



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

APPELLANT: John Tsichlis
DOCKET NO.: 10-02352.001-C-1
PARCEL NO.: 09-16-402-018

The parties of record before the Property Tax Appeal Board are John Tsichlis, the appellant, by attorney Gregory P. Diamantopoulos of Law Offices of Liston & Tsantilis, P.C., in Chicago; and the DuPage 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 DuPage County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$140,800
IMPR.: \$154,740
TOTAL: \$295,540

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property is improved with a commercial building, operating as a bar and grill, containing 6,400 square feet of building area. The dwelling was built in 1982 and is situated on a 45,000 square foot lot located in Downers Grove Township, DuPage County, Illinois.

The appellant appeared, through counsel, before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellant completed Section IV-Recent Sale Data of the appeal disclosing that the subject was purchased in January 2005 for \$740,000. The appellant's evidence included an income analysis for the subject derived from the subject's 2007, 2008 and 2009 income and expenses. The appellant's evidence also included Department of the Treasury Form 8825, Rental Real Estate Income and Expenses tax returns for 2007, 2008 and 2009.

The income analysis begins with the subject's gross rents taken from the Department of the Treasury Form 8825, Rental Real Estate

Income and Expenses tax returns from 2007, 2008 and 2009. From these amounts, expenses for advertising, legal/prof fees, management, reserve allowance and miscellaneous are subtracted leaving net operating income (NOI). The analysis then averages the subject's three years of gross income and subtracts the subject's three years of average expenses, leaving the average NOI for the subject for the three years of \$76,771. The average NOI of \$76,771 is then divided by a capitalization rate of .1076 to determine a subject market value of \$713,721.

During questioning, counsel for the appellant argued that the 2005 sale of the subject is relevant to a 2010 appeal due to the subject's assessment being increased by approximately \$145,000 in the five subsequent assessment years. Counsel testified that he did not prepare the income analysis and the difference in the subject's income and expenses could be due to vacancy. Counsel could not acknowledge that the subject was receiving market rent or how the capitalization rate was determined. Also, counsel acknowledged that expenses listed as "Other" on line 15 of Form 8825, should be supported by a "Statement 2" which was not provided as support. Finally, counsel acknowledged that in the income analysis, if the subject's actual income and expenses were used to conclude the subject's market value, such value would be for a leased fee value and not an ad valorem fee simple value.

Based on the evidence presented, the appellant requested a reduction in the subject's total assessment to \$237,883.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$295,540 was disclosed. The subject's assessment reflects an estimated market value of \$888,041 or \$138.76 per square foot of building area including land using DuPage County's 2010 three-year median level of assessments of 33.28%.

In support of the subject's assessment, the board of review submitted a grid analysis of eight suggested comparable sales. The proximate locations of the comparables to the subject were not disclosed, however, the township assessor testified that all the comparables are located within Downers Grove Township. The comparables consist of one-story or part one-story and part two-story commercial buildings, operating as restaurants, ranging in size from 4,183 to 8,068 square feet of building area. The buildings were constructed from 1969 to 1987 and have lots ranging in size from 23,145 to 73,920 square feet of land area. The comparables sold from June 1996 to December 2008 for prices ranging from \$600,000 to \$12,550,000 or from \$84.96 to \$1,718.71 per square foot of building area including land.

Ed Rottmann, Deputy Assessor for Downers Grove Township, testified that he prepared the evidence for the board of review's response to the appeal of the subject property. He further stated that he searched for restaurant/taverns with between 4,100 to 8,100 square feet of building area and that there were very few restaurant sales in the last few years.

During cross-examination, Rottmann acknowledged that the three sales between 2007 and 2009 had 2010 assessment to sales price ratios ranging from 18.18% to 48.05%, with a median of 28.01%, and the level of assessment for commercial property in DuPage County is 33.33%. Rottmann further testified that the lower assessments in relation to the sales prices of the comparables are due to the fact that he does not "sales chase" the higher sales, because it would throw our assessment uniformity off.

Based on the evidence presented, the board of review requested confirmation of the subject's assessment.

After hearing 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 Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The appellant argued the subject property was overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, Ill.App.3d 1038 (3rd Dist.2002). The Board finds the appellant did not meet this burden of proof.

The appellant submitted information disclosing that the subject was purchased in January 2005 for \$740,000. The Board finds this sale occurred greater than 60 months prior to the subject's January 1, 2010 assessment date, and therefore is not probative of the subject's fair market value as of the assessment date at issue.

The appellant also included an income analysis for the subject derived from the subject's 2007, 2008 and 2009 actual income and expenses. 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:

it is the value of the "tract or lot of real property" 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, which 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.

Actual expenses and income can be useful when shown that they are reflective of the market. The appellant did not demonstrate that the subject's actual income and expenses were reflective of the market. To demonstrate or estimate the subject's market value using an income approach, as the appellant's attempt, 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. 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 follow this procedure in developing the income approach to value; therefore, the Property Tax Appeal Board gives this argument no weight.

The Board further finds that the board of review submitted information on eight comparable sales to support the subject's assessment. The Board gave less weight to the board of review's comparables #2 and #4 through #8 due to their sales occurring greater than 25 months prior to the subject's January 1, 2010 assessment date. The Board finds the two remaining sales were most similar to the subject in location, age and size. These comparables sold in September and December 2008 for prices of \$2,500,000 and \$1,000,000 or \$309.87 and \$157.55 per square foot of building area including land. The subject assessment reflects a market value of \$888,041 or \$138.76 per square foot, which is supported by the market values established by the comparable sales.

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: 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.