



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Niemann Foods Inc.
DOCKET NO.: 08-01360.001-C-3
PARCEL NO.: 07-07-35-480-016

The parties of record before the Property Tax Appeal Board are Niemann Foods Inc., the appellant, by attorney Jackson E. Donley in Springfield, and the Macon County Board of Review.

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

LAND: \$207,700
IMPR: \$690,050
TOTAL: \$897,750

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of 6.07 acres improved with a one-story commercial building utilized as a grocery store. The building contains 64,183 square feet of building area, which includes a 1,583 square foot mezzanine. The subject improvement was constructed in 1986 with a reinforced concrete foundation, steel framing, a flat metal roof with tar and gravel covering and exterior block walls. The subject is fully sprinklered and features an asphalt parking lot. The subject is located in Hickory Point Township, Macon County, Decatur, Illinois.

The appellant appeared through counsel before the Property Tax Appeal Board arguing that the fair market value of the subject was not accurately reflected in its assessed value.¹ In support of this argument, the appellant submitted an appraisal prepared by Certified General Real Estate Appraiser J. Edward Salisbury of Salisbury & Associates, Inc. estimating the subject property had

¹ Attorney Clark Mills argued the appellant's case at the hearing. Attorney Jackson Donley filed a substitution of attorney on September 14, 2011.

a market value of \$2,700,000 as of January 1, 2008 (Appellant's Ex. 1).

As its witness, the appellant called J. Edward Salisbury, who has over 30 years of appraisal experience.²

Salisbury testified the site had 6.07 acres and was improved with 64,133 square feet of building area that he described as a "big box" store built in 1986. Salisbury testified that the subject is currently used and has been used as a grocery store. Salisbury further testified that "big box" stores typically encompass standard retail and grocery stores. Of particular interest, Salisbury testified that "big box" stores have a limited number of users nationally and they depreciate rapidly because if one of them becomes dark or goes vacant, there are very few potential buyers today for that type of retail outlet. Because of the rapid depreciation, Salisbury stated that he chose not to use the cost approach to value.

Salisbury was of the opinion the subject's highest and best use as vacant would be for continued use as a commercial site, and as improved, the subject's highest and best use would be for its current use as a commercial facility. He also estimated in his report that the realistic marketing time for the subject would be 9 to 12 months due to the subject's open design and local demand.

Salisbury testified that the subject is located in a fully developed, mostly commercial area. He looked for land sales, but did not have much luck in finding any, which is another reason he did not develop a cost approach to value. Salisbury testified he developed the income approach to value and the sales comparison approach to value.

In developing the income approach to value, Salisbury first searched for rent comparables. Salisbury testified that as a general rule, most "big box" stores are not built as income producing investment property. They are built by owner/users. Salisbury testified that "big box" stores differ from small stores in a strip mall or in a regional mall in that they are normally single tenant buildings, and as a result the rents tend to be quite lower than they are for smaller retailers.

With the foregoing in mind, Salisbury selected four rentals and two rental listings. The properties were located in Canton, Mahomet, Wood River, Washington, Peru and Bourbonnais, Illinois. One comparable was described as a commercial building and the other five were described as retail grocery stores. The leased spaces ranged in size from 24,775 to 95,888 square feet of building area. The rental improvements were built from 1977 to 1993. Their rentals or offerings ranged from \$2.05 to \$6.90 per square foot. The appraiser made adjustments to the comparables for market conditions (date), location, age, size and lease terms. Based on an analysis of this data, Salisbury estimated

² Salisbury was tendered and accepted as an expert without objection.

the subject had a market rent of \$5.00 per square foot of building area. The appraiser estimated the subject had a gross potential income of \$320,915.

Salisbury assumed a vacancy and credit loss of 5% based on rental surveys, conversations with leasing agents and the average demand for commercial buildings approximately the same size as the subject given the subject's market area for an effective gross income of \$304,869. Next the appraiser calculated an operating fee along with exterior maintenance of 10% of effective gross income or \$30,487, annually. After making these deductions, Salisbury estimated the subject had a net operating income of \$274,382.

The appraiser then estimated the overall capitalization rate for the subject from the market and use of the direct capitalization method to be 9.5% using actual sales and leases of national malls, office buildings, warehouse and apartment buildings taken from Valuation Insights & Perspectives for Professional Real Estate Appraisers published by the Appraisal Institute, Second Quarter 2008. Salisbury also used the Investor Survey, Developer Survey and the Market Survey published by RealtyRates.com. Salisbury also reviewed office sales data files for strip malls, regional malls and big box stores. A review of these files depicted returns ranging from 7% to 15% from 2005 to present (2008). Based on market indicators, the locational and physical characteristics of the subject property, Salisbury estimated an overall capitalization rate of 9.5%. Capitalizing the subject's net income resulted in an estimate of value under the income approach of \$2,888,232 or \$2,900,000, rounded.

Salisbury next developed the sales comparison approach to value. In doing so, he selected seven comparable sales and one pending sale which were located in Princeton, Pekin, Decatur, Springfield, Macomb and Chatham, Illinois. In his testimony, Salisbury noted that he tried to select comparable "big box" store sales based on size and age.

The selected comparables ranged in size from 38,835 to 88,140 square feet of building area and ranged in age from 9 to 31 years old. The comparables were situated on parcels ranging from 1.807 to 21.51 acres and featured land-to-building ratios ranging from 1.94:1 to 10.63:1. The properties sold or had a pending sale from August 2004 to November 2008 for prices ranging from \$755,000 to \$2,100,000 or from \$12.20 to \$47.63 per square foot of building area, including land. After making adjustments to the comparables for date of sale, location, size, land-to-building ratio, age and condition, the appraiser was of the opinion the subject had an indicated value under the sales comparison approach of \$42.00 per square foot of building area or \$2,695,686 or \$2,700,000, rounded.

In reconciling the three approaches to value, Salisbury gave most weight to the sales comparison approach to arrive at an estimate of value of \$2,700,000 of January 1, 2008.

On cross-examination, Salisbury acknowledged that in preparation of the appraisal, there were sales of grocery stores or "big box" stores that were closer in location to the subject that he discounted or did not consider to be valid comparable sales. Salisbury testified that he did not use them because those stores contained around 100,000 square feet of building area. Even though they were approximately the same age as the subject, they were still 30,000 square feet larger than the subject, which puts them in a different market area. Salisbury explained that as the store gets bigger, potential investors are decreased. In addition, Salisbury testified that grocery stores have more plumbing and freezer capabilities than stores like an older Wal-Mart or Kmart.

The next witness called to testify was Michael E. Lipowsky. He has served as a deputy supervisor of assessments for two years for Vermillion County and two years as a deputy assessor for Danville Township. He is the owner of Lipowsky & Associates, a real estate appraisal and consulting firm in Decatur. Lipowsky is a certified general real estate appraiser with an IFAS designation from the National Association of Independent Fee Appraisers. Lipowsky testified that he also has a CIAO designation and is a level II certified appraiser/assessor in the State of Indiana. He is also a past president of the National Association of Independent Fee Appraisers. Lipowsky was not certified as of the date of the Property Tax Services report, Appellant's exhibit 2. Lipowsky became certified in 2005 or 2006 and updated his appraiser license in 2009. Lipowsky testified that he has appraised over 1,000 commercial and industrial properties.³

Lipowsky testified that he visited the subject on two different occasions in November of 2008. Lipowsky described the subject similar to Salisbury, however he added the subject contains 300 parking spaces, had an actual age of 22 years at the time of the report, felt the property was in relatively good condition with an effective age of 15 years. Lipowsky found the subject's class C masonry exterior wall structure could be used for a number of commercial applications. In addition, Lipowsky testified that the parking lot was adequate with the site being visible on Pershing Street in a very good commercial area in the City of Decatur. However, Lipowsky found that the area of Pershing Street where the subject is located is not considered a good growth area anymore. Lipowsky found the subject's building type to be average. Lipowsky testified that he found several vacancies in the area like K's Merchandise, right across the street from the subject, a Schnucks grocery store, just down the road and K's Department store. Lipowsky found an over-supply of properties in the subject's immediate area.

Lipowsky examined eight comparable sales and one listing. The comparables were located in Forsyth, Decatur, Pekin, Chatham and

³ Lipowsky was tendered and accepted as an expert in real estate valuation.

Springfield. The properties ranged in size from 30,000 to 114,086 square feet of building area, had land-to-building ratios ranging from 2.01:1 to 10.69:1, effective ages ranging from 6 to 30 years old and wall heights ranging from 16 to 26 feet. The comparables sold or were listed for sale from February 2003 to November 2008 for prices ranging from \$400,000 to \$5,098,034 or from \$20.11 to \$51.30 per square foot of building area, including land. The comparables were adjusted for date of sale, size, location, parking adequacy, land-to-building ratio, effective age, wall height, class of construction and quality of construction. After making adjustments, Lipowsky concluded an upper value limit for the subject of \$2,700,000.⁴

Lipowsky further testified that he examined comparable sale #1 utilized by the board of review. Lipowsky testified that he did not believe the sale to be an arm's length transaction. In support of this claim, Lipowsky presented a transfer declaration sheet to show the property was not advertised on the open market and that the buyer and seller were basically the same parties. Lipowsky also testified that board of review sale #2 was located in Aurora, a collar county of Chicago, which is a totally different market area than Decatur. In addition, board of review sale #2 was part of a portfolio of three sales. As to board of review sale #3, Lipowsky testified that this sale was also part of the package deal involved with sale #2.

On cross-examination, Lipowsky testified that Property Tax Services was his client and hired him to do an appraisal of the subject. He admitted that the appraisal report does not conform to USPAP guidelines. Lipowsky testified that the report was more of a limited assignment for Property Tax Services that included evidence of sales. Lipowsky testified that he prepared his report prior to knowing another appraisal was being done. Lipowsky verified each sale he used by either a discussion with the buyer, seller or broker of each individual transaction. Lipowsky admitted that he prepared the report at a time when he was not certified as an appraiser, however, since becoming certified, he would not change his opinion of value.

The Board of review presented its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$1,100,000 was disclosed. Based on the subject's assessment and utilizing the 2008 three-year average median level of assessments for Macon County of 33.25%, the subject property has an estimated fair market value of \$3,308,271 or \$51.54 per square foot of building area, land included.

In support of the subject's assessment, the board of review submitted three comparable sales. The sales are located in Normal, Aurora and Joliet. Dasya Miller, Clerk of the Macon County Board of Review, testified that the board of review examined the sale of a property across the street from the

⁴ Lipowsky's comparables #4, #6, #7 and listing #1 were the same properties as Salisbury's comparables #2, #3, #7 and pending sale #1, respectively.

subject to determine the subject's value. Subsequent to determining the subject's value, the board of review requested and received information regarding three sales, which she submitted as the board of review's evidence. The sales were depicted as one-story commercial buildings of masonry or masonry and stucco construction. Each comparable was depicted to be a grocery store. They were situated on parcels ranging from 4.85 acres to 9.33 acres. The improvements ranged in size from 46,539 to 63,952 square feet of building area. The comparables sold from June 2006 to April 2007 for prices ranging from \$4,200,000 to \$6,412,500 or from \$82.32 to \$100.31 per square foot of building area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

On cross-examination, Miller testified that she believed the sales to be arm's length transactions because she received the sales from the Illinois Department of Revenue. Miller admitted that comparable sale #1, page 4 depicts the sale as not being an arm's length transaction based on the buyer and seller being related parties. Miller further admitted that the transfer declaration sheet for this sale depicts it was not advertised for sale on the open market. Miller further admitted that the buyer and sellers for comparable sales #2 and #3 were the same parties. She admitted that the properties transferred on the same day, March 1, 2007, which may indicate they were sold as part of a portfolio package deal. Miller acknowledged that the sale directly across the street from the subject, also used by Lipowsky as his sale #2 was relied upon heavily by the board of review in estimating the subject's value. She admitted that it sold in 2007, and then was resold in 2008. Miller further admitted that the property sold for less in 2008 than it did in 2007. Miller admitted that, even though it was available, the board of review did not submit the 2008 sale of this property into the record. Miller testified that she did not verify any of the sales received from the Department of Revenue.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds that a reduction in the subject's assessment is warranted.

The appellant contends the assessment of the subject property is excessive and not reflective of its market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3rd Dist. 2002). The Board finds the evidence in the record supports a reduction in the subject's assessment.

The appellant submitted two appraisals estimating the subject property had a market value of \$2,700,000, as of January 1, 2008. The Macon County Board of Review submitted three comparable sales. The subject's assessment reflects a market value of \$3,308,271.

The Board gave no weight in its analysis to the report prepared by Michael E. Lipowsky. The Board finds the report which provides an estimate of value for the subject was not prepared in conformance with USPAP guidelines and Lipowsky was not licensed to prepare such an estimate of value for the subject at the time of preparation of the report. The Board also gave little weight in its analysis to the three sale comparables submitted by the board of review. The Board finds that the arm's length nature of each sale was called into question by the appellant. The Board finds the board of review was unable to refute each allegation as presented by the appellant that each sale was either not advertised, was part of a portfolio sale, involved related parties or otherwise sold at a later date for a substantially lower price. The Board finds the assessor was not present to provide support neither for the subject's assessment nor subject to cross-examination regarding the subject's estimated market value. The Board finds the best evidence in this record of the subject's estimated market value is found in the appraisal prepared by J. Edward Salisbury.

The Board finds the appraisal and testimony provided by Salisbury is better supported and more credible than the evidence submitted by the board of review. Salisbury developed two of the three traditional approaches to value in developing his estimate of market value.

With respect to the income approach to value developed by Salisbury, he selected four rentals and two rental listings. The rentals ranged from \$2.05 to \$6.90 per square foot. After adjustments, Salisbury estimated the subject had a market rent of \$5.00 per square foot of building area. He then calculated the subject's potential gross income of \$320,915 and after making deductions for vacancy and credit losses, opined the subject had a net operating income of \$274,382. Capitalizing the estimated net income of the subject resulted in an estimate of value under the income approach of \$2,888,232 or \$2,900,000, rounded.

In addition, the Board finds that Salisbury's conclusion of value under the sales comparison approach is well supported. The Board finds that Salisbury provided a clear description of the sales he used in his report. The additional data and more complete descriptions provided the Board with a better understanding of the physical characteristics of the comparables which in turn leads to a better understanding and confidence in Salisbury's analysis. While the Board recognizes that the comparables used by Salisbury had different attributes when compared to the subject, such as size and location, the Board finds that Salisbury adequately explained his adjustment process to account for these differences and these properties were more similar in size and other attributes to the subject than the comparable sales selected by the board of review. In conclusion, the Board finds that Salisbury's estimate of value under the sales comparison approach is more credible than the estimate developed by the board of review.

In his final conclusion of value and after consideration of the income approach to value and the sales comparison approach to value, Salisbury opined the subject had an estimated market value of \$2,700,000 as of January 1, 2008.

The Board further finds Salisbury testimony regarding the sale surrounding the property directly across the street from the subject to be credible, and therefore finds this sale to be dissimilar from the subject because it is not a stand-alone building such as the subject, but rather, is located in a strip mall, which as testified to by Salisbury, affects its market value.

In conclusion the Property Tax Appeal Board finds the subject property had a market value of \$2,700,000 as of January 1, 2008. Since market value has been determined the 2008 three-year average median level of assessments for Macon County of 33.25% shall apply.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

Ronald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

Member

J. R.

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: October 18, 2013

Allen Castrovillari

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.