



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

APPELLANT: Benedetto Fragale
DOCKET NO.: 06-22671.001-R-1
PARCEL NO.: 09-24-107-049-0000

The parties of record before the Property Tax Appeal Board are Benedetto Fragale, the appellant, by attorney Lisa A. Marino of Marino & Assoc., PC 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: \$ 6,814
IMPR.: \$ 56,517
TOTAL: \$ 63,331

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property is improved with a two-story multi-family building of masonry construction containing 6,216 square feet of building area. The building is 43 years old, and it has six apartment units and a full basement finished with an apartment. The subject has a classification code of 2-11 under the Cook County Real Property Assessment Classified Ordinance, Apartment or mixed use commercial/residential building, two to six units, 20,000 square feet or less, up to 62 years of age. The subject is located in Niles, Maine Township, Cook County.

The appellant contends both assessment inequity and overvaluation as the bases of the appeal. In support of the assessment inequity argument, the appellant submitted information on three comparable properties described as two-story masonry multi-family buildings. The comparables have the same classification code as the subject, and they are located in the same block as the subject. The buildings are either 44 or 45 years old, and they contain either 5,533 or 6,216 square feet of building area. Each has a full basement finished with an apartment; however, the appellant did not disclose the number of apartment units in each building. The comparables have improvement assessments ranging from \$45,148 to \$51,406 or from \$8.08 to \$8.27 per square foot of

building area. The subject's improvement assessment is \$56,517 or \$9.09 per square foot of building area. In her brief, the appellant's counsel argued the average improvement assessment for the comparables was \$8.17 per square foot, which should be applied to the subject's improvement resulting in a revised improvement assessment of \$50,785 and a total revised assessment of \$57,599.

The appellant's attorney also argued the subject's income and expenses indicates the subject should have a market value of \$184,918. In support of this argument, the appellant's attorney presented the subject's income and expenses for 2003 through 2006. According to the appellant's attorney, the subject had gross income ranging from \$40,860 to \$45,910 and allowable expenses ranging from \$17,094 to \$21,330. Counsel determined the subject's stabilized net operating income was \$23,762. The attorney used a 12.85% capitalization rate, which included an effective tax rate of 2.85% to arrive at an indicated market value of \$184,918. In the brief, the appellant's attorney stated that, "In determining the base capitalization rate, we considered the Subject's age, location, condition, risk of collection loss/vacancy loss and likelihood of a breakdown in a major mechanical system or structural component." (Appellant's brief, p. 4.) Based on this estimate of value the attorney requested the subject's assessment be reduced to \$29,587 after applying the 16% level of assessment for class 2 property as provided by the Cook County Real Property Assessment Classification Ordinance.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$63,331 was disclosed. The subject's assessment reflects a market value of approximately \$625,800 or \$100.68 per square foot of building area, land included, when applying the 2006 three year median level of assessment for Cook County class 2 property of 10.12%. (See 86 Ill.Admin.Code 1910.59(c)(2)). The subject has an improvement assessment of \$56,517 or \$9.09 per square foot of building area.

To demonstrate the subject is correctly assessed, the board of review presented descriptions and assessment information on four comparable properties consisting of two-story masonry multi-family buildings. The comparables have the same classification code as the subject, and they are located in the same block as the subject property. The comparables are either 43 or 45 years old. Each building has 6,216 square feet of building area, six apartment units, and a full basement finished with an apartment. These properties have improvement assessments of either \$56,446 or \$56,517 (either \$9.08 or \$9.09 per square foot of building area). Based on this evidence, the board of review requested confirmation of the subject's assessment.

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 the appeal. The Board further

finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant argued in part assessment inequity as the basis of the appeal. 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 the appellant did not demonstrate unequal treatment by clear and convincing evidence.

The record contains descriptions and assessment information on seven comparables submitted by the parties. The Board finds the appellant's comparables numbered one and three and the comparables submitted by the board of review were identical to the subject in size. They were also very similar to the subject in location, exterior construction, age, and features. These comparables had improvement assessments ranging from \$50,235 to \$56,517 or from \$8.08 to \$9.09 per square foot of building area. The subject has an improvement assessment of \$56,517 or \$9.09 per square foot of building area, which is identical to the assessment at the high end of the range established by the best comparables in the record. Based on this record the Board finds a reduction in the subject's assessment based on assessment inequity is not justified.

The appellant also argued overvaluation as an alternative basis of the appeal. 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). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted on this basis.

The Board finds the subject's total assessment of \$63,331 reflects a market value of approximately \$625,800 or \$100.68 per square foot of building area, land included, when applying the 2006 three year median level of assessment for Cook County class 2 property of 10.12%. (See 86 Ill.Admin.Code 1910.59(c)(2)).

The appellant's counsel formulated an overvaluation argument using the subject's actual income and expenses from 2003 through 2006. 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 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 any documentation or 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 did not provide such evidence; therefore, the Property Tax Appeal Board gives this argument no weight.

The Board further finds problematical the fact that appellant's counsel developed the "income approach" rather than an expert in the field of real estate valuation. The Board finds that an attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion testimony of value for that client's property. (See 86 Ill.Admin.Code 1910.70(f)).

Based on this record, the Board finds a reduction to the subject's assessment based on overvaluation 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.

Ronald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario M. Louie

Member

Shawn R. Lerbis

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: March 18, 2011

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.