



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

APPELLANT: Youssi Rentals LLC
DOCKET NO.: 12-01579.001-R-2 through 12-01579.007-R-2
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Youssi Rentals LLC, the appellant, by attorney Mark P. Doherty, of The Doherty Law Firm in DeKalb; the DeKalb County Board of Review; the Sycamore C.S.D. #427 intervenor, by attorney Scott L. Ginsburg of Robbins Schwartz Nicholas Lifton & Taylor, Ltd., in Chicago.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds **An Increase** in the assessment of the property as established by the **DeKalb** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
12-01579.001-R-2	06-28-352-061	34,816	105,415	\$140,231
12-01579.002-R-2	06-28-352-062	34,816	105,415	\$140,231
12-01579.003-R-2	06-28-354-002	34,816	105,415	\$140,231
12-01579.004-R-2	06-28-354-003	34,816	105,415	\$140,231
12-01579.005-R-2	06-28-354-004	34,816	105,415	\$140,231
12-01579.006-R-2	06-28-354-005	34,816	105,415	\$140,231
12-01579.007-R-2	06-28-354-006	34,816	105,415	\$140,231

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the DeKalb 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 seven separate residential buildings, each with a distinct Property Index Number (PIN), each containing four rental units. The subject buildings were built in 2006. The property is located in the River Edge Condominium Subdivision, Sycamore, DeKalb County.

At the commencement of this hearing, the parties raised a number of preliminary matters. First, counsel for the appellant argued that the intervenor should not have been given notice and made a party to this appeal because the requested reduction in assessment value for each individual subject building is less than \$100,000. In support of this proposition, counsel for the appellant cited 35 ILCS 200/16-180 stating in relevant part:

“In all cases where a change in assessed valuation of \$100,000 or more is sought, the board of review shall serve a copy of the petition on all taxing districts as shown on the last available tax bill.”

In response, intervenor’s counsel argued that the section cited by appellant’s counsel does not preclude the Board from giving notice to a taxing district, but merely requires such notice above a certain threshold. After considering all of the arguments presented, the Board denies appellant’s request and finds that section 16-180 of the Property Tax Code (35 ILCS 200/16-180) does not preclude notice, but instead requires it when the appeal is over the \$100,000 threshold.

Second, along with notice to the intervenor, appellant’s attorney contended that the appeals should not have been consolidated. Section 1910.78 of the rules of the Property Tax Appeal Board deals with consolidation of appeals, and it states as follows:

“Two or more appeals involving the same property may be consolidated on motion of any party or at the direction of the Property Tax Appeal Board when the cases involve common issues of law or fact, consolidation would not prejudice the rights of the parties, and consolidation would result in the efficient and expeditious resolution of the appeals.” 86 Ill. Adm. Code 1910.78.

In the instant case, the Board gives no weight to appellant’s argument that he is in any way prejudiced by the consolidation of the current appeal. Appellant’s own appraisal estimated market value based on all of the buildings combined, and the appellant later testified that he negotiated the sale of the subject’s units in totality with a buyer. Furthermore, the Board finds that consolidating the subject property under one appeal leads to the most judicial efficiency and expeditious resolution of the appeals.

Third, appellant’s counsel next argued that the intervenor’s evidence was filed untimely. Counsel argued that on two separate occasions, the intervenor failed to submit its evidence in a timely manner. Specifically, appellant’s counsel argued the intervenor missed its first deadline of July 15, 2014 by submitting evidence a day later, on July 16, 2014. Then, appellant’s counsel argued after being granted a 60-day extension to October 17, 2014, the intervenor again failed to submit its evidence in a timely manner by filing on October 20, 2014.

In response, intervenor’s counsel argued that its evidence was filed timely and should be given weight and requested an extension to submit to the Board evidence showing the timeliness of intervenor’s evidence. After careful consideration of all arguments, the Board granted the intervenor a 24-hour extension to submit evidence that shows the timeliness of its evidence submission. Subsequently, and within this 24-hour period, the intervenor submitted evidence to the Board and remaining parties with multiple exhibits. In particular, intervenor’s Exhibit B reads “UPS Ship Notification” and contains a tracking number and a mailing date stamp of July

15, 2014 and a delivery date of July 16, 2014. Furthermore, intervenor's Exhibit F which is a "UPS CampusShip: Shipment Receipt" shows a transaction date of October 17, 2014 and a delivery date of October 20, 2014.

Section 1910.25(b) of the rules of the Property Tax Appeal Board deals with computing time limits in regards to receiving evidence, and it states in pertinent part:

"Petitions, evidence, motions, and all other written correspondence sent by United States Mail to the Property Tax Appeal Board shall be considered filed as of the postmark date in accordance with Section 1.25 of the Statute on Statutes [5 ILCS 70/1.25]."

In response to the subsequently submitted evidence by the intervenor, the appellant's counsel submitted two letters to the Board, both dated December 6, 2017. In the first letter, appellant's counsel argued that no evidence was submitted that shows that the intervenor provided notice to the appellant of the request to extend the evidentiary period or the ultimately submitted evidence. In the second letter, appellant's counsel cited the portion of intervenor's Exhibit B which reads: "This message was sent to you at the request of RSNLT to notify you that the electronic shipment information below has been submitted to UPS. The physical package(s) may or may not have been actually tendered to UPS for shipment." Appellant's counsel argued that this portion of the UPS notification at best indicates that shipment information was submitted.

The Board gives no weight to appellant's argument that the intervenor's evidence was filed untimely. As to the July 15, 2014 deadline, the record is clear that the Board received intervenor's initial request for a 60-day extension around noon on July 16, 2014. Therefore, the Board finds appellant's argument that intervenor's Exhibit B should not be construed as a shipping notification by focusing on the legal disclaimer rather than the actual dates as unpersuasive. Similarly, the Board finds that the intervenor's shipment receipt, marked as Exhibit F, provides sufficient evidence of timeliness under section 1910.25 of the Board's rules (86 Ill.Admin.Code 1910.25).

The intervenor and the board of review also raised a joint objection as to the admissibility of and weight to be accorded the appellant's appraisal based on the failure of the appellant's appraiser to appear and testify as to the methodology and conclusions of value. In response, appellant's counsel argued that there is no specific rule or provision of law that requires the presence of the appraiser at hearing. The Board overruled the intervenor and board of review's joint objections as to admissibility of the appraisal, which was already part of the record, but noted that the parties' objections will go to the weight accorded the evidence by the Board.

The appellant's appeal is based on overvaluation. In support of this argument the appellant submitted an appraisal completed by Eric P. Cooper (Cooper) estimating the subject property had a market value "as is" of \$3,150,000, as disposition value of \$2,375,000, and as liquidation value of \$1,575,000, all as of April 24, 2012.

In his appraisal, Cooper stated that the purpose of his appraisal was "[f]or the periodic valuation of an asset per policy." Cooper's appraisal describes the subject as consisting of 35

condominium units with a combined area of 43,210 square feet of rentable area. Cooper was not present to testify at the hearing regarding the methodology used in preparing his appraisal.

Nevertheless, at hearing, counsel for the appellant called Chris Youssi (Youssi) to testify not as an expert witness, but as to his personal knowledge of the subject. Youssi testified that he is the managing partner of Youssi Rentals LLC (Youssi Rentals). He testified that Youssi Rentals has been in the business of facilitating real estate development for approximately 17 years. He also testified that he has no licenses in real estate appraisal theory and practice.

On direct examination, Youssi testified that he developed the entire subdivision where the subject buildings are located. Youssi testified that the subject should not be considered to have 28 individual units, but rather seven separate buildings with four rental units each. For that reason, Youssi stated, the rental units do not have separate PINs, but the buildings do. Furthermore, Youssi testified that he obtained a performing loan from his bank; however, he indicated that another bank had taken over pursuant to federal authority and therefore that new lender ordered an appraisal in 2011 and 2012 to determine the assets worth. The Board notes that neither appraisal was submitted in this property appeal. Youssi also testified that in negotiating the sale of the subject's buildings in January, 2013, he negotiated and gave the buyer an \$8,000 discount for each unit. Youssi testified that the sale price was \$108,000 per unit one year after the lien date but that he believed the real value of each unit was \$100,000.

On cross examination, Youssi testified that the subject buildings and seven other units, for a total of 35 units, were placed on the market for a bulk sale in October, 2012. Youssi testified that he hired a real estate broker to advertise the subject on the open market. Youssi also testified that when deciding on an asking price, he used an income approach and did not consider any comparable sales. Youssi further testified that the asking price was developed ten months after the date of valuation and that would account for the difference between the current assessed value and the subject's sale price. In contrast, he later testified that he did use comparable sales that were provided in a 2011 appraisal.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for each of the subject buildings of \$133,000. The subject's assessment reflects a market value of \$399,040 for each of the subject buildings or approximately \$99,760 per unit, when using the 2012 level of assessment for class 2 property of 33.33% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted a brief requesting that the Board affirm the subject's 2012 assessment. In support of its brief, the board of review submitted five exhibits labeled #1 through #5. Those exhibits included: a two-page portion of the Cooper appraisal; a Multiple Listing Service (MLS) listing page of the subject; a printout of the Parcel Information Report (PIR) for each subject building; two PTAX-203 Illinois Real Estate Transfer Declarations (PTAX-203) for the sale of the subject in January, 2013; and two printouts detailing the subject's sale.

The board of review's brief detailed the subject's January, 2013 sale. The board of review submitted evidence that on October 23, 2012, the subject was listed as a "35 unit condominium building[] for sale" for a price of \$3,945,000. The MLS listing, labelled County's Exhibit #2,

indicates that the listing was closed on January 31, 2013, and the subject, consisting of 35 units, was sold for \$3,800,000 or approximately \$108,571 per unit.

The board of review's brief further details that the subject's sale was filed under two PTAX-203 Illinois Real Estate Transfer Declaration forms, attached to its brief as County's Exhibit #4. Both PTAX-203 forms are signed, attested to, and filed by Chris Youssi with the DeKalb County Recorder of Deeds on February 13, 2014. The first PTAX-203 form indicates that the five buildings with PIN numbers ending in -061, -062, -002, -003, -004 sold for \$2,103,680 or \$105,184 per unit after deducting \$110,720 for personal property. The second PTAX-203 form indicates that seven individual units along with two buildings with PIN numbers ending in -005 and -006 sold for \$1,577,760 or \$105,184 per unit after deducting \$83,040 for personal property.

At hearing, the board of review argued that the appellant failed to meet his burden of showing that the subject property is overvalued. The board of review argued that the subject's 2013 sale supports the subject's 2012 assessment. In fact, the board of review argued, the subject's current assessment at \$133,000 per building is roughly 5% lower than the assessment of \$140,238 per building based upon the actual sale price in the 2013 sale. Therefore, the board of review's assessment and opined market value is below its actual market value. Finally, the board of review argued that the Cooper appraisal is not for ad valorem purposes and is as of April 24, 2012; and therefore, less than relevant.

The intervenor submitted an appraisal prepared by Dale J. Kleszynski (Kleszynski). Kleszynski testified that he holds the MAI and SRA designations as awarded by the Appraisal Institute. He is the president and chief appraiser of Associated Property Counselors. Kleszynski was offered as an expert in real estate theory and practice and after no objection by opposing counsel was accepted as such by the Board.

On direct examination, Kleszynski testified that in completing his appraisal, he inspected the property and reviewed the Cooper appraisal. As part of his appraisal, Kleszynski also reached an opinion as to the highest and best use of the subject both as vacant and as improved. As to improved use of the property, Kleszynski stated that the current use is the highest and best use. Alternatively, he stated that the best use as vacant would be development in conformity with local zoning ordinance for residential purposes. Kleszynski also testified that his appraisal was prepared for ad valorem tax purposes.

In his appraisal, Kleszynski utilized only the sales comparison approach to value. He testified that he did not use the cost approach to value because of the difficulty in adjusting for such variables as interior finishes. Kleszynski also testified that he did not use the income approach to value because such units are typically bought for owner occupancy rather than leasing.

Under the sales comparison approach, Kleszynski used data on 24 individual units in the subject complex as suggested sales comparables. Kleszynski testified that he purposefully utilized varying terms of closing, from conventional to foreclosure and short-sale, in order to create a full picture of market conditions of the time. Those comparables ranged in sale date from March, 2010 to December, 2012 and in sale price from \$60,000 to \$138,000 per unit.

On cross examination, Kleszynski testified that he did not contact or discuss the subject when preparing his appraisal either with the appellant, nor his appraiser. Kleszynski testified that 12 of his 24 sale comparables sold during 2012 and all of the sales were of individual units. Finally, Kleszynski testified that he had no direct information of any negotiations that may have taken place around the subject's January, 2013 sale.

In written rebuttal, the intervenor submitted a brief, with supporting documents, distinguishing the seven suggested comparable sales utilized in the Cooper appraisal based on age, size, parking, arm's length nature of the transaction, and the interest being transferred.

In written surrebuttal, the appellant submitted a brief addressing the intervenor's written rebuttal. Without citing authority, the appellant first argued that the subject's 2013 sale should not be considered. In the alternative, the appellant argued that even if the 2013 sale is considered, the subject's assessment should still be reduced after subtracting the personal property and cash discounts from the purchase price. In support of this argument, the appellant submitted a partial copy of a residential real estate contract indicating cash discounts, HUD settlement statements, and PTAX-203 forms for the subject's 2013 sale.

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). Based on the evidence and testimony contained in the record, the Board finds an increase in the assessment of the subject property is warranted.

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, the intervenor, 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. In this case, the Board sua sponte finds that the appraisal is hearsay under Section 1910.90(g) of the Property Tax Appeal Board

rules. Therefore, the Board gives no weight to the adjustments and conclusions of value in the appraisal. However, the Board will consider the raw sales data submitted by the appellant. In determining the subject's ad valorem market value, the Board considered the appellant's raw sales data and finds a lack of comparability with the subject due to a large disparity in pertinent factors, such as; property rights conveyed, location, date of sale, number of units, improvement age, improvement size, and the absence of any evidence or testimony that the sales were arm's length transactions.

The Board then looks to the remaining evidence that comprises of the Kleszynski's appraisal and testimony, Youssi's testimony, as well as the DeKalb Board of Review evidence and testimony. The Board finds that the intervenor's evidence reflects a market value opinion of \$3,080,000 or an assessment value of \$146,520 per building, which is above the current assessed value of \$133,000 per building; thereby requesting the Board to grant an increase.

The Board gives no weight to appellant's argument that the subject's sale should not be considered because it took place 13 months after the lien date of January 1, 2012. The Board finds that appellant's counsel failed to cite any statute or case law in support of this proposition. Without dispute, the subject was placed on the open market by Youssi, with the help of his real estate broker, during the lien year. The Board finds that Youssi provided contradictory testimony regarding whether he used an income approach or comparable sales to determine his asking price. Youssi further testified that the sale was to an unrelated party and the price was negotiated. Therefore, the Board finds that Youssi's testimony and the evidence presented indicate that the subject's sale in January, 2013 was an arm's length transaction.

The Board gives no weight to appellant's argument that cash discounts should be deducted from the sale price. While the appellant has included personal property on the PTAX-203, he has failed to include any information about cash discounts. Step 4 of the PTAX-203 clearly indicates in relevant parts:

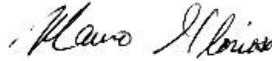
“The buyer and seller (or their agents) hereby verify that to the best of their knowledge and belief, the full actual consideration and facts stated in this declaration are true and correct...Any person who willfully falsifies or omits any information required in this declaration shall be guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for subsequent offenses.”

Based on the clear attestation language in Step 4 of the PTAX-203, the Board finds that only personal property, which is specifically included in the transfer declaration form, should be deducted from the full actual consideration, which in this case was attested to and signed by Mr. Youssi, personally.

The Board finds the best evidence of market value to be the purchase of the subject property in January, 2013 for a price of \$420,736 per building or \$105,184 per unit. A contemporaneous sale between two parties dealing at arm's length is not only relevant to the question of fair cash value but practically conclusive on the issue on whether the assessment is reflective of market value. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967). Furthermore, the sale of a property during the tax year in question is a relevant factor in considering the validity of the assessment. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 375 (1st Dist. 1983). In

this case, there is un rebutted testimony that the subject property was advertised on the open market in 2012 with a real estate broker representing the appellant. The appellant testified that the subject property sale was negotiated with an unrelated buyer with said sale concluding in January, 2013. The Board notes that the subject's sale was: negotiated in 2012; concluded in 2013; and was an arm's length transaction occurring within the subject property's quadrennial reassessment period for DeKalb County. Furthermore, the Board finds that there was no testimony or evidence to show that any change occurred to the property during the lien year at issue to impact the subject's market value. In addition, the Board finds that the intervenor's appraisal supports the subject's purchase price. Based on this record, the Board finds the subject property's assessment should be increased to reflect the purchase price.

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. Pursuant to Section 1910.50(b) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(b)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.



Chairman



Member



Acting Member



Member



Member

DISSENTING: _____

CERTIFICATION

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: February 20, 2018



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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

PARTIES OF RECORD

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