

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: David Martinez
DOCKET NO.: 05-22650.001-R-1
PARCEL NO.: 12-29-405-022-0000

The parties of record before the Property Tax Appeal Board are David Martinez, the appellant, by attorney Joseph Huang with the Law Offices of Terrence Kennedy, Jr. in Chicago, and the Cook County Board of Review.

The subject property consists of a 29-year-old, two-story, mixed-use building of masonry construction containing 5,040 square feet of building area and located in Leyden Township, Cook County. Features of the building include three full bathrooms, three half-baths, a partial-unfinished basement and air-conditioning. The subject contains three residential units and three commercial units.

The appellant, through counsel, appeared before the Property Tax Appeal Board claiming unequal treatment in the assessment process of the improvement as the basis of the appeal. In support of this claim, the appellant submitted assessment data and descriptive information on three properties suggested as comparable to the subject. Based on the appellant's documents, the three suggested comparables consist of two-story, mixed-use buildings of masonry construction located within the subject's neighborhood. The improvements range in size from 6,486 to 8,190 square feet of building area and range in age from 31 to 42 years. The comparables contain from four to eight full bathrooms and a partial or full-unfinished basement. The improvement assessments range from \$5.87 to \$7.25 per square foot of building area. Based on the evidence submitted, the appellant requested a reduction in the subject's improvement assessment.

The appellant also argued overvaluation in that the income generated by the subject does not warrant its high level of taxation, and therefore its excessive assessment. The appellant further argued that the subject was entitled to a 50% occupancy factor because it was rendered 50% uninhabitable by external

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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: \$ 2,099
IMPR.: \$ 37,900
TOTAL: \$ 39,999

Subject only to the State multiplier as applicable.

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factors beyond the owner's control. In support of the request for relief due to the subject's diminished income and vacancies, the appellant's attorney prepared and submitted an "income approach", using the subject's actual income and expenses. The evidence disclosed the subject property's stabilized net operating income for tax years 2003, 2004 and 2005 to be \$17,750. Applying a capitalization rate of 14.44% produced a market value for the subject of \$122,922. A factor of 16%, which represents the Cook County Real Property Classification level of assessment for Class 2 property, was applied to determine a requested total assessment for the subject of \$19,668. A copy of the subject's Schedule E/Supplemental Income and Loss statement for tax years 2002 through 2004, rent roll, and several affidavits were provided. The appellant's attorney also argued that the subject is 50% vacant, unused and unrented throughout 2005. The appellant's brief and accompanying affidavits suggested that the owner is unable to rent the commercial units on the first floor because of the Village's refusal to grant business licenses due to inadequate parking. Therefore, the appellant's attorney requested a 50% occupancy factor be applied to the subject's improvement assessment and requested an improvement assessment of \$21,049.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the subject's total assessment of \$39,999. The subject's improvement assessment is \$37,900 or \$7.52 per square foot of living area. In support of the assessment the board submitted property characteristic printouts and descriptive data on four properties suggested as comparable to the subject. The suggested comparables are improved with two-story, mixed use buildings of masonry construction with the same neighborhood code as the subject. The improvements range in size from 2,448 to 5,920 square feet of building area and range in age from 34 to 63 years. The comparables contain two or three full bathrooms and a partial-unfinished basement. The improvement assessments range from \$9.02 to \$14.39 per square foot of living area. Based on the evidence presented, the board of review requested confirmation of the subject's assessment.

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 appellant's argument was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations 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 the appellant has not overcome this burden.

Regarding the inequity claim, the Board finds the appellant's comparables one and two and the board of review's comparables one and two to be the most similar properties to the subject in the record. These four properties are somewhat similar to the subject

in improvement size, location, amenities, exterior construction and age and have improvement assessments ranging from \$5.87 to \$11.73 per square foot of building area. The subject's per square foot improvement assessment of \$7.52 falls within the range established by these properties. The Board finds the remaining comparables less similar to the subject in size and/or age. After considering adjustments and the differences in both parties' suggested comparables when compared to the subject, the Board finds the subject's per square foot improvement assessment is supported by the most similar properties contained in the record.

The appellant also 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. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist, 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arms-length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. (86 Ill.Adm.Code §1910.65(c)) The Board finds the appellant has not overcome this burden.

Regarding the appellant's overvaluation contention, the Board finds the appellant's argument that the subject's assessment is excessive when applying an income approach based on the subject's actual income and expenses as well as vacancy 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" clearly 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, which 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 at 430-431.

Actual expenses and income can be useful when shown that they are reflective of the market. The appellant did not demonstrate that the subject's actual income and expenses were 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. 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 failed to follow this procedure in developing the income approach to value; therefore, the Property Tax Appeal Board gives this argument no weight.

Finally, the appellant's attorney argued that the appellant is unable to rent the commercial units on the first floor because of the Village's refusal to grant business licenses due to inadequate parking. The Board finds the appellant's evidence consisted of a one-page brief written by its attorney and an affidavit presented at the board of review level. The Board further finds this claim unpersuasive in that the appellant failed to provide any evidence to show how the subject's market value was impacted by its vacancy during 2005. There was no evidence provided by the appellant to support a valuation finding. The appellant merely subscribes a 50% occupancy factor in order to reach a desired conclusion. Had the appellant submitted an appraisal, via the income approach, as to the subject's market value based on a reduction in income, such a submission might have been sufficient to meet the appellant's burden of proof. Therefore, the Board finds this evidence is insufficient to support a reduction.

As a result of this analysis, the Property Tax Appeal Board finds the appellant has failed to adequately demonstrate that the subject's improvement was inequitably assessed or overvalued and a reduction in the subject's assessment 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.



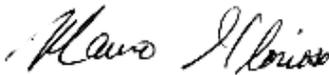
Chairman



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 19, 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.