



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

APPELLANT: Jim Atten
DOCKET NO.: 10-03725.001-C-1
PARCEL NO.: 05-16-133-009

The parties of record before the Property Tax Appeal Board are Jim Atten, the appellant, by attorney Terrence J. Benshoof in Glen Ellyn, 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: \$88,540
IMPR.: \$41,700
TOTAL: \$130,240

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 8,225 square foot site improved with a one-story masonry constructed, multi-tenant building, built on a garden level finished basement. The improvement was built in 1862 and has a land to building ratio of 2.73:1. The subject contains approximately 3,010 square feet of gross building area. The subject property is located at 117 West Wesley St., Wheaton, Milton Township, DuPage County.

The appellant, through counsel, appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted a summary appraisal report for a property located at 112-120 North Main Street, Wheaton, Illinois.¹

¹ The appraisal submitted by the appellant was for a property other than the subject property on appeal herein.

The board of review submitted its "Board of Review Notes on Appeals" wherein its final assessment of the subject property totaling \$130,240 was disclosed. The subject's assessment reflects a market value of \$391,346 or \$130.02 per square foot of building area, including land, when applying the 2010 three-year average median level of assessments for DuPage County of 33.28%.

At the hearing the board of review asked the Property Tax Appeal Board to rely on the record submitted into evidence.

During cross-examination, the Chief Deputy Assessor of Milton Township, Cathy Zinga testified that in 2010 the subject was going through renovations. The Deputy Assessor testified that most of the value in the subject was in the land. The subject received a vacancy reduction in 2008 and 2009; however, it was denied a vacancy reduction in 2010. The market vacancy reduction in 2010 for Milton Township was approximately 9% or 10%.

The board of review submitted 5 rental comparables in support of the subject's assessment. The rental comparables were located in Wheaton and Glen Ellen. The leased areas ranged in size from 1,000 to 3,547 square feet of building area. The rents were depicted as ranging from \$20.05 to \$34.77 per square foot of leasable area. Zinga testified that she prepared an income analysis of the subject using \$21.60 per square foot of all rentable area. Her analysis estimated effective gross income for the subject of \$58,514, 20% or \$11,703 for expenses which indicated net operating income for the subject of \$46,812. A total capitalization rate of 10.08% was used which indicated a value for the subject of \$433,440. Zinga testified that she did not include the subject's income from parking rents which would have increased its value. The vacancy and expense estimates in her income approach came from answers to surveys her office sent out.

The board of review also submitted five comparable sales. The sale comparables were located in Wheaton, Hinsdale and Westmont. The properties ranged in size from 1,560 to 3,754 square feet of building area. They were described as being in average condition and were built from 1908 to 1980. The sales had land-to-building ratios ranging from 2.93:1 to 7.58:1. The properties sold from January 2008 to January 2011 for prices ranging from \$400,000 to \$950,000 or from \$251.70 to \$305.56 per square foot of building area, including land. The subject is

depicted as containing 1,505 square feet of first floor building area; in average condition, built in 1862 with a land-to-building ratio of 5.46:1 and a 2010 market value of \$390,720 or \$259.61 per square foot of ground floor building area. Based on this evidence the board of review requested confirmation of the subject's assessment.

In rebuttal, Appellant's counsel called Lee Neuschaefer from Barron Corporate Tax Solutions Ltd. as a witness. The witness testified as to the description of the property as reported on the subject's property record card. Neuschaefer testified that his office received the income statements from the owner. Neuschaefer further testified that the subject was not completely rented in 2010, only the parking area was rented. The building area itself was vacant in 2010. He testified that he developed an income approach using approximately \$21 per square foot of building area, using the first floor only and excluding the basement area. Neuschaefer testified that the appeal was submitted based on his income approach analysis estimating a market value for the subject of \$170,000 using a pro-forma income approach using market rents of \$21.60 per square foot of building area. He believed the over-all capitalization rate he used was 10.8%, with a 8.5% capitalization rate and a 2.3% net effective tax rate.

During cross-examination, Neuschaefer could not recall how he determined the estimated land value. He further testified that his office was seeking a reduction based on the subject being vacant in 2010. Neuschaefer testified that he used the 2007, 2008 and 2009 income years during his analysis. Neuschaefer acknowledged that the record was void of market rents.

During re-direct examination Neuschaefer testified that the owner spent \$20 in 2007, \$8,392 in 2008 and \$17,466 in 2009 for maintenance and repairs to the subject. He further testified that in 2010 the owner was remodeling the basement to make it rentable. Based on this evidence, the appellant requested a reduction in the subject's assessment.

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

The appellant argued overvaluation as the basis of the appeal. 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 (3rd Dist. 2002). 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 a reduction in the subject's assessment is not warranted.

The Board initially finds the appellant failed to submit sufficient documentary evidence in his case-in-chief to challenge the subject's assessment and did not meet his burden of going forward to challenge the assessment pursuant to Property Tax Appeal Board rule 1910.63(b) (86 Ill.Adm.Code §1910.63(b)) which states in relevant part:

Under the burden of going forward, the contesting party must provide substantive, documentary evidence or legal argument sufficient to challenge the correctness of the assessment of the subject property. . . .

86 Ill.Adm.Code §1910.63(b)).

Further, Section 1910.68(c) of the rules of the Property Tax Appeal Board (86 Ill.Adm.Code 1910.68(c)) states in relevant part:

Rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. A party to the appeal shall be precluded from submitting its own case in chief in the guise of rebuttal evidence.

86 Ill.Adm.Code §1910.68(c)).

However, the Board finds the board of review presented evidence from the assessor using an income analysis, and therefore, the appellant was allowed at hearing to argue in rebuttal against this evidence.

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 finds the best evidence in this record of the subject's market value is found in the comparable sales submitted by the board of review. The Board gave more weight to the three sales located in Wheaton. These three properties best represent the market area for commercial buildings located in close proximity to the subject's immediate locale. These three comparables sold from January 2008 to January 2010 for prices ranging from \$400,000 to \$950,000 or from \$251.70 to \$270.50 per square foot of building area. The subject's assessment reflects a market value of \$391,346 or \$130.02 per square foot of building area, including land, which is well below the established range as depicted by the best comparables in this record. After considering the adjustments and differences in the comparables when compared to the subject, the Board finds the subject's assessment is justified.

The Board gave little weight to the vacancy argument presented by the appellant. The Board finds vacancy is only one part of an overall income approach to value. Vacancy alone is not a basis to appeal an assessment. As previously stated the use of market data, market rent, vacancy/collection losses, and expenses are used to arrive at a net operating income reflective of the market and the property's capacity for earning income. The appellant must then establish through the use of market data a capitalization rate to convert the net income into an estimate of market value. 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.

Based on this record the Property Tax Appeal Board finds the assessment of the subject property is not excessive in relation to the market value of the property as reflected by the assessment. In conclusion, the Board finds the assessment of the subject property as established by the board of review is correct and a reduction in the assessment is not justified.

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

Tracy 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: March 21, 2014

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.