



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

APPELLANT: Tom & Dino Kalabogias
DOCKET NO.: 09-23443.001-C-1
PARCEL NO.: 09-11-302-028-0000

The parties of record before the Property Tax Appeal Board are Tom & Dino Kalabogias, the appellants, by attorney George N. Reveliotis and attorney Dimitri Trivizas, of Reveliotis Law, P.C. in Chicago; and the Cook 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 Cook County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$ 80,736
IMPR.: \$ 108,471
TOTAL: \$ 189,207

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 40,360 square foot parcel of land improved with a 24-year old, one-story, commercial building containing 4,246 square feet of building area. The property is used as a restaurant and is located in Maine Township. The property is a class 5-17 property under the Cook County Real Property Assessment Classification Ordinance.

Procedurally, the Board issued an initial decision in this matter on September 19, 2014. Upon receipt, the appellants filed a motion to vacate dated September 23, 2014, while asserting that additional evidence in the form of an appraisal was timely mailed to the Board even though it apparently was not in the Board's official file. The Board granted the appellants motion to vacate the initial decision; accepted the appellant's appraisal evidence instanter; and reopened the rebuttal evidence

period for the board of review. Thereafter, a hearing was scheduled.

The appellant argued that the fair market value of the subject was not accurately reflected in its assessed value; and that there was inequity in the assessment process as the bases of the appeal.

In support of the market value argument, the appellants submitted: an actual income and expense analysis, a copy of the subject's 2009 rent roll, and an appraisal.

The appraisal indicated an estimated market value of \$405,000 as of an effective date of January 1, 2009. The appraisal report utilized the income and sales comparison approaches to value to estimate the market value for the subject property. Under the income approach, the estimated market value was \$405,000, while under the sales comparison approach the estimated market value was \$405,000.

The appraisal indicated a physical inspection was undertaken on July 10, 2010, while estimating a building size of 4,050 square feet. Under the income approach, the appraisal used four strip centers as suggested rental comparables.

Under the sales comparison approach, the appraisal analyzed the sales of six suggested sale comparables described as retail/restaurant or restaurant/store buildings. They sold from December, 2007, to May, 2010, for prices ranging from \$56.55 to \$115.93 per square foot of building area. The sales ranged in building size from 2,500 to 8,532 square feet and in year of construction from 1950 to 1993. The appraisal estimated a value for the subject under the sales comparison approach of \$405,000, while both approaches were given significant weight in the analysis.

In support of the equity argument, the appellants submitted limited data on two suggested equity comparables.

At hearing, the appellants' attorney did not call a witness to testify. Therefore, the board of review's representative moved to strike the appraisal due to the absence of an appraisal witness. The Board denied the board of review's motion to strike. Thereafter, the board of review objected to the appellants' appraisal as hearsay due to the absence of the expert witness. The Board sustained the board of review's hearsay objection.

As to the actual income and expense analysis, the appellants' attorney indicated that the analysis was prepared by a staff member at the law firm, who did not hold any assessing or appraising designations. Based upon this evidence, the appellants requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$189,207 was disclosed. The subject's final assessment reflects a fair market value of \$756,828 or \$178.24 per square foot when the Cook County Classification Ordinance 2009 level of assessment of 25% for Cook County Class 5, commercial properties is applied.

In support of the subject's assessment, the board of review presented descriptions and sales data on seven properties suggested as comparable. The properties are described as retail/ restaurant buildings. They sold from June, 2005, to June, 2008, for prices ranging from \$216.13 to \$786.91 per square foot of building area. The sales ranged in building size from 2,700 to 9,000 square feet and in year of construction from 1936 to 2004. The printouts stated that sale #1 included three tenants. Based on this evidence, the board of review requested confirmation of the subject's assessment.

At hearing, the board of review's representative, Lena Henderson, testified that the board of review had accorded a reduced assessment to the subject based upon the board of review's level appeal. As to the submitted sales, she stated that no adjustments were made to these suggested comparables. Based upon this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellants' attorney argued that the board of review's suggested sales lack comparability because: sale #1 is a multi-tenant building; sale #3 is a franchise location and a premium was mostly likely paid for the purchase; and sale #6 sold in 2005 which is too distant in time to the 2009 tax year.

After reviewing the evidence as well as considering the testimony and/or arguments, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property 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);

Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the market value evidence presented, the Board finds that the appellant did not meet this burden and that a reduction is not warranted.

In determining the fair market value of the subject property, the Board looks to the evidence and testimony presented by the parties.

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.

The appellants' 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 13 suggested comparables. The Board finds appellants' sales #2, #3 and #6 as well as the board of review's sales #2, #4, and #7 the most probative. These sales occurred from November, 2006, to December, 2009, for unadjusted prices ranging from \$56.55 to \$458.55 per square foot of building area. In comparison, the appellants' assessment reflects a market value of \$178.24 per square foot of building area which is within the range established by the sale 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 supported and a reduction is not warranted.

As to the appellants' second argument, the taxpayer 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

appellants did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

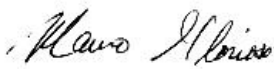
The Board finds that the appellants submitted limited data on two suggested equity comparables. As to property #1, the Board finds that the submitted assessor's printout stated 'a partial assessment' without further information submitted by the appellants resulting in only one remaining equity comparable. Therefore, the Board finds the appellants' argument unpersuasive and unsupported on this last issue.

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: May 22, 2015



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.