FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: H & N Adams, LLC Ser. A
DOCKET NO.: 07-02125.001-C-1
PARCEL NO.: 05-31-281-002

The parties of record before the Property Tax Appeal Board are H & N Adams, LLC Ser. A, the appellant, by attorneys Michael Jon Shalbrack and Amanda J. Adams, of Holmstrom & Kennedy P.C. in Rockford, and the Ogle County Board of Review by Special Assistant State's Attorney James A. Rodriguez of Guyer & Enichen P.C. in Rockford.

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

LAND:	$31,638
IMPR.:	$101,402
TOTAL:	$133,040

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 10,706 square foot parcel improved with a two-story, masonry-constructed multi-tenant office building that was built in 1994. The building contains 5,600 square feet of above grade building area and features a full 2,800 square foot finished basement. Each tenant has a water heater, gas fired forced hot air furnace, and central air conditioning units along with a restroom, a water closet and lavatory. For electric service, each tenant is individually metered. The site also has a 6,400 square foot asphalt parking lot with parking spaces[1] and lighting along with "average landscaping." The subject property is located in Byron, Byron Township, Ogle County.

[1] The appellant's appraiser testified that the subject actually had only 7 parking spaces and the report was in error having included parking spaces contained on an adjacent parcel which is not the subject matter of this appeal. (Transcript p. 88)

PTAB/cck/2-11

A consolidated hearing was held on Docket Nos. 07-02125.001-C-1 and 07-02126.001-C-1, but at the request of the appellant's counsel, separate decisions will be rendered on each matter.

A. Pleadings/Pre-Hearing Order(s)

As a preliminary matter, previous rulings in this matter will be summarized to clarify some matters that arose in testimony at the hearing regarding a 'revised' appraisal. By letter dated October 5, 2009, a Hearing Officer of the Property Tax Appeal Board ruled upon the Ogle County Board of Review's objection to certain portions of the appellant's rebuttal evidence along with the appellant's response thereto. In summary, on April 2, 2009 the appellant filed rebuttal evidence containing a Memoranda of Law responding to evidence submitted by the Ogle County Board of Review; a revised appraisal with additional comparable properties; TIF information (Exhibit 2); and additional sales comparables (Exhibit 3). In addition, appellant's legal counsel in the accompanying cover letter requested ". . . the opportunity to submit additional information to PTAB as it becomes available prior to the date of the hearing."

With citation to the Official Rules of the Property Tax Appeal Board, the Hearing Officer determined that: the 'revised' appraisal was deemed stricken in the appeal; likewise, the additional sales comparables (Ex. 3) were deemed stricken; and appellant's request to submit additional evidence as it becomes available prior to hearing was denied as the filing period for submission of written evidence had closed without a specific request for a further extension of time to submit evidence. [See letter dated October 5, 2009]

On October 8, 2009, appellant's counsel submitted a reconsideration request. Although given an opportunity to do so, no response was filed by the Ogle County Board of Review. As set forth in a letter dated November 19, 2009, the Hearing Officer denied the reconsideration request.

B. Merits

The appellant appeared before the Property Tax Appeal Board through counsel claiming overvaluation of the subject property as the basis of the appeal. In support of this argument, the appellant submitted an appraisal of the subject property with an effective date of January 1, 2007.

The appraiser, Daniel P. Currier, was present at the hearing and provided testimony regarding the report. Currier has been an appraiser for approximately 18 years and is employed by John P. Hill & Associates, Ltd. which has offices in Freeport, Rockford and Madison, Wisconsin. Currier is a licensed appraiser in the states of Illinois and Indiana and has an appraisal license application pending in Wisconsin. Currier estimated he has performed from 120 to 200 office building appraisals.

Currier also testified that in performing appraisals, the standard procedure is that he inspects the subject property, takes measurements, and collects comparables and related data. Then his supervisor, John P. Hill, MAI, is given Currier's report. At that time, Hill reviews the comparables, and looks at the value, capitalization rates, adjustments and other matters. Corrections are then made and the report is delivered to the client. (TR 16-17)[2]

He also testified that in the past his report on a new appraisal project would begin with another similar property, making adjustment to that previous report. In this particular project, Currier used another office building in Byron as a base document and he has since discovered that some necessary changes to the document were not made. Therefore, he acknowledges that there are descriptions and other references in this report that should have been corrected. Currier further testified that those descriptive corrections did not affect his final opinion of the value for the subject property.

As set forth in the summary appraisal report prepared by Currier and signed by both Currier and Hill, all three traditional approaches in estimating both a Leased Fee[3] and Fee Simple market value for the subject property were utilized. The intended use of the report was to assist the client, Mr. Harry Adams of H&N Adams, LLC, with asset valuation for real estate tax appeal purposes. (Appraisal p. 2 & 3) "The Income Capitalization and Cost Approaches to Value were developed for the Fee Simple Value with the Sales Comparison and Income Capitalization Approaches developed for the Leased Fee Value." (Appraisal, p. 2) The subject was estimated to have a Fee Simple Value of $385,000 as of January 1, 2007 and a Leased Fee Value of $380,000.

In the report, Currier described the subject building as located in central Byron, west of the downtown business district with frontage on Blackhawk Drive which is also Route 2, a developed commercial area of the community. While Currier does not reside in Byron, he has performed both commercial and residential appraisals in Byron before. He further acknowledged that he is much more familiar with Rockford where he has done many more appraisals. Page 4 of the report discusses the Byron economy. At hearing, Currier testified that in 2007 Walgreen's was looking at coming to Byron and Family Video had opened a location in Byron that year. However, as a rural community, the demand for commercial office buildings is not as great as in a larger

[2] References to pages of the transcript are denoted "TR" followed by page number citation(s).

[3] The report defined a Leased Fee Estate as "an ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease. [citation omitted]" (Appraisal, p. 2)

metropolitan area like Rockford. To the appraiser's knowledge, the Walgreen's project never came to fruition in Byron.

The appraiser also noted the subject property was located adjacent and to the west of a tax increment financing (TIF) district.

In the report, Currier asserted the building has 5,194 square feet of above grade area with 2,609 square feet of lower level area for a total gross area of 7,803 square feet. (Appraisal, p. 6)

At hearing, Currier testified the subject contains 5,254 square feet of building area. (TR 22) The appraiser further reported net rentable area (including lower level space) of 5,750 square feet which was occupied by four businesses known as By the Book, Rock Valley Publishing, Country Companies, and A.O. Smith E.P.C. While Whitehead Realtors occupied 1,000 square feet as of January 1, 2007, that tenant moved out of the building in April 2007. Thus, with 2,600 square feet of office area currently available for lease, the appraiser determined the subject building had an occupancy level of 55%, with 45% vacant and available.

While on page 6 of the appraisal report, Currier stated the property has 22 parking spaces, at the hearing he testified there were approximately 7 parking spaces on the parcel. (TR 22)

The highest and best use of the subject property was assumed to be continued multi-tenant office use. On page 9 of the report, Currier opined an exposure time for the subject property of 6 to 12 months. The report specifies that this is an "unsupported opinion" as there are no other properties having similar location, design, size, or competitive characteristics that have recently sold or are currently leased.

Under the cost approach, to determine a value for the subject site under a fee simple value analysis, the appraiser examined five land sales and two listings. The appraiser testified he seeks land sales as close in time as possible, namely, within 2 to 3 years of the valuation date which is easy to do in larger metropolitan areas. When there are fewer sales in a smaller community, Currier testified he seeks older sales and/or sales in similar communities such as Dixon. In this report, three sales were located in Dixon, two sales were in Byron, and two listings were in Oregon. The comparables range in size from 17,424 to 81,893 square feet. The five sales occurred between August 1999 and May 2007 for prices ranging from $300,000 to $950,000 or from $7.49 to $11.77 per square foot of land area. The listings were for $119,900 and $395,000 or $6.88 and $9.07 per square foot of land area. Land Sale #4 was an assemblage of three properties for the Byron Post Office. These lots also contained two houses and a storage building, so the appraiser added $30,000 representing the demolition costs to arrive at the adjusted sale price of $405,000 or $11.77 per square foot. Sales #2 and #3 in Dixon were outlots of Wal-Mart. On page 21, Currier set forth percentage adjustments to the land sale comparables for differences to the subject in location, size, traffic count, and corner/visibility; for the listings, the appraiser adjusted for date of sale. The appraiser determined adjusted sale prices ranging from $7.12 to $12.36 per square foot of land area. Currier also noted that Land Sale #5 was given greatest weight due to its location and date of sale. Based on this data, Currier opined the subject site, as if vacant, had a value of $9.50 per square foot, or $102,000, rounded.

Using the Marshall and Swift Cost Manuals, Section 15, Page 17, average quality construction under the cost approach, Currier calculated the subject's improvements had a reproduction cost of $755,900 which included an entrepreneurial incentive of 10%. This value took into consideration 5,194 square feet above grade and 2,609 square feet of basement area. The appraiser further estimated $25,692 for asphalt paving and other site improvements which again included a 10% entrepreneurial profit.

The appraiser next estimated the subject has a building life of 40 to 45 years and an effective age of 10 years. Using the straight line or age/life method, the appraiser estimated the subject improvement suffered physical depreciation of 22% or $166,298 and the site improvements have suffered physical depreciation of 25% or $6,423. The appraiser concluded there was no functional obsolescence. However, the appraiser determined substantial external obsolescence exits because "this property is located in a commercial area of a rural community with only moderate traffic, and average exposure." (Appraisal, p. 23; TR 34-35) Therefore, Currier concluded the subject improvement suffers from external obsolescence of 40% or $302,360 and likewise the site improvements suffer from 40% or $10,277 in external obsolescence. After subtracting the depreciation figures and adding back the land value of $102,000, Currier estimated a value for the subject by the cost approach of $400,000, rounded.

In reviewing the report, Currier acknowledged it may in hindsight have been appropriate to reduce the external obsolescence and apply some amount of functional obsolescence for the lack of an elevator which limits access to the lower level of the building.

Under the sales comparison approach used to determine a Leased Fee Value for the subject, the appraiser examined sales of six comparable properties. Two of the comparables were located in Dixon and the others were each located in Byron, Rockford, Sterling and Freeport. Currier testified that he tried to find comparable sales in Byron and failing that he chose the most comparable properties available. He further testified that Sale #4 from Rockford was not in the primary office area of the city, but rather a secondary location. The comparables utilized are situated on sites that range in size from 7,905 to 75,794 square feet of land area. They are improved with one, two-story and five, one-story frame, masonry, frame and masonry, or masonry and steel office buildings. Two of the comparables have full finished basements. The buildings range in size from 1,332 to 10,000 square feet of building area. Sale #2 is a single tenant building and the other five comparables are multi-tenant buildings. The structures were built between 1950 and 1997; one building that was built in 1962 was said to have been renovated in 1992. On page 39 of the appraisal, Currier reported these six comparables had effective ages ranging from 5 to 10 years old. Sales #1 and #2 have 35 and 20 parking spaces each, respectively. Currier described the property rights conveyed in five of the sales as "leased fee" with four arm's-length transactions and one distressed as it sold at auction. The properties sold between June 2003 and September 2007 for prices ranging from $123,000 to $880,000 or from $52.43 to $222.33 per square foot of building area including land. Currier testified that Sale #3, located in Byron, was located in a TIF district and the $725,000 sale price was adjusted downward by $50,000 for personal property. He further noted that no other property sold for a similar price; in fact, this price was "comparable to a very nice office building in the Rockford metropolitan area."

In the grid analysis on page 39 of the report, Currier made various adjustments to the comparable sales for conditions of sale, location/linkages, land to building ratio, building size, lower level, condition/quality, effective age, leases and sprinkler. Currier testified that, "If the property is leased fee of course that is typically more desirable in a market than a building that is completely vacant or just on a fee simple basis." (TR 47) The appraiser found comparable Sales #3, #5 and #6 were given greatest weight due to their size and Sales #1, #2, #3 and #4 due to their date of sale. After adjustments, the comparables had adjusted sales prices ranging from $60.26 to $211.21 per square foot of building area including land. Based on these adjusted comparable sales, Currier determined an estimated value for the subject of $77.00 or, based on 5,194 square feet of building area, an indicated leased fee value under the sales comparison approach of $400,000, rounded.

Under the income approach, the appraiser performed two separate analyses. In the market rental analysis, Currier examined four lease rates and one lease offering of properties located in Dixon and Byron. The offering and Rental #2 were located in the same building in Dixon. The three rentals in Byron were all in the same building which is owned by the appellant. The five comparables were described as containing 1,000, 2,000 or 3,500 square feet each. Rental Listing #1 and Rental #2 had modified gross leases of $14.00 and $13.00 per square foot, respectively. Rentals #3, #4 and #5 had net leases of $9.00 or $12.00 per square foot. The four rentals had leases ranging from 2 to 10 years, three of which commenced between May 2007 and January 2008. Each of the three Byron rentals had escalation clauses of 2% per year or, in the case of Rental #3, 3% per year commencing at the 4th year of the lease. Analyzing these rental comparables and the rental offering, Currier adjusted the properties for type of lease, date of lease, location, size, and condition in comparison to the subject and concluded an adjusted rental range of $10.45 to $12.60 per square foot on a net rental basis. (Appraisal, p. 49-50; TR 56) Based on analysis of the foregoing data, the appraiser estimated a market rental rate of $12.25 per square foot for above-grade units of 900 to 1,000 square feet and a 20% lower rate for inferior location of lower level rental units of $9.80 per square foot of rental area. (Appraisal, p. 50; TR 56-57)

The appraiser next developed a three-year discounted cash flow analysis of the net operating income at a market derived rate, and an overall capitalization rate through the band of investment technique to develop a value for the Leased Fee Interest of the subject property at $375,000, rounded. (Appraisal, p. 57-63)

Next, the appraiser performed a Lease By Lease analysis. In this process, he summarized the five current leases for the subject property. The current leases consumed 4,150 square feet of the building. The appraiser also reported that 2,600 square feet consisting of three tenant spaces was vacant. These figures of occupied and unoccupied space total 6,750 square feet, although Currier previously described the subject building as containing 5,750 square feet of rentable area. (Appraisal, p. 56) He also testified the building had 5,254 square feet of above ground area with a 2,609 square foot basement. Each of the five leases was said to be a modified gross lease. Two were renewed annually; one was a 3-year lease that ended March 31, 2007 and one was a 1-year lease that ended March 31, 2007. The fifth lease had been for two years which ended November 30, 2002 and was now month-to-month. The five units ranged in size from 250 to 1,000 square feet of rentable area and with annual rents ranging from $2,400 to $10,560 or from $6.67 to $10.56 per square foot. On page 56 of the report, Currier projected the subject's gross income based on the actual lease terms for three years "with the space rolled over at market levels as the leases expire." There is no indication that that appraiser used this analysis to determine any value conclusion for the subject.

Currier also developed a one year Static Analysis to estimate the Fee Simple Market Value of the subject property (Appraisal, p. 64). After applying the market rates for above-ground and lower level rents to the subject's 5,750 square feet, the appraiser determined a net rent for the subject of $66,150, which was reduced by 15%, or $9,923, for vacancy and collection loss. Currier reported that vacancy in the Byron area is 0% to 25%, meaning 15% was a reasonable stabilized annualized vacancy rate for the subject. While the property had a 45% vacancy level, Currier reported that 1,000 square feet was only recently vacated and could be rented. (Appraisal, p. 61) From the effective gross income of $56,227, Currier analyzed 2005 and 2006 income and expense data for the subject and made projections based upon it along with referring to comparable data in the marketplace. (Id.) This resulted in a deduction of 17.24% for operating expenses for a net operating income of $46,533.

Next, the appraiser deducted leasing commissions of $1,687 and tenant improvements of $1,500[4] for an "adjusted net income" of $43,346. The appraiser than applied an overall capitalization rate of 11.41%, which was described on pages 57-61 of the report by finding an 8.75% rate for the Fee Simple value analysis with an additional 2.66% for Real Estate taxes. (TR 59-61) Currier testified that upon further review, he still maintains this was an appropriate capitalization rate. This analysis resulted in an indicated fee simple value for the subject by the income approach of $380,000, rounded.

In his reconciliation and final value estimate as set forth on page 65, Currier determined a fee simple value for the subject property under both the cost and income approaches to value. The appraiser gave greatest weight to the income approach as it "reflects the high vacancy that has occurred over the years, with this property." (Appraisal, p. 65) He also noted that the sales comparison approach included sales from primarily much larger markets and as a result, the approach was given secondary weight as was the cost approach. Currier reconciled the differing findings and opined the subject had a fee simple value of $385,000 as of January 1, 2007.

On cross-examination by the board of review's counsel, Currier acknowledged that upon review of his report he discovered various errors including the description of the location of the subject property in relation to an east/west road, other roadways, and that the subject does not share parking. Currier contends those errors do not impact the final value conclusion.

As to development of the cost approach, Currier testified that he was not aware at the time he did his research for this report that there were at least three 2006 land sales in Byron. He concedes those sales would have been helpful in his analysis along with some other sales outside of Byron which he used in his report. Currier also addressed his depreciation calculation and described external obsolescence as containing many factors, including location (the community that the property is in):

> . . . you have a building in Rockford and you have the exact same building constructed in Byron. Typical buyer probably would not pay the same amount for that building in Byron as what they would for the one in Rockford. It has to do with location. So that becomes an external obsolescence or an external adjustment. (TR 73-74)

Currier further explained that the Marshall & Swift publication did not have a local multiplier for Byron, but the closest one in proximity was Rockford. Therefore, Currier made a subjective estimate of depreciation for the Byron market of 40% for location

[4] Currier testified that tenant improvements concern repainting, wall repair, and/or new flooring after a tenant moves out. (TR 58)

and the specific features of the Byron market. Given statements on pages 5 and 6 of the appraisal concerning the lack of adverse economic, social or governmental influences in Byron and the good access to major roadways to continue to support multi-tenant office uses, Currier admits that there is some inconsistency with his finding of 40% external obsolescence. Currier further asserted he would adjust his discussion of Byron before he would alter his external obsolescence determination although he conceded he might adjust it from 40%.

Under the sales comparison approach, Currier acknowledged that five of the six sales listed were leased fee sales, meaning the sales were encumbered by a lease although he further admits the purpose of the instant appeal hearing is to determine the fee simple, unencumbered market value of the subject property. The appraiser asserted that while a leased fee sale is not a true indicator of fee simple, unencumbered market value, an appraiser can adjust for it. For purposes of this appraisal, however, in the sales comparison approach Currier did not determine a fee simple value. A fee simple value would have been lower because Currier would have made 10% downward adjustments to leased fee sales to arrive at a fee simple value. While the page 39 grid asserted these were market leases, Currier acknowledges that there was no data in the report to confirm or deny these purported market rate leases. At the time that the data was developed, Currier was not aware of any other similar sales in Byron beside Sale #3, although he has since learned of additional sales from 2006 and 2007 in Byron which would have been helpful in developing a value for the subject.

The appraiser testified that Sale #1 in Dixon was determined to be a superior location or the property was located in a superior location as compared to the subject in Byron resulting in a 20% downward adjustment; factors considered for this subjective determination were overall economic(s), the size of the community and similar items. (TR 81-82) Currier did not consider the existence of the Byron Nuclear Power Plant in his determination regarding the desirability of Byron nor did he consider the school district in relation to this commercial property. While Sale #1 was a distressed sale and preferably would not be used, but in markets with a limited number of sales distressed sales may be used an adjusted accordingly. Although Currier testified that he did not determine how much parking Sale #1 had as compared to the subject, on page 26 he reported Sale #1 had 35+ parking places. (Appraisal p. 26; TR 87)

Sale #2 was admittedly surrounded by residential properties and had somewhat limited access, but according to Currier appropriately had a 20% downward adjustment since these issues were not as critical for an office building as for a commercial building such as a grocery or fast food restaurant.

As to Sale #3 located in Byron, Currier did not deduct any value for the residence and/or lot that was sold as part of the transaction which admittedly should have been deducted.

Sale #4 in Rockford was located in a less high volume commercial area; it is a less desirable commercial area, but still necessitated a 30% reduction for location. In comparison to Sale #4, the subject is located in a heavier commercial area of Byron, although office buildings do not require the heavy commercial traffic like a retail building would. Currier conceded, however, that he did not examine traffic counts for Sale #4, although desirability/traffic counts would be a factor or a consideration. Currier also testified that Sale #4 was deemed to have an effective age of 8 years; if he learned Sale #4 had an older actual age, it would not change his 2% downward adjustment based on the determined effective age of the property.

The 20% downward location adjustment for Sale #5 in Sterling was based on population, economic development and economic factors of Sterling; as such, Sterling was deemed to be a more desirable location than Byron by the appraiser. Currier obtained the stated building size data for Sale #5 from an appraisal performed previously by his firm, however, he acknowledged that if the size were smaller, it would impact his per-square-foot value by increasing it.

For Sale #6 which occurred in June 2003, the property is in a mixed residential/commercial area and not located in a major commercial area in Freeport. Furthermore, the appraiser found that, although it was a more desirable location than Byron, it needed a 20% downward location adjustment. Currier also characterized Freeport's economy as of January 2007 as fairly good and growing. Currier cited one company that was laying off workers and one that was "still going strong," but could cite no other examples of the economy in Freeport at that time. While the date of sale is older than desired, the appraiser testified that Sale #6 was deemed appropriate due to its lower level finished area, although he made no adjustment for the date of sale.

As to the rentals considered in the income approach and summarized on page 50, Currier made downward adjustments to Listing #1 and Rental #2 due to their location in Dixon as compared to the subject. He further noted a downward adjustment was made to Rental #2 because the lease commenced in July 2007 whereas the valuation date is January 2007. While Rentals #3, #4 and #5 were located in Byron and owned by the appellant, Currier testified that he sought out other comparables in Byron, but could find none in the sources that his firm uses. He also acknowledged that these three comparables were in a building that was constructed in 2007 so that the leases were not in place as of January 1, 2007. While no adjustment was made for this difference, Currier now acknowledges that a downward adjustment should have been made. Currier testified that these three Byron rentals are a good indication of the market; he further noted that if there had been a relationship, partnership or similar structure between the landlord and tenant, these properties would not have been used as rental comparables or they would have been adjusted accordingly. (TR 107)

As to the income approach summarized on page 64 utilizing the actual rents in the subject building, Currier asserted the subject's rentable area of 5,750 square feet was based upon the signed leases in place as well as what was vacant and offered for rent. Currier also agreed that the total building area including below-grade was approximately 7,800 square feet and that the hallways, stairways, storage area, and mechanical areas account for the other 2,100 square feet of building area, although he had no site plan to substantiate this assertion. The storage area is not for tenant use, but has materials for the building. The leases for the tenants in the subject building did not include percentage or prorated portions of the common areas as part of the rented area, but Currier has no data on the Byron market overall and whether leases include prorated portions of the common areas or not.

Currier's role in assisting Hill in determining the capitalization rate included only gathering the current tax rate data which resulted in a loaded capitalization rate. Although the band of investment technique was also used, it was usually Hill who contacted local banks to determine market mortgage rates for commercial property. The appraiser did not know if Hill checked the rates and he agreed that a one percent change in the rates would change the final value in the analysis.

As to the TIF district, Currier does not know when it began or whether it was under consideration as of January 1, 2007. Furthermore, he does not feel that the existence of the TIF district has any impact on the January 1, 2007 value for the subject property. (TR 117)

In response to questions by the Hearing Officer, Currier testified that the subject property has 6,400 square feet of asphalt for a driveway and 7 parking spaces. As to his land sale comparable, Sale #4 with an August 1999 sale date, he stated this property was considered only because of its location and, although an adjustment for date of sale probably should have been made, it was not made. (TR 121)

The appraiser also acknowledged that the date of sale for Sale #1 on page 39 of the report should have been September 2007, not November 2006, although the change in sale date would not necessitate an adjustment. Currier also reiterated that Sale #2 which was built in 1950 has an effective age of 10± years. Likewise, Sale #5 that was built in 1962 and renovated in 1992 was said to have an effective age of 5± years. Currier explained that in determining effective age "we try to discuss with the local listing agent or someone involved with the sale to find out what kind of condition the property was in." (TR 125)

In the income analysis, on page 56 Currier depicted a lease-by-lease analysis of the current tenants of the subject building.

For instance, the tenant By the Book had a lease of $7.20 per square foot which expired in October 2007. Currier found the market rent for this tenant should have been about $12.25 per square foot with one to two percentage point increases each year so that by the third year "all the tenants are now at market rental rates." (TR 125-26) While the five rentals/offerings were located in only two buildings, one of which was owned by the taxpayer/appellant, Currier contends the data reflects four different tenants and one offering with leases established at different times and given the limited information available in Byron, in the absence of distress or other conditions, there was still a willing renter and a willing landlord suitable for analysis in this manner.

As to leases in the subject building, Currier was not sure, but believes that tenant A.O. Smith was an entity associated with the taxpayer/appellant owner of the subject building. The appraiser asserted the analysis placed the A.O. Smith rental at market rental rates. He also stated Rentals #3, #4 and #5 had leases that commenced in 2008 with no time adjustments, although in retrospect he might have made such adjustments.

On re-direct examination, Currier reiterated that 6,400 square feet of asphalt on the subject property concerned the driveway, 7 parking spaces and related areas only on the subject parcel. (TR 131) He further testified that he did not know if A.O. Smith was a related company to the owner of the building. Likewise, a tenant named Classics & Colonials could be a related entity to the owner/appellant, but Currier was not sure. While Currier never saw a lease for Classics & Colonials, he did see a sign out in front of the subject building for that entity; Currier believes he viewed an office space on the second floor that may have been for that business. The appraiser opined that there was no economic effect from the nuclear power plant on office buildings.

On re-cross-examination, Currier asserted that the vacant second floor space that may have been occupied by Classics & Colonials was included in his lease-by-lease analysis on page 56 at market rental rates. Currier also reiterated his opinion that the existence of the power plant has no positive impact on the overall quality of the Byron economy.

Appellant next called Harry Adams, a general contractor who also owns four commercial buildings, including the subject which he built in 1994. (TR 136-37) In 2007, the building had two tenants on the first floor, one tenant on the second floor, and three tenants in the lower level. Adams contends that at that time, there was no office area rented by Classics & Colonials, which is the general contractor business operated by Adams which does light commercial and residential construction, but there was a sign in front of the building for that business. In January 2007, A.O. Smith was a tenant on the second floor of the building.

The witness contends the subject site has approximately 5,700 square feet of asphalt paving; the 6,400 square foot figure may have included sidewalks and/or other green space according to Adams. The asphalt includes a drive from the street or highway nearly the length of the parcel with some turn space in the back. Based on external dimensions and two above-ground floors, Adams contends the building contains 5,052 square feet of building area. (TR 139-40)

During cross-examination by the board of review's legal counsel, Adams affirmed the subject parcel has limited parking and he asserted he has no written easement to utilize parking on an adjacent parcel. The subject building, in terms of available rental space, is entirely built out. Adams estimated the total rentable area to be approximately 5,500 square feet including some of the lower level area while the gross building area, including the lower level, is approximately 7,800 square feet of building area. Based on the building's dimensions, Adams asserts about 2,300 square feet of the building contains hallways, bathrooms, service rooms and similar items. He further testified the majority of the tenants have their own bathroom(s), but there are also hall bathrooms. Tenants are not entitled to use the storage area. Adams from 1994 to about 2000 or 2002 maintained his own office in the subject building, but he left the sign out front as "great advertising." (TR 142-43)

On questioning by the Hearing Officer, Adams confirmed that as of January 2007 he believes there were six tenants in the subject building, although "I could be off one." Upon examining page 56 of the appellant's appraisal, Adams agreed that there were only five tenants in the subject building as shown in the appraisal reducing the lower level to two tenants.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $208,968 was disclosed. The subject has an estimated market value of $628,286 or $112.19 per square foot of building area including land, as reflected by its assessment and Ogle County's 2007 three-year median level of assessments of 33.26%.

In support of the subject's assessment, the board of review submitted a six-page letter jointly signed by Gynel Orr, Byron Township Assessor, and James Harrison, Supervisor of Assessments. The letter has numerous attachments including a grid of seven commercial vacant land sales, an equity grid of 10 improved commercial comparables with photographs, and a grid of five commercial improved sales with photographs and a map depicting their locations in relation to the subject.

The Hearing Officer also ordered the board of review to produce the property record card for the subject as required to be submitted with the board's "Notes on Appeal." (86 Ill. Admin. Code, Sec. 1910.40(a)). The card, which was produced at hearing, depicts a total building size of 5,600 above grade square feet of building area along with a schematic drawing.

At hearing the board of review called Gynel Orr, the Byron Township Assessor, for testimony. Orr has held that position since 1990 and has been a Certified Illinois Assessing Officer (CIAO) since 1995. She also maintains the continuing education requirement for that designation and further noted that she has received a stipend from the State of Illinois since 1995 for maintaining her township's assessment level close to 33 1/3% of fair cash value.

Orr noted that the nearby nuclear power plant provides substantial benefits to local taxing districts including the schools, fire department and library. Former residential areas on Route 2 through Byron have become commercial properties and the assessed values in the township since 1993 have almost tripled. In 2007, Orr did a reassessment of commercial properties in the township based on sales from 2004, 2005 and 2006 which included reassessment of the subject property. She further contends that the subject is located in a prime commercial area with a daily traffic count of 12,000 to 13,000 vehicles.

Orr testified that there are no negative factors surrounding the subject property. She further asserted that 40% external obsolescence taken by appellant's appraiser was not at all justified as the subject is in a prime location with perfect exposure, situated in the middle of the block.

As outlined in the assessor's letter, sales of vacant commercial land within Byron were used to determine land reassessment values (Attachment 1-1). The seven vacant commercial parcels ranged in size from 2,400 to 31,735 square feet of land area. The properties sold between November 1996 and November 2007 for prices ranging from $37,000 to $300,000 or from $9.45 to $19.21 per square foot of land area.

In performing her 2007 reassessment, Orr applied front foot values in the downtown block between Walnut Street and Union Street and along the north and south sides of Route 2 with the highest value of $2,000 per front foot at the intersection of Routes 2 and 72 as this is the prime commercial area of Byron. (Colored map Attachment 1-2 depicts the various front foot values applied). Orr further reported that front foot values decrease going east and west from this intersection along Route 2. In her data, Orr further pointed out that Land Sales #2, #3 and #5 were each along Route 2 like the subject and based on their April 2006 to July 2007 sale prices were sold for $9.45 to $17.14 per square foot or $1,371 to $1,925 per front foot. The subject parcel was assessed at $1,330 per front foot. Based on the sales data, Orr contends the appellant's appraiser's conclusion of $9.50 per square foot for the subject parcel was not accurate. The subject's 2007 land assessment of $31,638 reflects a market value of approximately $95,123 or $8.89 per square foot of land area.

For improved commercial sales, Orr presented Attachment 2-5 with five sales. She testified that Sale A which occurred in 1993 was presented simply as a reference to display steady values for the last 15 years. The other four sales, identified as Sales B through E, were each described as an office building. One had an unknown date of construction and the three others were built from 1950 (with renovations in 1987) to 1996. These frame, masonry or frame and masonry buildings ranged in size from 1,488 to 5,500 square feet of building area. They sold from 2004 to 2007 for prices ranging from $187,000 to $501,100 or from $54.36 to $165.05 per square foot of building area including land.

Orr pointed out that Sale B was located next to the subject property and sold in 2004 for $88.84 per square foot of building area including land. (See Attachment 2-7) Sale C located closer to downtown was a less desirable area than the subject's location. Sale D, whose age was unknown, was said to have been originally a house, but is now an older two-story office building in the downtown that has been added on to several times. Orr's Sale E is the same property as the appellant's appraiser's Sale #3. The assessor testified this property, consisting of three parcels, sold for $675,000, but after removal of the personal property and the second house, Orr contends its sale price was $501,000 or $165.05 per square foot of building area including land. Other than size and the age/style and location of Sale D, Orr asserted these sales did not differ much from the subject. Orr also testified that Sales D and E include rental space that the appellant's appraiser could have analyzed for market rental data in Byron.

Orr also analyzed the appellant's appraisal and described what she found to be errors and/or discrepancies on pages 2 through 6 of her letter. The errors noted include building location, neighborhood description, and property description. Discrepancies include building size and occupancy.

Based on the foregoing evidence, the board of review requested confirmation of the subject's assessment.

On cross-examination, Orr testified to the historical location of 'downtown' Byron as compared to the commercial area on Route 2. She acknowledged that over the last five to six years she has increased assessments if she had data to support the change. Orr testified that every four years a quadrennial reassessment is performed. With 3,100 parcels in the township, Orr, as a one-person office, is unable to do all parcels in one year, so the township is divided into four sections and one section is reassessed each year, unless other information is presented that merits a change in assessment.

In 2007, the change in the subject's assessment was due to sales data showing all values on commercial properties were extremely low as compared to the market data. Orr worked with an appraiser in developing commercial land values based on front foot taking into consideration the good exposure on Route 2. This includes considerations like traffic count and visibility. Orr reiterated that three of the sales of vacant land on Route 2 were used to determine the front foot values that were used in reassessing the commercial land in Byron Township.

As to the comparable improved sales, Sale A from 1993 was a restaurant that was converted into a bank. Sale B is a chiropractic office and Sale C is a dental office. As to Sale B, Orr did not know whether the sale involved related parties or some other factor that would result in it receiving less weight in her sales analysis.

On questioning by the Hearing Officer, Orr reiterated that Land Sales #3 and #4 reflect only the purchase price and do not include the demolition costs the purchaser incurred in demolishing the existing structures on each property.

In written rebuttal, counsel presented a six-page memorandum and a City of Byron Ordinance adopting Tax Increment Financing (TIF) dated April 26, 2004. Counsel's memorandum reads much like a closing argument by comparing and contrasting the appellant's evidence with that of the board of review and suggesting which evidence is more appropriate and/or credible. To the extent the memorandum makes arguments related to evidence that was stricken from this record, it has not been considered.

In rebuttal at hearing, appellant recalled Currier. He testified that he is familiar with front foot measurements which were described by Orr for assessing property, but contends that front foot measurements are not typically used in commercial appraisals. Currier also asserts the method is only used for valuation of lakefront properties or high land values, such as along Michigan Avenue in Chicago. The instant appeal is the first time Currier has seen someone using the front foot method in valuing property in northern Illinois. Currier contends the method is not effective as frontage and depth differences can alter the results from one parcel to another despite any potential similarities in total land square footage. Currier also opined the best valuation method for commercial properties was the square foot method. He further asserted that he has never observed front foot methodology in one area with a different methodology in a nearby area other than lakefront or extremely high valued land areas.

Currier also was unfamiliar with "prime commercial real estate" as a term of art recognized in the industry and he would not consider the area on Route 2 in Byron to be "anything spectacular or extraordinary" in terms of the types of properties. He opined the only factor that may lead to a higher value for property in Byron would be related to a TIF district where there may be an incentive to buy, build or develop a property. On Route 2 in Byron, as best as Currier could understand the TIF district has a 20 year life and the TIF began prior to January 1, 2007. Currier testified that board of review Sale E received a tax abatement of $9,000 or $10,000 one year and turned in "reimbursement" for about $19,000 worth of improvements or other items in 2009. He further opined that the property owner was entitled to seek reimbursements for up to $850,000. Having done a cash flow analysis for this property, Currier asserts the amount of reimbursement for the property over a 20-year period could range from $95,000 to $370,000.

Board of review Land Sale #2 is not in the TIF district and was sold in July 2007 for the lowest per-square foot amount of $9.45. However, Currier asserts that other properties presented by the board of review were located within the TIF district which would tend to skew the assessments. Moreover, Currier acknowledged that if he had known of the TIF district benefits that were applicable to his Sale #3 in his appraisal, he would have made some adjustment as he did in his revised appraisal removing the personal property and additional home and site to the rear of the property; the TIF benefit is hard to state for the future, "but we would at least make some type of investment [*sic*] based on at least the tax amount, things like that to adjust for the sales price of the property." (TR 302-03) Board of review Land Sales #3 and #5 were also located in the TIF district according to Currier, but there was no indication that the assessor accounted for that benefit in reporting the sales prices.

As to the medical office buildings and/or banks that the board of review presented, Currier opined that for purposes of an appraisal of a general office building an appraiser would prefer not to include medical offices or banks as comparables, or if those are the only possible comparables, the appraiser adjusts for medical office build-out and/or bank canopies, drive-thrus, vaults, and tubes, all of which have a higher cost.

With regard to board of review Sale B, Currier testified the building was purchased by the tenant who had occupied the building for an extended period of time. The tenant approached the owner and inquired about purchasing the property which then lead to the sale in 2004. Currier opined that a tenant will pay a premium to purchase a building they already occupy as opposed to moving to a new location and likewise a seller may take a lesser price since they will not pay a realtor's commission.

Land Sale #2 presented by the board of review was a parcel purchased by Family Video. Currier opined that companies such as this one typically choose a location which they are willing to pay a premium for which in order to include corners and stop lights/signs. The subject property has none of those characteristics.

On cross-examination, Currier acknowledged that the current assessment of the subject land only reflects a market value of approximately $94,000 whereas Currier's appraisal determined a land value of $9.50 per square foot or approximately $102,000 for the subject. Therefore, the assessor's use of the front foot methodology did not really affect the subject's land value as compared to Currier's use of the square foot methodology.

While prime real estate may not be a technical term, Currier agrees that some areas of a community are more favorable than other areas which may then also reflect varying values depending on numerous other factors such as traffic count, TIF districts, types of adjacent properties, other developments in the area, and overall condition of the property.

As to Sale #3 in the appraisal, Currier acknowledged that the participants to the transaction did not return telephone calls and so verification of the data was obtained from "other realtors and other people that were possibly involved in the transaction." (TR 319) From his appraisal, Sale #4 was a physical therapy facility which Currier contends was not a medical build-out like some of the data which was presented by the board of review.

As to Land Sale #2 (Family Video) presented by the board of review, Currier acknowledged the property was a former gas station. He further admitted that its sales price would in part be dependent upon whether it had been cleared of all the environmental issues at the time of purchase. Currier testified "to the best of our knowledge, it was clean." (TR 321)

Currier contacted the seller in board of review Sale B which was purchased by the existing tenant. To his knowledge, there was no realtor involved in the transaction.

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 a reduction in the subject property's assessment is warranted.

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. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000). In support of the overvaluation claim, the appellant submitted an appraisal with testimony from the appraiser. In the appraisal, the appraiser estimated the subject had a Fee Simple value of $385,000 or $68.75 per square foot of building area including land as of January 1, 2007.

While Currier developed all three traditional approaches to value, only the cost approach and the static analysis under the income approach to value were performed to arrive at a fee simple value for the subject property. Section 9-145 of the Property Tax Code provides in part that 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)). 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 to so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d 428 (1970). In this regard it is noted that the appellant's appraiser calculated both fee simple and leased fee values for the subject property. The Board finds that fee simple is equivalent to fair cash value and therefore, the Board could only consider the appraiser's fee simple determination(s) and cannot consider the leased fee determination(s) made by Currier in his appraisal report.

Next, in considering the totality of the appraisal report, the Board finds the numerous variations in building size along with the other descriptive errors and the overall poor quality of the report sufficiently diminish the credibility and reliability and so detract from the credibility and reliability of the report so that the Property Tax Appeal Board cannot rely upon the appraiser's fee simple opinion of value of $385,000.

There was a disagreement between the parties as to the size of the subject building. Currier variously reported the building contains 5,194 square feet of above grade area in his appraisal document and at hearing testified the building contains 5,254 square feet of building area. Currier's report in the income approach also stated the building had 5,750 square feet of rentable area. The appellant/owner of the building testified the building contains 5,052 square feet of above grade area. The Property Tax Appeal Board finds the best evidence of size was presented in the property record card which includes a schematic drawing of the subject two-story building. Currier did not include a schematic drawing to support his reported building size figure(s). In contrast, the subject property record card, which was ordered at hearing by the Hearing Officer, indicates the building contains 5,600 square feet of above grade area. The appraiser did not dispute the details of that schematic drawing. Based on this record, the Board finds the best evidence of the building size was presented with a schematic drawing. Therefore, the Board finds the subject building contains 5,600 square feet of above-ground building area with a full 2,800 square foot finished basement and it was constructed in 1994.

The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. Chrysler Corporation v. Property Tax Appeal Board, 69 Ill. App. 3d 207 (2nd Dist. 1979) and Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill. App. 3d 9 (5th Dist. 1989). Thus, given the applicable caselaw, the Property Tax Appeal Board finds it appropriate to analyze the raw sales data in the appellant's appraisal and compare and contrast that data with the raw sales presented by the board of review to determine whether the record establishes that the subject property is overvalued as argued by the appellant herein. As noted previously, the appraiser's leased fee value conclusion of the subject property utilizing the sales comparison approach is inapplicable to a determination of the fee simple or fair cash value of the subject property.

Currier's sales comparison approach utilized six comparable sales of office buildings as summarized on page 39 of the appraisal. Of these six sales, five were described as leased fee sales which detract from their suitability to determine fee simple value. The Board finds Sale #2 was the only fee simple transaction and therefore one of the most appropriate sales to consider of those presented by Currier. The building was built in 1950 and is much smaller than the subject at 1,332 square feet. Sale #2 sold in March 2006 for $92.34 per square foot of building area including land. In addition, Sale #5 which was a leased fee sale from February 2005 was more similar to the subject in size at 8,508 square feet, but it lacked a finished lower level. Sale #5 from Sterling was built in 1962 and renovated in 1992. It sold for $94.62 per square foot of building area including land. Sale #6 from Freeport was a 3,004 square foot building constructed in 1989 with a finished lower level that sold in June 2003 for $104.86 per square foot of building area including land. Thus, the most similar sales indicate that the subject property is overvalued.

In support of its assessment, the board of review presented data on five sales of properties characterized as office buildings within the City of Byron detailed on Attachment 2-5. In providing data on these sales, the board of review did not include parcel size or any other details about the features of these properties such as basements. While each was classified by the assessor as "office," the only other data submitted included story height, exterior construction, year of construction, year of sale and sale price. Sale A which occurred in 1993 is too distant in time to be relevant to the subject's 2007 fair cash value. Sale E, which was also the appraiser's Sale #3, was a complex transaction involving multiple parcels, a home and personal property all of which detract from its suitability as a comparable for the subject property. Of the remaining three sales presented by the board of review, the Property Tax Appeal Board finds that Sale C at 1,488 square feet of building area is substantially smaller than the subject building. Therefore, the Board finds the most suitable sales presented by the board of review were Sales B and D which sold in 2004 and 2005 for prices of $88.84 and $54.36 per square foot of building area including land, respectively. Each of these were older structures with no date of construction on Sale D; however, Sale D is also the only two-story structure presented by the board of review. In summary, the Board finds the best sale comparable presented by the board of review sold for substantially less than the estimated market value of the subject property, despite the comparable's presumed advanced age. Thus, the board of review's evidence establishes that the subject property is overvalued.

The subject property based on its assessment has an estimated market value of $628,286 or $112.19 per square foot of building area including land which is not supported by the most similar comparable sales in this record presented by both parties. The subject's current estimated market value based on its assessment is substantially higher than the most similar sales presented by the parties and discussed in detail above. Based on this record, the subject is overvalued and a reduction is warranted.

The Property Tax Appeal Board finds the subject property had a market value of $400,000 as of January 1, 2007. The Board finds, based on the subject's size, age, location and multi-tenant use, its market value would be somewhat higher on a per square foot basis than the most similar comparable sales which are somewhat dated and in some instances involve a leased fee sale. Since market value has been established, the Property Tax Appeal Board finds the 2007 three year median level of assessments for Ogle County of 33.26% shall apply. (86 Ill.Admin.Code 1910.50(c)(1)).

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: February 18, 2011

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.