FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Kurt & Patricia Kretchman
DOCKET NO.: 07-02161.001-C-3
PARCEL NO.: 18-05-400-011

The parties of record before the Property Tax Appeal Board are Kurt & Patricia Kretchman, the appellants, by attorney Mark R. Fowler, of Gomez May Schutte Yeggy Bieber & Wells in Davenport, and the Rock Island County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds ***no change*** in the assessment of the property as established by the **Rock Island** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$1,035,546
IMPR.:	$15,975
TOTAL:	$1,051,521

Subject only to the State multiplier as applicable.

ANALYSIS

The subject parcel of 28.811-acres has been improved with a one-story pro-shop pole building that contains 3,266 square feet of retail space and also features a 1,680 square foot canopied driving area. The subject parcel is used for commercial purposes as a driving range and teaching facility which is located in Silvis, Hampton Township, Rock Island County, Illinois.

The appellants appeared before the Property Tax Appeal Board with their legal counsel contending that the market value of the subject property was not accurately reflected in its assessed valuation. It should be noted that on the Commercial Appeal form the appellants acknowledged the improvement assessment of $15,975 for the structures, but did not place a claimed assessment for the improvement in Section 2c of the form. Thus, the appellants' dispute was primarily with the land assessment.

In support of the land overvaluation argument, the appellants submitted an appraisal prepared by Curtis Bedwell and David Passmore, who respectively are associate and certified general

real estate appraisers in Illinois. The appraisers opined a market value for 1.84-acres of land as a portion of the subject parcel of $56,000 as of January 16, 2007.[1]

Counsel for the appellants further argued that because Wal-Mart purchased a large tract of land in the area of the subject, there was speculation that area land values would increase exponentially. Counsel asserted that time has shown that did not happen and in fact Wal-Mart has out-lots on its property that have not yet sold. Furthermore, counsel argued that the assessment of the subject property was increased 600% despite the fact that no new structures were built on the property. Furthermore, the subject property has been on the market with no particular interest from buyers.

Appellants' first witness was Kurt Kretchman, one of the owners of the subject property. He stated the property was purchased in 1994 and improvements to the property were completed in 1995 for use as a driving range and teaching center. Furthermore, the property has been marketed for sale since 2007 which was about the time Wal-Mart obtained nearby property. The witness stated the initial 2007 asking price was $3.7 million with no offers. The owner has also listed the subject property previously as if it was subdivided between the front and back portions of the property, but no offers were made in response to that listing.

There have been various asking price reductions to where, as of the date of hearing in mid-2011, the asking price was now $1.9 million. The witness also reported that he has not had an appraisal of the property performed, but that 'the bank' had an appraisal done which concluded a market value of $2.3 million as of June 21, 2010. A relevancy objection made by the board of review to this testimony was sustained as the referenced appraisal was not timely submitted as evidence in this proceeding in accordance with the Board's rules (86 Ill.Admin.Code Sec. 1910.30(g)).

The owner testified with regard to the appraisal performed by Rally Appraisal, LLC concerning 1.84-acres of the subject parcel. The appraisers only valued 1.84-acres of the subject parcel which were located on a planned right-of-way necessary for the city to provide road access to the Wal-Mart parcel pursuant to a development agreement.

On cross-examination, Kretchman acknowledged that in 2007 the appellants had an option on the subject property to purchase by a Rockford development company for $4.2 million. The golf business had already been closed in 2007.

[1] At hearing, counsel referenced having additional appraisal(s) for submission at that time. Under the Official Rules of the Property Tax Appeal Board, such new evidence is inadmissible. "Without a written request for an extension, no evidence will be accepted after the petition is filed." (86 Ill.Admin.Code Sec. 1910.30(g)).

On re-direct examination, the witness testified the option to purchase simply expired with no counter-offer.

The appellants' second witness was Mike Burke of Mel Foster Commercial Real Estate. He has been involved in commercial real estate for about 30 years. Burke has been the listing agent for the subject property since October 2008.

Based on Burke's records, in October 2008 the property was offered for sale at $3.7 million with no offers received. In October 2009, the listing price was lowered to $2.8 million for "one month" during which time no offers were received. The listing price was then changed again to $2.7 million for which no offers were received. No further changes were made to the asking price until May 2011 at which time the asking price was lowered to $2.4 million with an offer to split the parcel between the front portion and the rear portion for which rezoning could occur for the rear portion for residential use to try to spur some interest in development. In June 2011 the asking price was reduced to $1.9 million. As of the date of hearing in mid-2011, there was no interest shown from purchasers.

Next Burke testified to his knowledge of area real estate prices contending that the market has been "soft" since the "tail part of 2008." He testified that current area asking prices, not sold prices, for comparable properties are ranging from $45,000 to $55,000 per acre. Burke acknowledged that the subject's current asking price is about $66,000 per acre and thus higher than most comparable properties. The witness was not aware of any ongoing development in the area of the Wal-Mart property which might spur some interest in the subject parcel. Burke opined that to properly market the subject property the asking price should be about $45,500 per acre or about $1,250,000.[2]

The witness noted that the appraisal submitted in this proceeding by the appellants concerned 1.84-acres of frontage road area. He further asserted that the first 300 feet of the subject property along this frontage acreage is the 'prime' part of the property with the remaining back portion of the property to "hopefully be developed as something else."

On cross-examination, the witness acknowledged that he is not an appraiser. The board of review representative further put forth an objection to consideration of any of the current value information provided by Burke as it did not relate to the valuation date of January 1, 2007. The objection was noted by the Hearing Officer on the record.

In response to a question of the Hearing Officer, Burke acknowledged that as of January 1, 2007 the value of the subject

[2] Mathematically, the subject's 28.811-acre size multiplied by $45,500 per acre is actually equivalent to $1,310,900 not including the value of the improvements.

would have been higher than the current asking price data, but without having done the research he could not be more specific.

The appraisal submitted herein by the appellants sets forth that its intended use is to establish the market value of the land for sale negotiations with the City of Silvis and the purposes of acquiring the property for future road construction. "This appraisal is not intended for any other use or for use by others." (See cover letter, p. 1) On page three, the appraisal report states in pertinent part:

> An appraisal related to an estate in land that is less than the whole fee simple estate applied only to the fractional interest involved. The value of this fractional interest plus the value of all other fractional interests may or may not equal the value of the entire fee simple estate considered as a whole.
>
> The appraisal report related to a geographical portion of a larger parcel is applied only to such geographical portion and <u>should not be considered as applying with equal validity to other portions of the larger parcel or tract</u>. The value for such geographical portions plus the value of all other geographical portions may or may not equal the value of the entire parcel or tract considered as an entity. [Emphasis added.]

Having described a portion of the subject parcel as the property being appraised, namely, 1.84-acres or 80,150 square feet of land area, the appraisers analyzed four sales to arrive at an estimated market value conclusion utilizing the sales comparison approach to value. Two parcels were located in Silvis and two parcels were located in East Moline. The properties ranged in size from 1.19 to 7.69-acres of land area. The sales occurred between August 2002 and October 2005 for prices ranging from $70,000 to $495,000 or from $23,750 to $64,369 per acre of land area. After adjusting the comparable sales for date of sale, location, access and/or site work, the appraiser estimated a market value for the subject under the sales comparison approach of $56,000, rounded, or $0.70 per square foot of land area for the 1.84-acre parcel that was the subject of the appraisal report. This appraised value conclusion reflects an estimated value of $30,435 per acre of land.

Based on this evidence, in the Commercial Appeal petition the appellants requested a reduction in the subject's total assessment to $273,460 which would reflect a market value of approximately $820,380 or approximately $28,475 per acre of land, not including the value of the structures on the property. However, in closing argument, appellants' counsel requested that the appraisal opinion of "$56,000 per acre" be applied to the subject property for a resulting estimated fair market value of about $1.6 million.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final total assessment of $1,051,521 was disclosed. The total assessment of the subject property reflects a market value of $3,131,391 or $108,687 per acre of land (including the building value) using the 2007 three-year median level of assessments for Rock Island County of 33.58%.

In support of the subject's estimated market value based on its assessment, the board of review submitted a three-page letter from James Cramblett, Hampton Township Assessor with supporting data including eleven sales. In the letter, Cramblett wrote the subject parcel "is now the last parcel along Route 5 big enough for a big-box retailer that wants to draw from Wal-Mart traffic." The assessor also stated, "[t]his parcel has been marketed in the past at more than its current listing at $3.7 million." Cramblett's narrative in the letter will be summarized along with the underlying data, although the narrative does not in all cases agree with his summary sales chart of the eleven sales.[3]

Of the eleven vacant land sales presented by the assessor, Sales #1, #2 and #3 involved Wal-Mart; Sale #1 was about 5-acres, Sale #2 consisted of about 44-acres, 5-acres of which were the property in Sale #1, and Sale #3 consisted of 24.746-acres[4] which included portions of both Sales #1 and #2. These three sales occurred between December 1998 and March 2007 for prices ranging from $5,645 to $159,722 per acre. Presumably relating to Sale #3 of 30-acres for $159,722 per acre, Cramblett reported "this purchase supports my market value on the subject."

Next in the letter, Cramblett discussed Sales #4 through #9 that involved various portions of the Hynd Farm which were sold for development. These sales occurred between December 2005 and October 2007.[5] The assessor summarized that these six sales of as a total of about 55.52-acres which sold for $4,388,422 or $79,042 per acre.[6] Cramblett reported these sales support the subject's market value as he would adjust the total value up by 25% as the Hynd property is larger than the subject and would not have the traffic of Wal-Mart and Route 5.

As to Sale #10, the assessor reported a 29.568-acre parcel sold for $2,550,000 or $86,242 in April 2006.[7] Cramblett wrote that he would adjust this sale price upward by 25% since the anchor in

[3] Sale #3 in the chart consists of 24.746-acres but the letter discusses a 30-acre property sale; Sale #8 in the chart consists of 12-acres but the letter discusses a 6.246-acre sale; and Sale #10 in the chart consists of 29.568-acres but the letter discusses a 39.568-acre sale. To the extent the underlying documents clarify which analysis is correct the Board has set forth that data in the decision.
[4] See underlying documents.
[5] In the narrative, Sale #8 was described as 6.246-acres, not 12-acres, which then also altered its per-acre value. However, the underlying documentation confirms this as a 12-acre parcel sale.
[6] The individual sales as reported in the chart total 73.535-acres and reflect total sale prices of $4,964,706 or $67,515 per acre.
[7] In the narrative, Sale #10 was described as 39.568-acres. The underlying documentation confirms this as a 29.568-acre parcel.

this development is Farm & Fleet which "would not draw the traffic of Wal-Mart" and a portion of the parcel was wetlands.

The assessor reported Sale #11 was "an illustration of what happens to land values when a high traffic retailer enters a neighborhood." He reported that a Walgreens was built in 2005 and then in May 2006 an adjoining 5.472-acre parcel was sold for $1,000,000 or $182,749 per acre as compared to its 2004 sale price of $225,000 or $41,118 per acre of land area.

Also in the documentation submitted by the board of review as prepared by Cramblett was a grid entitled "simple sale chart" purportedly presenting Sales #3, #10, #11 and #7 described above. However, the data on Sale #3 differed from the narrative and the underlying documentation; in this chart, Sale #3 contains 33.046-acres resulting in a lower per-acre sale price of $119,605 as opposed to the actual 24.746-acres selling for $159,722 per acre. These four properties were said to be from 533 feet to 3.75-miles from the subject and ranging in size from 5.212 to an erroneous 33.046-acres of land area which should actually have been 24.746-acres. Each was zoned commercial. The properties sold between April 2006 and May 2007 for prices ranging from $640,000 to $3,952,480 or from $86,242 to $182,749 per acre of land area. On this chart, Cramblett indicated upward or downward adjustments for size, sale date, flood plain, and price per square foot. No specific value conclusions were presented based on Cramblett's adjustments to these properties.

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

Cramblett appeared at the hearing and was cross-examined about the data he prepared. The assessor testified that he based his assessment of the subject property for 2007 on the research of comparable sales contained in the narrative; specifically, on the Wal-Mart property, on one additional property "as well as some others on Route 5 and on Avenue of the Cities."

Neighborhood sales and sales in the marketing area in 2006 and 2007 led Cramblett to make a change in the subject's 2007 assessment; he testified the entire area changed abruptly whereas there had been little evidence previously. The subject's 2006 assessment was $167,587. The assessor testified that his 2007 assessment of the subject property was valid based on information obtained prior to that year.

Looking to his "simple sale chart" Cramblett reiterated that Sale #3 (Wal-Mart) was a very appropriate comparable being close in proximity to the subject and similar in size and that Sale #10 (53rd St.) was also appropriate but needed a little adjustment for a portion that "had to be set aside for mitigation." Cramblett opined that with the adjustment, this would bring Sale #10 closer to the subject's estimated market value.

The assessor was asked about traffic counts between the subject and Sale #10. The witness had no traffic count data. But he did acknowledge that at some distance from Sale #10 were both a Lowe's and a Wal-Mart. In comparison, near the subject are both a Wal-Mart and a Jewel.

In the course of objecting and/or arguing about the merits of this matter, the board of review representative contended that all events that occurred after January 1, 2007 would be irrelevant to the assessment of the subject property.

After reviewing the record 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 that a reduction in the subject's assessment is not supported on this record.

The appellants argued that the subject's assessment was not reflective of 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)). 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). 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); National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3rd Dist. 2002). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *Official Rules of the Property Tax Appeal Board*, 86 Ill. Admin. Code Sec. 1910.65(c). The Board finds the appellant has not overcome this burden.

At the hearing in the course of questioning the assessor, the appellants' counsel argued that the subject property was overvalued because of the percentage increase in its assessment from 2006 to 2007. The Board finds this type of analysis is not an accurate measurement or a persuasive indicator to demonstrate overvaluation by a preponderance of the evidence. The Board finds rising or falling assessments from year to year on a percentage basis do not indicate whether a particular property is undervalued or overvalued. The Board further finds assessors and boards of review are required by the Property Tax Code to revise and correct real property assessments, annually if necessary, that reflect fair market value, maintain uniformity of

assessments, and are fair and just. This may result in many properties having increased or decreased assessments from year to year of varying amounts and percentage rates depending on prevailing market conditions and prior year's assessments.

The appellants submitted an appraisal of 1.84-acres of the subject property with a final value conclusion of $56,000 for that portion of the subject 28.811-acre parcel with improvements (permanent structures). For two reasons, the Property Tax Appeal Board sustains the objection of the board of review to the appellants' appraisal report. First, the Board finds that in the absence of an appraiser at hearing to address questions as to the selection of the comparables and/or the adjustments made to the comparables in order to arrive at the value conclusion set forth in the appraisal, the Board could only consider the appraisal's raw sales data in its analysis and give no weight to the final value conclusion made by the appraiser. Novicki v. Dept. of Finance, 373 Ill. 342 (1940); Grand Liquor Co., Inc. v. Dept. of Revenue, 67 Ill. 2d 195 (1977); Jackson v. Board of Review of the Dept. of Labor, 105 Ill. 2d 501 (1985). The Board finds the appraisal report is tantamount to hearsay. Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill. App. 3d 887 (1st Dist. 1983). Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill. App. 3d 474 (2nd Dist. 1979); Russell v. License Appeal Comm., 133 Ill. App. 2d 594 (1st Dist. 1971). Second, the Board finds that the appraisal report by its own terms is not to be used in determining a value conclusion for the entire 28.811-acre parcel which is the subject matter of this appeal. Furthermore, appellants' counsel contended based on this appraisal report that the subject should be valued at $56,000 per acre, however, the appraisal report did not arrive at that land value conclusion. Instead, this appraisal of 1.84-acres determined a value of $30,435 per acre. Therefore, both in the absence of an appraiser being available and subject to cross-examination regarding methods used and conclusion(s) drawn and furthermore since the appraisal report does not value the entire parcel at issue in this proceeding with specific limitations that the value conclusion cannot be applied to the whole parcel, the Board finds that the weight and credibility of the evidence has been diminished and the data cannot be deemed conclusive as to the value of the subject property.

Appellants' evidence at hearing also clearly established that the subject property has been continually advertised for sale on the open market since 2007. The initial asking price through and until October 2009 was $3.7 million, which is more than its estimated market value based on its 2007 assessment. Since October 2009 there have been successive price reductions and various efforts to subdivide the parcel with no offers to purchase as of the date of hearing.

The question before the Property Tax Appeal Board is the correct assessment of the subject property as of January 1, 2007. In light of the 2007 to October 2009 listing price of the subject property of $3.7 million, which is deemed to be the upper limit of value, the Board finds that the appellants have failed to submit substantive evidence indicating that the subject property was overvalued as of January 1, 2007.

In summary, the Property Tax Appeal Board finds the appellants' evidence as outlined above does not support a reduction in the subject's assessment and the Board finds that the appellants failed to meet their burden of proof to establish that the subject property was overvalued.

In support of the subject's assessment, the board of review submitted eleven vacant land sales. The board of review did not address the value of the improvements on the subject parcel or the manner in which those improvements were assessed; however, as noted previously the appellants did not appear to contest the improvement assessment. As discussed above, the board of review's data on the eleven vacant land sales was poorly reported by the assessor, contradictory at times between the narrative and chart summary, presented an extremely broad spectrum of land sizes and set forth an extremely broad range of per-acre land values from $5,645 to $185,211.

Having examined the eleven sales, the Board finds the most similar comparable sales were Sale #10 and the reported totality of Sales #4 through #9 resulting in sales prices of $86,242 and $79,042 per acre, respectively. The assessor noted that these comparables needed upward adjustments and thus, the evidence in the record arguably supports the subject's estimated market value of $108,687 per acre of land (including buildings).

Based on this record and considering the evidence and testimony presented by the parties to this appeal, the Board finds a change in the subject's assessment is not justified.

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

Acting 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: January 20, 2012

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.