in Morton. Klopfenstein failed to present adequate market data or analysis depicting the market similarities and/or differences between Peoria and Morton, which must be considered when comparing a property located in Morton with one located in Peoria. More importantly, the comparable sales were industrial properties located in an industrial park, while the subject is a

commercial building located on a major thoroughfare within the Village of Morton. The Board finds two of the comparable sales were smaller than the subject and all had an exterior construction that differed from the subject. The comparison analysis lacks detail as to land-to-building ratios, number of parking spaces available, site improvements, size of office space and/or adjustments based on date of sale. The only property located within close proximity to the subject is comparable #6 which sold for \$650,000 in August 2000, however, the Board finds this sale too remote in time to aid in the determination of the subject's fair market value in 2004.

The subject's estimated value by the income approach was \$985,000, however, the Board gave little weight to the appraiser's income approach to value due to the lack of credible market rental data. Klopfenstein testified that he was not able to reveal his market rental sources because of confidentiality reasons. Klopfenstein failed to justify the subject's estimated potential annual income of \$3.00 per square foot of building area with substantive evidence. The Board finds the evidence presented was not sufficient to verify whether annual expenses of 12% were appropriate. The appraisal lacks sufficient detail as to the mortgage rates used, loan to equity rates and anticipated rates of return to justify the overall capitalization rate of 10%. The Board finds it problematic that these estimates are concluded without sufficient supporting testimony and/or documentation to substantiate the amounts used.

Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1st Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc, 45 Ill.2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945).

The Board first must determine whether the subject's purchase for \$1,400,000 in May 2004 is an arm's-length transaction. From a review of the record, the Board finds there is no evidence suggesting the subject sale was not an arm's-length transaction. The appellant testified he was under pressure from the automobile manufacturer to expand, however, he further testified that he satisfied this pressure through the purchase of property other than the subject property in question. In addition, he testified

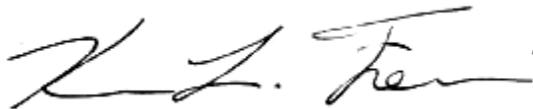
that he felt the parties involved in the subject's purchase held a balance of power during the negotiation process. Further, the testimony revealed that for this general locale, property such as the subject and the parties involved in its sale, did not typically advertise such properties for sale on the open market. The evidence further revealed that the seller, Waldschmidt, and his daughter were real estate agents. In fact, Waldschmidt's daughter received a commission from the sale. The appellant testified that the negotiation of the sale and ultimate purchase of the subject occurred over a period of several years. Moreover, the real estate transfer declaration sheet (Form PTAX-203-A) states in relevant part "[i]n your opinion, is the net consideration for real property entered on Line 13 of Form PTAX-203 a fair reflection of the market value on the sale date?" The answer depicted, which is in direct conflict with the argument advanced by the appellant, was "yes." The Board finds the appellant's testimony on this issue is not credible in light of the evidence presented and the real estate transfer declaration.

In conclusion, the Board finds the best evidence of the subject's fair market value in this record is its sale price of \$1,400,000. Since fair market value has been established, the 2004 three-year median level of assessments for Tazewell County of 33.12% 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.



Chairman



Member



Member



Member

DISSENTING: \_\_\_\_\_

C E R T I F I C A T I O N

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: December 5, 2008



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 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 the subsequent year 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.

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.