



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

APPELLANT: Gino Battaglia
DOCKET NO.: 08-29393.001-R-1
PARCEL NO.: 16-01-209-020-0000

The parties of record before the Property Tax Appeal Board are Gino Battaglia, the appellant(s), by attorney Francis W. O'Malley, of Worssek & Vihon in Chicago; and the Cook 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 Cook County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$ 7,874
IMPR.: \$ 44,113
TOTAL: \$ 51,987

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Cook County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2008 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 two-story mixed-use building of masonry construction with 4,300 square feet of building area. It was constructed in 1910. Features include a partial basement

and a one and one-half car garage. The property has a 4,300 square foot site and is located in West Chicago Township, Cook County. The subject is classified as a class 2-12 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant's appeal is based on overvaluation. In support of this argument the appellant submitted a Multiple Listing Service ("MLS") printout, a warranty deed, and a settlement statement that indicated the subject property was purchased in April 2009 for a price of \$70,000. The seller was North Washtenaw, LLC and the buyers were Gino and Bernadette Battaglia. The "MLS" printout indicates the subject was sold in an "as-is" condition and that it was in need of extensive work. The appellant also submitted a vacancy affidavit that showed the subject was 100% vacant in 2008. Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect the purchase price.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$51,987. The subject's assessment reflects a market value of \$541,531 or \$125.94 per square foot of living area, land included, when using the 2008 three year average median level of assessments for class 2 property of 9.60% under the Cook County Real Property Assessment Classification Ordinance as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted information on four equity comparables. The grid sheet indicates comparable #1 sold in 2006 for \$650,000 or \$151.41 per square foot of building area.

In written rebuttal, the appellant's attorney stated that the subject's assessment was reduced by the cook county assessor in 2009 to \$12,074. No evidence of this reduction was submitted.

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 Board finds that the sale of the subject in April 2009 for \$70,000 is not indicative of the subject's fair cash value. In this case, the appellant did not submit evidence to show that the sale of the subject was at its fair cash value. Such evidence could have included the descriptive and sales information for recently sold properties that are similar to the subject. Since there is no evidence that the sale price of the subject was at its fair cash value, the Board finds that the subject is not overvalued and a reduction is not warranted.

The appellant submitted documentation showing the income of the subject property. The PTAB gives the appellant's argument little weight. 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".

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. Id. at 431.

Actual expenses and income based on vacancy can be useful when shown that they are reflective of the market. Although the appellant made this argument, the appellant did not demonstrate through an expert in real estate valuation that the subject's actual income and expenses are reflective of the market. To demonstrate or estimate the subject's market value using income, 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. The appellant did not provide such evidence and, therefore, the Board gives no weight to this evidence and finds that a reduction on this basis is not warranted.

In addition, the Board finds no evidence in the record that the subject's assessment is incorrect when vacancy is considered. The mere assertion that vacancies in a property exist, does not constitute proof that the assessment is incorrect or that the fair market value of a property is negatively impacted. There was no showing that the subject's market value was impacted by its vacancy during 2008. The Board finds the appellant has failed to adequately demonstrate that the subject was overvalued and a reduction in the subject's improvement assessment is not warranted.

The appellant's attorney stated in written rebuttal that the subject property's assessment was reduced by the cook county assessor in 2009. In Hoyne Savings & Loan Assoc. v. Hare, 60 Ill.2d 84, 90, 322 N.E.2d 833, 836 (1974) and 400 Condominium Assoc. v. Tully, 79 Ill.App.3d 686, 690, 398 N.E.2d 951, 954 (1st Dist. 1979), the court found, "a substantial reduction in the subsequent year's assessment is indicative of the validity of the prior year's assessment". The Board finds that the facts of the Hoyne and 400 Condominium cases are different from the facts at hand. The Hoyne and 400 Condominium cases involved glaring errors in the subject properties' assessments. (see John J. Maroney & Co. v. Illinois Property Tax Appeal Board 2013 IL App (1st) 120493). In the case at hand, there is no evidence of an error in the calculation of the subject's assessment. The Board notes that 2008 and 2009 are in different triennial reassessment periods for West Township. In addition, the Board notes that board of review comparable #1 has a sale price of \$151.41 which supports the subject's current assessment. As such, the Board finds a reduction on this basis is not 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.

Ronald R. Cuit

Chairman

K. L. Fern

Member

Tracy A. Huff

Member

Mario Morris

Member

J. R.

Member

DISSENTING:

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: March 20, 2015

A. Portal

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.