FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: IPO, LLC
DOCKET NO.: 12-02302.001-R-1
PARCEL NO.: 16-08-377-004

The parties of record before the Property Tax Appeal Board are IPO, LLC, the appellant, by attorney Richard J. Caldarazzo and Julia Mezher, of Mar Cal Law, P.C., in Chicago, and the Winnebago 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 **Winnebago** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$9,071
IMPR.:	$84,929
TOTAL:	$94,000

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Winnebago County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2012 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 two-story building of brick construction with 9,288 square feet of building area and consisting of eight apartment units. The building was constructed in 1977. Features of the eight 2-bedroom apartment units include an individual "sleeve" air conditioning unit and a garage of 2,112 square feet of building area. The property has a 32,164 square foot site and is located in Rockford, Cherry Valley Township, Winnebago County.

Appearing before the Property Tax Appeal Board on behalf of the appellant was its attorney, Julia Mezher, who argued

overvaluation with respect to the subject's assessment as the basis of the appeal. In support of this argument the appellant submitted information on three comparable sales and included a brief addressing an income and expense analysis prepared by the appellant's law firm.

The comparable sales data consists of three properties located from 20 blocks to 7-miles from the subject property. Each of the comparables is a two-story apartment building of frame, brick or brick and stone exterior construction. The buildings have either 6 or 8 apartment units which range in age from 38 to 92 years old. The buildings range in size from 5,568 to 7,096 square feet of building area and one of the buildings has a full unfinished basement. One of the buildings has central air conditioning and one of the buildings has individual air conditioning units for the apartments. Two of the buildings have six to twelve outdoor parking spaces and one building has a six-car garage. These comparables sold between May 2007 and December 2012 for prices ranging from $125,000 to $210,000 or from $18.55 to $29.59 per square foot of building area, including land, or from $15,625 to $35,000 per apartment unit, including land. From this data, counsel for the appellant argued that the "average" sale price of the comparables was $160,000 and thus, the subject's assessment should reflect this average sales price.

For the income and expense analysis in a brief, counsel outlined the "actual income and expenses of the subject property for the 2010, 2011 and 2012 tax years" with the figures for 2012 being "projected to reflect a one year period." Moreover, in a further explanation in the brief, the income data was derived from not only the subject property but an additional property with the subject's income "derived" as approximately 49% of the "rental" income in the 2010 and 2011 Schedule E filings. From this data of gross income and "allowable expenses" in the brief counsel derived a stabilized net operating income for the subject of $35,121 to which an overall capitalization rate of 14.17% was applied resulting in a requested market value of $247,855.

Based on this evidence and argument, the appellant requested a total assessment of $53,328 which reflects a market value of approximately $159,984 or $17.22 per square foot of building area, including land, or $19,998 per apartment unit, including land in light of the comparable sales. In the alternative, based upon the income and expense analysis, the appellant requested a total assessment of $82,610 or a market value of approximately $247,830 or $26.68 per square foot of building area, including land, or $30,979 per apartment unit, including land.

On cross-examination, counsel acknowledged that she did not personally inspect the comparable sale properties which were presented.

Given questions by the Administrative Law Judge, Ms. Mezher acknowledged that her submission in the brief did not include any rental comparables to establish market rents, her submission did

not include any vacancy and collection loss data reflective of the market, and her submission did not include any data to support a market derived capitalization rate.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $94,000. The subject's assessment reflects a market value of $284,332 or $30.61 per square foot of building area, land included, or $35,542 per apartment unit, land included, when using the 2012 three year average median level of assessment for Winnebago County of 33.06% as determined by the Illinois Department of Revenue. Appearing at the hearing on behalf of the board of review was Richard Crosby, member of the board of review.

In rebuttal to the appellant's comparable sales, Mr. Crosby contended the comparable sales were located in a different township and were suburban rather than urban locations. Also, he contended that comparable sale #1 was sold at auction (see PTAX-203 Illinois Real Estate Transfer Declaration depicting that the property was advertised prior to sale although it was an "auction sale"). In addition, in its written submission the board of review disputed consideration of sales that occurred after January 1, 2012 when determining the correct assessment of the subject as of the assessment date of January 1, 2012. Moreover, as comparable sale #2 occurred in May 2007, the board of review contended for assessment purposes as of 2012 only sales from 2011, 2010 and 2009 are considered valid, thus it was argued sales after January 1, 2012 should not be considered valid comparable sales for this appeal. Also, appellant's comparable sale #3 was reportedly a "short sale."

In support of its contention of the correct assessment the board of review submitted information on four comparable sales located from 2 to 11-miles from the subject, but which reportedly are within Cherry Valley Township like the subject. These comparable two-story brick apartment buildings have either 8 or 11 apartment units which range in age from 34 to 45 years old. The buildings range in size from 7,188 to 10,090 square feet of building area. Three of the comparables have a basement and all of the comparables have "air conditioning."[1] One comparable has a "carport" and one comparable has a "4 basement garage." The sales occurred between August 2010 and May 2012 for prices ranging from $201,500 to $330,000 or from $28.03 to $36.35 per square foot of building area, including land, or from $25,188 to $33,400 per apartment unit, including land.

Based on this evidence and argument, the board of review requested confirmation of the subject's assessment.

[1] Property record cards were not provided for the comparable properties; the board of review contended that the subject and these comparables have "sleeve" air conditioning units.

On cross-examination, Mr. Crosby acknowledged that his comparable #4 has an additional basement garage feature when compared to the subject property. He further acknowledged that comparables #2 and #3 have eleven apartment units with an equal number of bathrooms as compared to the subject with eight apartment units and an equal number of bathrooms. Additionally, Mr. Crosby acknowledged that board of review comparable sales #2, #3 and #4 have basements whereas the subject building does not have a basement.

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 a reduction in the subject's assessment is not warranted.

The parties submitted a total of seven comparable sales to support their respective positions before the Property Tax Appeal Board. The Board has given reduced weight to appellant's comparable sale #2 due to its substantially older age of 92 years and due to its date of sale having been May 2007, a date more remote in time to the valuation date at issue of January 1, 2012 and thus less likely to be indicative of the subject's estimated market value as of the assessment date. The Board has also given reduced weight to board of review comparables #2 and #3 as each of these buildings have eleven apartment units.

As to the criticism by the board of review that appellant's comparable #3 was a "short sale," the Board finds that Public Act 96-1083 amended the Property Tax Code adding sections 1-23 and 16-183 (35 ILCS 200/1-23 & 16-183), effective July 16, 2010.

Section 1-23 of the Property Tax Code provides:

> Compulsory sale. "Compulsory sale" means (i) the sale of real estate for less than the amount owed to the mortgage lender or mortgagor, if the lender or mortgagor has agreed to the sale, commonly referred to as a "**short sale**" and (ii) the first sale of real estate owned by a financial institution as a result of a judgment of foreclosure, transfer pursuant to a deed in lieu of foreclosure, or consent judgment, occurring after the foreclosure proceeding is complete. [Emphasis added.]

Section 16-183 provides:

> Compulsory sales. The Property Tax Appeal Board shall consider compulsory sales of comparable properties for

> the purpose of revising and correcting assessments, including those compulsory sales of comparable properties submitted by the taxpayer.

The Board finds the effective date of these statutes is applicable to assessment date at issue, January 1, 2012 and thus, there is no basis to give less weight to a comparable sale property merely because it was a "short sale."

The board of review also criticized appellant's comparable sale #1 as having sold at auction. The board of review's own submission of the PTAX-203 for this transaction clearly establishes that the property was advertised for sale prior to the sale. Thus, from this record, it appears that the general public had the same opportunity to purchase the property at any negotiated price as a consequence of the auction. The book Property Assessment Valuation, 2nd edition, states: Market value is the most probable price, expressed in terms of money, that a property would bring **if exposed for sale in the open market** [emphasis added] in an arm's-length transaction between a willing seller and a willing buyer; a **reasonable time is allowed for exposure to the open market**. [emphasis added]. (International Association of Assessing Officers, Property Assessment Valuation, 2nd edition, Pgs. 18, 35, (1996)). In light of these principles, the Property Tax Appeal Board finds no merit in the implication that a property which sold at an advertised auction is for this reason alone an invalid comparable sale.

Lastly, the board of review contended that the appellant's two comparables which sold in 2012 were "invalid" for purposes of this appeal, but then in its own submission comparable sale #1 presented by the board of review was a property which sold in May 2012. Regardless of the incongruity of the argument given its own evidentiary submission, the Property Tax Appeal Board finds no merit in this argument. While the Board finds assessors are statutorily bound to determine a given property's fair cash value as near as practicable as of the date of January 1 of a given assessment year, Illinois courts have recognized that assessing officials are not barred, as a matter of law, from considering events which occurred after the lien date in assessing properties and subsequent events assessing officials may consider in any individual case will depend on the nature of the event and the weight to be given the event will depend upon its reliability in tending to show value as of January 1. (See Application of Rosewell, 120 Ill.App.3d 369 (1st Dist. 1983)).

The Board finds the best evidence of market value to be appellant's comparable sales #1 and #3 along with board of review comparable sales #1 and #4 where these comparables have superior features of basements when compared to the subject property. These four most similar comparables sold between August 2010 and December 2012 for prices ranging from $125,000 to $267,200 or from $18.55 to $36.35 per square foot of building area, including land, or from $15,625 to $35,000 per apartment unit, including land. The subject's assessment reflects a market value of

$284,332 or $30.61 per square foot of building area, land included, or $35,542 per apartment unit, land included, which is within the range established by the best comparable sales in this record in terms of a square-foot analysis and is slightly higher in terms of a per-apartment unit analysis which appears to be justified given that the subject is the newest and largest building when compared to the best comparables. Based on this evidence the Board finds a reduction in the subject's assessment is not justified.

The appellant through legal counsel also developed an income approach to value using the subject's actual income and expenses. The Board finds this 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. As established at hearing through questions asked of Ms. Mezher, the appellant did not demonstrate through any type of expert opinion or documentation 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's counsel 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's legal counsel did not provide such evidence as part of the brief; therefore, the Property Tax Appeal Board gives this purported argument no weight. Furthermore, the Board finds problematic the fact that appellant's counsel purportedly developed an "income approach" to value rather than an expert in the field of real estate valuation. Additionally, the Board finds that an attorney cannot act as both an advocate for a

client and seek to provide unbiased, objective evidence of value for that client's property. (See 86 Ill.Admin.Code §1910.70(f)).

In conclusion, the Board finds the appellant did not demonstrate the subject property's assessment to be excessive in relation to its market value and a reduction in the subject's assessment is not warranted on this record.

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: October 24, 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.