

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Leonard R. Milewski
DOCKET NO.: 05-20747.001-C-1
PARCEL NO.: 16-28-204-021-0000

The parties of record before the Property Tax Appeal Board are Leonard R. Milewski, the appellant, by attorney Patrick J. Cullerton of FagelHaber LLC in Chicago, Illinois, and the Cook County Board of Review.

The subject property consists of an 82-year-old, one-story, commercial building containing 4,292 square feet of building area. The improvement is situated on a 5,304 square foot site in Cicero, Cicero Township, Cook County.

The appellant in this appeal submitted documentation to demonstrate that the subject property's improvement was being inequitably assessed and also analyzed the property under an income approach to value which appellant contends is customarily used by the Cook County Board of Review for income producing properties.

As to the inequity argument, appellant provided data in a grid analysis on two comparables located in Summit and Berwyn, Illinois. The subject property is a 5-17 classification property which under the Real Property Assessment Classification Ordinance of Cook County is defined as a "one story commercial building" with a 38% level of assessment. The suggested comparables are classification 5-17 and 5-92 properties, respectively. Appellant also asserted the comparables have the same neighborhood code as the subject property, however, the property characteristic sheets for these comparables revealed two different neighborhood codes and townships of Lyons and Berwyn, whereas the subject is located in Cicero Township. Additionally, based upon classification, one comparable is a one-story commercial building and the other comparable is a two or three-story retail or commercial building. Both comparable buildings are said to be 87-years-old. The buildings consist of 4,687 and 4,632 square feet of building area, respectively. The comparables had 2005 improvement assessments of \$21,498 and \$32,056 or \$4.59 and \$6.92 per square foot of building area each. The subject's improvement assessment is \$39,483 or \$9.20 per square foot of building area. Based on

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

LAND:	\$	11,779
IMPR.:	\$	24,722
TOTAL:	\$	36,501

Subject only to the State multiplier as applicable.

this data, the appellant requested an improvement assessment of \$24,722 or \$5.76 per square foot of building area, the median value of the comparables.

As an alternative argument, appellant seeks an assessment reduction based upon the subject's actual income instead of analyzing market data. Appellant asserts it is the routine custom, practice and policy of the Cook County Board of Review to do so. Based on this assertion, appellant through his legal counsel presented an analysis under a stabilized income approach to value prepared by counsel. Based on three years of income data of the subject and application of a capitalization rate as set forth by counsel, appellant sought a total assessment of \$29,006 to reflect a fair market value of \$94,593 at a part 38% and part 16% assessment level. While the income analysis presumed one-third of the property as residential, no explanation or data was provided as to how this commercial building should have a partial 16% level of assessment.

The board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of its assessed valuation of the subject property. Thus, the Cook County Board of Review was found to be in default on July 14, 2008, pursuant to Section 1910.69(a) of the Rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(a)).

After reviewing the record 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 Board further finds the evidence in the record supports a reduction in the subject's assessment.

The appellant first argued assessment inequity in the subject's improvement assessment. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data the Board finds a reduction is warranted.

The Board finds the only evidence pertaining to the uniformity of the subject's improvement assessment was submitted by the appellant. The appellant provided detailed data on two comparables. The appellant's evidence disclosed the subject had an improvement assessment of \$39,483 or \$9.20 per square foot of building area, which is above the range established by the comparables presented. The board of review did not submit any evidence in support of its assessment of the subject property or to refute the appellant's argument as required by Section 1910.40(a) of the Rules of the Property Tax Appeal Board and is found to be in default pursuant to Section 1910.69(a) of the Rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.40(a) and §1910.69(a)).

As to the income approach, the Board finds appellant's 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".

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 an expert appraisal witness 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 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. Further, 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 presented purported income, expenses, net operating income and a suggested capitalization rate for the subject only based on the subject's operating statements for the prior three years. The Board further finds it problematic that appellant's counsel developed the "income approach" rather than an expert in the field of real estate valuation. Based on the foregoing, the Property Tax Appeal Board gives this argument little weight.

In summary and based on this record, the board of review did not submit any evidence in support of its assessment of the subject property or to refute the evidence presented by the appellant as required by Section 1910.40(a) of the Rules of the Property Tax Appeal Board. The Board has examined the information submitted by the appellant and finds, based on this limited evidence that was not refuted, a reduction in the assessed valuation of the subject property's improvement is 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: August 29, 2008



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.