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

APPELLANT: Nick Gutu
DOCKET NO.: 06-28955.001-R-1
PARCEL NO.: 17-08-111-026-0000

The parties of record before the Property Tax Appeal Board are Nick Gutu, 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:

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|---|---|---|
| **LAND:** | $ | 9,249 |
| **IMPR.:** | $ | 68,247 |
| **TOTAL:** | $ | 77,496 |

Subject only to the State multiplier as applicable.

## ANALYSIS

The subject property consists of two improvements situated on one parcel. Building #1 is a three-story multi-family building of masonry construction containing 3,324 square feet of building area. The building is 118 years old, and it has three apartment units and a full unfinished basement. Building #2 is a three-story multi-family building of masonry construction containing 2,100 square feet of building area. The building is 118 years old, and it has three apartment units and a full unfinished basement. Both improvements have 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, over 62 years of age. The subject property is located in Chicago, West Chicago 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 five comparable properties for building #1. The comparables are described as frame or masonry multi-family buildings. Equity data was not submitted on building #2. The comparables have the same classification code as the subject, and they are located within three blocks of the subject. The buildings range in age from 113 to 133 years old, and they contain from 3,609 to 3,987 square feet of building area. Four have unfinished basements, either full or partial, and one has a full basement finished with an apartment. The appellant did not disclose the number of apartment units in each building. One building has central air conditioning, and three comparables have a garage. The comparables have improvement assessments ranging from $45,883 to $49,842 or from $12.44 to $12.71 per square foot of building area. The appellant claims that the subject's improvement assessment is $68,247 or $20.53 per square foot of building area, but that is based on using the combined 2006 improvement assessment for both buildings. In her brief, the appellant's counsel argued the average improvement assessment for the comparables was $12.56 per square foot, which should be applied to the subject's improvement resulting in a revised improvement assessment of $41,749 and a total revised assessment of $50,998.

The appellant's attorney also argued the subject's income and expenses indicates the subject should have a market value of $397,744. In support of this argument, the appellant's attorney presented the subject's income and expenses for 2005 and 2006, with the figures for 2006 being prorated for a full year. According to the appellant's attorney, the subject had gross income of $46,270 and $70,407 and allowable expenses of $11,253 and $5,078. Counsel determined the subject's stabilized net operating income was $50,173. The attorney used a 12.6144% capitalization rate, which included an effective tax rate of 2.6144% to arrive at an indicated market value of $397,744. 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. 3.) Based on this estimate of value the attorney requested the subject's assessment be reduced to $63,639 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 $77,496 was disclosed. The subject's assessment reflects a market value of approximately $765,771 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)).

To demonstrate the subject is correctly assessed, the board of review presented descriptions and assessment information on eight comparable properties. The four comparables for building #1 consist of three-story masonry multi-family buildings. The comparables have the same neighborhood and classification codes as the subject. The comparables range in age from 98 to 118 years old, and they range in size from 3,327 to 4,554 square feet of building area. The buildings have either three or six apartment units. Two buildings have full unfinished basements, and two have slab foundations. One comparable has central air conditioning and a two-car garage. These properties have improvement assessments ranging from $4,932 to $59,103 or $1.28 to $12.98 per square foot of building area. The comparable assessed at $4,932 or $1.28 per square foot has a 10% prorated assessment, indicating an improvement assessment at 100% of $12.85 per square foot. Based on this evidence, the board of review requested confirmation of the subject's assessment.

The four comparables for building #2 consist of one and one-half or two-story frame, masonry, or frame and masonry multi-family dwellings that range in age from 118 to 128 years old. The dwellings range in size from 2,016 to 2,333 square feet of living area. Two of the buildings have a slab foundation; one has a partial unfinished basement; and one has a full basement finished with an apartment. Each of the comparables has two apartment units and a garage. These properties have improvement assessments ranging from $32,596 to $34,396 or $14.03 to $16.48 per square foot of living area.

Based on the 2006 assessment information provided by the board of review, Building #1 has an improvement assessment of $40,817 or $12.28 per square foot of building area, and building #2 has an improvement assessment of $27,430 or $13.06 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 twelve comparables submitted by the parties. All of the eight comparables by both parties for building #1 were apartment buildings that were generally similar to the subject in varying degrees. These comparables had improvement assessments ranging from $45,883 to $59,103 or from $12.44 to $12.98 per square foot of building area. Building #1 has an improvement assessment of $40,817 or $12.28 per square foot of building area, which falls below the range established by the comparables for building #1. The Board finds that building #1's improvement assessment is equitable and a reduction in its assessment is not warranted. The Board further finds the board of review submitted comparables demonstrating building #2 was being equitably assessed. 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 $77,496 reflects a market value of approximately $765,771 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 for 2005 and 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.

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: April 22, 2011

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.