



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

APPELLANT: Victory Centre of River Oaks ILF
DOCKET NO.: 07-24765.001-R-1 through 07-24765.002-R-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Victory Centre of River Oaks ILF, the appellant(s), by attorney James P. Regan of Fisk Kart Katz and Regan, Ltd. 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:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
07-24765.001-R-1	29-24-200-080-0000	36,151	70,063	\$106,214
07-24765.002-R-1	29-24-200-083-0000	68,949	119,237	\$188,186

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of 101,059 square feet of land, which is improved with a two-year old, five-story, masonry, independent senior living facility. The subject contains 105 units: 91 one-bedroom units, and 14 two-bedroom units. The appellant's appraisal states that the subject contains approximately 85,313 square feet of interior space, of which 66,646 can be rented out as living area. According to the appellant's pleadings and the appraisal, construction of the subject was financed, partially, through federal tax credits granted under Section 42 of Title 26 of the United States Code. The appellant, via counsel, argued that the subject's fair market value was not accurately reflected in its assessed value as the basis of this appeal.

In support of the market value argument, the appellant submitted an appraisal undertaken by John Stephen O'Dwyer and Julie Rae Webster of JSO Valuation Group, Ltd. The appraisal report states that Mr. O'Dwyer is licensed as a State of Illinois certified general real estate appraiser, and that Ms. Webster is licensed as a State of Illinois certified general real estate appraiser. The appraisers stated that the subject had an estimated market value of \$1,840,000 as of January 1, 2005. The appraisal report utilized the cost approach to value, the income approach to

value, and the sales comparison approach to value to estimate the market value for the subject property. The appraisal report states that Mr. O'Dwyer and Ms. Webster both personally inspected the subject property, and that the subject's highest and best use as improved is its present use.

Under the cost approach to value, the appraisers used nearby land sales to estimate the subject's land value to be \$660,000. The improvement's replacement cost new was estimated to be \$7,740,884 using the Marshall and Swift cost manual. The appraisers then deducted 86.00% from the replacement cost new to account for depreciation of the improvement. The appraisers also found that the subject contains \$79,560 worth of "as-is" site improvements. The appraisers then added the estimated land value, the "as-is" site improvements, and the value of the depreciated replacement cost to arrive at a value under the cost approach to value of \$1,800,000, rounded.

Under the income approach to value, the appraisers analyzed the rents of five suggested comparable nearby properties to estimate a potential gross income of \$775,800 for the subject. These properties were all multi-unit apartment buildings. Vacancy and collection losses were estimated to be \$77,580, and expenses were estimated to be \$409,271, for a net operating income of \$288,949. A loaded capitalization rate of 15.69% was utilized to estimate a value under the income approach to value of \$1,840,000, rounded.

Under the sales comparison approach, the appraisers analyzed the sales of seven suggested comparables, which are described as apartment buildings that are from 33 to 109 years old, and contain from 30,000 to 206,322 square feet of living area. These suggested comparables sold from January 2002 to September 2005 for between \$536,500 and \$4,100,000, or from \$14.90 to \$24.55 per square foot of living area, including land. The appraisers adjusted each of the comparables for pertinent factors. Based on the similarities and differences of the comparables when compared to the subject, the appraisers estimated a value for the subject under the sales comparison approach to value of \$1,840,000.

The appraisers gave the most weight to the income approach to value. Thus, the appraisers concluded that the subject's appraised value was \$1,840,000 as of January 1, 2005. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The Cook County Board of Review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$381,356 was disclosed. This assessment yields a market value of \$2,383,475 when the 16% assessment level for class 9-90 and class 9-91 properties under the Cook County Classification of Real Property Ordinance is applied. In support of the subject's assessment, the board of review submitted a property record card for the subject, and raw sales data for four apartment buildings located within five miles of the subject. The sales data was collected from the CoStar Comps service, and the CoStar Comps

sheets state that the research was licensed to the assessor's office. However, the board of review included a memorandum which states that the submission of these comparables is not intended to be an appraisal or an estimate of value, and should not be construed as such. The memorandum further stated that the information provided was collected from various sources, and was assumed to be factual, accurate, and reliable; but that the information had not been verified, and that the board of review did not warrant its accuracy.

The suggested comparables contained apartment buildings that range in age from 37 to 58 years old, and in size from 73,500 to 150,044 square feet of building area. However, Comparable #4's age was not disclosed. The properties sold from August 2005 to October 2006 in an unadjusted range from \$2,450,000 to \$9,700,000, or from \$28.97 to \$64.65 per square foot of building area, including land. The printouts also indicate that the buyer and seller used the same real estate broker in Comparable #4. Based on this evidence, the board of review requested confirmation of the subject's assessment.

At hearing, the appellant's attorney, Antonio J. Senagore, argued that Illinois law requires that the income approach be given the most weight in determining the assessed value of properties built using federal tax credits under Section 42 of the Federal Internal Revenue Code. In particular, Mr. Senagore cited Sections 1-103 and 10-260 of the Illinois Property Tax Code.

Mr. Senagore then called Mr. O'Dwyer to testify about the appraisal he prepared on the subject property. Mr. O'Dwyer testified that the income approach was given the most weight in the appraisal because Illinois law required him to do so. Under the income approach, Mr. O'Dwyer testified that he looked at five rental apartments in the area around the subject to determine the subject's potential gross income. He testified that these comparables had lower rents than the subject's actual rents because tenants at an independent living facility pay for additional expenses in their rents, and that these additional expenses are separate from the amount paid to rent an apartment in the subject. Mr. O'Dwyer went on to testify that these additional expenses include facilities such as a library or a cafeteria on the premises. According to the appraiser, these additional facilities are part of the subject's business value, and not its value as a fee simple absolute estate. Thus, when appraising the subject, Mr. O'Dwyer testified that he had to find a way to separate the subject's business value from its value as a fee simple absolute estate. He testified that he did so by looking to the rents of other apartment buildings in the area that did not have facilities that added business value, such as a library and transportation to and from local shopping centers. Using this technique, Mr. O'Dwyer testified that he was able to determine the subject's value as a fee simple absolute estate, separate from its business value.

In determining the capitalization rate, Mr. O'Dwyer testified that he had to take into consideration the fact that, under Section 42 of the Federal Internal Revenue Code, the rents of the subject are frozen, but that the expenses were not. Moreover, Mr. O'Dwyer testified that the subject could not be sold for 15 years after its construction under Section 42. Mr. O'Dwyer testified that these factors make the subject extremely less marketable than properties without such restrictions. Thus, he determined that the capitalization rate was 10.00%, with a tax load factor of 5.69%, for a loaded capitalization rate of 15.69%.

Mr. O'Dwyer then testified that he developed the cost approach and sales comparison approach to value as well, and that these two approaches supported his conclusion under the income approach. When asked by the Property Tax Appeal Board (the "Board") whether this was a case where a valuation method other than the income approach was clearly appropriate, Mr. O'Dwyer stated that it was not.

Mr. Senagore then cited one more statute for the Board to consider, which was Section 1-130 of the Illinois Property Tax Code.

The Cook County Board of Review Analyst, Michael Terebo, then asked Mr. O'Dwyer whether he used the rent roll for the subject (which was included as part of the appraisal) to determine the subject's potential gross income. Mr. O'Dwyer stated that he did not because the rents paid by the tenants included business value in addition to the rental of an apartment.

In his case-in-chief, Mr. Terebo admitted that he did not prepare an appraisal for this case. Next, Mr. Terebo directed the Board to the rent roll in the appraisal, and stated that the average rent per unit was \$684, but that the potential gross income in the appraisal used monthly rents that averaged to \$613 per unit. Thus, he argued, that the appraiser's report should have used the actual rents collected, and not the potential rents estimated.

On cross-examination, Mr. Senagore asked Mr. Terebo if he was an appraiser. Mr. Terebo answered in the negative. Mr. Senagore then asked Mr. Terebo what the difference was between a leased fee and a fee simple estate. Mr. Terebo refused to answer the question. The Board took this refusal as an objection by Mr. Terebo, sustained the objection, and explained that the appellant's attorney or the appellant's appraiser could explain the difference between the two types of estates. Mr. Senagore then questioned Mr. O'Dwyer, who explained that a fee simple estate is one in which the owner owns all the rights in a parcel of real estate, and a leased fee is where the tenant has limited rights in the property, and where the owner is limited to the rights contained in the lease agreement. Mr. O'Dwyer then testified that, for ad valorem real estate tax purposes, only the fee simple estate is valued and assessed under Illinois law. The appraiser then reemphasized his earlier testimony that the rental amounts shown in the rent roll include business value, that is

not part of the fee simple estate, and should not be considered when valuing the subject for ad valorem property tax purposes.

Mr. Senagore then asked Mr. Terebo whether the board of review presented any income evidence in its Notes on Appeal. Mr. Terebo testified that the board of review did not provide any such evidence. Mr. Senagore then asked whether the evidence submitted by the board of review was intended to be an estimate of value, whether the evidence submitted was verified, and whether the sales comparables submitted by the board of review were adjusted for market factors. Mr. Terebo answered "no" to all of these questions.

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

When overvaluation is claimed, the appellant has the burden of proving the value of the property by a preponderance of the evidence. Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 339 Ill. App. 3d 529, 545 (1st Dist. 2002); National City Bank of Michigan/Illinois v. Prop. Tax Appeal Bd., 331 Ill. App. 3d 1038, 1042 (3d Dist. 2002) (citing Winnebago Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 313 Ill. App. 3d 179 (2d Dist. 2000)); 86 Ill. Admin. Code § 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's-length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Calumet Transfer, LLC v. Prop. Tax Appeal Bd., 401 Ill. App. 3d 652, 655 (1st Dist. 2010); 86 Ill. Admin. Code. § 1910.65(c).

The appellant cited several statutes at hearing, which are recited here. Section 1-130 of the Property Tax Code defines "[p]roperty; real property; real estate; land; tract; lot" as those terms are used in the Code, and it states as follows:

(a) The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon, including all oil, gas, coal, and other minerals in the land and the right to remove oil, gas and other minerals, excluding coal, from the land, and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code. *Not included therein are low-income housing tax credits authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42.*

35 ILCS 200/1-130 (emphasis added).

Section 10-245 of the Property Tax Code states as follows:

Notwithstanding Section 1-55 and *except in counties with a population of more than 200,000 that classify property for the purposes of taxation*, to determine 33

and one-third percent of the fair cash value of any low-income housing project developed under the Section 515 program or that qualifies for the low-income housing tax credit under Section 42 of the Internal Revenue Code, in assessing the project, local assessment officers must consider the actual or probable net operating income attributable to the property, using a vacancy rate of not more than 5%, capitalized at normal market rates. The interest rate to be used in developing the normal market value capitalization rate shall be one that reflects the prevailing cost of cash for other types of commercial real estate in the geographic market in which the low-income housing project is located.

35 ILCS 200/10-245 (emphasis added).

Section 10-260 of the Property Tax Code states as follows:

In determining the fair cash value of property receiving benefits from the Low-Income Housing Tax Credit authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42, emphasis shall be given to the income approach, except in those circumstances where another method is clearly more appropriate.

35 ILCS 200/10-260. Having considered the evidence presented, the Board finds that a reduction is warranted.

Initially, the Board finds that Section 10-245 of the Illinois Property Tax Code is inapplicable in this case. The statute explicitly excludes "counties with a population of more than 200,000 that classify property for the purposes of taxation." This language tracks the language of Article IX Section 4 Subsection (a) of the Illinois Constitution of 1970. Ill. Const. art. IX, § 4(a). The subject is located in Cook County, and Cook County is the only county in Illinois to classify property for the purposes of taxation under this Constitutional provision. See Cook Co., Ill., Code of Ordinances ch. 74, § 74-60, *et seq.* Thus, Section 10-245 does not apply to this case.

In determining the fair market value of the subject property, the Board finds the best evidence to be the appellant's appraisal. The appellant's appraisers utilized the cost approach to value, the income approach to value, and the sales comparison approach to value in determining the subject's market value. The Board finds this appraisal to be persuasive because the appraisers have experience in appraising, personally inspected the subject property and reviewed the property's history, and used similar properties with similar rental markets in the income approach while providing adjustments that were necessary. Additionally, in accordance with Section 10-260 of the Illinois Property Tax Code, the appraisers gave the most emphasis to the income approach, as the property was constructed using federal income

tax credits granted under Section 42 of the Federal Internal Revenue Code.

The Board gives no weight to the board of review's comparables as the information provided was admittedly not an opinion of value, and no income data was submitted in accordance with Section 10-260. Additionally, the board of review analyst argued that the actual rents for the subject should be used, as opposed to the rents estimated by the appraiser that were based on rental comparables found in the market. The Board finds this argument without merit. The appraiser competently and clearly testified that the rental amounts paid by tenants of the subject property included monies that are used to provide for additional services outside the purview of a fee simple estate. These additional services constitute business value, which cannot be taxed under the Illinois Property Tax Code. Thus, the appraiser looked to the rents of similarly sized units in apartment buildings without substantial business value, and estimated a potential gross income for the subject. The Board finds this technique of estimating the subject's fair cash value under the income approach persuasive.

Therefore, the Board finds the subject had a market value of \$1,840,000 for tax year 2007. Since the market value of this parcel has been established, the Cook County assessment level for class 9 property as in effect for tax year 2007 shall apply. This level of assessment was 16% of the property's fair cash value. Cook Co., Ill., Code of Ordinances ch. 74, § 74-64 (2007). In applying this level of assessment to the subject, the total assessed value is \$294,400 while the subject's current total assessed value is above this amount. Therefore, the Board finds that a 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.

Ronald 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: December 21, 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.