

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Peter Nicol
DOCKET NO.: 06-00201.001-C-1
PARCEL NO.: 13-11-327-012

The parties of record before the Property Tax Appeal Board are Peter Nicol, the appellant, by attorney Clyde B. Hendricks of Peoria and the Peoria County Board of Review.

The subject parcel has been improved with a one-story block, brick and frame fast food restaurant known as Culver's consisting of 4,496 square feet of building area. The building was constructed in 2005 and is located in Peoria Township.

The appellant through counsel appeared before the Property Tax Appeal Board contending a lack of uniformity in the assessment process as the basis of the appeal, disputing only the subject's improvement assessment. In support of this inequity argument, the appellant presented an assessment analysis prepared by Vivian E. Hagaman.

Hagaman testified she was hired to do a search as an appraiser and prepared most of the evidentiary material presented in the appeal. Hagaman has 10 years of appraisal experience in commercial and residential properties along with an Associate Real Estate Appraiser license from the State of Illinois. Hagaman testified she spoke with the township assessor and determined the cost approach was used in calculating the subject's assessment and therefore she based her analysis upon the cost approach.

In performing her analysis, Hagaman looked at the property record cards for each comparable and examined the condition, desirability, and utility (CDU) notation as set forth by the township assessor along with the grade. Hagaman prepared an assessment analysis using seven equity comparables which she found to be the most similar. She indicated in her written materials that she adjusted the equity comparables in relation to the subject for grade "as prescribed by the most current Illinois Property Manual (2002)" as well as for CDU. Her materials also contained copies of the property record cards for the subject and comparables from the township assessor's Computer Assisted Mass

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

LAND:	\$	163,920
IMPR.:	\$	217,157
TOTAL:	\$	381,077

Subject only to the State multiplier as applicable.

Appraisal (CAMA) system along with color photographs of the subject and comparables.

Her analysis indicated the subject improvement had an estimated fair market value as reflected by its assessment of \$153.86 per square foot of building area.¹ Hagaman's chart indicated the comparables ranged in size from 4,381 to 7,605 square feet of building area for an average of 5,621 square feet of building area. Hagaman's analysis indicated the comparables were constructed from 1968 to 2003 for an average of 1993. Using a 95% CDU for the subject, Hagaman reported the comparables had CDUs ranging from 60% to 95% for an average of 75%. The comparables had grades ranging from A to C+05 for an average of A-05. She indicated the comparables had improvement assessments reflecting estimated market values ranging from \$50.48 to \$106.75 per square foot of building area and an average market value of \$78.92 per square foot for the building only. The witness indicated the comparables had grade adjustments ranging from \$57.89 to \$117.42 per square foot of building area for a weighted average of \$86.81 per square foot of building area. The witness indicated the comparables had CDU adjustment values ranging from \$92.73 to \$128.21 for a weighted average of \$109.96 per square foot. Based on this analysis, the appellant requested the subject's improvement assessment be reduced to \$36.67 per square foot of building area, reflecting a market value of \$110.00 per square foot of building area, or \$494,560 for the improvement.

On questioning by the Hearing Officer, Hagaman admitted that she made no age or size adjustment in her analysis. Hagaman further contended that the exterior construction of the comparables was similar to the subject.

Under cross examination by the board of review, Hagaman testified she did not prepare an appraisal in this matter.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$394,510 was disclosed. The subject had an improvement assessment of \$230,590 or \$51.29 per square foot. To demonstrate the subject was equitably assessed, the board of review submitted description and assessment information on three comparables in a grid analysis format along with copies of the applicable property record cards for the subject and comparables. The comparables were said to be similar to the subject in location, design, use, size, and age. In particular, the board noted its comparable 1 was also a Culver's property like the subject. From the grid analysis, the comparables were all one-story commercial buildings used for fast food purposes. The comparables ranged in size from 3,581 to 4,555 square feet of building area and were of concrete block and frame construction. The buildings ranged in age from 2 to 5 years old and were located either 2 blocks or 4.5 miles from the subject property. The comparable properties had improvement

¹ Improvement assessment of \$230,590 ÷ 4,496 sq. ft. = \$51.287 x 3 = \$153.86 rounded.

assessments ranging from \$177,530 to \$215,440 or from \$47.27 to \$49.58 per square foot of building area. The subject had an improvement assessment of \$230,590 or \$51.29 per square foot of building area.

The board of review also presented data in its grid analysis that the subject property sold in September 2006 for \$1,557,948 or \$346.52 per square foot of building area including land. No further information on the sale was provided by the board of review. The sale price was not noted on the property record card for the subject property.

In response to the appellant's data, the board of review criticized the appellant's comparables for lack of similarity in use, size, location, and that the burden of proof of clear and convincing evidence had not been established as to appellant's appeal. Based on this evidence, the board of review requested confirmation of the subject's assessment.

On cross-examination, appellant's counsel confirmed that only the improvement assessment was at issue. As such, the appellant's counsel asserted that location of the comparables is irrelevant to the analysis in this proceeding given the use of the cost approach in valuing the improvements.

Moreover, counsel for appellant indicated the sale of the subject property, in which he was involved as counsel, occurred between two limited liability companies with similar partners in both entities. As a result of this, counsel for appellant did not consider the transaction to be an arm's-length sale.

The Hearing Officer requested a copy of the transfer declaration involving the sale of the subject. The board of review provided a copy of the Illinois Real Estate Transfer Declaration Supplemental Form A (PTAX-203-A) related to the sale of the subject. As to question #8 on the form "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 was marked "yes." No further evidence of the nature of the transaction was presented by either party.

In a written rebuttal previously filed in this matter, appellant's counsel criticized each of the comparables presented by the board of review. As to comparable #1, counsel noted this property is currently pending on appeal before the Property Tax Appeal Board (Docket No. 06-00202.001-C-1). As to comparable #2, it was contended the size was substantially smaller than the subject and the use of the property differed as a full-service restaurant. As to comparable #3, it was noted this property was also smaller and should have its assessment reviewed due to age, size, and CDU.

In surrebuttal at hearing, the board of review noted the appellant's chosen comparables to establish inequity were admittedly mostly full-service restaurants, unlike the subject,

and therefore the rebuttal criticism of the board of review's evidence was arguably undeserved in this matter.

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 appellant contends assessment inequity in the improvement assessment as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 544 N.E.2d 762, 136 Ill. Dec. 76 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data submitted by the parties, the Board finds a reduction to the subject's improvement assessment is warranted.

Initially, the Board gives little weight to Hagaman's analysis and conclusion. The Board finds Hagaman's analysis was based on general subjective characteristics of the buildings of grade and CDU with virtually no other considerations. The Board finds the type of analysis does not adequately consider the physical characteristics of the individual buildings such as age, size, type of construction, proximate location, and features to make a meaningful analysis of the similarity of the comparable properties to the subject property.

As stated by the Supreme Court of Illinois in Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 544 N.E.2d 762, 136 Ill.Dec. 76 (1989):

[T]he cornerstone of uniformity is the fair cash value of the property in question. . .

Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d at 21, 544 N.E.2d at 772. In this appeal the appellant failed to demonstrate the comparables and the subject had similar fair cash values, but were assessed at substantially lesser or greater proportions of their fair cash values.

In the absence of evidence demonstrating the comparables and the subject have similar fair cash values, the Property Tax Appeal Board will examine the physical characteristics of the subject and the comparables to determine if the buildings are sufficiently similar necessitating similar assessments. A review of the properties disclosed that those most similar comparables to the subject in terms of age, size and construction included the appellant's comparables 1, 3, and 4 and comparables 1, 2, and 3 submitted by the board of review. These comparables were one story buildings of brick and frame, block and frame, and/or concrete block construction that ranged in size from 3,581 to 4,893 square feet of building area. The buildings were constructed from 1996 to 2004.

As aptly noted by the board of review, its comparable 1 is also a Culver's property which was built in 2002 as compared to the subject's construction in 2005, but nearly the same size as the subject. However, as noted by the appellant, board of review comparable 1 was under appeal also.

Simultaneous with this decision, the Property Tax Appeal Board has rendered a decision in Docket No. 06-00202.001-C-1 concerning board of review comparable 1. In summary, the Board found based upon the record evidence that the assessment of board of review comparable 1 in this matter was correct. This factual situation of comparing the subject property to a property which is also pending appeal is therefore distinguishable from the Illinois Appellate Court's decision in Pace Realty Group, Inc. v. Property Tax Appeal Board, 306 Ill. App. 3d 718, 713 N.E.2d 1249 (2nd Dist. 1999).

The subject has an improvement assessment of \$51.29 per square foot of building area. Board of review comparable 1 (on appeal in Docket No. 06-00202.001-C-1) has an improvement assessment of \$47.30 per square foot of building area. The six most similar comparable properties on this record had improvement assessments that ranged from \$20.77 to \$49.58 per square foot of building area. The subject has an improvement assessment of \$51.29 per square foot of building area which falls above the range established by the most similar comparables contained in this record. Thus, the Board is not finding board of review's comparable 1 to be self-validating for the instant appeal. Instead, the Property Tax Appeal Board finds the assessment of board of review comparable 1 supports a reduction in the subject's improvement assessment and based on this data finds a reduction in the subject's improvement assessment is justified.

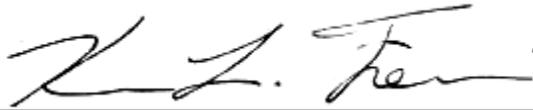
Lastly, the sale of the subject property should be addressed. The Illinois Supreme Court has held that a contemporaneous sale of the subject property between parties dealing at arm's length is relevant to the question of fair market value. People ex rel. Korzen v. Belt Ry. Co. of Chicago, 37 Ill. 2d 158, 161, 226 N.E.2d 265, 267 (1967). "However, the sale price of property does not necessarily establish its value without further information on the relationship of the buyer and seller and other circumstances." Residential Real Estate, 188 Ill. App. 3d 232, 242, 543 N.E.2d 1358, 1364. The record is unclear in this matter whether these were parties dealing at arm's length and/or what the relationship, if any, was between the buyer and seller entities. In light of this, the Board finds that no weight should be given to the sale price of the subject property in determining the instant appeal.

For the foregoing reasons, the Property Tax Appeal Board finds that the subject's assessment as established by the board of review is incorrect and a reduction 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.



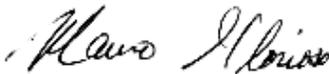
Chairman



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: March 20, 2009



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.