



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

APPELLANT: Silvana Marzullo
DOCKET NO.: 06-27572.001-R-1
PARCEL NO.: 17-06-422-022-0000

The parties of record before the Property Tax Appeal Board are Silvana Marzullo, the appellant, by attorney George J. Behrens of McCracken, McCracken & Behrens, P.C., in Chicago, and the Cook County Board of Review.

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: \$21,000
IMPR.: \$45,559
TOTAL: \$66,559

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of at least two buildings on one parcel. Building A is a one-story structure and Building B consists of two, two-story structures that appear to be connected by a frame porch. The structures are described as frame and masonry multi-family buildings that are 89 years old. Features include a partial unfinished basement. The subject site contains 6,250 square feet of land area and is located in Chicago, West Chicago Township, Cook County.

The initial issue in this matter concerns the size of the subject building(s) and the number of apartment units. The appellant contends the buildings contain a total of 7,036 square feet of building area and have five residential apartment units.¹ In support of the subject's size, the appellant submitted Exhibit D, a Plat of Survey, along with a second page consisting of the building schematic only with building dimensions and calculations for each structure. As depicted on the document, the buildings

¹ Appellant's Exhibit F consists of a 2006 Rent Roll Affidavit depicting a total of five units, four of which are one-bedroom and one of which is a two-bedroom unit.

reportedly contain a total of 7,035 square feet of building area.² As its evidence, the board of review submitted a property characteristics sheet that sets forth that the subject is a three-story frame and masonry dwelling that contains 8,403 square feet of living area and six residential apartment units. The board of review provided no schematic to support the reported story height and/or dwelling size.

On this limited record evidence, the Property Tax Appeal Board finds the best evidence of the subject's improvement size was presented by the appellant and therefore, the Board finds the subject buildings contain a total of 7,036 square feet of building area.

The appellant's appeal is based on the descriptive error discussed above along with market value evidence. As to the descriptive error, the appellant has accepted the board of review's improvement assessment determination of \$6.48, rounded, per square foot of building area. However, the appellant requests that the subject's improvement assessment be reduced by applying the accepted square foot assessment to the corrected building size of 7,036 square feet for a reduced improvement assessment of \$45,559.

The appellant's attorney also argued the subject's income and expenses indicate the subject should have a market value of \$230,682. In support of this argument, the appellant's attorney presented the subject's average gross income and average expenses (excluding real estate taxes, interest and depreciation) for years 2003 through 2005 (see Exhibit E). According to the appellant's attorney, the subject had average gross income of \$43,356 and average expenses of \$14,267 resulting in average net income (before deducting taxes, interest and depreciation) of \$29,089. The attorney then applied a 14.61% loaded capitalization rate, which included an effective tax rate of 2.61%, to arrive at an indicated market value of \$230,682. Based on this estimate of value, the attorney requested the subject's total assessment be reduced to \$36,909 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 the subject's total assessment of \$75,411 was disclosed. The board of review presented three comparable properties, two of which include sales data. The comparables have the same neighborhood code assigned by the assessor as the subject and are within $\frac{1}{4}$ of a mile of the subject. The comparables consist of three-story frame and masonry dwellings that are 116 or 128 years old. The dwellings range in size from 2,887 to 4,080 square feet of living area and feature concrete slab foundations. One comparable has a one-car garage. These properties have improvement assessments ranging from \$42,784 to

² There is a "frame porch" that appears to connect Building B sections that is not included in the calculation.

\$72,447 or from \$12.94 to \$21.18 per square foot of living area. Comparables #1 and #3 sold in May 2004 and June 2005 for prices of \$625,000 and \$790,000 or for \$153.19 and \$230.99 per square foot of building area, including land. 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 this appeal. The Property Tax Appeal Board further finds that a reduction in the subject's improvement assessment is justified.

The appellant's secondary argument was overvaluation based upon an analysis of income and expenses prepared by legal counsel for the appellant. 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 \$75,411 reflects a market value of approximately \$745,168, 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 2005. 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 problematic 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)).

The appellant's primary argument in this appeal was unequal treatment in the assessment process in that the subject was being assessed for a larger improvement than exists on the parcel. 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). After an analysis of the data, the Board finds the appellant has established inequity of the subject's improvement assessment given the substantial descriptive error in the subject's dwelling size as determined on this record.

The unrefuted evidence in the record is that the subject building(s) contain a total of 7,036 square feet of living area although the assessing officials reported a dwelling size for the subject of 8,403 square feet. As set forth above, the Board finds the best evidence of the subject's improvement size was presented by the appellant. The size difference is substantial at 1,367 square feet. The appellant accepted the per-square-foot improvement assessment determined by the assessing officials of approximately \$6.48, but requested this improvement assessment be applied to the corrected dwelling size of 7,036 square feet. The board of review did not address or refute the appellant's evidence or claims with regard to the subject's dwelling size.

In the absence of any contradictory evidence, the Property Tax Appeal Board finds that the subject building(s) contain a total of 7,036 square feet and therefore, the correct improvement assessment of the subject property with the corrected building size is \$45,559.

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.

Donald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

Member

J. R.

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 23, 2013

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.