

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Cohen Esrey Real Estate Services
DOCKET NO.: 04-02391.001-C-2
PARCEL NO.: 18-13-35-300-031

The parties of record before the Property Tax Appeal Board are Cohen Esrey Real Estate Services, the appellant, by attorney Denise Knipp Bates of Thomas, Mamer & Haughey, LLP, in Champaign, Illinois, and the Stephenson County Board of Review by attorney Christopher E. Sherer of Giffin, Winning, Cohen & Bodewes, P.C. in Springfield, Illinois.

The subject property consists of 6.03-acres± improved with three, two-story apartment buildings containing 24 units each. The apartment buildings, built in 1996, are on a slab foundation and have a vinyl sided/brick veneer exterior construction. Each building contains 25,431± square feet of building area; two 117 square foot laundry rooms containing two washers and two dryers each. Each building is divided into four, one-bedroom units; four, three bedroom units; and sixteen, two-bedroom units. The one-bedroom units contain 656± square feet and are divided into one bedroom, living room, dining area, kitchen, one full bath, a storage area and a balcony. The two-bedroom units contain 840± square feet and are divided into two bedrooms, living room, dining area, kitchen, one full bath, storage area and a balcony. The three-bedroom units contain 1,100± square feet and contain three bedrooms, a living room, dining area, kitchen, one full bath, one ¾ bath, storage area and a balcony. The first floor units have a patio/porch. The gross building area for all three buildings is 76,293 square feet. In addition, there are two six-stall garage buildings containing 1,661 square feet each and two twelve-stall garage buildings containing 3,311 square feet each, for a total of 36 garages with a gross building area of 9,944 square feet. The apartment complex was built and operated as a Section 42 (26 U.S.C. 42) low-income housing project. The property is located in Freeport, Stephenson County.

The appellant, through counsel, appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellant submitted a limited appraisal, summary report of the subject property with an effective date of January 1, 2004. The appraiser used two of the

(Continued on Next Page)

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 Stephenson County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	\$	35,200
IMPR.:	\$	354,176
TOTAL:	\$	389,376

Subject only to the State multiplier as applicable.

three traditional approaches to value in estimating a market value for the subject property of \$1,170,000. The cost approach was not used in preparation of the appraisal report. The appraiser found that after consideration of all factors, the present use of the improved property as section 42 low-income housing is the highest and best use.

In the sales comparison approach, the appraiser examined sales of seven comparable properties consisting of conventional apartment complexes not subject to section 42 housing codes. Two of the comparables are located in Springfield and two are located in Moline. One of the comparables is located in Peoria; one in Danville; and one in the Decatur area. Four of the comparables are situated on lots ranging in size from 2.1-acres to 9.63-acres of land area. Information regarding the land area of three of the comparables was not disclosed. Four of the comparables are described as having a brick or brick and frame exterior construction. Further, six of the comparables are described as one, one-story, three, two-story and two, three-story buildings. The comparables contained from 42 to 321 units. The seven comparables contain an average unit size ranging from 580 to 916 square feet of living area and range in age from 14 to 37 years old. The comparables sold between August 2000 and May 2004 for prices ranging from \$1,160,000 to \$7,750,000 or from \$19,792 to \$30,754 per unit. The appraiser made adjustments to the comparables for location, number of units, age, condition, amenities and classification as section 42 housing. Based on this analysis the appraiser concluded a value of \$16,000 per unit was appropriate, resulting in an estimated value for the subject by the sales comparison approach of \$1,150,000 rounded.

In the income approach, the appraiser examined eleven rental properties located in Dixon, Rochelle, Machesney Park, Champaign, Peoria, Pekin, Urbana, Carbon Cliff and Bloomington. The comparables, built from 1996 to 2003, contained from 72 to 228 units. Rental income of the eleven comparables was not provided. The properties had vacancy rates ranging from 5% to 31%. The properties had expenses ranging from \$137,174 to \$498,064 with expense ratios ranging from 29.5% to 51% of effective gross income or from \$1,934 to \$2,637 per unit. The appraiser estimated a market rent of \$390 for the one-bedroom units, \$430 for the two-bedroom units and \$535 for the three-bedroom units for the subject was appropriate, resulting in a potential gross income for the subject of \$376,200, using a total of 71 units. One unit was reported as being used for office space. Expenses for vacancy, concessions and bad debt (\$27,463), per unit expenses and reserves for replacements (\$202,350) were subtracted, and miscellaneous income (\$15,000) was added resulting in an estimated net operating income of \$161,387. An overall capitalization rate of 13.8% was utilized to capitalize this income, resulting in an estimated value for the subject by the income approach of \$1,170,000 rounded.

In his final value correlation, the appraiser placed most weight on the income approach in estimating a market value for the subject of \$1,170,000.

During cross examination, the board of review's representative questioned the appraiser specifically about various parts of the appraisal. The representative asked the appraiser why his comparable sales did not include any section 42 properties. The appraiser replied that he was not aware of any section 42 properties that have sold in Illinois. The appraiser was also questioned regarding the geographic market area for the subject. The appraiser testified that the geographic area for the subject would be the State of Illinois, excepting the city limits of Chicago. In addition, the appraiser was questioned regarding the use of actual rents and the lack of detailed market rents. The appraiser replied that he did not consider conventional apartment complexes to determine rent for a subsidized property. Based on this evidence the appellant requested the subject's assessment be reduced to reflect the appraised value of \$1,170,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$610,000 was disclosed. The subject has an estimated market value of approximately \$1,832,933, as reflected by its assessment and Stephenson County's 2004 three-year median level of assessments of 33.28%. In support of the subject's estimated market value, the board of review submitted an appraisal of the subject property with an effective date of January 1, 2004. The appraiser used the three traditional approaches to value in estimating a market value for the subject property of \$2,300,000.

Under the cost approach to value, the appraiser estimated the subject's site value of \$300,000 (rounded) or \$4,200 per buildable unit of land area using three land sales and two land sale listings. The comparables ranged in size from 0.512 to 6.450 acres. Three of the land comparables sold from July 2003 to May 2005 for prices ranging from \$18,000 to \$170,000 or from \$1,800 to \$5,556 per buildable unit of land area. The two sale listings are for \$100,000 and \$150,000 or \$5,000 and \$7,500, respectively, per buildable unit of land area. The subject is depicted as having 72 buildable units of land area. All of the land comparables were zoned R-6, similar to the subject, and were located in Freeport, Illinois.

In estimating the cost new of the improvements the appraiser used the Marshall Valuation Service. The appraiser estimated a cost new of the building improvements of \$327,165. Entrepreneurial incentive was estimated to be 10% or \$332,717 and was added to the building improvements cost new to arrive at a total building reproduction cost new of \$3,659,882. Equipment such as refrigerators, ovens, dishwashers and water heaters were added along with a 10% entrepreneurial incentive to arrive at a total equipment reproduction cost new of \$155,628. Site improvements and entrepreneurial incentive of \$101,200 was added to calculate

a total reproduction cost new of \$3,916,710. Total depreciation, estimated to be \$1,607,929, consisted of 40% for buildings, 50% for site improvements and 60% for equipment, was deducted to arrive at a total depreciated value of the building and site improvements of \$2,308,781. Adding in the estimated land value (\$300,000, rounded) resulted in a total estimated indicated value by the cost approach of \$2,600,000, rounded.

In the sales comparison approach the appraiser used seven sales of apartment complexes located in Cherry Valley, Rockford and Freeport. The sales comparables contained from 8 to 61 units and from 32 to 244 rooms and had effective ages ranging from 5± to 15± years old. The comparables sold from September 2000 to May 2005 for prices ranging from \$355,000 to \$2,750,000 or from \$30,337 to \$47,500 per unit or from \$8,048 to \$13,095 per room. Based on these units of comparison the appraiser, after adjustments for location, market conditions, land to building ratios, age and other features, concluded the subject property had indicated values ranging from \$29,133 to 36,900 per unit or from \$7,729 to \$10,543 per room. In conclusion the appraiser estimated the subject property had an indicated value under the sales comparison approach of \$32,320 per unit or \$2,330,000, rounded.

In the income approach, the board of review's appraiser examined four apartment rental properties located in Freeport. The one, two and three-bedroom comparables were built from 1968 to 1990 and contained from 16 to 36 units. Monthly rental income of the four comparables was depicted as ranging from \$125 to \$525 per bedroom and \$75 to \$175 per room. Based on these units of comparison the subject was depicted to have a gross potential monthly income of \$420 for a one-bedroom, \$460 for a two-bedroom and \$570 for a three-bedroom apartment. Additional income for garages (\$35 per month) and laundry was added to arrive at an annual potential gross income for the subject of \$424,640. Vacancy and collection losses were estimated to be 5%. Based on the rents of the comparable properties, effective gross income for the subject was estimated to be \$154,485 after deductions for such items as management fees, repairs and maintenance, utilities, insurance, landscaping and reserves for replacements.

In estimating the capitalization rate the board of review's appraiser used a direct capitalization analysis for the subject property based on market rents, an extraction method based on two sales, published capitalization rate services and considered the band of investment technique. Using these methods, the net operating income of \$243,883 was capitalized at a rate of 10.6% indicating a value of \$2,300,000, rounded, for the subject.

In his final value correlation, the board of review's appraiser placed most weight on the income approach in estimating a market value for the subject of \$2,300,000 because it most accurately reflected the current investment climate for this type of property. The cost approach was used to set the upper limit of

the transaction range within the market. In addition, the sales comparison approach was also given weight in the analysis.

During cross examination, the appellant's counsel questioned the board of review's appraiser specifically about various parts of the appraisal. The representative asked the appraiser if he knew the subject was section 42 housing in 2003. The appraiser testified that the subject has been section 42 housing since it was constructed and remained section 42 housing in 2004. In addition, the appraiser admitted that the overall capitalization rate stated in the appraisal was incorrectly applied and stated as 10.6% when he should have used a capitalization rate of 11.6%. The appraiser further testified upon cross-examination that using a 11.6% capitalization rate would indicate an amended estimated value for the subject of \$2,100,000, rounded. Further, the appraiser testified that none of the properties used in the appraisal were section 42 housing similar to the subject and no adjustments were made to the comparables because of this issue. In calculating the subject's estimated income, the tax credits the subject property received were not considered because that would have changed his estimation of fee simple value to an estimate of investment value.

The board of review objected to the subject's qualification for a low-income housing tax credit under section 42 of the Internal Revenue Code. In support of this argument, the board of review called Cynthia Petta Worster, the Freeport Township Assessor, as a witness. She testified that she did not recall receiving a letter dated January 28, 2005 from the appellant purportedly certifying that the subject was a section 42 housing property. She admitted the letter did certify the subject as section 42 housing, however, it was not addressed to her.

The next witness called by the board of review was the Stephenson County Chief Assessment Officer, Ronald Kane. He testified that the appellant filed a 2004 property tax appeal in a timely manner and that at no time prior to December 31, 2004 did he receive a certification letter from the appellant. It was Mr. Kane's belief that a January 28, 2005 letter referred to the 2005 assessment year. He admitted the January 28, 2005 letter was addressed to his office. It was specifically pointed out to the witness that the letter states "We respectfully request amendment to the original complaint to reflect a requested market rate value of \$1,150,000." Further, the witness could not recall if the section 42 housing issue came up at the board of review hearing. He was aware that prior to January 1, 2004 there was talk that the subject was section 42 housing. Mr. Kane acknowledged that his office did not have specific published rules regarding certification of section 42 housing. He admitted receiving a letter which had attached thereto an "income value worksheet" for section 42 housing, however he could not recall when that was received. He could not recall receiving a "low income housing tax credit carry-over allocation" from the appellant. He testified that his office was receiving 2005 property tax complaints as early as January 28, 2005, even though

the assessments had not been published. Mr. Kane admitted that on January 28, 2005 the appellant did not have a 2005 appeal on file with his office, therefore his office would have put the letter in a newly created file to look at for the 2005 assessment year.

In rebuttal, the appellant called the owner's representative, Ray Browning, as a witness. The witness testified that he is the author of the January 28, 2005 letter certifying the subject as section 42 property. Further, he testified that the issue of section 42 low-income housing for the subject was discussed at the board of review hearing and at that time he presented a copy of the land use restriction agreement.

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 this appeal. The Property Tax Appeal Board further finds a reduction in the subject property's assessment is warranted.

The appellant argued overvaluation as a basis of the appeal. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2nd 1256 (2nd Dist. 2000). After analyzing the market evidence submitted, the Board finds the appellant has overcome this burden.

The Board finds the appellant submitted an appraisal of the subject property taking into consideration the subject's status as section 42 low-income housing property. The board of review submitted a fee simple appraisal of a conventional apartment complex disregarding the subject's status as section 42 property.

Section 35 ILCS 200/10-250(b) of the Property Tax Code states in relevant part:

Beginning with taxable year 2004, all low-income housing projects that qualify for the low-income housing tax credit under Section 42 of the Internal Revenue Code shall be assessed in accordance with Section 10-245 if the owner or owners of the low-income housing project certify to the appropriate local assessment officer that the owner or owner that qualifies for the low-income housing tax credit under Section 42 of the Internal Revenue Code for the property.
(35 ILCS 200/10-250(b)).

A property qualifying as section 42 low-income housing is assessed pursuant to section 35 ILCS 200/10-245 of the Property Tax Code which states in relevant part:

Method of valuation of low-income housing projects.
. . . to determine 33 and one-third percent of the

fair cash value of any low-income housing project that qualifies for the low-income housing tax credit under Section 42 of the Internal Revenue Code, in assessing the project, local assessment officers must consider the actual or probable net operating income attributable to the project, using a vacancy rate of not more than 5%, capitalized at normal market rates. The interest rate to be used in developing the normal market valued capitalization rate shall be one that reflects the prevailing cost of cash for other types of commercial real estate in the geographic market in which the low-income housing project is located. (35 ILCS 200/10-245).

The Property Tax Appeal Board finds the Chief Assessment Officer had knowledge prior to January 1, 2004 that the subject was section 42 low-income property. The board of review's appraiser acknowledged that the subject has always been section 42 low-income housing since its construction in 1996. The evidence revealed the Chief Assessment Officer's office received correspondence certifying the subject as section 42 housing dated January 28, 2005 which referred to an amended complaint. The Board finds that this refers to a complaint for the 2004 assessment year previously on file with Stephenson County. The testimony revealed that none of the board of review representatives could recall receiving the certification letter even though they had knowledge that the subject was section 42 low-income housing. The Property Tax Appeal Board finds it problematic that the appellant was not contacted when the Assessor's Office received a document regarding an amended complaint, and failed to follow-up with the appellant regarding which assessment appeal it referred to. On the other hand, the appellant's representative testified that he authored the certification letter; that it referred to the 2004 appeal on file and discussed the matter at the board of review hearing. The Property Tax Appeal Board finds the appellant's witness testimony regarding this issue was credible and consistent with the evidence presented, therefore the Board finds the subject property was properly certified to a local assessing official that the subject qualified for section 42 low-income housing for the 2004 assessment year in question.

The Board gave reduced weight to the value conclusion for the subject represented in the board of review's appraisal because the fee simple appraisal did not take into account the subject's status as section 42 low-income housing. The appraiser testified he had knowledge the subject was section 42 low-income housing since its construction in 1996, yet did not take section 42 housing into consideration when the appraisal report was prepared. Further, the appraisal report contained several errors calling into question the final conclusion of value. Actual income was not used, and probable net operating income of the subject was derived after consideration of only actual expenses and a developed expense ratio analysis from market data. The

testimony indicated the vacancy and collection rates were lumped together; the overall capitalization rate that was used in the analysis was found to be in error; and further, none of the rentals or sales comparables considered by the appraiser were section 42 low-income housing projects, and no adjustments were made to the comparables to account for this difference.

The Property Tax Appeal Board finds the best evidence of the subject's fair market value is found in the appraisal report submitted by the appellant.

The standard for determining the fair cash value of property is the price at which ready, willing, and able buyers and sellers would agree. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 16 (1989). A property's income-earning capacity is the most significant element in arriving at its fair cash value for assessment purposes. Kankakee County, 131 Ill.2d at 15. A taxing authority must weigh both the positive and negative aspects of a subsidy agreement and adjust the actual income figure to accurately reflect the true earning capacity of the property in question. Kankakee County, 131 Ill.2d at 17. In Kankakee County, the supreme court held a subsidy agreement affecting a property's income-earning capacity must be considered in calculating fair market value if the property is designed for use as subsidized housing, its best and highest use is subsidized housing, and it is transferable to others for use as subsidized housing. Kankakee County, 131 Ill.2d at 18-19.

In Rainbow Apartments v. Illinois Property Tax Appeal Board, 326 Ill.App.3d 1105 (4th Dist. 2001) the court followed Kankakee County in holding that the positive and negative aspects of a subsidy agreement must be considered by taxing authorities in valuing properties designed, developed and used with section 42 restrictions.

Furthermore, the Property Tax Code contains provisions relating to section 42 low-income housing. Section 1-130 of the Property Tax Code (35 ILCS 2001-130) in defining real property for assessment purposes specifically excludes "low-income housing tax credits authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42." In addition, section 10-235 of the Property Tax Code in effect as of the assessment date at issue provided that:

In determining the fair cash value of property receiving benefits from the Low-Income Housing Tax Credit authorized by section 42 of the Internal Revenue Code, 26 U.S.C. 42, emphasis shall be given to the income approach, except in those circumstances where another method is clearly more appropriate. (35 ILCS 200/10-235).

As noted the subject property is operated as a low-income apartment complex under the rules of Section 42 of the Internal Revenue Code. Under section 42 the subject property qualifies

for a 30-year 1% mortgage and tax credits. In turn there are rent restrictions and residents whose income does not exceed the income limits for "very low-income tenants" or "low-income tenants" as defined in the agreement must occupy the units. There are also restrictions with respect to the use of the property as low-income housing for a number of years and there are numerous acts such as conveying the property, transferring management of the property, leasing or subleasing and the like that are to be approved by the Authority. The restrictions in the agreement run with the project for a period of 30 years and bind and new borrower or owner of the property.

In reviewing the reports and testimony presented by the parties the Property Tax Appeal Board finds that only the taxpayer's witness valued the subject property considering the positive and negative aspects as section 42 low-income housing. The record is clear that the subject property was designed as section 42 low-income housing and its highest and best use is rental property in compliance with section 42 restrictions. Thus the impact of the section 42 restrictions must be considered in estimating the fair cash value of the property for assessment purposes. Of the two valuation witnesses, only the appellant's appraiser recognized and considered the subject property is operated as a section 42 low-income housing project in deriving his estimate of value. The board of review's appraiser acknowledged that he did not consider the fact the subject property was a section 42 housing complex in his conclusion of value analysis. Ignoring the effects of the section 42 restrictions distorts the earning capacity and fair cash value of the property.

The appellant's appraiser, a certified assessment evaluator, licensed in Illinois, with over 30-years experience, used the subject's actual income and expenses to derive a final conclusion of value for the subject of \$1,170,000. The record is clear that the appellant's appraiser based his estimation of value on the subject being section 42 low-income housing property. The Board finds the testimony and analysis of the appellant's appraiser was logical and credible. He determined market rents for the subject based on rent rolls and vacancies of other section 42 properties without using conventional apartment complexes. The appraiser used the actual income of the subject (\$376,200), and from this he deducted 5% (\$18,810) for vacancy. Concessions and bad debt (\$8,653) were also deducted from which he then added back additional income (\$15,000), to arrive at the subject's effective gross income (\$363,737). Deducting the expenses (\$184,200) and reserves for replacements (\$17,750), he calculated the net operating income for the subject of \$161,387. The appraiser developed an overall capitalization rate from the market and the use of the direct capitalization method. He then divided the net operating income by an overall capitalization rate of 13.8% to arrive at an estimated final value conclusion for the subject of \$1,170,000.

Based on this analysis, the Board finds the appellant has proven overvaluation by a preponderance of the evidence. The Board

finds the best evidence of the subject's fair market value in this record is the appraisal submitted by the appellant. Since fair market value has been established, the 2004 three-year median level of assessments for Stephenson County of 33.28% shall apply.

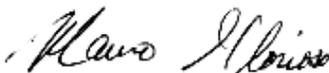
This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.



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: February 20, 2009



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.