



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

APPELLANT: Betty Bauer
DOCKET NO.: 09-22876.001-R-1
PARCEL NO.: 14-19-131-044-0000

The parties of record before the Property Tax Appeal Board are Betty Bauer, the appellant, by attorney Joe Lee Huang, of Law Offices of Terrence Kennedy Jr. 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: \$ 13,230
IMPR: \$ 17,715
TOTAL: \$ 30,945

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 assessment 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 106-year old, three-story, mixed use building with a commercial unit on the first floor and two residential apartments on the upper floors. The building contained 3,077 square feet of building area. The property has a 3,150 square foot site and is located in Lake View Township, Cook County. The subject is classified as a class 2, mixed-use property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an actual

income and expense analysis undertaken by the appellant's attorney as well as an appraisal. The appraisal estimated the subject property had a market value of \$260,000 as of January 1, 2009, which developed the sales comparison approach to value. This approach to value used four, mixed-use sales which sold from January, 2006, through July, 2009, for prices that ranged from \$320,000 to \$1,040,000, or from \$76.67 to \$85.28 per square foot of building area. The sales ranged in building size from 3,920 to 10,000 square feet and were constructed from 1888 to 1910. The appraiser opined a value for the subject of \$260,000 or \$85.00 per square foot.

As to the actual income and expense analysis, the appellant's attorney explained the development of this analysis and submitted copies of the subject's 2006 through 2008 IRS Schedule E forms as well as a copy of the subject's rent roll.

Further as to the subject, the appellant's brief asserts that the commercial unit and one residential unit are owner-occupied.

At hearing, the appellant did not call as a witness its appraiser.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$56,175. The subject's assessment reflects a market value of \$631,180 or \$205.13 per square foot of living area, including land, when applying the 2009 three year average median level of assessment for class 2, mixed-use property of 8.90% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment, the board of review submitted descriptive and assessment information on four suggested equity comparables as well as sales data on property #2. This property sold in October, 2007, for a price of \$1,150,000 or \$341.85 per square foot. Assessor database printouts were submitted for the subject as well as the suggested comparables. The printout for the subject reflects the taxpayer-owner located at the subject's address.

The board of review's representative objected to the appellant's appraisal as being hearsay because the appellant failed to call the appraiser as a witness at hearing prohibiting examination of the appraiser's methodology. In support of this position, the board of review requested judicial notice of two Board decisions on this issue while submitting courtesy copies thereof into evidence. In addition, the board of review objected to the actual income and expense analysis, while also submitting a courtesy copy of a Board decision on this issue into evidence.

Moreover, the board's representative testified that he had no personal knowledge as to whether the board's sale #2 was an arm's length transaction and indicated that there was neither data in the pleadings to address this issue nor adjustments made to this raw sales data. He did testify that a subarea as indicated on

the board's grid is less than a one quarter of a mile in distance from the subject. He also stated that there could be variances in desirability and amenities within a subarea.

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 met this burden of proof and a reduction in the subject's assessment is warranted.

In determining the fair market value of the subject property, the Board looks to the evidence and testimony presented by the parties. The un rebutted evidence from both parties indicates that the subject is an owner-occupied structure.

Next, the appellant submitted documentation showing the income and expenses of the subject property. The Board gives the appellant's argument little weight. 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. Id. at 431. The Board gives this argument little weight and will look to the submitted market data.

Further, the appellant's appraiser was not present at hearing to testify as to his qualifications, identify his work, testify about the contents of the evidence, the conclusions or be cross-examined by the board of review and the Board. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos

Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The appellate court found the appraisal to be hearsay that did not come within any exception to the hearsay rule, thus inadmissible against the defendant, and the circuit court erred in admitting the appraisal into evidence. Id.

In Jackson v. Board of Review of the Department of Labor, 105 Ill.2d 501, 475 N.E.2d 879, 86 Ill.Dec. 500 (1985), the Supreme Court of Illinois held that the hearsay evidence rule applies to the administrative proceedings under the Unemployment Insurance Act. The court stated, however, hearsay evidence that is admitted without objection may be considered by the administrative body and by the courts on review. Jackson 105 Ill.2d at 509. In the instant case, the board of review has objected to the appraisal as hearsay. Therefore, the Board finds the appraisal hearsay and the adjustments and conclusions of value are given no weight. However, the Board will consider the raw sales data submitted by the parties.

In totality, the parties submitted raw, unadjusted sales data on five suggested comparables. The Board finds appellant's sales #1, #3, and #4 the most probative. These sales occurred from August, 2008, to July, 2009, for unadjusted prices ranging from \$76.65 to \$84.65 per square foot of living area. In comparison, the appellant's assessment reflects a market value of \$205.13 per square foot of living area which is above the unadjusted range established by the sales comparables. After considering adjustments and the differences in the comparables when compared to the subject, the Board finds the subject's per square foot assessment is not supported and that a reduction is warranted.

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

K. L. Ferr

Member

JR

Member

Mark Morris

Member

Jerry White

Acting 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 21, 2015

A. Proctor

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.