



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

APPELLANT: John J. Moroney & Co.
DOCKET NO.: 05-26920.001-I-3 through 05-26920.002-I-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are John J. Moroney & Co., the appellant, by attorney Patrick J. Cullerton, of Thompson Coburn LLP in Chicago; the Cook County Board of Review by Cook County Assistant State's Attorney Ben Bilton; and the intervenors, School District #104 by attorney Alan M. Mullins of Scariano, Himes and Petrarca in Chicago and Argo Comm. H.S.D. #217 by attorney Ares G. Dalianis of Franczek Radelet P.C. in Chicago.

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:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
05-26920.001-I-3	18-24-400-011-0000	6,987	0	\$6,987
05-26920.002-I-3	18-24-400-012-0000	92,000	614,640	\$706,640

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of two parcels of land totaling 133,554 square feet and improved with a 20 to 31-year old, one-story, masonry, industrial building containing 63,840 square feet of building area. The appellant, via counsel, argued that there was unequal treatment in the assessment process as the basis of this appeal.

In support of the equity argument, the appellant submitted a legal brief asserting that the board of review must uniformly apply a policy to all taxpayers. The appellant asserts that the Cook County Assessor and the Board of Review have a policy of applying partial assessments to properties based on the vacancy of that property. The appellant included a copy of an affidavit from the appellant's representative attesting to the fact that the subject was occupied for 25% of the 2005 assessment year.

As proof of the board's policy of granting vacancy relief based on a percentage rate of the improvement's assessment without analysis of a property's market value, the appellant presented the following documents: Exhibit #1) a copy of an affidavit from a Cook County Assessor's Office employee attesting to a particular property as receiving an occupancy factor based on the habitability of the property along with a legal brief concerning the property; Exhibits #2, #3, #8, #10, #11, #13, #19 and #22) copies of Cook County Assessor's Office decisions granting a reduction in a property's assessed value due to partial vacancy or partial vacancy along with an income, market or cost analysis along with appeal documents and assessor printouts; Exhibits #5, #6, #9, #12, #14, #16, #17, #20, #21, #23 and #24) copies of Cook County Assessor's Office decisions granting a reduction in a property's assessed value due to total vacancy along with appeal documents and assessor printouts; Exhibit #15) copies of Cook County Assessor's Office decision granting a reduction in a property's assessed value due to an income, market or cost analysis along with appeal documents and assessor printouts; Exhibits #4 and #18) copies of the Cook County Board of Review decisions granting a reduction in a property's assessed value due to vacancy, demolition, fire or natural disaster or due to an analysis of comparable properties, recent sale, updated characteristics, or a C of E along with appeal documents and assessor printouts; Exhibit #25) a copy of the "Official Rules of the Board of Review of Cook County" for 2004 over assessment appeals; and Exhibit #26) copies of printouts of various documents from the Cook County Assessor's Website.

At hearing, the parties stipulated that the subject property was vacant from April through December 2005.

The appellant's witness is Glenn Guttman a partner with the law firm of Rieff, Schramm and Kanter. Guttman testified he has filed thousands of complaints at both the assessor's office and the board of review seeking a reduction in an assessed value on various properties.

As to Exhibit #1, Guttman testified that this affidavit was submitted as an exhibit in a summary judgment motion on a 1997 tax objection case. He indicated that the affiant was employed by the Cook County Assessor's Office.

The appellant submitted Appellant's Hearing Exhibit #1, a printout listing the number of each exhibit and a summary of what the document is. The PTAB ruled that the portions of the document that go beyond the scope of describing the document and start to draw conclusions as to the reasoning of the document will not be accepted by the PTAB and will be given no weight.

Guttman testified he has asked for assessment relief at the assessor's office and the board of review for properties and has received relief without regard to a property's market value. He testified an occupancy factor was applied to the property

recognizing the property's vacancy without regard to the known market value. In these instances, Guttman testified, he requested of the assessor's office or board of review to apply an occupancy factor to the depreciated cost of the improvements.

Guttman testified that Exhibit #2 is a typical letter sent by the assessor's office indicating their decision in an appeal before them. He indicated the relief in this case was granted based on partial occupancy along with an income, market or cost analysis. He stated the bottom of the document indicates the lowered assessed value amount along with an indication that it was for one year only. Guttman testified that this exhibit also contains the assessor's complaint form and a brief from the attorney seeking assessment relief based on a 24.7 occupancy factor for a requested assessment of \$37,049. He testified the final documents of the exhibit are printouts from the assessor and that the second page of this printout, on the right hand side, details the assessment for the improvement. He stated that this detail shows a depreciated cost for the improvement and then an occupancy factor of 24.6%; multiplying these two figures arrives at a market value for the subject which, when the level of assessment is applied, has an assessed value of \$30,500.

As to Exhibit #3, Guttman testified the first page in the group is the decision letter from the assessor's office which grants a reduction to the three parcels based on the partial occupancy of the property; the total new assessed value is \$141,569. Further in the exhibit is a chart with vacancy calculations. Guttman testified that an occupancy factor of 63.7% was requested in the appeal for a requested assessment of \$141,569. Guttman was shown an assessor's printout for the improvement on parcel 13-02-205-001-000 and he stated this document has a depreciated cost of \$458,800 with an occupancy factor of 63.7% applied for a market value of \$292,258. Guttman stated this factor was applied to the pro-rated share of the improvement located on the remaining parcels.

In reviewing Exhibit #4, Guttman testified he was familiar with the first document, a result letter from the board of review when a complaint is filed on a property. He testified the change column refers to the amount of relief granted by the board of review. He stated the second document in the group, which he is familiar with, is a log form that must be submitted with the appeal which has the basis of the complaint as vacancy. He stated the request from the appellant is for a 10% occupancy factor for a total requested assessed value of \$21,024. He indicated that when the board of review final assessed value amounts are added up from the first document the new assessed value total is \$21,027. In reviewing the assessor printouts, Guttman testified an occupancy factor of 9.9% is applied.

As to Exhibit #5, Guttman stated the assessor granted a reduction in the assessed value to \$98,611. He indicated that he is familiar with the sales questionnaire form in this packet and testified that this form is used when a property has recently

sold. Guttman testified that the questionnaire on this property show it sold for \$1,500,000. He calculated out the market value assigned by the assessor based on the assessment at \$259,503, rounded.

For Exhibits #6 and #8 thru #16, Guttman testified that a review of the documents in these exhibits would show the result letter from the assessor, the occupancy factor and assessment request from the taxpayer and the printout from the assessor with an occupancy factor applied to the improvements.

As to Exhibit #17, Guttman testified that this group of documents included a sales questionnaire and in the taxpayer's brief the sale in June 2002 for \$250,000 is referenced. He testified that the assessed reduced assessment reflects a market value of \$134,450.

In reviewing Exhibit #18, Guttman state this group of documents includes a decision from the board of review with a reduction for a total assessment of \$161,358. He noted the brief to the board of review from the taxpayer for this appeal seeks an assessment of \$161,359.

As to Exhibits #19, #20, #21 and #23, Guttman testified that the assessor's result letters are consistent with the requests made by the taxpayer in the respective briefs. He also testified that Exhibit #20 includes a sales questionnaire and the settlement statement showing the property sold on December 21, 2004 for \$1,100,000. Guttman noted that the assessor's reduction in the assessment reflected a market value of \$583,539.

For Exhibit #22, Guttman testified that to work backwards from the assessment, the land would have to be subtracted which would result in a reduced improvement assessment of \$11,206. Guttman testified that this improvement assessment is 20% of the original improvement assessment.

As to Exhibit #24, Guttman testified that the property identification number identified the property as a leasehold property. He testified that there is no land value applied to the property and that any occupancy factor would be applied to the overall value of the property. He further noted that the assessor's reduced assessment is based on total vacancy and consistent with the taxpayer's request.

The appellant then noted that Exhibit #25 includes a specific rule for an appeal based on vacancy in the board of review rules.

Under cross-examination, Guttman reiterated he has filed hundreds of cases before the assessor and the board of review seeking a reduction based on vacancy. He testified there are rules and procedures to follow when filing the complaint. He then acknowledged that he has been denied relief for a vacancy claim.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's improvement assessment was \$614,640 and total assessment was \$713,627. This total assessment reflects a market value of \$1,994,648 or \$31.24 per square foot of building area, including land, using the Cook County Real Property Ordinance level of assessment of 36% for class 5b properties. The board also submitted copies of the property characteristic printouts for the subject as well as raw sales data on four properties. The sales occurred between March 2004 and June 2007 for prices ranging from \$1,800,000 to \$2,623,228 or from \$30.66 to \$37.50 per square foot.

The board also included information on two sales for the subject property in 2006. The first sale includes copies of the facsimile assignment of beneficial interest for purposes of recording and the Illinois Real Estate Transfer Declaration PTAX-203 and Illinois Real Estate Transfer Declaration Supplemental Form B PTAX-203-B. These documents show the subject sold on May 24, 2006 for \$1,650,000. The PTAX 203 form shows the seller and the buyer to be the same trustee. Copies of the recorder of deeds website printout and a trustee's deed indicate a portion of the subject property, 18-24-400-012-0000, sold on October 24, 2006 for \$2,100,000.

The board also submitted a legal brief arguing that the PTAB should not grant the appellant relief because the appellant offers no supporting evidence. In addition, the board argues that the hearing before the PTAB is de novo and the PTAB should consider only the evidence before it without consideration to the conclusions of the board of review. The brief also argued that the PTAB looks to market income and not the subject's actual income and that a reduction based on vacancy would be based on the actual income of the property. Based on this evidence, the board of review requested confirmation of the subject's assessment.

The intervenor submitted a brief asserting the appellant did not submit the documentary evidence called for by the PTAB to establish that the subject property was over assessed. In addition, the intervenor submitted evidence of the subject's sale in October 2006 and asserts that the alleged vacancy of the subject did not impact the subject's market value.

The board of review and intervenors did not call any witness to testify at the hearing, but rested on their evidence submitted. Intervenor S.D. #217 presented Intervenor's Hearing Exhibit #1, a copy of the trustee deed of the sale of the subject in October 2006, the Illinois Real Estate Transfer Declaration (PTAX-203), and the Illinois Real Estate Transfer Declaration Supplemental Form A (PTAX-203-A). The PTAX-203 shows that only one parcel sold in October 2006 for \$2,100,000. Question #7 on this form indicates the property was advertised for sale. Item #3 on the PTAX-203-A indicates the property was on the market for six months and item #4 indicates the property was vacant for two years and two months prior to the sale. Finally, item #8 on the

PTAX-203-A the parties opined that the sale price was reflective of the subject's market value.

In rebuttal the appellant submitted a brief arguing that a 2005 reduction is warranted because the subject received a reduction in the subsequent year, 2006. The appellant also included copies of the 2006 assessor level appeal and the decision from the assessor granting a reduction in the subject's assessment based on total vacancy.

The brief also argues uniformity based on vacancy and asserts that the county consistently applies relief reflected in the improvement assessment based on the vacancy of a building. It further argues that the subject property has this same vacancy problem and should also receive relief.

In closing, the appellant argued that the PTAB should decide this appeal based on equity and the weight of the evidence and not on a clear and convincing standard. But that, regardless of the standard of proof, the appellant has proven by clear and convincing evidence that the assessor and the board of review have a common practice of reducing assessed values based on a percentage of their occupancy and often disregard the market value of the property. The appellant argued that for the 2006 assessment year the assessor was presented with the appellant's affidavit that the subject property was vacant and offered for sale and a reduced assessment was granted. He argued that the court has noted a subsequent reduction demonstrates a mistake in the previous year.

The appellant further argued that the sale of the subject is the best evidence of market value, but that the issue before the PTAB is the best assessment and not the market value. He argued that when the assessor deviates from the market value this practice must be followed for all and cited the exhibits as proof of this practice.

The appellant's attorney then disclosed that there was no complaint filed before the assessor for the 2005 assessment year. This is supported by the fact that the appellant submitted only the 2006 decision from the assessor which was a reduction due to total vacancy. The appellant argued that a previous appeal decision rendered by the PTAB, 05-20619, addresses this issue of only appealing to the board of review and decided that the policy of vacancy should be uniformly applied.

The board of review argued that the only facts known about the subject property are that the property was vacant from April to December 2005 and that the property sold in October 2006 for \$2,100,000. The attorney argued that the current assessment supports this sale price.

The argument addressed the appellant's Exhibit #1 and asserted that the affidavit is from 1999, does not set forth a specific policy, and addresses a very specific property which was unfit

for occupancy. The board argues the appellant failed to show how these properties were similar.

The board further argued that there is no evidence in this matter to show that the subject was held out for lease to tenants or that it was ever leased at all. It argued that of the exhibits submitted by the appellant, any of the properties that are not owner-occupied should be discarded as not being similar to the subject. It asserted that the exhibits show properties that are being rehabbed or renovated, which would make occupancy impossible or the properties were boarded-up or suffered from contamination. The board argued that the only basis for the vacancy request for the subject was that it was held out for sale.

The board argued that the PTAB case cited by the appellant, 05-20619, is distinguished from the instant appeal because that property was linked with another adjacent property, under a similar redevelopment by a common owner where one parcel received relief and the other did not. In addition, the board argued these properties were both being rehabilitated and were vacant for this reason.

The board also argued that the appellant must show that the rules were followed for the subject property at the county level. It asserted that the affidavit for the subject property is confusing in that it states 25% of the property is owner-occupied which leads one to ask was 25% of the property owner-occupied or owner-occupied for 25% of the year. The board further argued that the board of review rules call for a vacancy occupancy affidavit which includes setting forth the duration of and reason for the vacancy and attempts made to lease the vacant space with documents such as copies of listings and advertisements attached. If no effort to lease was made the affidavit must set forth why. The board argues the appellant failed to comply with this rule. The board asserted that in 2006 the appellant submitted a vacancy affidavit and an additional affidavit regarding the subject property in 2006; this additional affidavit was not submitted in the 2005 evidence.

The intervenor argued that the witness opined that vacancy is applicable when there is economic distress and obsolescence. The intervenor asserted, that if the briefs within the exhibits were correct, the properties in the exhibits differed from the subject in the following ways: property listed in Exhibit #2 had environmental contamination; the property in Exhibit #3 had parking issues and efforts were being made to lease the space; the Exhibit #4 property was purchased for future development and had no gas, water or electric service; Exhibit #5 is a boarded-up gas station with a non-compete restriction; the property in Exhibit #10 had difficulty leasing the space; Exhibit #13 is a property offered for lease; the relief granted for the property in Exhibit #15 is based not only on vacancy, but also on income, market and a cost analysis; Exhibit #16 concerns a boarded-up gas station; the property in Exhibit #17 is being redesigned for

alternative use or for demolition; Exhibit #18 has an abandonment affidavit in the documents; the property in Exhibit #19 is an apartment building undergoing rehabilitation; the Exhibit #21 and #22 properties are described as not habitable or fit for occupancy; and the property in Exhibit #24 is described as needing extensive work to be functional.

The intervenor argued there is no information on the subject property other than the affidavit submitted. The intervenor further argued the appellant did not meet the board of review's rules in 2005 by submitting more information and affidavits. It asserted the 2006 reduction was granted because the rules were followed in 2006.

The appellant then argued that the board failed to establish that the policy was not met because they failed to present a witness to testify to the policy. He further argued that even if he did not follow the board's rules, his constitutional rights to be treated the same as similarly situated properties are preserved for the PTAB.

After considering the evidence and hearing the testimony, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

Appellants 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, 544 N.E.2d 762 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. Proof of assessment inequity should include assessment data and documentation establishing the physical, locational, and jurisdictional similarities of the suggested comparables to the subject property. *Property Tax Appeal Board Rule* 1910.65(b). Mathematical equality in the assessment process is not required. A practical uniformity, rather than an absolute one is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960). Having considered the evidence presented, the PTAB concludes that the appellant has not met this burden and that a reduction is not warranted.

The PTAB finds the appellant failed to establish the policy and procedures of the board of review through competent testimony on how relief for vacancy is granted. Moreover, the appellant failed to show the criteria used by the board of review to grant a reduction in assessed value based on vacancy or that the subject property met any of these criteria.

As to the previous PTAB appeal cited by the appellant, 05-20619, the PTAB finds that the reduction in this decision was based not on vacancy, but that the subject property should be treated the same as the similarly situated property adjacent to it. In this appeal, the appellant did not prove the subject property was treated differently than similarly situated properties.

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Therefore, the PTAB finds the subject property is not over assessed a reduction 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

Frank A. Huff

Member

Mario Morris

Member

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: January 20, 2012

Allen Castrovillari

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.