



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

APPELLANT: Commercial Crossings, LLC  
DOCKET NO.: 07-28761.001-C-1  
PARCEL NO.: 12-28-206-031-0000

The parties of record before the Property Tax Appeal Board are Commercial Crossings, LLC, the appellant(s), by attorney Edward Larkin, of Larkin & Larkin in Park Ridge; 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:** \$0  
**IMPR.:** \$ 125,928  
**TOTAL:** \$ 125,928

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject consists of one Property Identification Number ("PIN"), divided into three retail units (hereinafter "Retail #1," "Retail #2," "Retail #3," and, collectively, the "Retail Units"). The Retail Units consist of the first floor of a residential condominium building. The appellant, via counsel, argued that the subject's assessment should be reduced because: (1) the Retail Units were mostly vacant for tax year 2007; (2) the subject is being assessed for the land upon which it sits, even though the appellant has no right to use the land; and (3) the Cook County Assessor's records are incorrect regarding the subject's improvement size.

In support of the vacancy argument, the appellant argued that Retail #2 is further divided into "suites," identified as Suite H, Suite I, Suite J, and Suite K. The appellant stated that Suite H became occupied by a tenant around May 1, 2006, and that half of Suite K became occupied by a tenant sometime in 2007. The appellant submitted a copy of the lease agreement between the appellant and the tenant in Suite H, which shows that the lease commenced on November 15, 2005, and terminated on November 15, 2010. No lease agreement was tendered for the tenant in half of Suite K. The appellant argued that the remaining parts of Retail #2, and the entireties of Retail #1 and Retail #3 were unoccupied

for the entirety of tax year 2007. The appellant submitted color photographs of these units to evidence the vacancy. The photographs show that Retail #1 is unfinished, and a "For Lease" sign is visible in the window. Retail #3 is unimproved, raw land in the photographs. The appellant also submitted actual income and expense data for the Retail Units for tax year 2006. The appellant argued that Section 9-160 and 9-180 of the Illinois Property Tax Code allow for a reduced assessment to be applied to the vacant portions of the Retail Units.

In support of the land assessment argument, the appellant asserted in the petition that the appellant has no interest in the land under the Retail Units, including the underground parking facility, or the common elements of the condominium development. Instead, argued the appellant, the underlying land and the common elements are controlled by the condominium association, which the Retail Units are not a part of. The legal description of the Retail Units filed by the condominium developers was submitted by the appellant in the Declaration of Condominium document. The legal descriptions state that the condominium development includes everything above and below the Retail Units, but specifically excludes the Retail Units. The Retail units are also designated a certain elevation, whereby Retail #1 and #2 both consist of elevation 643.66 to 657.16, and Retail #3 consists of elevation 643.43 to 693.43. The Retail Units are not granted a percentage of ownership in the common elements under the Declaration of Condominium. The appellant also submitted a Declaration of Easements, Restrictions, and Covenants, which describes the legal, contractual duties and relationships between the condominium association and the owner of the Retail Units. The Declaration of Easements, Restrictions, and Covenants defines "Owner of the Retail Property" as "the person (or Persons if more than one) at any time in question, holding fee simple title to the Retail [Units]." The Declaration of Condominium and the Declaration of Easements, Restrictions, and Covenants were both recorded with the Cook County Recorder of Deeds on June 30, 2005.

In support of the square footage argument, the appellant asserted that Retail #1 has 9,226 square feet of building area, that Retail #2 has 9,197 square feet of building area, and that Retail #3 has 7,000 square feet of outdoor space. The appellant submitted a survey of the Retail Units, and a portion of the Property Record Card for Retail #2 which included a drawing and measurements of Retail #2. The survey is unsigned, incomplete, and is not notarized. The property record card for Retail #2 states that it consists of 9,278 square feet of building area. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The Cook County Board of Review submitted it "Board of Review-Notes on Appeal," wherein the subject's final assessment of \$247,528 was disclosed. In support of the subject's assessment, the board of review submitted a property record card for the subject, and raw sales data for seven commercial retail

buildings located within six 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 Cook County 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 states 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 comparables are described as commercial retail buildings. Additionally, the comparables are from 5 to 12 years old, and have from 22,000 to 39,101 square feet of building area. The comparables sold between July 2001 and May 2008 for \$2,180,000 to \$8,600,000, or \$70.03 to \$254.44 per square foot of building area, including land.

The subject's property record cards all include a drawing of the three individual Retail Units with measurements. Retail #1 is described as having 10,347 square feet of building area. Retail #2 is described as having 9,278 square feet of building area. Retail #3 is described as having 9,549 square feet of building area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant argued that the board of review did not address any of the appellant's arguments that were made in the evidence that was originally submitted.

At hearing, the appellant's attorney, Edward Larkin, reaffirmed the evidence previously submitted. Mr. Larkin also stated that the land under the Retail Units was assessed by the Assessor twice: once to the condominium association; and once to the appellant. In support of this assertion, Mr. Larkin submitted a printout from the Assessor's website, showing that one of the units in the condominium development has a land assessment of \$1,035 for tax years 2011 and 2012.

In regards to the vacancy argument, Mr. Larkin argued that the Retail Units were 100% vacant for the entirety of tax year 2007 because the two tenants described in the previously submitted evidence had vacated the premises.

After reviewing the record and considering the evidence, the Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties and the subject matter of this appeal.

Initially, the Board finds that the appellant holds a fee simple interest in the subject. This is evidenced by the Declaration of Easements, Restrictions, and Covenants' definition of "Owner of Retail Property," which states that the term is defined as "the person (or Persons if more than one) at any time in question,

holding fee simple title to the Retail [Units]." While holding a fee simple interest in the Retail Units, the appellant is severely restricted by the Declaration of Easements, Restrictions, and Covenants. However, it is clear from that document that the owner of the Retail Units was intended to have a fee simple ownership interest in those units. Therefore, the Board finds that the appellant can be taxed on the real estate described as the Retail Units.

The appellant submitted documentation showing the income of the subject property, and also argued that the subject was vacant for the entirety of tax year 2007. The Board gives the appellant's arguments little weight. In Springfield Marine Bank v. Prop. Tax Appeal Bd., 44 Ill.2d 428 (1970), the Illinois Supreme 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.

Id. at 431.

As the Court stated, actual expenses and income can be useful when shown that they are reflective of the market. Although the appellant made this argument, the appellant did not demonstrate through an expert in real estate valuation that the subject's actual income and expenses are reflective of the market. To demonstrate or estimate the subject's market value using income, 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. The appellant did not provide such evidence.

The appellant also relies on Section 9-160 and 9-180 of the Illinois Property Tax Code in seeking relief under the vacancy argument. However, neither of these statutes authorize the Board to grant a reduction in this case. Section 9-160 states, in pertinent part:

The assessment shall also include or exclude, on a proportionate basis in accordance with the provisions

of Section 9-180, all new or added buildings, structures or other improvements, the value of which was not included in the valuation of the property for that year, *and all improvements which were destroyed or removed*. In case of the destruction or injury by fire, flood, cyclone, storm or otherwise, or removal of any structures of any kind, or of the destruction of or any injury to orchard timber, ornamental trees or groves, the value of which has been included in any former valuation of the property, the assessor shall determine as near as practicable how much the value of the property has been diminished, and make return thereof.

35 ILCS 200/9-160 (emphasis added). The Board finds that the subject was not destroyed or removed. It is clear that the subject was standing throughout tax year 2007, and that the appellant was attempting to rent the subject to potential tenants.

Section 9-180 states, in pertinent part:

When, during the previous calendar year, any buildings, structures or other improvements on the property were destroyed and rendered uninhabitable or otherwise unfit for occupancy or for customary use by accidental means (excluding destruction resulting from the willful misconduct of the owner of such property), the owner of the property on January 1 shall be entitled, on a proportionate basis, to a diminution of assessed valuation for such period during which the improvements were uninhabitable or unfit for occupancy or for customary use.

35 ILCS 200/9-180. The Board finds that the subject was not destroyed, rendered uninhabitable, unfit for occupancy, or unfit for customary use by accidental means. Contrarily, as discussed above, the appellant was actively marketing the subject as being available for lease. While the photographs do show that the subject's interior is not completed, it is not "unfit for customary use." Instead, the Board finds that the appellant is merely allowing for the customization of the subject for a tenant that would lease the subject. To finish the subject with an interior designed to be used by a bank, would effectively exclude all other potential retail tenants from being interested in leasing the subject; or would require extensive and expensive renovations to be done to the appellant's financial detriment. Thus, by not finishing the interior of the subject, the appellant is increasing the potential pool of available potential tenants. Therefore, the Board finds that it cannot grant a reduction based on vacancy.

The appellant also argued that it should not be taxed on the land because the owner of the Retail Units has no legal interest in the underlying land. According to their legal descriptions, the Retail Units all have specific minimum and maximum elevations

which encompass them. The Illinois Property Tax Code defines the terms "Property; real property; real estate; land; tract; lot" as:

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.

35 ILCS 200/1-130. The statutory definition does not specifically state what "[t]he land itself" means. However, Black's Law Dictionary defines "land" as "[a]n immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it." Black's Law Dictionary (9th ed.). Based on these sources, the Board finds that the Retail Units' legal description does not encompass any part of land. According to Black's, land must include a portion of the earth's surface, and the space above and below the surface. The Retail Units have some of the land above the earth's surface, but clearly not all of it. Additionally, it is unclear, based on the evidence and testimony, whether the legal description includes a portion of the earth's surface and a portion below the earth's surface. It is clear, however, that there is a minimum elevation that the Retail Units' legal description encompasses. Therefore, because there is a definite minimum and maximum elevation that encompasses the Retail Units outside which the appellant has no legal right of ownership, the Board finds that the subject's land assessment should be \$0.

Finally, with regard to the square footage argument, the Board finds the best evidence to be the property record cards submitted by the board of review. These documents had drawings of the Retail Units with measurements. The appellant even submitted the property record card for Retail #2 as part of the petition. The Board finds the survey unpersuasive because it is unsigned, incomplete, and is not notarized. Therefore, the Board finds that the subject's improvement size shall remain unchanged.

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.