



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

APPELLANT: Lumanair, Inc.
DOCKET NO.: 08-04938.001-C-2 through 08-04938.006-C-2
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Lumanair, Inc., the appellant, by attorney Glen A. McTavish, Jr., of Myler Ruddy & McTavish, Aurora; and the Kane 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 Kane County Board of Review is warranted. The correct assessed valuation of the property is:

| DOCKET NO | PARCEL NUMBER | LAND | IMPRVMT | TOTAL |
|------------------|---------------|------|---------|-----------|
| 08-04938.001-C-2 | 14-17-300-034 | 0 | 154,985 | \$154,985 |
| 08-04938.002-C-2 | 14-17-300-017 | 0 | 8,295 | \$8,295 |
| 08-04938.003-C-2 | 14-17-300-015 | 0 | 7,759 | \$7,759 |
| 08-04938.004-C-2 | 14-17-300-016 | 0 | 6,807 | \$6,807 |
| 08-04938.005-C-2 | 14-17-300-014 | 0 | 6,807 | \$6,807 |
| 08-04938.006-C-2 | 14-17-300-028 | 0 | 37,990 | \$37,990 |

Subject only to the State multiplier as applicable.

ANALYSIS

The subject matter of this appeal involves six parcels at the Aurora Municipal Airport located at Route 30, Sugar Grove, Sugar Grove Township, Kane County. The property identified by property index number (PIN) 14-17-300-034 is improved with a two-story building constructed in 1987 with 15,600 square feet of building area. The remaining PINs are improved with one-story hangars that range in size from 6,318 to 39,000 square feet of building area.

The appellant appeared before the Property Tax Appeal Board by counsel contending overvaluation with respect to the leasehold value as the basis of the appeal. The first witness called on behalf of the appellant was Mike Luman, vice president, general manager and partial owner of Lumanair, Inc. (hereinafter Lumanair). The witness testified Lumanair is located at the

Aurora Municipal Airport in Sugar Grove and is known as a fixed base operator (FBO). A FBO provides such services to the general aviation community as fuel, maintenance, hangar storage, flight training, and aircraft rental.

Luman testified Lumanair has been at the Aurora Municipal Airport since 1966 and leases its facilities from the City of Aurora. He explained that the lease has been extended from time to time with the latest being a 20 year lease with a 10-year option entered in 1999. Luman agreed that the lease would expire on February 28, 2019.

Luman explained the lease consists of eight parcels, six of which are occupied by buildings. There are five hangar buildings and one office building although within the confines of the hangars there is some office space. The hangars are used for either the storage of clients' aircraft or Lumanair's usage for line operations and aircraft maintenance facilities. The offices are generally for corporate use and/or rental to other tenants. Luman testified the six buildings were present when the existing lease was entered into in 1999.

The next witness called on behalf of the appellant was Ralph W. Harkison. Harkison is a State of Illinois Certified General Real Estate Appraiser. He is self-employed with Harkison Appraisal Corporation, Big Rock, Illinois. The witness identified Appellant's Exhibit #1 as the appraisal of the subject property that he prepared. Harkison estimated the leasehold value of the subject property to be approximately \$668,000.

The appraiser testified his assignment was to value the leasehold interest of the lease between Lumanair and the City of Aurora. He testified there is one lease between Lumanair and the City of Aurora, which he reviewed and included in the addenda of his appraisal. Harkison explained that in valuing each parcel he used the monthly rent for the remaining term of the lease, which was 134 months, and applied a discount rate of 8.5% resulting in a present value factor of 86.35. The witness also explained that for PIN 14-17-300-034 he added a percentage rent due to the fact the lease includes rent based on 1.5% of gross sales.¹

With respect to the buildings, Harkison testified they remain on the property until the end of the lease and there is no provision that the buildings remain the personal property of the tenant. The appraiser testified that he considered the buildings as part of the lease and testified that all but one of the buildings was built by Lumanair. He also explained that at the end of the

¹ Paragraph 2 of the lease described the Ground Rent that was to be paid to the City of Aurora. Paragraph 3 of the lease described the Additional Rent that was to be paid to the City of Aurora for the leased premises as an amount equal to 1.5% of the gross receipts generated by Lumanair's business conducted on the leased premises. Gross receipts were defined as all cash generated from the business activities conducted on the leased premises by Lumanair, plus deductions for State and/or Federal excise/sales taxes.

lease all building improvements are not to be removed.² The appraiser testified the highest and best use of the property was as improved with facilities to provide space for airport functions of business.

The appraiser testified he valued the leasehold interest because the property is owned by the City of Aurora, a tax exempt government body. He testified that when a tax exempt body owns property that is leased to one not exempt the leasehold interest becomes taxable to the tenant. In determining the leasehold value the witness testified he followed the formula set forth in Korzen v. American Airlines, Inc., 39 Ill.2d 11, 233 N.E.2d 568 (1968). He explained that the factors that need to be considered in arriving at the leasehold value include market rent, the remaining term of the lease and the discount factor which is based on the quality of the rent, the character and credit of the person paying the rent.

Harkison testified that on the date of value there were 134 months remaining on the lease. The appraiser examined the quality of the rent and felt the proper rate of return or discount rate was 8.5%. He then looked at the rent provided by his client, chose a level rent, and discounted the rent back to present dollars using the discount rate of 8.5%.

The witness agreed that American Airlines required the use of market rent not contract rent in developing the leasehold value. Ultimately the appraiser determined the subject's actual rent was market rent. This was done by reviewing comparable leases involving a tax exempt body leasing to a taxable entity. His report included three lease comparables located at the Quad City International Airport, Peoria International Airport and the Chicago Executive Airport also known as Pal-Waukee Airport. The Quad City International Airport had rental rates ranging from \$.11 to \$.30 per square foot of ground area with lengths ranging from 20 and 30 years. Peoria International Airport had rates of \$.30 per square foot of land area in 2006 and 2007. He indicated that at the Chicago Executive Airport the FBO had a land lease rate of \$.590032 per square foot for 40 years, which is subject to CPI adjustments each year. He further testified that after preparing the report he had a return call from DeKalb Airport and their leases are at \$.22 per square foot of land area. Harkison testified the subject has a lease rate of \$.34537 per square foot of ground area and an additional rent based upon 1.5% of gross sales. He also testified that in checking with other leases at the Aurora Municipal Airport the lease rates are the same.

The witness testified he began valuing leaseholds in approximately 1982 at Aurora Airport and other airports using the

² Paragraph 8(b) of the lease provides in part that, "At the termination of the Lease or of any extension or renewal thereof, Tenant shall surrender the leased premises, including all building and site improvements constructed or installed by the Tenant, in good condition . . . All such buildings and improvements shall become the sole property of the Landlord upon termination of the Lease. . . ."

same methods as in the appraisal. The witness indicated his valuation was presented in a prior objection by Lumanair to the board of review and the assessor and was accepted. He further testified that he had continued to calculate the value of Lumanair's leases with the City of Aurora for the purpose of arriving at appropriate assessed values in subsequent years. Harkison indicated the assessor had accepted his values until the current year.

In the addenda of the appraisal Harkison also included a copy of a tax bill disclosing the tax was based on a leasehold interest, a copy of instructions from the Kane County Supervisor of Assessments setting forth the methodology of assessing leaseholds and a copy of the opinion of the court issued in Korzen v. American Airlines, Inc., 39 Ill.2d 11, 233 N.E.2d 568 (1968).

Under cross-examination Harkison testified Luman has the authority to sublease the space at a number considerably higher than what the current ground rent is. Harkison also explained that the subject's lease quotes a ground rent of \$.027691 per square foot, however, the lease is dated February 23, 1999, and has an annual cost of living adjustment resulting in the estimated rent of approximately \$.34 per square foot. He further testified that there is no separate lease for the building area and the \$.34 per square foot includes the building component. He testified that one of the hangars was built prior to being occupied by Lumanair and the rent is the same as the rest of the property.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final assessment of each of the PINs was disclosed. The subject PINs had a total assessment of \$421,775. The total assessment reflects a market value of \$1,267,733 when applying the 2008 three year average median level of assessments for Kane County of 33.27%.

In a letter submitted to the Property Tax Appeal Board, board of review member Timothy J. Sullivan asserted that it was their position that the appellant's appraiser had misinterpreted American Airlines in that he addressed strictly the value of the land component of the property and does not include the building improvements of the hangars. He indicated the methodology employed by the appraiser may be correct but the interest appraised was not.

At the hearing the board of review called as its witness Ed Kling. Kling testified he had worked as a deputy assessor for four townships in DuPage County when he started his career 20 years ago. He testified he does consulting work for York Township, work for the Will County supervisor of assessments office and work in Kane County for various assessment offices. He further testified he is an MAI (Member of the Appraisal Institute) appraiser. He also testified that he has done a lot of airport evaluation for fee-simple type transfers and for

leasehold purposes at DuPage, Lake-in-the-Hills, DeKalb and Aurora.

The witness further explained he has developed approximately 15,000 square feet of hangars in the last five year. He also testified he has a hangar in DeKalb that he just negotiated a fair leasehold assessment on.

Kling testified he agreed with the methodology employed by Harkison in terms of establishing the market rent and then discounting the rent over the period. However, it was Kling's opinion that in developing market rent you look at the building improvement. Kling testified he looked up rental rates for competing hangars from the market area. The valuation analysis prepared by Kling for each PIN was submitted by the board of review and each contained a list of 14 comparable rentals from DeKalb Taylor Municipal Airport, Aurora Municipal Airport, DuPage County Airport and Rockford. These properties were reported to have hangars renting for \$2.75 to \$10.40 per square foot of building area. Kling testified after using these comparables he arrived at a fair market rent of \$5.00 per square foot for all the improvements on the site. He further stated that he agreed with Harkison's used of an 8.5% discount rate.

Kling further testified that he used a four year term in his calculations rather than the unexpired term of Luminair's lease in arriving at his conclusion of value. He thought it would be very onerous if somebody's got a brand new 40-year term lease if you apply the formula to the letter of how it is written. He testified they were going to make an assumption that everybody had a uniform lease length on their hangars at Aurora Airport. He asserted once they established what the uniform lease period might be they went and looked at all the hangar stock to derive market rents.

The board of review representative asked Kling if he was familiar with the case of Rosewell v. Bulk Terminals Co., 73 Ill.App.3d 225 390 N.E.2d 1294, 28 Ill.Dec.704 (1st Dist. 1979) and he indicated that his understanding of the opinion was that the market rent of the improvements is to be used. Meaning the market rent of the hangars was to be used in the American Airlines formula.

Kling arrived at the following values for the respective PINs under appeal rounded to the nearest dollar:

| Property Index Number | Value |
|-----------------------|------------------|
| 14-17-300-034 | \$305,324 |
| 14-17-300-017 | \$148,845 |
| 14-17-300-015 | \$77,257 |
| 14-17-300-016 | \$148,845 |
| 14-17-300-014 | \$78,149 |
| <u>14-17-300-028</u> | <u>\$524,582</u> |
| Total | \$1,283,002 |

Under cross-examination Kling testified that he agreed with Harkinson that the formula used to arrive at the leasehold value was that in the American Airlines decision. He further testified he did not use the term of Lumanair's lease stating to do so would be onerous. He indicated the four year term in his analysis was the methodology chosen by the assessor's office for uniformity purposes.

During the course of his cross-examination Kling testified that the City of Aurora was the landlord with respect to the ground. He asserted that the City of Aurora was leasing the underlying ground to Mr. Luman (Lumanair).

Kling explained that Lumanair leases the hangars to the general public and some of the rates they charge were similar to the rates cited in his analysis. He explained his rent of \$5.00 per square foot is what someone could rent the hangars for from the owners. The witness asserted the rental rates in his report are the market rental rates for aircraft hangars in competition with the subject property.

Kling identified Board of Review Group Exhibit #1 as containing the reports he prepared in valuing the subject property. He further indicated that he used the same rental comparables in valuing the whole property and asserted he used a market rent of \$5.00 per square foot of hangar building area. However, in reviewing his respective valuations, Kling used rental rates for PINs 14-17-300-014 & 015 of \$5.00, \$5.10 \$5.20 and \$5.30 per square foot of building area for 2007, 2008, 2009 to 2010, respectively; for PINS 14-17-300-016, 017 & 034 he used rental rates of \$8.00, \$8.16, \$8.32 and \$8.48 per square foot of building area for 2007, 2008, 2009 to 2010, respectively; and for PIN 14-17-300-028 he used rental rates of \$5.50, \$5.61, \$5.72 and \$5.83 per square foot of building area for 2007, 2008, 2009 to 2010, respectively. He indicated that he made adjustments to the rentals because of office area in the various hangars, however, nowhere in his analysis of the respective PINs is that stated.

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

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

The appellant in this appeal is challenging the fair cash value of the leasehold interest in the property. 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)). Additionally, the Property Tax Code provides that each taxable leasehold estate shall be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145(b)). 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, 780 N.E.2d 691, 269 Ill.Dec. 219 (3rd Dist. 2002); 86 Ill.Admin.Code §1910.63(e). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds there was no dispute that the subject property should be assessed as a leasehold. The parties did not dispute that the subject property was owned by the City of Aurora and was exempt but leased to Lumanair creating a taxable leasehold. Section 9-195 of the Property Tax Code provides in part that:

- (a) Except as provided in Section 15-35, 15-55, 15-100, and 15-103, when property is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate and appurtenances shall be listed as the property of the lessee, thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as on property that is not exempt, and the lessee shall be liable for those taxes. However, no tax lien shall attach to the exempt real estate. . . .

35 ILCS 200/9-195. The fair cash value of a leasehold is its rental value in the market, the amount a willing lessee will pay a willing lessor, in a voluntary transaction, for the right to use and occupy the premises. Korzen v. American Airlines, Inc., 39 Ill.2d.11, 18, 233 N.E.2d 568, 572 (1968). The Supreme Court of Illinois in American Airlines set forth the mathematical formula to be used in calculating the value of a leasehold for real estate assessment purposes by stating that:

The present value of the current market rental payable in the future, which is the fair cash value of the leasehold, can be determined by multiplying the current market rental of a leasehold by the present value of an annual payment of one dollar for the unexpired term of the lease.

American Airlines, 39 Ill.2d at 19, 233 N.E.2d at 573. Furthermore, the court in Rosewell v. Bulk Terminals Co., 73 Ill.App.3d 225, 237, 390 N.E.2d 1294, 28 Ill.Dec.704 (1st Dist. 1979) stated it is the market rental for the land as improved, rather than the contractual rental or the market rental for unimproved land, that is the appropriate basis for computing the fair case value of the leasehold.

Both Harkison and Kling testified the formula announced in American Airlines was to be used in valuing the subject leasehold. Of the two witnesses the Board finds that Harkison was more credible than Kling in that he most closely followed the dictates of American Airlines in arriving at the leasehold value.

First, the Board finds Harkison included a copy of the subject's lease in his appraisal disclosing the lease terminated on February 28, 2019. Harkison calculated the leasehold value using the unexpired term of the lease or 134 months. Conversely, Kling estimated the subject's leasehold value using a hypothetical term of four years beginning in 2007 and expiring in 2010. Kling's use of a hypothetical lease term is not supported by the holding of American Airlines. The Board finds that Harkison's conclusion with respect to the unexpired term of the lease and the use of the remaining 134 months of the lease term in calculating the leasehold value is more credible and consistent with the holding of American Airlines.

Second, Harkison testified he canvassed other airports to determine the market rent for ground rents and also included an additional rent based on 1.5% of gross sales as provided in the subject's lease. He testified that the subject's rental was reflective of the market based on his research of other airports and with other tenants within the Aurora Municipal Airport. Kling testified during the hearing he utilized a market rent of \$5.00 per square building area; however, in reviewing his analysis and during cross-examination it was revealed he used different rates for different hangars for each of the 4 years of his hypothetical lease term. The Board finds the fact that his testimony was inconsistent with the report he prepared for each PIN undermines his credibility. Furthermore, Kling testified that the subject's lease was for the ground. However, a review of the lease disclosed it was for the entire premises, which included the improvements, and had a both a ground rent component and an additional element based on a percentage of gross sales generated by Lumanair's business as an FBO. Mr. Luman testified that as an FBO Lumanair provided services and presumably received revenue from such sources as fuel, maintenance, hangar storage, flight training, and aircraft rental. Luman also testified the six hangars were present when the current leased was entered into in 1999. Based on this record it appears the subject's rental under the lease was more than just for the ground but included a factor derived from the rental of hangar space or the building improvements. The Board finds that Kling's testimony with respect to his understanding of the subject's lease detracts from his credibility and his selection of the market rent attributable to the subject property. In conclusion the Board finds that Harkison's conclusion of market rent is more credible.

Third, The Board finds that both Harkison and Kling were in agreement with respect to the discount factor of 8.5% to be used to calculate the present value of the current market rental payable in the future.

Based on this record the Board finds that Harkison's conclusion of the subject's leasehold value is more credible and a reduction in the subject's assessment is 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.

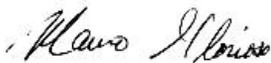


Chairman



Member

Member



Member



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: May 24, 2013



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.