



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

APPELLANT: Marino Realty, LLC
DOCKET NO.: 12-00048.001-C-1
PARCEL NO.: 12-31-377-002

The parties of record before the Property Tax Appeal Board are Marino Realty, LLC, the appellant, by attorney Ryan Schaeffges 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 a reduction 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: \$13,537
IMPR.: \$99,000
TOTAL: \$112,537

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, eleven unit, multi-family building of brick construction with 9,342 square

feet of building area. The building was constructed in 1982. The property has a 29,109 square foot site and is located in Rockford, Rockford Township, Winnebago County.

The appellant appeared through counsel arguing assessment inequity and a contention of law as the bases of the appeal. In support of these arguments the appellant submitted information on three equity comparables that have from 24 to 32 apartment units and have improvement assessments ranging from \$5,680 to \$8,509 per apartment unit or from \$8.64 to \$10.11 per square foot of building area.

As to the contention of law argument, the appellant argued the subject property was overvalued and submitted an income approach to value the subject property derived by using the subject's actual income and expenses from 2010 and 2011. The 2012 income and expenses were prorated. The analysis provided three alternative values for the subject property. Using a stabilized gross income and expense analysis, the subject's indicated fair market value was \$183,179. Using the vacancy factor applied to the improvement of the subject property indicated the subject's fair market value was \$271,605 and using an analysis of the assessed value per square foot of the improvements of comparable properties indicated the subject's fair market value was \$315,932.

At the hearing, the appellant's attorney acknowledged that the author of the income approach analysis was Andrew Dzuik, who was not present at the hearing to provide testimony and/or be cross-examined with regard to the analysis.

Based on this evidence the appellant requested the subject's improvement assessment be reduced to \$47,517 or \$4,320 per apartment unit or \$5.09 per square foot of building area. Based on the appellant's evidence of overvaluation, the appellant requested the subject's total assessment be reduced to \$61,054, which would reflect a market value of \$183,180 using the statutory level of assessment of 33.33%.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$114,838. The subject property has an improvement assessment of \$101,301 or \$9,209 per apartment unit or \$10.84 per square foot of living area. The subject's assessment reflects a market value of \$344,548 or \$31,323 per apartment unit, land included, when using the statutory level of assessment of 33.33%.

In support of its contention of the correct assessment the board of review submitted information on four equity comparables that have from 11 to 16 apartment units. The buildings were constructed from 1968 to 1995. The comparables have improvement assessments ranging from \$6,853 to \$8,903 per apartment unit or from \$9.28 to \$15.25 per square foot of building area.

As to the appellant's overvaluation argument, the board of review submitted four sales that occurred from February 2010 to May 2012 for prices ranging from \$264,000 to \$774,000 or from \$16,500 to \$35,182 per apartment unit, including land. The board of review did not disclose the lot size of the comparables. The board of review also submitted an income approach to value the subject property derived by using the subject's actual rent roll indicating the subject's market value was \$366,856.

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

Under cross-examination, the board of review's witness, Mike Smith, acknowledged that the board of review's equity comparables had improvement assessments per apartment unit that were lower than that of the subject. Smith further acknowledged that the board of review's comparable sale #4 had two buildings, when compared to the subject's one building.

Conclusion of Law

The taxpayer contends in part improvement assessment inequity as a 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 appellant met this burden of proof and a slight reduction in the subject's improvement assessment is warranted.

The Board finds the best evidence of improvement assessment equity to be the board of review's comparables #3 and #4. These comparables had the same number of apartment units and were most similar in size, when compared to the subject. These

comparables had improvement assessments of \$8,903 per apartment unit or \$9.28 per square foot of building area. The subject's improvement assessment of \$9,209 per apartment unit or \$10.84 per square foot of building area falls above the improvement assessments established by the best comparables in this record. The Board gave less weight to the appellant's equity comparables due to their greater number of apartment units and significantly larger building sizes, when compared to the subject. The Board also gave less weight to the board of review's comparables #1 and #2 due to their greater number of apartment units and smaller building sizes, when compared to the subject. Based on this record the Board finds the record demonstrates with clear and convincing evidence that the subject's improvement was inequitably assessed and a slight reduction in the subject's improvement assessment is justified.

The appellant also 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 no reduction in the subject's assessment is warranted.

As an initial matter, the Property Tax Appeal Board gave no weight to the parties' income approach analyses. The Board finds the parties estimation of the subject's market value when applying the subject's actual income and expenses unconvincing and not supported by any credible market evidence in the record. An income analysis using the subject's actual income and expenses is unpersuasive. 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. The parties attempted to demonstrate through an income approach analysis that the subject's actual income and expenses are reflective of the market. However, in order to demonstrate or estimate the subject's market value using an income approach, as the parties attempted, the parties must establish through the use of market derived comparable data, the market rent, vacancy and collection losses and expenses used to arrive at a net operating income reflective of the market and the property's capacity for earning income. The Board finds the parties' rental income evidence is lacking any market data to support the opinion and is therefore not credible. As a result, the Property Tax Appeal Board gives the parties' income approach no weight.

In addition, the Board finds the appellant's income approach is hearsay. The Board finds that in the absence of the author of the analysis at the hearing to address questions as to the value conclusions set forth by the income approach, the Board will give no weight to the final value conclusion made by the author of the analysis. The Board finds the appellant's income approach analysis is tantamount to hearsay. Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill. App. 3d 474 (2nd Dist. 1979); Russell v. License Appeal Comm., 133 Ill. App. 2d 594 (1st Dist. 1971). In the absence of the author being available and subject to cross-examination regarding methods used and conclusion(s) drawn, the Board finds that the weight and credibility of the evidence and the value conclusions have been significantly diminished.

Lastly, the record contains four sales from the board of review for the Board's consideration. The Board gave less weight to the board of review's comparable #4 due to its sale occurring greater than 22 months prior to the assessment date at issue. In addition, this comparable had 22 apartment units within two buildings when compared to the subject's 11 apartment units within one building. The Board finds the remaining comparable sales in this record are somewhat similar to the subject in location, size, age and number of apartments. The comparables sold from August 2011 to May 2012 for prices ranging from

\$264,000 to \$363,000 or from \$16,500 to \$30,250 per apartment unit, including land. The subject's assessment reflects a market value of \$344,548 or \$31,323 per apartment unit, land included, which is within the range established by the best comparables in this record on a total market value basis and slightly above the range on a per apartment basis. However, after applying the reduction to the subject's improvement assessment due to the appellant's equity argument, the Property Tax Appeal Board finds the subject's estimated market value as reflected by its revised assessment is supported by the sales in the record and no further reduction in the subject's assessment is warranted due to overvaluation.

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

Klaus Albino

Member

[Signature]

Member

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: July 24, 2015

[Signature]

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.