

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Agnes Mroczkowski  
DOCKET NO.: 07-04030.001-R-2  
PARCEL NO.: 03-26-201-041

The parties of record before the Property Tax Appeal Board are Agnes Mroczkowski, the appellant, by attorney Melissa K. Whitley of Marino & Associates, P.C., Chicago; and the DuPage County Board of Review.

The subject property consists of 3,269 square foot site improved with a two-story masonry constructed building that contains 5,544 square feet of building area. The building was constructed in 1979 and contains six apartments. The property is located in Bensenville, Addison Township, DuPage County.

The appellant's attorney appeared before the Property Tax Appeal Board contending the assessment of the subject property was excessive. The first argument presented on behalf of the appellant was assessment inequity with respect to the improvement assessment. In support of this argument the appellant provided information on four comparables. The comparables were improved with two-story masonry buildings that contained either 5,120 or 7,200 square feet of living area. Three of the buildings had six units and one comparable had three units. Each of the buildings was constructed in 1979. The comparables had improvement assessments of either \$109,370 or \$139,900 or either \$19.44 or \$21.36 per square foot of building area. The subject has an improvement assessment of \$139,990 or \$25.25 per square foot of building area. The appellant argued the average improvement assessment for the comparables was \$19.92 per square foot of building area, which would result in an improvement assessment for the subject of \$110,436.

The appellants attorney also argued that applying the subject's stabilized income and expenses indicates the subject had a fair market value of \$81,584. In support of this argument the appellant presented the actual income and expenses for the subject property from 2003 through 2006. Based on this data the appellant's counsel concluded the subject had gross incomes of \$29,000, \$15,720, \$12,527 and \$610 and allowable expenses of

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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 DuPage County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	\$	35,000
IMPR.:	\$	139,900
TOTAL:	\$	174,990

Subject only to the State multiplier as applicable.

\$17,527, \$7,060, \$6,756 and \$7,204 for the years 2003 through 2006, respectively. The appellant's counsel then concluded the subject had a stabilized operating income of \$4,895, which she capitalized at a 6% rate to arrive at an estimated market value of \$81,584 and a resulting assessment of \$27,192.

Finally, the appellant argued the subject's total assessment of \$174,990 reflects a market value of \$525,023 when applying the statutory level of assessments of 33 1/3%. The appellant's counsel asserted the subject was being remodeled in 2007 as it was being converted to a condominium and experienced a vacancy rate of 91.67%. Applying an occupancy factor of 8.33% to the improvement assessment resulted in an estimated total assessment of \$46,661 which reflects a market value of \$139,997.

At the hearing the appellant tendered a document disclosing the subject property was converted to a condominium as of January 2008.

Based on this data the appellant requested the subject's total assessment be reduced to \$27,192.

Under questioning the appellant's attorney testified that the income analysis was prepared from the Schedule E's from the client. Ms. Whitley did not know whether the numbers reflected market rent.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$174,990 was disclosed. The subject's total assessment reflects a market value of approximately \$558,000 or \$100.65 per square foot of building area or \$93,000 per unit using the 2007 three year median level of assessments for DuPage County of 31.36%. The subject has an improvement assessment of \$139,990 or \$25.25 per square foot of building area or \$23,332 per apartment unit.

To demonstrate the subject's assessment was equitable and reflective of market value the board of review presented an analysis prepared by the Addison Township Assessor's office. The board of review called as its witness Deputy Addison Township Assessor James M. Konopka.

The analysis presented by the assessor's office included the appellant's four assessment comparables, which had the same numbers and calculations as in the appellant's submission. The assessor provided six additional comparables for consideration. The comparables were improved with two-story masonry buildings that each contained 5,544 square feet of building area. Each building was constructed in 1979 and contained six apartments. Each of the comparables had an improvement assessment of \$139,990 or \$25.25 per square foot of building area. The data also indicated these same properties sold from May 2004 to November 2007 for prices ranging from \$550,000 to \$579,000 or from \$99.21 to \$104.44 per square foot of building area. The deputy assessor also provided an analysis of five of these comparables that sold

from May 2004 to January 2006 for prices ranging from approximately \$91,667 to \$96,500 per apartment unit. The board argued this data demonstrates the subject's assessment is equitable and reflective of its market value.

Mr. Konopka did not use the income approach in valuing the subject but used comparable sales in valuing the subject. He testified there were 36, 6 flats in the subject's area and the typical vacancy is between 7 and 10%. He also did not know the typical rental rate for apartments in the 6 flats. The witness also indicated that six flats are typically valued on a per apartment unit basis.

The witness also testified if an income approach to value was developed, market rent and a typical vacancy rate should be used.

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 Board further finds the evidence in the record supports the assessment of the subject property.

The appellant first argued assessment inequity with respect to the improvement assessment. 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 a reduction is not warranted on this basis.

The record contains assessment information on 9, 6-flat apartment buildings that were similar to the subject in age, style and construction. Each of these 6-flats had an improvement assessment of \$139,990 or \$23,332 per apartment unit. The subject has an improvement assessment of \$139,990 or \$23,332 per apartment unit. Additionally, the five comparables submitted by the board of review were identical to the subject in building size. These comparables had improvement assessments of \$25.25 per square foot of building area which is identical to the subject's improvement assessment. The Board finds this evidence demonstrates the subject is being equitably assessed.

The appellant also argued the subject's assessment was excessive and not reflective of its market value based on an income approach to value. 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 (3<sup>rd</sup> 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 evidence and testimony disclosed the appellant's counsel developed the income approach to value 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 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 and as a valuation witness.

The Board finds the board of review did submit data disclosing that its six comparables sold from May 2004 to November 2007 for prices ranging from \$550,000 to \$579,000 or from \$99.21 to \$104.44 per square foot of building area of for prices ranging from approximately \$91,667 to \$96,500 per apartment unit. The subject's total assessment reflects a market value of approximately \$558,000 or \$100.65 per square foot of building

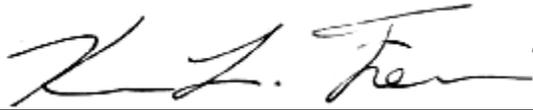
area or \$93,000 per apartment unit using the 2007 three year median level of assessments for DuPage County of 31.36%. The Board finds the subject's assessment is reflective of its market data.

Finally, the Board gives no weight to the appellant's argument for an assessment reduction based on vacancy during renovation and conversion. The Board finds a market derived vacancy rate rather than actual vacancy is to be used in valuing property for assessment purposes.

In conclusion, the Property Tax Appeal Board finds the assessment of the subject property as established by the board of review is correct and no reduction is 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.

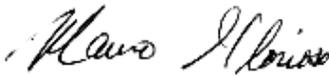
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Chairman



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: July 28, 2009



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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.