



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

APPELLANT: Mid City Truck
DOCKET NO.: 10-02541.001-I-1 through 10-02541.003-I-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Mid City Truck, the appellant, by attorney Panagiota ("Patty") Fortsas of Elliott & Associates, P.C., in Des Plaines, and the DuPage 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 DuPage County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
10-02541.001-I-1	03-30-402-005	191,670	193,540	\$385,210
10-02541.002-I-1	03-30-402-012	32,620	0	\$32,620
10-02541.003-I-1	03-30-402-025	96,710	0	\$96,710

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from decisions of the DuPage County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessments of the subject parcels for the 2010 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of a one-story masonry and metal industrial/manufacturing building with 28,460 square feet of building area of which 1,224 square feet is office area and the remainder is warehouse space. The building was constructed in

approximately 1966 with an addition built in 1975 resulting in an effective age of 1968. Features include a sprinkler system, 20 foot building height, 27 overhead doors and 48,535 square feet of asphalt paving. The three parcels combined consist of 183,445 square feet of land area or a 4.211-acre site reflecting a land-to-building ratio of 6.45:1. The subject is located in Addison, Addison Township, DuPage County.

The appellant appeared for hearing before the Property Tax Appeal Board through attorney Panagiota ("Patty") Fortsas, of Elliott & Associates, P.C., contending overvaluation as the basis of the appeal. Besides providing comparable sales data, the appellant also submitted a brief with a purported income and expense analysis.

At the hearing, the only person present on behalf of the appellant was attorney Fortsas. In accordance with Section 16-170 of the Property Tax Code (35 ILCS 200/16-170) and in accordance with the appellant's request for an in person hearing set forth on the appellant's Industrial Appeal petition filed by counsel, the Property Tax Appeal Board scheduled this matter for a hearing in DuPage County. For her opening statement, Fortsas extensively "summarized" all three comparable sales previously submitted and discussed the previously submitted income and expense analysis contained within the brief. When directed to present appellant's case-in-chief, Fortsas stated:

We're [going to] stand on the evidence that we previously submitted to the Property Tax Appeal Board.

To summarize the appellant's written evidence, for the income and expenses analysis, within the brief counsel stated, in pertinent part, "[a]s the subject is substantially owner occupied, a market rent based analysis was performed." Next, commencing on page two of the brief in a section entitled "Argument - Income and Expense Analysis Indicates a Market Value of \$1,250,000," the document at page two begins as follows:

We hereby present an analysis of income and expenses generated by the subject during rent years. This approach involves an analysis of the subject in terms of its ability to provide a net annual income measured in dollars. This estimated net annual income was then capitalized at a rate commensurate with the risks inherent in the ownership of the property in order to arrive at an indication of its market value.

This "brief" was signed by Joanne P. Elliott, attorney at law.

As part of page two, the "brief" purports to provide "a market rent based income and expense analysis" with income and expenses from the client's tax returns or, if not available, "from income/expense statements provided by our client."

Page three of the "brief" consists of a spreadsheet displaying "actual rent receipts" for the three years of 2009, 2010 and 2011 separately, with a column entitled "stabilized year" and a stated vacancy/credit loss of 10%, various itemized expenses for the three years with figures also in the "stabilized year" column" and a stated net operating income of \$135,531 with a capitalization rate of 9% and a tax load of 1.87% resulting in an indicated market value of \$1,247,242 with a resulting assessed value of \$415,706.

At the bottom of the analysis is a reference to CoStar Reports, copies of which were attached, with purported "asking market rents" for three properties. The available rental space ranged in size from 10,978 to 25,000 square feet with asking rents of \$6.25 or \$6.50 "gross" per square foot.

On page four, counsel stated "[a] base cap rate of 9% was utilized which we submit is reasonable if not conservative given current industrial vacancy rates and general market conditions." The brief also set forth "significant assumptions" of (1) scheduled rental of \$6.50 psf [per square foot] modified gross; (2) stabilized vacancy/credit loss of 10%; and (3) stabilized expenses of 19% of projected rent receipts. Based upon this data, the 2010 proposed assessment for the subject stated at the end of counsel's income and expense analysis was \$416,625.

The appellant also submitted information on three comparable sales in the Section V grid analysis of the Industrial Appeal petition. The comparables are located within 1.5-miles of the subject property. The comparables consist of parcels ranging in size from 33,232 to 89,298 square feet of land area which are improved with one-story masonry or masonry and metal buildings that were constructed between 1976 and 1983. The buildings range in size from 19,005 to 48,000 square feet of building area with office areas ranging in size from 1,680 to 2,790 square feet and the remainder consisting of warehouse space. These three comparables sold between August 2008 and December 2010 for prices ranging from \$715,000 to \$2,100,000 or from \$37.62 to \$45.00 per square foot of building area, including land.

Based upon the foregoing evidence, the appellant requested a reduction in the subject's total assessment so as to reflect a market value of \$1,250,000 or \$43.92 per square foot of building area, including land.

As cross-examination, Fortsas stated that the appellant's brief was prepared by Joanne Elliott who was not present at the hearing. When asked Fortsas asserted that she could not give testimony on the appellant's evidence and stated "it's already in the record." With regard to the income analysis, Fortsas was asked for the effective date of the rental comparables utilized. In reliance upon the CoStar rental comparable sheets, she was unable to specify a lease date other than the printed data sheet date of November 7, 2011. She also acknowledged that the assessment date at issue was January 1, 2010. Additionally, the data counsel had before her did not indicate how long the properties were exposed to the market for rental; Fortsas believed the rentals were on a gross basis. She could not explain what "modified gross" as referenced on page 4 of the brief meant.

Counsel was asked if a market analysis of expenses was performed to which she stated that it appeared to her based upon page three of the brief that the expense analysis involved an average of the historical expenses of the subject property. The analysis involved according to counsel market rents consistent with the actual rental rate of the subject property with expenses derived from the subject property. Fortsas also acknowledged that the owner occupies 11,400 square feet of the subject property. When counsel was asked if the owner imputes a market rent or a different rent, she stated "I believe he pays a different rent"; she believes it was "less than market."

While the subject has a land-to-building ratio of 6.45:1, Fortsas did not know if the rental comparables had similar land-to-building ratios as the subject without doing the arithmetic for each of those comparables. Fortsas was asked how the capitalization rate was determined to which she responded, "Based upon similar properties in the area, their expenses, based on internal data in our office."

Fortsas was asked about her familiarity with the subject property. She stated it was an industrial property; she was not quite sure what they do there. Fortsas has not been to the property. The board of review representative indicated to Fortsas that the subject property was a truck terminal which counsel did not dispute given the appellant is "Mid City Truck

Body." When counsel was asked if land would be an important feature for a truck terminal, counsel responded, "I don't know; I'm not a witness in this matter; I don't think I have an opinion."

On further cross-examination with regard to the comparable sales presented by the appellant, counsel was asked if comparable sale #1 was a sale/leaseback. Based upon the one-page CoStar listing sheet, counsel asserted there was no indication the transaction was a sale/leaseback. Next, counsel was questioned about the differences in square footage of comparable sale #1 as displayed in the CoStar sheet of 36,600 square feet and the printout from the Addison Township Assessor's website which was also attached of 39,130 square feet. Fortsas opined that the assessor's records are more likely to be accurate for building size.

For appellant's comparable sale #2, based on the CoStar sheet counsel was unable to determine if the transaction was a sale/leaseback. Next, Fortsas was questioned about the differences in square footage of comparable sale #2 as displayed in the CoStar sheet of 48,000 square feet and the printout from the Addison Township Assessor's website which was also attached of 45,710 square feet. When counsel was asked which one was correct, Fortsas stated she did not know.

As to appellant's comparable sale #3, Fortsas was asked about the condition of the property. Referring to the CoStar sheet, Fortsas quoted the condition listed as "deferred maintenance" and when asked what that meant Fortsas said, "I'm not here to testify; I don't know what it means; I'm not [going to] speculate."

Next, Fortsas was asked if surplus land would be important in a comparable sale for comparison to the subject property. Fortsas responded, "I am not an opinion witness."

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject parcels of \$514,540. The subject's total assessment reflects a market value of \$1,546,094 or \$54.33 per square foot of building area, land included, when using the 2010 three year average median level of assessment for DuPage County of 33.28% as determined by the Illinois Department of Revenue.

At hearing, the board of review presented the testimony of Frank Marack, Jr., Chief Deputy Assessor of the Addison Township Assessor's Office. Marack has worked with the assessor's office

since 1979 and he obtained his Certified Illinois Assessing Official (CIAO) designation in 1981. Marack noted that he has been in charge of the commercial/industrial department since 1984.

Marack testified that the subject property is used as a truck terminal meaning it receives, stores and moves goods. Marack opined that ceiling height was an important characteristic for facilities like the subject as was land-to-building ratio in order to allow ample space for trucks to pull in and out of the facility.

In support of its contention of the correct assessment the board of review, through Marack, submitted information on seven comparable sales located in Bensenville, Elmhurst, Lombard or Addison. Each of the comparables is located within Addison Township and is also within a 1.5 to 3-mile radius of the subject property according to Marack's testimony. Board of review comparable sale #5 was the same property as appellant's comparable sale #1.

These seven comparables consist of either one-story or part one-story and part two-story industrial buildings of masonry, tilt-up or masonry and metal construction. The comparables were built or have effective ages ranging from 1974 to 1984. The buildings range in size from 21,280 to 55,650 square feet of building area and have from 3.54% to 13.56% office space. The comparables have building heights ranging from 16 feet to 25 feet and have land-to-building ratios ranging from 1.62:1 to 4.71:1. The seven comparables sold between June 2007 and September 2009 for prices ranging from \$1,450,000 to \$3,100,000 or from \$42.09 to \$80.83 per square foot of building area, including land.

Marack included a spreadsheet displaying +, - and = adjustments to the comparables for differences from the subject in time, building size, land-to-building ratio, construction, age, exterior height and/or office area. As displayed, Marack's adjustment process resulted in adjusted sales prices ranging from \$53.88 to \$91.34 per square foot of building area, including land. In testimony, Marack contended that the subject's estimated market value based on its assessment falls within the range of these sales and should be confirmed. In Marack's written report, based upon these sales and his analysis, the assessor's office concluded that the subject has an indicated value via the market approach to value of \$67.25

per square foot of building area, including land, or \$1,913,000, rounded.

Based upon the evidence presented, the board of review through its representative at hearing requested confirmation of the assessment of the subject parcels.

On cross-examination, Marack acknowledged that he is not a licensed appraiser and he is not contending that his report rises to the level of an appraisal of the subject property. While Marack did not sign the document, he does recall performing the research and gathering the data as presented. The witness acknowledged that he neither analyzed income data nor considered any expense data in his report.

Marack acknowledged that he chose seven sales from the hundreds of industrial sales available in his office and thereby eliminated hundreds of sales in the analysis. While there are no individual copies of recorded sales transactions attached to his report, Marack asserted that his individual comparable sheets, which he prepared, include reference document numbers from the recorded, closed sales from the source cited as the "Assessor's Records/Transfer Declaration" sheets. Other descriptive data regarding the comparables was gathered from the assessor's property record cards.

The witness also acknowledged that all seven comparable sales have superior construction dates as compared to the subject. Marack also acknowledged that his comparable sale #1 was located closer to O'Hare airport than the subject which he also admitted is a relevant consideration when comparing the property to the subject. Given that the township is six miles by six miles, the witness did not believe this comparable #1 was ten miles from the subject property. With additional questioning, Marack further opined that at the relevant time frame a location closer to O'Hare would not necessarily carry a higher market value because at the time there were many industrial restrictions in Bensenville that were initiated by village officials such as if a business closed at an industrial property site the building could only be used "at the same usage." The witness then gave an example that a closed screw making business could only be replaced by a screw making business, not by a bolt making business. In addition, the witness asserted that much of the city of Bensenville was being acquired for the O'Hare expansion.

As to comparable sale #2, Marack did not believe the property was located near the Eisenhower Expressway. As to comparable

#3, he acknowledged the property is located closer to O'Hare airport than the subject.

As to comparable #4, Marack acknowledged that the property was not listed on the market for sale prior to the reported sale transaction which means that this possibly was not an arm's length transaction. The witness acknowledged that for a determination of fair market value exposure time in the open market was a relevant factor.

Marack acknowledged that comparable sale #6 which occurred in June 2007 was a different market condition than the lien date of January 1, 2010. Upon further questioning, Marack did not believe that 2007 represented a superior market condition to the lien date of January 1, 2010.

As to comparable sale #7, Marack had no information that the sale was not an arm's length transaction.

With regard to the adjustment process, Marack acknowledged the adjustments were subjective.

On re-direct examination, Marack testified that for purposes of the assessor's office, he is not required to be a licensed appraiser in order to form an opinion of value and "do an appraisal."

Marack included comparable sale #5 in his analysis because it was chosen by the appellant. All of the comparables lack land-to-building ratios similar to the subject because these were the best available comparables. When comparables are dissimilar from the subject, Marack makes adjustments and the most significant adjustment in these comparable sales was the land adjustment (land/bldg ratio). The subject property has a land value of \$5.25 per square foot.

Marack opined that in the absence of documentation, he could not form an opinion as to whether a sale/leaseback was an arm's length transaction. For the seven chosen sales comparables, Marack verified the sales transactions either through the PTAX-203 Illinois Real Estate Transfer Declaration or through direct contact with the buyer or seller.

In written rebuttal, counsel for the appellant argued the board of review's submission was not signed by the preparer, lacked supporting documentation of the sales data that was presented, the adjustment process lacks factual support and while agreeing

that board of review comparable #5 is an appropriate sale for consideration, the appellant disagreed with the adjustments made due to the lack of factual support. The appellant also contended that comparable sale #6 having sold in 2007 was too remote in time to be a valid comparable for the subject as of the assessment date of January 1, 2010. Additionally, based upon submission of a CoStar data sheet, the appellant contends that board of review comparable #4 was not an arm's length sale transaction as there was no listing or buyer's broker for the transaction. Also as to proximity based upon Mapquest driving directions, the appellant contended board of review sale #1 was nearly 10 miles from the subject and also nearer to O'Hare airport than the subject; comparable #2 was nearly 5 miles from the subject and located near the Eisenhower expressway; comparable #3 was over 8 miles from the subject and also near O'Hare airport; and finally comparable #4 was 2.5 miles from the subject.

In closing argument, appellant's counsel argued in part that "certain portions" of the board of review's testimony do not rise to the level required by the rules of the Property Tax Appeal Board in Section 1910.67(1).¹

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). 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 appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The procedural rules of the Property Tax Appeal Board provide in substantive part that:

An attorney shall avoid appearing before the Board on behalf of his or her client in the capacity of both an advocate and a witness. When an attorney is a witness for the client, except as to merely formal matters,

¹ The cited rule 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." (86 Ill.Admin.Code §1910.67(1)).

the attorney should leave the hearing of the appeal to other counsel. Except when essential to the end of justice, an attorney shall avoid testifying before the Board on behalf of a client.

(86 Ill.Admin.Code §1910.70(f)). With the aforesaid procedural rule in mind, the Board finds the appellant's counsel failed to abide by the Board's rule. Attorney Fortsas had no witness present for the hearing and through cross-examination was shown to be unfamiliar with the property, the income and expense analysis and the comparable sales presented. When counsel for an appellant requests an in person hearing before the Property Tax Appeal Board, counsel should present witness(es) with regard to the evidence in support of the petition as envisioned and outlined by the Board's procedural rules. (86 Ill.Admin.Code §1910.67 & §1910.90)

As to the appellant's purported income approach to value, first, the Board finds "Each appeal shall be limited to the grounds listed in the petition filed with the Board. (Section 16-180 of the [Property Tax] Code)." (86 Ill.Admin.Code §1910.50(a)). In this matter, the sole basis of the instant Industrial Appeal petition was comparable sales.² In the "brief," however, the appellant's attorney also purported to develop an income approach to value using some unknown combination of the subject's actual income and expenses with purported market rental support from attached CoStar Reports. Second, the Board finds this argument that the subject's assessment is excessive when applying an income approach based on the subject's actual income and expenses unconvincing and not supported by evidence in the record. In Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), the court stated:

[I]t is the value of the "tract or lot of real property" which is assessed, rather than the value of the interest presently held. . . [R]ental income may of course be a relevant factor. However, it cannot be the controlling factor, particularly where it is admittedly misleading as to the fair cash value of the property involved. . . [E]arning capacity is properly regarded as the most significant element in arriving at "fair cash value".

² When originally filed, the basis of the appeal was "recent appraisal." Given an extension request to submit evidence, upon submission of evidence, the basis of the appeal was changed to "comparable sales."

Many factors may prevent a property owner from realizing an income from property that accurately reflects its true earning capacity; but it is the capacity for earning income, rather than the income actually derived, which reflects "fair cash value" for taxation purposes. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d at 431. Actual expenses and income can be useful when shown that they are reflective of the market. The appellant did not demonstrate through any type of expert opinion or documentation that the subject's actual income and expenses are reflective of the market. To demonstrate or estimate the subject's market value using an income approach, as the appellant's counsel seems to have attempted, one must establish through the use of market data the market rent, vacancy and collection losses, and expenses to arrive at a net operating income reflective of the market and the property's capacity for earning income. Third, the appellant must establish through the use of market data a capitalization rate to convert the net income into an estimate of market value. The appellant's legal counsel did not provide sufficient evidence for such an analysis; therefore, the Property Tax Appeal Board gives this purported argument no weight.

Fourth and perhaps most significantly, the Board finds it highly problematic that appellant's counsel purported to develop an "income approach" rather than an expert in the field of real estate valuation. The Board finds that an attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion testimony of value for that client's property. (86 Ill.Admin.Code §1910.70(f)).

Furthermore, in this case, the attorney who appeared for the hearing was not the attorney who prepared the appellant's income and expense valuation evidence and thus attorney Fortsas was unprepared and/or unable to address questions with regard to the submission. In other words, the income and expense analysis in the brief was akin to hearsay. As a result, the Board finds the appellant's income and expense analysis prepared by Joanne Elliott is tantamount to hearsay. Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill. App. 3d 887 (1st Dist. 1983). Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill. App. 3d 474 (2nd Dist. 1979); Russell v. License Appeal Comm., 133 Ill. App. 2d 594 (1st Dist. 1971). In the absence of Joanne Elliott being available and subject to cross-examination regarding methods used and conclusion(s) drawn in her income and

expense analysis, the Board finds that the weight and credibility of the evidence and the value conclusion of \$1,250,000 as of January 1, 2010 cannot be considered as to the value of the subject property.

As to the board of review's "Market Approach to Value" prepared by Marack and counsel's argument that "certain portions" of the testimony and/or document did not rise to the level of an appraisal, the Property Tax Appeal Board takes judicial notice of the following provision of the Real Estate Appraiser Licensing Act of 2002:

This Act does not apply to a county assessor, township assessor, multi-township assessor, county supervisor of assessments, or any deputy or employee of any county assessor or supervisor of assessments who is performing his or her respective duties in accordance with provisions of the Property Tax Code.

(225 ILCS 458/5-5(e)). There is no evidence in the record that Marack was purporting to perform an "appraisal" of the subject property. As will be shown below, the Board has given no weight to the adjustment process presented by Marack and thus, the Board finds that examination of the raw sales data presented in support of the subject's assessment is no different than the appellant's presentation of raw sales data challenging the assessment of the subject property.

In this matter, the Board finds that the parties submitted a total of nine suggested comparable sales to support their respective positions before the Property Tax Appeal Board. The Board has given reduced weight to board of review comparable #6 which sold in June 2007 as the date of sale is most distant from the assessment date at issue of January 1, 2010 and thus is less likely to be indicative of the subject's market value. In addition, this comparable along with appellant's comparables #2 and #3 and board of review comparables #1 and 7 all differ substantially in size from the subject building and thus, have been given reduced weight in the Board's analysis.

The Board has also given no weight to board of review comparable #4 as upon cross-examination, Marack acknowledged there was no evidence that the sale was an arm's length transaction as it had not been exposed on the market prior to the sale.

The Board finds the best evidence of market value to be appellant's comparable sale #1 (which is also board of review

sale #5) along with board of review comparable sales #2 and #3. These three most similar comparables range in size from 24,000 to 39,130 square feet of building area while the subject contains 28,460 square feet of building area. These three properties sold between May 2008 and June 2009 for prices ranging from \$42.09 to \$77.08 per square foot of building area, including land. The subject's assessment reflects a market value of \$54.33 per square foot of building area, including land, which is within the range established by the best comparable sales and appears well justified given the subject's much larger land area than any of these otherwise most similar comparables in the record. Based on this evidence the Board finds a reduction in the subject's assessment is not justified.

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



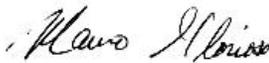
Chairman



Member



Member



Member



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: June 20, 2014



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.