



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

APPELLANT: David J. Bielenberg Trust
DOCKET NO.: 09-27243.001-R-1
PARCEL NO.: 25-22-209-003-0000

The parties of record before the Property Tax Appeal Board are David J. Bielenberg Trust, the appellant, by attorney Donald L. Schramm, of Rieff Schramm Kanter & Guttman 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: \$ 4,428
IMPR.: \$ 9,130
TOTAL: \$ 13,558

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 2009 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 is 131 years old, and consists of a two-story dwelling of frame and masonry construction containing 1,745 square feet of living area. Features of the home include a full unfinished basement, one fireplace and a one-car garage.

The subject property has a 3,690 square foot site, is located in Hyde Park Township, Cook County and is classified as a Class 2-10 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends assessment inequity as the basis of the appeal. In support of this argument, the appellant submitted information on four suggested equity comparables. The appellant also submitted a Vacancy-Occupancy Affidavit and an Affidavit from the trustee of the appellant in support of its argument.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$13,558. The subject property has an improvement assessment of \$9,130 or \$5.23 per square foot of living area. In support of its contention of the correct assessment, the board of review submitted information on four suggested equity comparables.

Conclusion of Law

The appellant contends assessment inequity as a basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The appellant also presented what it characterized as a "Uniformity/Equity Argument-Vacancy." The appellant asserted "Cook County has applied an assessment policy for vacant properties without regard to the property's market value." Therefore, the appellant argued the Property Tax Appeal Board should grant a "uniformly applied formula of relief" due to the assertion the subject property was entirely vacant for 2009. In support of this argument, the appellant submitted copies of two documents.

The first document is a copy of the Vacancy-Occupancy Affidavit filed in the Cook County Board of Review disclosing none of the

units in the subject property were occupied units in 2009. The second document is a copy of a two-page affidavit of the trustee for the appellant, itself a trust. The trustee's affidavit stated: that the trust was created by David Bielenberg, who died in 2007; that thereafter the trust was involved in litigation; and that vacancies were a result of the litigation. The trustee's affidavit disclosed that "virtually all of the Trust Property [the subject] was vacant and unoccupied throughout all of the 2009 tax year," and that the vacancy "was the result in large part to the condition of the properties and the need for maintenance and rehabilitation..." The trustee's affidavit listed six properties ("a" through "f") claimed to have been owned by the appellant in 2009. For property "a" the description was that all three units therein were vacant and unoccupied. For property "b" (the subject property, herein) the description was the property was entirely vacant and no rent was collected. For property "c" the description was the property was entirely vacant and no rent was collected. For property "d" the description was that two of the six units therein were occupied but no rent was collected. For property "e" the description was that one of the four units therein was occupied by the caretaker, who paid no rent. For property "f" the description was that it was partially occupied.

No evidence was submitted by the appellant on these six properties as to: why some, but not all, were occupied; why rents were not collected on units in any properties that were occupied; and what efforts were made by the trust to collect rents. The appellant did not submit evidence of the specific nature of the suggested need for maintenance and rehabilitation, and evidence of how and why trust litigation made it not possible to address that need. All the appellant offered was the conclusory statement in the trustee's affidavit that "vacancy was driven by the litigation..." The appellant failed to submit evidence of the practices and procedures of the Cook County Assessor and Board of Review regarding their assessments of vacant properties, and to establish why the Property Tax Appeal Board, in the appellant's words, "must apply the same policy or practice." Moreover, the appellant failed to establish a basis for creating a novel category of assessment inequity for vacant property.

The Board finds the appellant's "Uniformity/Equity Argument-Vacancy" to have no merit. 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 428, 431 (1970).

[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". Id.

The appellant failed to establish by submission of evidence that the subject's absence of rental income, rather than its earning capacity is controlling. The appellant further failed to establish with specific evidence, rather than unsupported conclusory statements, why some of the properties owned by the trust were occupied but not others, and how and why trust litigation rendered the appellant unable to rent units in the subject property.

The Board finds the best evidence of assessment equity to be board of review's comparables #1, #2, #3, and #4. These comparables had improvement assessments that ranged from \$5.48 to \$5.94 per square foot of living area. The subject's improvement assessment of \$5.23 per square foot of living area falls below the range established by the best comparables in this record. Based on this record the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed and holds that 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

Mark Albino

Member

[Signature]

Member

Member

Jerry White

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: July 24, 2015

[Signature]

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.