PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: One Gregory Place, LLC
DOCKET NO.: 05-00101.001-C-3
PARCEL NO.: 93-21-18-277-025

The parties of record before the Property Tax Appeal Board are One Gregory Place, LLC, the appellant, by attorney Paul J. Reilly of Chicago, Illinois; the Champaign County Board of Review; and Cunningham Township, intervenor, by attorney Frederic M. Grosser of Champaign, Illinois.

The subject property is improved with a four-story mixed-use apartment/retail building containing 70,400 square feet of above-grade building area. The building has 19,400 square feet of first floor retail space and three floors each containing 17,000 square feet of multi-family apartment units. There are a total of 9 commercial units and 96 rentable apartments. There were 45 one-bedroom units that range in size from 361 to 534 square feet and 51 two-bedroom units that contained 500 square feet. The below grade area consists of 24,332 square feet of parking space. The building is of brick veneer and dryvit exterior and was built in 2004. The improvements are constructed on a 30,550 square foot parcel leased from the University of Illinois. The property is located in Urbana, Cunningham Township, Champaign County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a narrative appraisal prepared by Joseph M. Ryan of LaSalle Appraisal Group, Inc. Ryan estimated the subject property had a fee simple market value of $8,000,000 as of January 1, 2005, and a leasehold value of $5,555,000 as of January 1, 2005. In his opening statement the appellant's attorney explained the subject property includes improvements constructed on leased land from the University of Illinois and is to be valued as a leasehold interest pursuant to statute and case law.

The appellant called as its witness real estate appraiser Joseph M. Ryan. Ryan has had the Member of the Appraisal Institute

(Continued on Next Page)

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 **Champaign** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$ 0
IMPR.:	$ 1,844,820
TOTAL:	$ 1,844,820

Subject only to the State multiplier as applicable.

PTAB/SMW/05-00101/12-07

(MAI) designation since 1990 and is also a State Certified General Real Estate Appraiser with the State of Illinois. Ryan began his appraisal career with the Cook County Assessor's office in 1980. He also served as a hearing officer for the Cook County Board of Review. Ryan testified that he has experience with the Cook County Assessor's office valuing leaseholds at O'Hare and Midway Airports as well as the Port Authority. Ryan also testified that he is familiar with the statute that describes leasehold valuation and has read the American Airlines case (Korzen v. American Airlines, Inc., 39 Ill.2d 11, 233 N.E.2d 568, (1968)). He testified that he has also read Department of Revenue guidelines for establishing values on leaseholds. Ryan has conducted 20 to 25 leasehold valuations while in private practice using the formula outlined in American Airlines. He was accepted as an expert in the field of valuation of leasehold estates.

Ryan testified he was familiar with the terms of the subject's land lease which was marked as Exhibit B. The lease identified the landlord as The Board of Trustees of the University of Illinois and the tenant as Gregory Place, LLC. The lease provided for a term of fifty years commencing on June 1, 2003 and ending at midnight on May 31, 2053. Pursuant to the lease the tenant was to prepay rent for the term in the sum of $700,000 in three installments with the final installment due 30 days following the date that the City of Urbana issued the "Final Certificate of Occupancy". The lease set forth the use that the tenant could put the property which included retail and service oriented use on the first floor, residential apartments on the third and fourth floors, and residential apartments and/or offices on the second floor. The lease provides that the tenant, at its own expense, shall construct the improvements on the premises pursuant to plans and specifications approved by the Landlord. The lease also states that at the expiration or other termination of the lease the tenant shall peaceably and quietly quit and surrender to the landlord the premises (including all improvements) in good order and condition.

Ryan stated that on page 9 of his appraisal he set forth the land lease prepayments in the amount of $700,000 and the construction cost of the improvements of $7,400,000 that were completed in 2004. The improvement costs were provided to Ryan by the owner. Ryan testified that he invoked an "extraordinary assumption" when valuing the leasehold interest in the subject property pursuant to the dictates of the Supreme Court of Illinois in Korzen v. American Airlines, Inc., 39 Ill.2d 11, 233 N.E.2d 568, (1968)). He explained that in valuing the leasehold interest he discounted the market rent of the subject property over the remaining term of the lease. The report indicated that the market rent was derived by valuing the fee simple estate to determine what a third party would pay to lease the subject property as a whole.

He noted in the report that the lease expires on May 31, 2053, thus there would be 581 monthly rental payments from the valuation date of January 1, 2005 to the lease termination date. Therefore, the leasehold value of the subject property for assessment purposes would be determined by discounting the market rent over a 581 month term.

Ryan testified that the report was not an appraisal of the fee simple interest or an appraisal of a leased fee. The purpose of the appraisal as stated on page 6 of the report was to estimate the market value of the fee simple estate as of January 1, 2005, and to also determine the leasehold value per the precedent established by American Airlines.

The report indicated the highest and best use of the property as improved was its continued use as an apartment/retail building. In estimating the leasehold value Ryan testified he first estimated the fee simple value of the property. To that value he used an acceptable rate of return, which was the overall capitalization rate, and discounted the monthly rent over the remaining 581 months remaining on the lease.

The three traditional approaches to value were employed to estimate the fee simple value of the property. The first approach developed by Ryan was the cost approach with the initial step being to estimate the value of the land as if vacant. In estimating the land value Ryan used four land sales located in Champaign. The comparables ranged in size from 9,620 to 19,454 square feet of land area. The sales occurred from July 2001 to December 2004 for prices ranging from $305,000 to $700,000 or from $25.10 to $47.41 per square foot of land area. Based on these sales Ryan estimated the subject parcel had a land value of $27.50 per square foot of land area or $840,000.

Ryan utilized replacement cost new using the Marshall and Swift Cost Manual to estimate the cost new of the improvements. He classified the subject as a Class D good quality apartment building with a base cost of $85.07 per square foot. To this base cost he added $1.50 per square foot for the sprinkler system to arrive at an adjusted base cost of $86.57 per square foot. The appraiser also included $7.50 per square foot to account for the garage to arrive at a base cost of $94.07 per square foot of above grade building area. The appraiser also included various multipliers totaling 1.0268 resulting in an adjusted base cost of $96.59 per square foot. Ryan indicated within his report that the retail portion of the subject would have a similar cost per square foot. To this the appraiser added 5.0% for entrepreneurial profit and 2.5% for indirect costs. The total replacement cost new was estimated to be $7,309,931. Ryan noted in the appraisal and his testimony that the reported cost new of the improvements were $7,400,000.

In estimating depreciation the appraiser was of the opinion the subject had an effective age of 1 year and economic life of 50 years resulting in 2.0% physical incurable deterioration or $146,199. Deducting depreciation resulted in a depreciated cost new of $7,163,732. Ryan determined the subject suffered from no external or functional obsolescence. The site improvements were estimated to have a depreciated cost of $25,000. Adding the depreciated cost new of the improvements, site improvements and land value resulted in an estimated value under the cost approach of $8,025,000.

The next approach developed by the appraiser was the sales comparison approach. Under this approach the appraiser used four sales located in Champaign and Urbana. Three comparables were improved exclusively with apartment buildings while one comparable had both apartments and commercial units. Two of the comparables had two buildings while two were improved with one building. The buildings were multi-story and two were of wood frame construction. The comparables ranged in size from 9,662 to 19,281 square feet and contained from 10 to 25 units. These buildings were constructed from 1965 to 1999 and located on parcels that ranged in size from 8,712 to 17,680 square feet. The sales occurred from March 2003 to January 2005 for prices ranging from $950,000 to $2,125,000 or from $75.39 to $151.83 per square foot or from $52,778 to $146,700 per unit. Based on these sales the appellant's appraiser estimated the subject had a value of $75,000 per unit or $7,875,000 and $115.00 per square foot of building area or $8,096,000. Ryan ultimately estimated the subject had an indicated value under the sales comparison approach of $8,000,000.

The final approach to value developed by Ryan was the income approach. In the appraisal Ryan noted the subject property had rental rates for the one-bedroom apartments ranging from $475 to $600 per month or from $1.11 to $1.34 per square foot while the two-bedroom apartments had rentals ranging from $820 to $840 per month or from $1.44 to $1.47 per square foot. In estimating the market rent for the apartments the appraiser utilized five comparable rentals located in Urbana and Champaign. The comparables were constructed from 1980 to 2001 and contained 24 to 96 units. The occupancy rates for the comparables exceeded 95%. The one-bedroom units had rental rates ranging from $1.04 to $1.75 per square foot while the two-bedroom units rental rates ranged from $1.02 to $1.47 per square foot. Using this data the appraiser stabilized rents for the one-bedroom units at $1.33 per square foot with the larger units at $1.12 per square foot. The subject's two-bedroom units were stabilized at $1.46 per square foot.

In estimating the market rent for the subject's retail space the appraiser used four comparables located in Champaign. The comparables had rents ranging from $13.00 to $28.61 per square foot of building area. The appraiser also reported the subject had three retail tenants with rents ranging from $20.00 to $24.74 per square foot of building area. Based on this data the appraiser estimated the subject's perimeter retail space had a market rent of $20.00 per square foot and the interior space of $14.00 per square foot. The appraiser also noted the subject property's 56 parking spaces leased for $800 per year or $66.67 per month. Based on this data the appraiser estimated the subject had a gross potential income of $1,191,592.

The appraiser estimated the subject apartments and garage would have a vacancy and collection loss of 2.5%. The vacancy and collection loss for the retail area was estimated to be 10%. The subject had an estimated effective gross income of $1,134,327. Operating expenses and reserves for replacements were estimated to be 31.60% or $358,295 resulting in a net operating income of $776,032.

The next step was to estimate the capitalization rate for the subject. Using actual and imputed rents for the comparable sales contained in the report had overall rates ranging from 6.3% to 7.5%. The appraiser indicated that Korpacz Real Estate Survey for the first quarter of 2005 had rates ranging from 5.25% to 10.50%. Based on this data the appraiser was of the opinion the appropriate capitalization rate for the subject was 7%. Using the band of investment technique the appraiser estimated a capitalization rate of 7.30%. Correlating these methods the appraiser estimated the appropriate capitalization rate of 7%. To this the appraiser added 2.8% for the effective tax rate resulting in a loaded capitalization rate of 9.8%. Capitalizing the estimated net income resulted in an indicated value using the income approach of $7,925,000.

Correlating the three estimates of value resulted in an estimated value for the subject's fee simple interest of $8,000,000. The appraiser was of the opinion that the $8,000,000 market value would indicate that the owner would expect a 7% return or $560,000 on a triple net basis or $46,667 per month if rented to a third party. Using the Peter J. Korpacz & Associates investor report the appraiser estimated that an institutional investor would require a 10% rate of return. Using a 10% discount rate and 581 monthly rental payments the appraiser determined the present value factor would be 119.03. Multiplying the monthly rental of $46,667 by the discount factor resulted in an estimated value for the leasehold of $5,555,000.

Ryan was of the opinion that when valuing a leasehold the relevant rent to consider is paid at the level of the lease with the exempt entity. He was of the opinion this comported with Illinois Department of Revenue (DOR) guidelines relative to valuing leaseholds. The appraiser referred to Exhibit D, example number 3 as a of the DOR guidelines as support for his technique. In that example in calculating the leasehold value the lease to the operator was examined, not the operator's income derived from the use of the property.

In conclusion Ryan estimated the market value of the subject property in a leasehold estate was $5,555,000 as of January 1, 2005. The appraiser was of the opinion that the disparity between the subject's fee simple market value and the leasehold value is normal due to the partial interest in the property that is being appraised.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $3,254,380 was disclosed. The subject's assessment reflects a market value of approximately $9,799,400 using the 2005 three year median level of assessments for Champaign County of 33.21%. The board of review presented no evidence in support of its assessment of the subject property.

In support of its position the intervenor, Cunningham Township, submitted an appraisal prepared by real estate appraiser Stephen D. Whitsitt estimating the subject property had market value of $9,700,000 as of January 1, 2005. The appraisal was marked as Intervenor's Exhibit No. 1.

The intervenor called as its witness Stephen D. Whitsitt. Whittsitt is an Illinois Certified General Appraiser with the MAI designation. The witness testified he has been an appraiser for 30 years and also teaches appraisal courses at Parkland College.

Under voir dire Whitsitt testified he had limited knowledge with respect to the property tax provisions as they relate to the assessment of leasehold estates. Whitsitt was provided with information from Joanne Chester, Cunningham Township Assessor, that summarized some of the assessment techniques but he did not understand it. He had previously not performed any valuations relative to the statutory prescriptions for leasehold estates. The witness was questioned about a two-page document captioned "State Method of Leasehold Analysis". Whitsitt testified the document came out of his appraisal report; however, the pages could not be located within his appraisal. The document stated the subject property had a value of $9,525,000. Whitsitt acknowledged that his conclusion did not follow the state method to value leaseholds.

In tendering Whitsitt as an expert in real estate appraisal, the intervernor's attorney acknowledged that Mr. Whitsitt did not follow the dictates of American Airlines in valuing the leasehold. Whitsitt was accepted as an expert in real estate appraisal.

Whitsitt stated within his report that the property rights being appraised are the leased fee estate. Intervenor's Exhibit No. 1, page 1. In the appraisal "leased fee estate" is defined as, "An ownership interest held by a landlord with the rights of use and occupancy conveyed by the lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained with the lease." Intervenor's Exhibit No. 1, page 4. Leasehold estate is defined as, "The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions. Intervenor's Exhibit No. 1, page 4. Whitsitt was of the opinion the highest and best use of the subject is its current us as improved.

In estimating the market value of the subject property the intervenor's appraiser developed the three traditional approaches to value. The first approach to value was the cost approach with the initial step being to estimate the value of the land as if vacant using four land sales. The land comparables consisted of the same properties used by Ryan. These properties were located in Champaign and sold for prices ranging from $25.10 to $47.41 per square foot of land area. Based on these sales Whitsitt estimated the subject parcel had a unit value of $38.00 per square foot or $1,160,000.

Whitsitt utilized the calculator method from the Marshall Valuation service to estimate the reproduction cost new of the improvements to be $9,747,344. From this appraiser deducted $496,000 in physical depreciation to arrive at a depreciated improvement value of $9,251,344. To this amount he added $400,000 for the leasehold value to arrive at a value of $9,650,000. The $400,000 leasehold value was calculated by deducting $760,000 leased fee value of the land from the estimated land value of $1,160,000.

In the sales comparison approach Whitsitt used four comparable sales of apartment buildings, with the first comparable being a combination of apartments and office suites, located in Champaign and Urbana that ranged in size from 9,662 to 19,286 square feet with 10 to 25 apartments or office suites. The comparables ranged in age from 4 to 40 years old. The sales occurred from March 2003 to January 2005 for prices ranging from $950,000 to $2,125,000 or from $75.39 to $151.83 per square foot of building area. The appraiser made adjustments for parking, age, quality, and amenities resulting in adjusted prices ranging from $96.78 to

$188.27 per square foot or from $78,111 to $181,908 per unit. The appraiser also noted the comparable sales had gross income multipliers ranging from 8.00 to 8.95. Based on these sales the appraiser estimated the subject property had a value of $165.00 per square foot of $11,600,000 or $100,000 per unit or $13,500,000. Based on these estimates the appraiser determined the subject property had an indicated value of $12,000,000. The appraiser then deducted the site value of $1,160,000 and added a leasehold land value of $400,000 to arrive at an indicated value of $11,240,000.

The final estimate of value used by the intervenor's appraiser was the income approach to value. In developing the subject's market rent the appraiser used a combination of commercial comparables and apartment comparables located in Champaign. Based on the commercial property comparables the appraiser estimate the subject's 19,400 square feet of retail space had a market rent of $20.00 per square foot resulting in a potential gross income of $388,000. Whittsitt estimated the subject apartments would have market rents ranging from $650 to $850 per month resulting in a potential gross income for the apartments of $874,600. To this the appraiser added ancillary income for 37 parking spaces of $22,200 using a rental of $50.00 per month. Based on these estimates the appraiser determined the subject had a potential gross income of $1,285,000. Because the retail space in the subject was partially occupied, the appraiser opted to use the discounted cash flow technique and estimated the subject had a value of $8,950,000. The appraiser using the comparable sales estimated the subject would have a gross income multiplier of 8.6 resulting in an estimated value of $11,050,000. Using these two estimates the appraiser was of the opinion the subject had an indicated value by the income approach of $9,700,000.

Whittsitt's appraisal also contained a leased fee value analysis reviewing the fifty year land lease for the subject parcel. He concluded that the leased fee value of the land lease and reversion over a 48 year period of time was $760,000.

Under direct examination Whittsitt testified that developers typically want a ten percent return or higher to recognize their contribution to the property and risk.

Under cross-examination the appraiser acknowledged that at page 1 of his report it states, "The property rights being appraised are the leased fee estate." However, the witness asserted the leasehold value was the property rights appraised.

The witness also testified that in an investment of the size of the subject potential investors would prefer using the discounted cash flow analysis rather than a gross income multiplier technique. He acknowledged that he arrived at an estimate of value using the discounted cash flow analysis of $8,950,000 but opted to estimate the subject had an indicated value under the income approach of $9,700,000. The intervernor's appraiser also acknowledged that he estimated a reproduction cost new for the improvements of $9,747,344. He also recalled Ryan's testimony that the owner's costs were reported to be $7.4 million. Whittsitt testified he met with the owners who were not willing to share most of the information on the building but could not recall if cost was one of the questions he asked. The appraiser also acknowledged his estimate of cost new included the contributory value of the personal property such as appliances and furniture. The total for the appliances and furniture in the cost summary was $290,100. The witness agreed that he did not have an opinion of value of the leasehold estate as set forth under Illinois law. (Transcript pages 67-68.)

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessed valuation.

The appellant contends the subject's assessment is not reflective of its market value. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Additionally, the Property Tax Code provides that each taxable leasehold estate shall be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145(b)). 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). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds there was no dispute that the subject property should be assessed as a leasehold. Section 9-195 of the Property Tax Code provides in part that:

> (a) Except as provided in Section 15-35, 15-55, 15-100, and 15-103, when property is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate and appurtenances shall be listed as the property of the lessee, thereof, or his or her assignee. . . .

35 ILCS 200/9-195. Furthermore, the Property Tax Code provides that each taxable leasehold estate shall be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145(b)).

The fair cash value of a leasehold is its rental value in the market, the amount a willing lessee will pay a willing lessor, in a voluntary transaction, for the right to use and occupy the premises. Korzen v. American Airlines, Inc., 39 Ill.2d.11, 18, 233 N.E.2d 568, 572 (1968). The Supreme Court of Illinois in American Airlines set forth the mathematical formula to be used in calculating the value of a leasehold for real estate assessment purposes by stating that:

> The present value of the current market rental payable in the future, which is the fair cash value of the leasehold, can be determined by multiplying the current market rental of a leasehold by the present value of an annual payment of one dollar for the unexpired term of the lease.

American Airlines, 39 Ill.2d at 19, 233 N.E.2d at 573. In comparing the two appraisals submitted in this appeal, the Property Tax Appeal Board finds the method used by the appellant's appraiser more closely followed the dictates or American Airlines in calculating the leasehold value for assessment purposes. In summary the appellant's appraiser estimated the subject's market rent by valuing the fee simple estate to determine what a third party would pay to lease the subject property as a whole. The appraiser determined the subject's lease expires on May 31, 2053, thus there are 581 monthly rental payments from the valuation date of January 1, 2005 to the lease termination date. The appraiser then calculated the leasehold value of the subject property for assessment purposes by discounting the market rent over the 581 month term. Ryan ultimately estimated the subject had a leasehold value as of January 1, 2005 of $5,555,000.

By contrast Whittsitt testified he did not follow the prescribed method to value leaseholds for assessment purposes. Furthermore, the intervernor's attorney admitted that Mr. Whitsitt did not follow the dictates of American Airlines in valuing the leasehold. (Transcript page 49.) For these reasons the Property Tax Appeal Board gives no weight to the conclusion of value contained in Whittsitt's appraisal.

In conclusion, the Property Tax Appeal Board finds the subject property had a leasehold value of $5,555,000 as of January 1, 2005. Since the market value of the leasehold has been determined the 2005 three year median level of assessments for Champaign County of 33.21% shall apply.

DOCKET NO. 05-00101.001-C-3

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

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 21, 2007

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.