



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

APPELLANT: Michele Colella  
DOCKET NO.: 09-33862.001-C-1  
PARCEL NO.: 07-29-309-011-0000

The parties of record before the Property Tax Appeal Board are Michele Colella, the appellant, by attorney Patrick J. Cullerton of Thompson Coburn, LLP, 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:** \$ 36,572  
**IMPR:** \$ 74,758  
**TOTAL:** \$111,330

Subject only to the State multiplier as applicable.

**Statement of Jurisdiction**

The appellant timely filed the appeal from a decision of the Cook County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessments for the 2009 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

**Findings of Fact**

The subject property consists of a Class 5-17 property as provided by the Cook County Real Property Assessment Classification Ordinance. The subject property is improved with

a one-story strip mall with three stores. The building is 40 years old and contains 5,013 square feet of building area. The building is situated on 22,500 square feet of land area. The subject property is located in Schaumburg Township, Cook County, Illinois

The appellant contends both assessment inequity and overvaluation as the bases of the appeal. The appellant did not challenge the subject's land assessment.

In support of the inequity claim, the appellant submitted minimal assessment information on four suggested assessment comparables. The comparables had improvement assessments ranging from \$40,321 to \$72,899 or from \$8.35 to \$14.58 per square foot of building area. Based on this evidence, the appellant requested the subject's improvement assessment be reduced to \$74,758 or \$14.91 per square foot of building area.

In support of the overvaluation claim, the appellant's counsel developed an income approach to value using the subject's actual income and expense information from 2007 through 2009. Counsel indicated the subject had an average annual income of \$45,112 and stabilized expenses of 25% or \$11,278, resulting in a net operating income of \$33,834. Counsel claimed a 10% capitalization rate was calculated using the band of investment technique, but no calculations were provided. A tax load factor was added resulting in an overall capitalization rate of 15.73%. Capitalizing the subject's net operating income of \$33,834 by the rate of 15.73% resulted in an estimated market value for the subject property of \$215,113 under the income approach. Based on this evidence, the appellant requested the subject's total assessment be reduced to \$53,778.

In further support of an assessment reduction, the appellant submitted an affidavit from the property owner averring that the subject property suffered from 25% weighted vacancy. Based on a "standard vacancy formula" the appellant's counsel simply applied a 75% occupancy factor to the subject's improvement assessment of \$95,571 to arrive at a revised improvement assessment of \$71,678.

The appellant also submitted the final decision issued by the Cook County Board of Review disclosing the subject parcel's final assessment totaling \$132,133. The subject's assessment reflects an estimated market value of \$528,532 when applying the Cook County Real Property Assessment Classification Ordinance level of assessment of 25% for Class 5-17 property. The subject property has an improvement assessment of \$95,571 or \$19.06 per

square foot of building area. Based on this evidence, the appellant requested a reduction in the subject's assessment

The board of review did not timely<sup>1</sup> submit its "Board of Review Notes on Appeal" or any evidence in support of its assessment of the subject property as required by section 1910.40(a) of the rules of the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.40(a). By letter dated February 1, 2013, the board of review was found to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.69(a).

### Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and no reduction in the subject's assessment is warranted.

The Board gave no weight to the appellant's market value argument and vacancy claims. 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 held:

[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".

---

<sup>1</sup> The Cook County Board of Review was notified of this appeal on June 15, 2012 and given 90 days to submit its responsive evidence by September 13, 2012. The Property Tax Appeal Board received the board of review response to this appeal on February 14, 2013, which is 154 days past the due date.

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 in the field of 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 an income approach, as the appellant attempted, the taxpayer 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 provided no credible evidence or calculations to support the market income, expenses, vacancy rate, or capitalization rate. Since the appellant failed to provide such evidence, the Property Tax Appeal Board gives this argument no weight.

Likewise, the Board also finds the appellant submitted no market evidence regarding vacancy rates for similar type properties. Without this evidence the Board finds it is impossible to know if the vacancy rate is a result of location, economics, poor management, above market asking rents or any of a number of other relevant factors that were not disclosed. Furthermore, vacancy is only one component used to develop the income approach to value and is not a standalone factor to determine whether the subject's assessment is uniform or reflective of fair cash value. The appellant's attorney simply argued the subject had a 25% vacancy rate and applied that rate to the subject's improvement assessment. The Board finds this not a recognized or acceptable industry methodology nor supported by the Property Tax Code. Therefore, the Board finds this type of evidence is insufficient to support a reduction.

The Board further finds it highly problematical the fact that appellant's counsel developed the "income approach" to value 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 of value for that subject property under appeal.

The taxpayer also contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is

the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment warranted.

The Board finds the appellant submitted minimal assessment information on four assessment comparables to demonstrate the subject property was not uniformly assessed. The comparables had improvement assessments ranging from \$40,321 to \$72,899 or from \$8.35 to \$14.58 per square foot of building area. The subject property has an improvement assessment of \$95,571 or \$19.06 per square foot of building area, which falls above the range established by the only assessment comparables contained in this record. The board of review did not timely submit any evidence in support of its assessment of the subject property or refute the inequity claim presented by the appellant as required by section §1910.40(a) of the rules of the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.40(a). Therefore, the board of review was found to be in default pursuant to section §1910.69(a) of the rules of the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.69(a). The Board has examined the assessment equity information submitted by the appellant and finds that it supports a reduction in the assessed valuation of the subject property.

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.



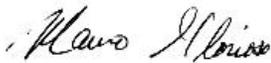
Chairman



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: November 21, 2014



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.