



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

APPELLANT: Marathon Petroleum Company LLC
DOCKET NO.: 08-02426.001-C-2
PARCEL NO.: 05-02-202-035

The parties of record before the Property Tax Appeal Board are Marathon Petroleum Company LLC, the appellant(s), by attorney Donald F. Hemmesch, Jr. of Smith, Hemmesch, Burke, Brannigan & Guerin, Chicago; the DuPage County Board of Review; and Glenbard Township High School Dist. No. 87, intervenor, by attorney Ares G. Dalianis of Franczek Radelet, P.C., Chicago.¹

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

**LAND: \$439,660
IMPR: \$18,270
TOTAL: \$457,930**

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 44,400 square foot site improved with a one-story, masonry constructed gas station/mini-mart building containing 3,200 square feet of building area. The building was constructed in 1987. The subject property has six pumps with three islands and 12 fueling positions along with underground storage tanks. A steel canopy with approximately 3,496 square feet and 24 lights covers the pumps and fueling areas. The subject has a land to building ratio of approximately 13.88:1. The property is located at 22W275 North Avenue, Glen Ellyn, Milton Township, DuPage County.²

¹ The intervening school district adopted the evidence presented by the DuPage County Board of Review and submitted no independent evidence. The intervenor did not appear at the hearing and is found to be in default pursuant to section 1910.69(b) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(b)).

² At the beginning of the hearing Mr. Hemmesch made a Motion in Limine to bar the use of the Valuation Analysis submitted by the board of review (Board of Review Exhibit #2) and the testimony of those that prepared the exhibit. Subsequent to the hearing the Motion in Limine was withdrawn.

The appellant called as its witness Joseph M. Ryan. Ryan is a real estate appraiser with the designation of Member of the Appraisal Institute (MAI) from the Appraisal Institute and an Illinois State Certified General Appraiser. Ryan is a Principal of the LaSalle Appraisal Group, a firm that primarily does appraisals of commercial and industrial properties. Representative clients include Marathon, BP, Shell, Exxon Mobile, Atlas Oil and Graham Oil.

He has appraised between 625 and 650 gas stations. He further testified that he has had direct contact with the major oil company employees and has become familiar with oil company retail trends and strategies. Ryan testified the unit of comparison used in the oil industry for buying and selling service stations is price per square foot of land area. The unit of comparison he uses in valuing service stations is price per square foot of land area. The witness explained that the most valuable component of any gas station is the land. He further stated that the buildings on gas station sites have changed over the years but the constant has been the land area. The appraiser testified that if one uses building square footage as the unit of comparison the range in values is too wide making the adjustments unwieldy.

Ryan prepared a summary appraisal report on the subject property which was marked as Appellant Exhibit #3. The effective date of the appraisal was January 1, 2008. Ryan explained the subject property is located on the south side of North Avenue, east of Main Street, at the intersection of North Avenue and Park Boulevard in unincorporated DuPage County. Ryan testified the subject's location North Avenue is divided by a grassy median and a raised curb, which allows the subject property to have access only from eastbound traffic. He testified that North Avenue has three lanes in either direction and that the intersection of North Avenue and Park is not signalized. He also testified that Park is a residential street. The witness did not consider the location to be a major intersection.

The witness testified that an optimal location for a gasoline service station would be at a signalized intersection with high traffic counts on both streets that border the location. He explained that he would be looking for curb cuts that allow ingress and egress in either direction on both right of ways. Ryan was of the opinion that negative aspects of the subject's location include the lack of a signalized intersection and there is no chance of attracting westbound traffic.

Ryan testified the subject property is improved with a 3,200 square foot gas station, mini-mart type of building constructed in 1987 with an effective age of 12 years as of the date of value. The appellant's appraiser determined the highest and best use of the site as vacant was for specialty retail uses such as a service station, branch bank, restaurant or other smaller single-tenant building. The witness determined the highest and best use

of the property as improved was for continued use as a gas station.

In estimating the market value of the subject property Ryan developed only the sales comparison approach to value. The cost approach was not developed because the building was constructed in 1987 and was closer to the end of its economic life than the beginning. He also testified buyers and sellers within the market place don't rely on the cost approach in their investment decisions. He further testified the income approach has less reliability because oftentimes there is low rent and then rent is paid on gallons pumped, which includes a business element.

In the sales comparison approach Ryan used five sales located in Aurora, Warrenville, and Downers Grove that ranged in size from 41,848 to 67,518 square feet of land area. The comparables were improved with buildings that ranged in size from 3,360 to 5,124 square feet of building area and in age from 5 to 18 years old. The witness testified these comparables had similar land sizes and building sizes as the subject. He also was of the opinion the comparables had a fairly tight land to building ratio ranging from 10.01:1 to 18.26:1 while the subject had a land to building ratio of 13.88:1. Ryan also considered location and testified two of the sales, comparable sale #1 and comparable sale #2, were not located at signalized intersections. The sales occurred from June 2005 to September 2008 for prices ranging from \$972,000 to \$1,910,000 or from \$17.77 to \$31.14 per square foot of land area, building included. Ryan testified he compared and contrasted each of the sales to the subject property based on location, land size, age, land to building ratio, property rights, condition of sale and market conditions. After considering these adjustments, Ryan estimated the subject had a market value of \$28 per square foot of land area, building included, or \$1,250,000, rounded.

On cross-examination Ryan indicated his comparable sale #4 may have gone from a gas station to a car wash to a discount cigarette place. Ryan also agreed that his sale #5 was a gas station that also had a McDonald's restaurant building and a separate car wash. Ryan's report indicated comparable sale #5 had a deed restriction stating the new owner must only sell BP brand gas at the site for 20 years. Ryan also indicated his comparable sale #1 had a car wash. Ryan testified his comparable sale #3 had 3,945 square feet of building area and there was a typing error on page 35. He further indicated that his comparable #5 had 5,124 square feet of building area and the 4,180 square feet of building area reported on page 39 was a typo and the sales price per square foot reported on page 39 was also a typo. Ryan also agreed his report at page 23 indicated the typical structural life for a building such as the subject is 25 years. The witness further explained the prices used for the comparables was what was reported on the transfer declarations and the prices reflected in his report are for the real estate only.

Under redirect the witness testified the traffic count past the subject property was 66,000 cars per day but you would have to cut that in half because it is not accessible to half of the traffic. He further testified that his comparable sale #2 had a rather low traffic count of 10,008 and the rest of the traffic counts were between 33,000 and 35,000. The witness also agreed the subject does not have a car wash.

Under re-cross Ryan agreed that his appraisal indicated that the sales were verified through public records and the transfer document. He also indicated the traffic count information was not discussed in his report.

The board for review submitted its "Board or Review Notes on Appeal" and a Valuation Analysis prepared by Robert Earl and Dawn Hanson of the Milton Township Assessor's office. The subject property had a final total assessment of \$598,470 which reflects a market value of \$1,798,828 or \$40.51 per square foot of land area, building included, when applying the 2008 three year average median level of assessments for DuPage County of 33.27% as determined by the Illinois Department of Revenue.³

The board of review called as its witness Dawn Hanson, the commercial deputy assessor for Milton Township. Ms. Hanson had been with the Milton Township Assessor's office since 2007. She testified that she worked as an appraiser with William J. Carter in the 1980s travelling across the country doing commercial appraisals. She indicated that in 1994 she was the Fox Township assessor for a four year term. She further testified that she had been on the Kendall County Board of Review for six years. She was also a residential deputy assessor with York Township for approximately five years and then she began work with Milton Township. She also testified she has the Certified Illinois Assessing Officer (CIAO) designation and is a licensed real estate agent.

Under cross-examination Hanson testified she was a licensed residential real estate appraiser from 1998 through 2007. She testified that she holds herself out as being able to assess commercial property. While working with other appraisers Hanson indicated that she had not appraised any other function gas stations. While with the Kendall County Board of Review Hanson indicated that she had at least two hearings on gas stations. She began working in the residential section of the Milton Township Assessor's Office in January 2007 and did not value any gas stations. In January 2008 she began working in the Milton Township's commercial division. She testified that the report that she prepared in the instant appeal was the first she had prepared of this nature on gas stations. Hanson also testified there were 11 other gas stations in Milton Township that she valued for assessment purposes in 2008. She indicated that part of her duties as a deputy township assessor in the commercial

³ The board of review incorrectly reported the subject's assessment on the "Board of Review Notes on Appeal" submitted in this matter.

section was to value gas stations in her jurisdiction. Hanson further testified that in valuing gas stations she typically uses the cost approach and the sales comparison approach to value.

Appellant's counsel objected to Hanson's qualifications to give opinion testimony. The Board overrules the objection finding that she has sufficient education, training and work experience to give opinion testimony.

Hanson identified Board of Review (BOR) Exhibit #2 as the valuation report she prepared of the subject property. She testified she used nine comparable sales in valuing the subject property. The comparables were located in the communities of Aurora, Woodridge, Bartlett, Roselle, Willowbrook, Lombard, Bloomingdale, Wheaton and West Chicago. Board of review comparable sale #1 was the same sale as Ryan's sale #3. The comparables ranged in land area size from 12,425 to 84,584 square feet. The comparables were improved with buildings that ranged in size 410 to 3,142 square feet of building area that were constructed from 1958 to 2005. The comparables had from one to three islands; from three to six pumps; and from 6 to 12 fueling stations. These properties had land to building ratios ranging from 13.2:1 to 82.8:1. The sales occurred from May 2005 to October 2007 for prices ranging from \$930,000 to \$3,200,000 or from \$607.89 to \$3,170.73 per square foot of building area, land included. Alternatively, the comparables sold for unit prices ranging from \$30.06 to \$69.27 per square foot of land area, including building.

Hanson testified she selected her comparable sale #1 because she knew that it had an awkward ingress/egress, similar to the subject. Comparable sale #2 was selected because it is located on Route 53 in Woodridge and has a lot of traffic like North Avenue. Hanson was of the opinion this comparable had better access than the subject. Hanson was of the opinion comparable sale #3 had better access than the subject. Sale #4 was selected due to its location even though the building and land area are both smaller than the subject. Sale #5 was selected due to its location on Route 83, a major thoroughfare. The building was smaller than the subject building and the site was 10,000 square foot smaller than the subject's site. Sale #6 had a mini-mart with a building approximately 800 square feet smaller than the subject but with a site approximately double the size of the subject parcel. Sale #7 was selected because it was located on a major thoroughfare. Sale #8 was located within Milton Township. Sale #9 was selected due to its location on Roosevelt Road, a fairly heavily travelled thoroughfare.

Hanson testified she made adjustments to the sales based on location, ingress/egress, land to building ratio, date of sale, marketing conditions and building size. Her adjustments ranged from -10% to -75% resulting in adjusted sales prices ranging from \$547.10 to \$882.05 per square foot of building area, land included. In the report Hanson asserted that due to the subject's age, average condition and indirect access from west

bound North Avenue the subject was at the lower value range. She estimated the subject had an estimated value of \$575.00 per square foot of building area, including land, or \$1,851,500.

She also indicated the comparables had sales prices ranging from \$30 to \$69 per square foot of land area rounded, building included. The deputy assessor did not make any adjustments to the comparables when using a price per square foot unit of comparison. She indicated the median sales price was \$43 per square foot of land area. Applying the median value to the subject resulted in an estimated value of \$1,909,200.

Hanson indicated in the report that since gas stations are typically valued on a price per square foot of building area and these mini-marts/convenience stores are valuable components, more weight was given to the value determined using price per square foot of building area. She estimated the subject property had a market value of \$1,850,000.

Under cross-examination Hanson agreed that she is not a licensed real estate appraiser and does not have the MAI designation. She also agreed BOR Exhibit #3 was the only valuation report of a gas station that she had prepared. Hanson further agreed that she does not know anyone in the oil industry. Hanson also agreed that the unadjusted price per square foot of building area for her comparables was a broad range of values. She disagreed that her adjustments were unusually high even though two were adjusted by 75%, one was adjusted by 50% and one was adjusted by 30%. She did agree, however, that price per square foot of land area would be the better way to develop a unit of comparison.

Hanson also agreed the subject property was not located at a major intersection; the subject is not located at a signalized intersection; and agreed that access to the subject property by west bound traffic on North Avenue is restricted by a large grassed and treed median. She further agreed that one can only make a right turn in and a right turn out of the station on North Avenue. She also agreed that the traffic on Park is residential in nature.

On page 18 of her report Hanson made the statement the highest and best use of the subject as improved is the existing use as a gas station/mini-mart. In determining the highest and best use as improved Hanson made the statement "that the current use of the property results in net operating income and corresponding value greater than that obtained by placing the site in an alternative use." Hanson testified she had not reviewed the net operating income of the subject nor had she reviewed the net operating income of alternative uses. She explained that this statement was just part of a format she used which was based on a form from Fred Beno of York Township.

She also agreed her comparables #1, #2, #3, #5, #6, #7 and #9 were located at signalized intersections.

Based on this testimony and evidence, the board of review requested confirmation of the subject's assessment.

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 the appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. 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 do so. 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. 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 of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the market data in the record demonstrates a reduction in the subject's assessment is warranted.

Initially, the Board finds the parties are in general agreement with respect to the description of the subject property and the conclusion that the highest and best use as improved is the existing use. Additionally both parties presented either an appraisal or valuation analysis based on comparable sales of gas stations.

One issue before the Property Tax Appeal Board concerned the proper unit of comparison to be used to value gas stations. The Board finds Ryan's testimony that the unit of comparison used in the oil industry for buying and selling service stations is price per square foot of land area is the most credible in this record. The witness explained that the most valuable component of any gas station is the land. His conclusion is buttressed by the fact he has appraised between 625 and 650 gas stations and has had direct contact with the major oil company employees and has become familiar with oil company retail trends and strategies. Based on this record the Property Tax Appeal Board finds it is appropriate to use price per square foot of land area, including the building, in valuing gas stations.

The record contains sales data on five comparables submitted in the appellant's appraisal and nine sales submitted in the board of review's valuation report. The Board gave less weight to the appellant's comparable sales #1 and #2 due to the fact they both sold in June 2005, approximately 2½ years prior to the assessment date at issue. The Board also gave less weight to appellant's comparable sale #4 due to the fact that there was a change in use from a gas station to a car wash and then to a cigarette discount store after the property sold. This change in use indicates this sale and the subject property differed in highest and best use as improved and would not be substitutes in the market.

With respect the sales selected by Hanson, the Board finds little weight should be given sales #4 through #9. Both sales #4 and #5 were improved with buildings significantly smaller and older than the subject building and had land to building ratios significantly higher than the subject property. Less weight was given comparable sale #6 due to date of sale, the age of the building and the land to building ratio. The Board gave less weight to sales #7, #8 and #9 due to the dates of sale and the building ages.

The Board finds both Ryan and Hanson had a common sale located at 1207 North Eola Road, Aurora, Illinois, that sold in October 2007 for a price of \$1,910,000 or \$31.14 per square foot of land area, including building.⁴ The Board gives some weight to the appellant's comparable #5 but notes the sales price of \$17.77 per square foot of land area, including building, seems relatively low compared to other sales deemed relevant and probative by this Board. This relatively low sales price may be due to the fact there is a deed restriction stating the new owner must only sell BP brand gas at the site for 20 years. The Board also finds sales #2 and #3 used by Hanson were good comparable sales. These two comparables were improved with one-story retail service stations constructed in 1995 and 1996 with 1,872 and 2,858 square feet of building area respectively. These properties had 34,556 and 65,340 square feet of land area resulting in land to building ratios of 18.5:1 and 22.9:1, respectively. These two comparables were superior to the subject in both building age and land to building ratio. These comparables sold in October 2007 and September 2007 for prices of \$1,300,000 and \$2,801,000 or \$37.62 and \$42.87 per square foot of land area, including building. Hanson indicated in her testimony and within her valuation report that these comparables were superior to the subject in various aspects including building age, superior land to building ratio and superior ingress/egress. Therefore, the Board finds downward adjustments would be required to these two sales to make them comparable to the subject. In summary, the Board finds the best comparables in the record had unadjusted sales prices ranging

⁴ Ryan and Hanson differed slightly on both the building size and land size of this comparable. The Board finds that Hanson's valuation report included a copy of the listing sheet which supported the data in the Ryan appraisal. The Board accepts Ryan's conclusion of the unit price of this comparable.

from \$17.77 to \$42.87 per square foot of land area building included.

In conclusion, after considering these most relevant sales and the testimony of the witnesses, the Property Tax Appeal Board finds the subject property had a market value of \$31.00 per square foot of land area, building included, resulting in a market value of \$1,376,400 as of January 1, 2008. Since market value has been established the 2008 three year average median level of assessments for DuPage County of 33.27% as determined by the Illinois Department of Revenue 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

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

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.