



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

APPELLANT: David Ebert  
DOCKET NO.: 12-32918.001-C-2 through 12-32918.002-C-2  
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are David Ebert, the appellant, by attorney Gregory M. Mini, of Schoenberg Finkel Newman & Rosenberg LLC in Chicago; and the Cook County Board of Review by Cook County Assistant State's Attorney Cristin Duffy.

Based on the facts and exhibits presented in this matter, 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:

<b>DOCKET NO</b>	<b>PARCEL NUMBER</b>	<b>LAND</b>	<b>IMPRVMT</b>	<b>TOTAL</b>
12-32918.001-C-2	14-31-322-036-1001	20,932	209,832	\$230,764
12-32918.002-C-2	14-31-322-036-1002	1,026	63,528	\$64,554

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 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 three-story, two-unit, commercial and residential condominium building of masonry construction with 12,930 square feet of building area. The property has a 6,567 square foot site and is located in West Chicago Township, Cook County. Unit 1 of the subject is classified as class 5, and Unit 2 is classified as class 2 under Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation and contention of law as the basis of the appeal. In support of the overvaluation argument, the appellant submitted an appraisal prepared by Nicholas Pellecchia (Pellecchia) and Audrey Davis MAI (Davis) estimating the subject property had a market value of \$1,170,000 as of January 1, 2012.

Appellant's attorney also submitted a brief noting that the subject was legally divided into two separate condominium units with distinct property index numbers (PINs) in 1994. Unit 1 comprised of the basement, first floor, and second floor and was assessed as a 5-99 commercial condominium unit. Unit 2 comprised of the third floor and the roof deck and was assessed as a Class 2-99 residential condominium unit.

Appellant's attorney argued that despite that division into a two-unit condominium property the subject should be assessed as a class 2 property based on its use under section 74-63(2)(c) of the Cook County Real Property Classification Ordinance, which provides in pertinent part that class 2 real estate is: "[i]mproved with a building put to commercial and residential use, of six or less units where the building measures less than 20,000 square feet of above grade space." Appellant's counsel submitted caselaw in support of his proposition that the underlying basis of valuation should be based on the use to which the owner puts the property, rather than the form of ownership. Application of County Collector of Cook County v. Hunt, 136 Ill.App.3d 496 (1985). In addition, appellant's attorney argued that the subject was reclassified by the Assessor's office starting 2014 and the trier of fact has the discretion to take this into consideration.

At hearing, appellant's attorney submitted one more prior Board decision from the 2005 Synopsis – Commercial Chapter, as Appellant's Exhibit #1, in support of the proposition that the Board has the jurisdiction to change the subject's classification.

Next, appellant's counsel called Pellecchia to testify as an expert in the valuation of real estate. Pellecchia testified that he possesses a certified general appraiser license. He also testified that he: completed a number of courses in the valuation of property; completed over 140 appraisals of apartments; previously testified before the Board in one other matter, the name of which he was unable to recall; and was supervised by Audrey Davis (Davis) MAI in the completion of this appraisal. Pellecchia also testified that he was a trainee appraiser at the time of preparation of the current appraisal, and did not possess his current certified general license nor has he ever had an MAI designation by the appraisal institute. Pellecchia further testified that at the time that he completed this appraisal he had not prepared any residential condominium unit appraisals on his own despite having worked for Davis for about five years. After an objection by the board of review, the Board admitted Pellecchia as an expert in the valuation of real estate in the limited capacity of a trainee appraiser.

In the appraisal at issue, Pellecchia performed the cost, income, and sales comparison approaches to value. He testified that, of the three approaches, the most weight was placed on the income approach to value because of the overall income producing nature of the property.

In his income approach to value, Pellecchia looked at the subject's rent-roll for 2012 and the three prior years. In addition, Pellecchia testified that he had access to a prior year appraisal which contained the income and expense information as far back as 2007 and 2008. He also testified that he looked at a copy of the lease agreement for the retail portion of the subject building. Furthermore, Pellecchia utilized seven residential rental comparables and seven retail comparables. The residential rental comparables ranged from \$0.92 to \$1.30 per square foot of building area. The report reflects that all of the residential rental comparables used 2014 rental data due to the unavailability of lease information closer to the lien year at issue. However, no

information was provided as to what steps the appraiser took to secure such information and Pellecchia did not testify as to this process.

The retail rental comparables ranged from \$ 10.86 to \$18.75 per square foot of building area with a stabilized rental rate for the subject's commercial space of \$14.50 per square foot. Pellecchia testified that to determine his vacancy and collection loss, he used several market sources including PricewaterhouseCoopers, RERC, Reis, Marcus & Millichap, Hendricks & Partners, and CoStar. After looking at those market sources, Pellecchia concluded that 4.5%, for the residential space, and 6.5%, for the retail space, should be applied. The appraisal report further specifies that the collection loss is included with vacancy, without providing any further break down or any sources of actual or market range for collection loss. In analyzing the operating expenses, Pellecchia testified that he used the previous five years of income and expenses as well as data from IREM and five expense comparables. The appraisal report further elaborates that the five expense comparables differ from the rental comparables in that they range from 12 to 24-unit, low-rise buildings. The appraisal report lists stabilized total operating expenses as \$2.69 per square foot of building area, or 20.5% of the effective gross income. The appraisal report also provides a stabilized total Net Operating Income (NOI) of \$127,124 or \$10.42 per square foot.

Pellecchia testified that in selecting a market capitalization rate for the subject he attempted to use the market extraction technique, but was unable to uncover cap rates for the comparable sales. As a result, Pellecchia testified he used the band of investment technique and also referenced market sources, like PricewaterhouseCoopers. Based on this information, Pellecchia testified that he utilized an 8.6% capitalization rate that resulted in a market value for the subject under the income approach to value of \$1,170,000 or \$95.90 per square foot of building area.

Under the sales comparison approach, Pellecchia used six suggested sales comparables. Those properties range: in sale date from September, 2009 to September, 2011; in size from 3,312 to 20,000 square feet of building area; and in price from \$35.66 to \$93.06 per square foot of building area. He testified that in comparing those properties to the subject he used factors such as "property rights, [] financing, sale conditions, market conditions, location, site, site shape, [] age and condition, building size, construction, and parking." The appraisal report further stated that some of the comparables are 100% commercial but were used nonetheless because of the unavailability of more mixed-use residential/commercial properties in the subject's immediate area. More specifically, the appraisal report indicates only that sale comparable #1 and #2 are mixed-use commercial/residential building. Based on those characteristics, Pellecchia concluded that the subject had a market value of \$1,098,000 or \$90.00 per square foot of building area, rounded to \$1,100,000.

During his testimony on the sale comparison approach, Pellecchia answered questions by appellant's counsel by reading from his previously prepared notes. The board of review objected to Pellecchia reading from his notes and requested that all of his testimony be stricken from the record. The Board denied the board of review's motion because it went to weight and not admissibility. However, the Board prohibited Pellecchia from reading any more of his personally prepared notes.

In his cost approach to value, Pellecchia testified that he did not find any land sales comparable to the subject and as a result used the assessor's land value. However, the appraisal report did indicate that a potential sale of the subject for the underlying land could yield a much higher price than the assessor's estimation. Pellecchia further testified that he used the Marshall & Swift cost estimator to calculate the replacement cost for the subject. In arriving at the depreciation factor for the subject, Pellecchia testified that he used the economic age life method to estimate physical depreciation and feasibility analysis to estimate the external obsolescence of the property. Pellecchia testified that his total accrued depreciation from all sources was 47.9%.

On cross, Pellecchia testified that while inspecting the property he was accompanied only by the owner, Mr. Ebert, and not Davis. Pellecchia testified that he prepared most of the appraisal and then submitted it to Davis who returned it with notes and corrections. Pellecchia also testified that he performed the searches for comparable properties personally, but did not recall any of the details in regard to what search criteria he used. He further testified that he was the one that selected the seven comparables for Unit #1, without any input from Davis. Pellecchia testified that the subject property is located in Bucktown, but did not know the exact parameters of Bucktown. The appraisal report, however, stated that the subject property is located in Ukrainian Village. Pellecchia further testified that the subject had parking, but was not sure of the number of parking spots. He also testified that he does not believe parking to be a premium in this location. In the appraisal report, however, Pellecchia included parking ratio as a pertinent factor in the adjustment category under the sales comparison approach to value.

In regard to his sales comparables approach to value, Pellecchia testified that he searched for "mixed-use retail/residential properties." He also testified that he does not know what is the zoning, classification, number of commercial units, or occupancy of those mixed-use comparables that he found. Pellecchia also testified that he does not consider the range between 3,312 and 20,000 square feet of building area to be an abnormal range. He further testified that he made the adjustments on those comparable sales personally without any input from Davis or the other MAI appraiser in his office.

Next, appellant's attorney called Davis to testify. Davis testified that she holds the MAI designation and is a certified general appraiser licensed by the State of Illinois. Davis testified that she was licensed in 1987 and since then has performed hundreds of appraisals of mixed-use properties. She also stated that she has previously testified as an expert before the Board. Davis was offered as an expert in real estate valuation and with no objections by opposing counsel was accepted as such by the Board.

On direct, Davis testified that she reviewed the appraisal prepared by Pellecchia. Her review included looking at the description and history of the property as well as examining the three approaches to value as developed by Pellecchia. Davis testified that she typically provides Pellecchia with comments and makes sure that the comparables that he selected are truly comparable to the subject. Finally, Davis testified that she concurs with Pellecchia's final opinion of value, of \$1,170,000.

On cross, Davis testified that she did not personally prepare the report and does not have any independent recollection of the chosen comparables. Davis also testified that she does not remember any of the revisions or suggestions that she made for Pellecchia.

Before presenting their case in chief, the board of review moved for a directed finding, which was denied by the Board. The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for Unit 1, only, of \$230,764. Unit 1's assessment reflects a market value of \$923,056 or \$71.39 per square foot of building area, including land, when applying the 2012 statutory level of assessments for class 5 property under the Cook County Real Property Assessment Classification Ordinance of 25%.

In support of its contention of the correct assessment the board of review submitted information on five suggested sales comparables. Those properties range: in sale date from January, 2008 to May, 2012; in age from 14 to 122; in size from 3,750 to 4,965 square feet of building area; and in sale price from \$271.90 to \$509.35 per square feet of building area. The board of review's evidence reflects evidence only for Unit 1. In addition, the board of review's memorandum discloses that the data is not intended to be an appraisal or estimate of value and should not be construed as such. The memorandum also discloses that the information is assumed factual, accurate, and reliable, but has not been verified and does not warrant its accuracy. The board of review did not present any witness at hearing.

At hearing, the board of review argued that the Board is the incorrect forum for the appellant to retroactively change the subject's classification. In support of this proposition, the board of review submitted as Board of Review's hearing Exhibit #1 the prior Board decision McInerney Properties, LLC with docket 2009-32377.001-R-1. The board of review also argued that even if the Board could reclassify the subject property, the appellant failed to meet its burden of proof because there was no showing that the subject was used for residential uses or that the owner occupied any portion of it.

In written rebuttal, appellant's attorney argued that the board of review's response cited an incorrect size for the subject and used significantly smaller comparables. Furthermore, appellant's attorney argued that the appellant's appraisal is the best evidence of market value in the record. Finally, appellant's attorney distinguished each of the board of review's comparable sales from the subject property.

### **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.

The Board finds the board of review's witnesses were not present or called to testify about their qualifications, identify their work, testify about the contents of the evidence and the conclusions, or be cross-examined by the appellant and the Board. Without the ability to observe the demeanor of those individuals during the course of testimony, the Board gives this evidence from the board of review no weight.

As to the reclassification argument, the Board finds that the board of review's reliance on McInerney Properties is unfounded. In that case, the Board rejected appellant's argument based on the lack of "jurisdiction to re-classify property that is not before it on appeal." In the instant case, the Board finds that both units are under appeal and the reasoning in McInerney Properties is inapplicable.

The Board finds that the appellant presented sufficient evidence that the subject's second floor is residential property. The Board also agrees with appellant's counsel's argument that subsequent re-classification by the Cook County Assessor's Office may be considered by the trier of fact. In addition, the Board finds that the subsequent re-classification of the subject in August, 2013 is germane to the lien year at issue in this case under the Supreme Court's decisions of Hoyne Savings & Loan Association v. Hare, 60 Ill.2d 84, 322 N.E.2d 833 (1974) and 400 Condominium Association v. Tully, 79 Ill.App.3d 686, 398 N.E.2d 951 (1<sup>st</sup> Dist. 1979). In Hoyne, the appellant argued the court held that a substantial reduction in a subsequent tax bill is indicative of validity of prior tax years' assessment. In 400 Condominium Association, the appellant argued the Illinois Supreme Court cited and followed Hoyne in that a substantial reduction in a subsequent tax bill is indicative of validity of prior years' assessment.

The Board finds in the recent decision of Moroney & Co. v. Property Tax Appeal Board, 2013 IL App (1<sup>st</sup>) 120493, 2 N.E.3d 522, the Court at ¶46 did not perceive Hoyne and 400 Condominium as standing for the proposition that "subsequent actions by assessing officials are fertile grounds to demonstrate a mistake in a prior year's assessments." In Moroney, the Court wrote in pertinent part:

... in each of those unique cases, which are confined to their facts, there were glaring errors in the tax assessments -- in Hoyne, the assessment was increased on a property from \$9,510 to \$246,810 in one year even though no changes or improvements to the property had occurred (Hoyne, 60 Ill.2d at 89), and in 400 Condominium, assessments on a garage were assessed separately from the adjoining condominium in violation of the Condominium Property Act (400 Condominium, 79 Ill.App.3d at 691). Here, based upon the evidence that was submitted, there is no evidence that there was an error in the calculation of the 2005 assessment. Rather, the record shows that the 2005 assessment was properly calculated based on the market value of the property.

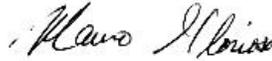
The Board finds the appellant presented credible evidence, namely the subsequent re-classification of the subject, showing there were unusual circumstances present in this 2012 appeal relative to the establishment of the subject's assessment for the 2014 tax year.

As to the subject's market value, the Board gives no weight to the adjustments and conclusions of value in the appellant's appraisal. The Board finds that Pellecchia was accepted as an expert witness in a limited capacity based on his lack of experience and training. The Board finds that Pellecchia possessed neither the MAI designation, nor was he a certified general appraiser at the time of preparation of this report. In fact, Pellecchia testified that at the time of preparation of this report he was only a trainee appraiser and had not performed any residential appraisals on his own. Pellecchia's reading off from prepared notes and his contradictory and evasive statements regarding the subject's location and amenities, such as parking, further bolster his

lack of expertise. The Board also finds that Pellecchia utilized vastly dissimilar in physical characteristics, and use, outlier comparables in his sales comparables approach. Finally, the Board finds that Davis played a limited and undefined role in the preparation and review of this appraisal. However, the Board will consider the raw sales data submitted by the appellant. The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207 (2nd Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989). Therefore, the Board will consider the raw sales data from both parties.

The parties submitted a total of 11 sales comparables. The Board finds the appellant's sales comparables #1, #4, #5, and #6, and the board of review's comparables #4 and #5, to be similar and most probative in determining the subject's market value. These comparables sold for prices ranging from \$35.66 to \$509.35 per square foot of building area. In comparison, the subject's assessment reflects a market value of \$228.40 per square foot of building area when using a mixed-use class 2 level of assessment of 10%. Based on this evidence, the Board finds that a reduction in the subject's assessment is not 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. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) 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



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: June 19, 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

AGENCY

State of Illinois  
Property Tax Appeal Board  
William G. Stratton Building, Room 402  
401 South Spring Street  
Springfield, IL 62706-4001

APPELLANT

David Ebert, by attorney:  
Herbert B. Rosenberg  
Schoenberg Finkel Newman & Rosenberg LLC  
222 South Riverside Plaza  
Suite 2100  
Chicago, IL 60606-6101

COUNTY

Cook County Board of Review  
County Building, Room 601  
118 North Clark Street  
Chicago, IL 60602