



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

APPELLANT: State Bank of Countryside
DOCKET NO.: 09-00841.001-C-2
PARCEL NO.: 16-05-22-211-002-0000

The parties of record before the Property Tax Appeal Board are State Bank of Countryside, the appellant, by attorney Mary Fitzgerald of John P. Fitzgerald, Ltd., Chicago; and the Will 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 Will County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$ 84,482
IMPR.: \$ 657,683
TOTAL: \$ 742,165

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a one-story owner occupied building that contains 5,487 square feet of building area. The building is of masonry exterior construction that was built in 2008. The building features an unfinished basement, central air conditioning, sprinkler fire protection, four bathrooms, 40,000 square feet of paving, and a 1,600 square foot canopy covering three drive-up lanes. The improvements are situated on 50,790 square feet or approximately 1.17 acres of land area. The subject property is used as a banking facility. The subject property has land to building ratio of 9.26:1. The property is located in Homer Township, Will County.

The appellant appeared before the Property Tax Appeal Board through counsel claiming overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal of the subject property prepared by a state licensed appraiser. Using the three traditional approaches to value, the appraisal report conveys an estimated market value of \$1,650,000 as of January 1, 2009. The appraiser was not present at the hearing to provide direct testimony or be cross-examined

regarding the appraisal methodology and final value conclusion. Counsel explained the appraiser is deceased.

Counsel attempted to present testimony from Mr. Tom Grogan, an appraiser from Sterling Valuation, regarding the contents of the appraisal report. The Will County Board of Review argued Grogan did not develop or sign the appraisal report. The board of review requested the Property Tax Appeal Board give no weight to the appraisal conclusion due to the inability to question the appraiser regarding the selection of the comparables, the adjustment process and final value conclusion. In response, counsel requested the Property Tax Appeal Board use its equitable power to allow Grogan's testimony and enter the appraisal into evidence for the sake of fairness. Initially, Grogan was willing to take full responsibility of the appraisal report, however, after being fully informed of a possible USPAP (Uniform Standards of Professional Appraisal Practice) violation¹, Grogan declined to provide testimony in connection with the appraisal report. More importantly, the Board takes notice that Section 1910.67(1) of the rules of the Property Tax Appeal Board provides in pertinent part:

Appraisal testimony offered to prove the valuation asserted by any party shall not be accepted at the hearing unless a documented appraisal has been timely submitted by that party pursuant to this Part. Appraisal testimony offered to prove the valuation asserted may only be given by a preparer of the documented appraisal whose signature appears thereon. (86 Ill.Admin.Code §1910.67(1)).

Since Mr. Grogan's signature was not on the appraisal report, he was not allowed to testify in connection with the appraisal report.

At the hearing, the appellant's counsel argued that despite a dramatic economic decline the subject's assessment increased by 20.9% from 2008. Counsel noted the appellant did not contest the subject's land assessment of \$84,482, which reflects an estimated market value of approximately \$253,446.

Based on this evidence, the appellants requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject property totaling \$742,165 was disclosed. The subject's assessment reflects a market value of \$2,237,459 or \$407.78 per square foot of building area including land using the 2009 three-year average median level of assessments for Will County of 33.17%.

¹ The record disclosed the subject lot was purchased in January 2007 for \$1,175,000. The subject's land sale was not disclosed in the appraisal report.

In response to the appeal, the board of review raised some concerns regarding the appellant's appraisal report. Additionally, Dale Butalla, Deputy Assessor for Homer Township, was called as a witness to refute various aspects of the appraisal report.

The board of review argued the appellant's appraiser mischaracterized the subject building as being 2 years old, when in fact the building was completed and an occupancy permit issued in March 2008, just nine months prior to the January 1, 2009 assessment date. Under the cost approach, the appraiser estimated the subject building suffered physical depreciation of 4% or \$55,200 using the age life method of calculating depreciation because it is two years old. Notwithstanding the error of the subject's age, the board of review argued using the appraiser's depreciated building value of \$1,324,800 and adding the subject's 2007 land sale of \$1,175,000 equals \$2,499,800, which is greater than its estimated market value of \$2,237,459, as reflected by its assessment. The board of review argued land sale 4 under the cost approach was actually an improved office condominium, not vacant land. The board of review argued the appraiser misidentified land sale 5 as commercial zoning. The board of review argued land sale 5 sold with residential zoning, unlike the subject, but was rezoned for commercial use one and one-half years later. All the land sales were considerably larger in size than the subject. Under the income approach to value, the board of review argued rental comparable 2 needs clarification. The board of review claimed the lessee leases a small portion of the (bank) building at a reduced fee or there is a special interest. The board of review explained the lessee was the former owner, who sold to the new developer/owner. Rental comparable 3 is owner occupied, not leased. With respect to the sales comparison approach, the board of review argued three of the comparable sales are located in McHenry, Lake and Kane Counties. The board of review argued there were many banking facility sales within Will County. The board of review argued the appellant's appraiser mischaracterized comparable sale 5 as a bank because it is a jewelry store.

Under cross-examination, Butalla testified he spoke with the tenants or occupants of rental comparables 1 through 3 on November 18, 2009 regarding lease information. The occupant of rental comparable 1 confirmed the lease, but did not know the specifics. Rental comparables 2 and 3 are owner occupied and do not lease. However, rental comparable 3 leases approximately 1/3 of the basement space to a doctor. Butalla did not formally request their actual leases or speak with the owners.

In support of its contention of the correct assessment of the subject property the board of review called Dale Butalla, who was accepted as an expert witness to provide testimony.

Butalla first testified he requested the subject's actual construction costs² to substantiate the appraiser's cost approach.

The township assessor next analyzed eight suggested vacant land sales located from next door to 4 miles from the subject within Homer Township. The commercial zoned lots range in size from .78 of an acre to 2.47 acres or from 33,846 to 107,723 square feet of land area. The comparables sold from May 2005 to May 2010 for prices ranging from \$500,000 to \$2,100,000 or from \$13.51 to \$20.33 per square foot of land area. The assessor noted that land comparable 1, which is located next to the subject, sold in October 2009 for \$2,100,000 or \$19.49 per square foot of land area. Land comparable 1 contains some water detention area, inferior to the subject. Again, the subject's 1.17 acres or 50,790 square feet of land area sold in January 2007 for \$1,175,000 or \$23.14 per square foot of land area. The assessor argued the subject and comparable land sales demonstrate the appellant's appraiser's land value conclusion of \$260,000 or approximately \$5.00 per square foot of land area is not supported. The board of review also submitted copies of the Illinois Real Estate Transfer Declaration associated with each of the land sales.

Butalla next provided testimony in connection seven suggested improved comparable sales. The comparables are located throughout Will County. The comparables are improved with one-story masonry banking facilities that range in size from 1,600 to 6,777 square feet of building area that were constructed from 1978 to 2008. Property record cards associated with each property was submitted. Each comparable has drive-thru banking service. Comparable 3 has a basement. The comparable properties have sites that range in size from 1.04 to 1.72 acres or from 45,433 to 74,935 square feet of land area. Land to building ratios ranged from 8.51:1 to 46.83:1. The suggested comparables sold from February 2005 to June 2009 for prices ranging from \$1,500,000 to \$4,550,000 or from \$356.56 to \$937.50 per square foot of building area including land. The subject's assessment reflects an estimated market value of \$2,237,459 or \$407.78 per square foot of building area including land. The board of review argued the subject's assessment is supported by these similar comparable sales.

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

Under cross-examination, Butalla testified he believed the improved sales were between baking institutions. He did not know if there was any mandate by the FDIC or the Controller of the Currency. Butalla did not know if the sales included a business value, but the transactions were individual bank sales. Butalla

² The Board Ordered and subsequently received the subject's actual construction contract. The contract, dated October 15, 2006, disclosed the costs to construct the subject banking building of \$2,039,000.

testified he did not recall receiving the Real Estate Transfer Declaration associated with each sale³. The witness agreed comparable 1 sold in 2005; comparables 2 and 4 sold in 2006; and three comparables sold in 2007. Butalla agreed comparable 2 was leased at the time of sale. He did not know if any other comparables were under a lease agreement. The location and surrounding of the comparables were also discussed. Butalla agreed the subject's location is not as "commercialized" as the comparables.

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 does not support a change 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 $\frac{1}{3}$ % 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)).

In support of the overvaluation argument, the appellant submitted an appraisal of the subject property estimating the a fair market value of \$1,650,000 or \$300.71 per square foot of building area including land as of January 1, 2009. The Property Tax Appeal Board finds that based on the valuation evidence contained in this record, the subject's land value is one of the main value considerations in this appeal, although the appellant did not request a change in the subject's land assessment. The Board finds the subject parcel consists of real property including both land and improvements thereon. In Showplace Theatre Company v. Property Tax Appeal Board, 145 Ill.App 3d. 774 (2nd Dist. 1986), the court held an appeal to the Property Tax Appeal Board includes both land and improvements and together constitute a single assessment. In accordance with Showplace, the Property

³ The Board Ordered and subsequently received the Real Estate Transfer Declaration associated with each sale for review.

Board Tax Appeal Board analyzed the subject's total assessment in making the determination on whether its assessment is reflective of fair cash value. The Board finds the conclusion of value contained in the appraisal submitted by the appellant not credible and was given no weight for several reasons.

The appellant's appraiser was not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The court found the appraisal was not competent evidence stating: "it was an unsworn ex parte statement of opinion of a witness not produced for cross-examination." This opinion stands for the proposition that an unsworn appraisal is not competent evidence where the preparer is not present to provide testimony and be cross-examined.

Additionally, in response to the appeal the board of review pointed out several un-refuted deficiencies contained within the appraisal report, which undermines the credibility, reliability and validity of the value conclusion. Foremost, the evidence contained in this record shows the subject lot was purchased in January 2007 for \$1,175,000 or \$23.13 per square foot of land area. The subject's land acquisition costs was not disclosed on the appraisal report and clearly undermines the appraiser's land value conclusion of \$260,000 or approximately \$5.00 per square foot of land area. Next, the Board finds the actual new construction costs for the subject building was \$2,039,000. Again, this amount was not disclosed in the appellant's appraisal report. The Board further finds the subject's land acquisition and construction costs total \$3,214,000 or \$585.75 per square foot of building area including land. The subject's actual cost new cast further doubt of the appellant's appraiser's final value conclusion of \$1,650,000 or \$300.71 per square foot of building area including land. Additionally, the subject's total cost of \$3,214,000 or \$585.75 per square foot of building area including land lends support to the subject's estimated market value of \$2,237,459 or \$407.78 per square foot of building area including land as reflected by its assessment.

The Board further finds there are other aspects of the appellant's appraisal report that further detracts from the final value conclusion. First, the Board finds the appraiser mischaracterized the age of the subject building as being 2 years old. The record clearly shows the subject building was completed and an occupied in March 2008, less than nine months prior to the

January 1, 2009 assessment date. The Board finds land sale 4 under the cost approach was actually an improved office condominium, not vacant land. The Board finds all the land sales used under the cost approach were considerably larger in size than the subject. Under the income approach to value, the Board finds the credible evidence and testimony indicate rental comparable 3 is owner occupied, not leased. With respect to the sales comparison approach, the Board finds it problematic that the appellant's appraiser utilized dissimilar comparable sales that are located in McHenry, Lake and Kane Counties. Based on this record, the Board finds there were many available banking facility sales located more proximate in location within Will County for comparison to the subject.

The Board finds the board of review, through Butalla, presented sales information on seven suggested comparable banking facilities located throughout Will County to demonstrate the subject property was not overvalued. The Board gave less weight to comparables 1, 2 and 4. These comparables sold in 2005 or 2006, which are dated and less reliable indicators of fair market value as of subject's January 1, 2009 assessment date. In addition, comparable 2 was a sale leaseback (lease fee) transaction and comparable 4 was considerably older in age and smaller in size when compared to the subject.

The Board finds the remaining four comparables are more similar when compared to the subject in location, use, age, land area, building size, exterior construction and features. These properties sold from January 2007 to June 2009 for prices ranging from \$1,649,385 to \$4,550,000 or from \$356.56 to \$902.01 per square foot of building area including land. The subject's assessment reflects a market value of \$2,237,459 or \$407.78 per square foot of building area including land. The Board finds the subject property's estimated market value falls at the lower end of the range established by these raw sale prices. Additionally, three of the four properties sold for prices significantly above the appellant's appraiser's estimated value of \$1,650,000 or \$300.71 per square foot of building area, including land, which further demonstrates the appraiser's opinion of value is not credible.

Based on this record, the Board finds the appellant failed to demonstrate the subject property was overvalued by a preponderance of the evidence. Therefore, the Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

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.

Donald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

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: August 28, 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.