



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

APPELLANT: Hugo Galicia
DOCKET NO.: 15-01096.001-C-1
PARCEL NO.: 06-12-361-004

The parties of record before the Property Tax Appeal Board are Hugo Galicia, the appellant, by attorney Michael T. Reynolds, of Rieff Schramm Kanter & Guttman, in Chicago, and the Kane County Board of Review.

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 **Kane** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$13,497
IMPR.: \$65,646
TOTAL: \$79,143

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Kane County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2015 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 multi-family building of masonry construction consisting of four, 2-bedroom 1-bath, apartment units with a total of 3,514 square feet of living area. The building was constructed in 1952. Features of the building include a basement and a detached brick garage of 1,155 square feet of building area. The property has a 10,890 square foot site and is located in Elgin, Elgin Township, Kane County.

The appellant contends overvaluation as the basis of the appeal designated as a "contention of law." In support of this argument the appellant's counsel developed an estimate of value using the subject's income and expense history for 2012 through 2014 and submitted this analysis as

the sole evidence of value for the appeal. The brief included a copy of the appellant's Schedule E, Supplemental Income and Loss statement for each identified tax year.¹

Appellant's legal counsel argued that the subject's total assessment of \$79,143 reflects an estimated market value of \$237,453 or \$59,363 per apartment unit, including land. In the brief, counsel for the appellant outlined the subject's income and expenses for 2012, 2013 and 2014 and set forth a 3-year average gross income or a stabilized gross income of \$33,703 and stabilized expenses of \$10,312 (based upon a 30% expense ratio). Deducting the expenses from the gross income figure resulted in counsel's determination of a net operating income of \$23,391. Next Attorney Reynolds applied a total capitalization rate of 14.19% (10% cap rate plus 4.19% tax load) to the calculated net operating income figure to arrive at "a Fair Market Value, for the subject, of \$164,841."

Based on the foregoing analysis by counsel, the appellant requested a total assessment of \$54,842 and argued this was reflective of the attorney's estimated fair market value of \$164,841 at the statutory level of assessment of 33.33%.²

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$79,143. The subject's assessment reflects a market value of \$237,595 or \$59,399 per apartment unit, land included, when using the 2015 three year average median level of assessment for Kane County of 33.31% as determined by the Illinois Department of Revenue.

In response to the appeal, the board of review noted disagreement "with the appellant's methodology." The board of review also contended there was no support for the selected capitalization rate and argued that "the trending income shows increases." The submission also included a memorandum from the Elgin Township Assessor's Office noting that the subject is "a non-investment grade property" and arguing that an income approach "is not a reliable indicator of value."

In support of its contention of the correct assessment the board of review through the township assessor submitted information on seven comparable sales of one, four-unit and six, six-unit apartment buildings and also detailed an income analysis in a memorandum from the assessor's office.

The comparable sales are located from 2.18 to 3.79-miles from the subject apartment building. The comparable parcels range in size from 9,148 to 16,117 square feet of land area and are improved with four, two-story and three, three-story apartment buildings that were built between 1963 and 1982. The buildings range in size from 4,224 to 6,336 square feet of living area. Comparable #1 is a four-unit building and the remaining comparables are each six-unit buildings. Comparables #1, #5, #6 and #7 have garages; garage size was only provided for comparables #1 and #7. The sales occurred between August 2013 and October 2015 for prices ranging from \$243,500 to \$415,000 or from \$52,833 to \$69,167 per apartment unit, including land.

¹ The submission was made in an unredacted form, including personal identifying information of the appellant, which the Property Tax Appeal Board has redacted for security purposes. (5 ILCS 179/1 et seq.)

² The correct total assessment at the statutory level of assessment would be \$54,942.

For these seven comparables, the grid analysis reported gross rental income for the four unit building of \$41,100 and for the six unit buildings the gross rental income ranged from \$48,933 to \$63,600. The grid also set forth gross rent multipliers (GRM) for the comparables ranging from 5.37 to 7.39. In the memorandum, the assessor reported use of "the subject's yearly rent" of \$40,500. The assessor further stated, "By extracting a GIM from the market data, we have estimated a fair market value of \$243,000 (\$40,500 x 6) or \$60,750 per unit. The suggested fair market value calculated by the GIM is supported by the sales price data found in the sales of similar constructed multi units provided by the assessor's office."

Based on the foregoing evidence and argument, the board of review requested confirmation of the subject's assessment.

Conclusion of Law

The appellant marked a contention of law argument as the basis of the appeal. Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63.

Substantively, the appellant's evidence asserted that the market value of the subject property is not accurately reflected in its assessed valuation based on the preparation by counsel of an income approach to value. 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 a reduction in the subject's assessment is not warranted.

The Board finds the appellant's argument that the subject's assessment is excessive when applying an income approach based on the subject's actual income and expenses unconvincing and not supported by market derived evidence in the record. 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.

Actual expenses and income can be useful when shown that they are reflective of the market. The appellant did not demonstrate through any evidence or documentation that the subject's actual income and expenses are reflective of the market. To demonstrate or estimate the subject's market value using an income approach, as the appellant attempted, one must establish through the use of market data the market rent, vacancy and collection losses, and expenses to arrive at a net operating income reflective of the market and the property's capacity for earning income. Further, the appellant must establish through the use of market data a capitalization rate to convert the net income into an estimate of market value. The appellant did not provide such evidence; therefore, the Property Tax Appeal Board gives this argument no weight. Similarly, the Board finds that the assessing officials likewise did not provide all of the underlying data necessary to estimate the subject's market value using an income approach.

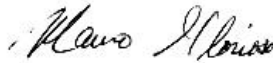
Furthermore, the Board finds problematic the fact that appellant's counsel developed the "income approach" rather than an expert in the field of real estate valuation. The Board finds that an attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion evidence of value for that client's property.³

The Board finds the best evidence of market value to be board of review comparable sale #1 which is most similar to the subject in the number of apartment units, although the building is somewhat newer and larger than the subject. This board of review comparable sold in October 2015 for \$243,500 or \$60,875 per apartment unit, including land. The subject's assessment reflects a market value of \$237,595 or \$59,399 per apartment unit, including land, which is below the best comparable sale in the record.

Based upon the limited valid market value evidence in the record, the Board finds a reduction in the subject's assessment is not justified.

³ Based upon the terms of the Real Estate Appraiser Licensing Act of 2002 (225 ILCS 458 et seq.), counsel's preparation of a brief setting forth an estimated value of the subject property using an income approach to value may be deemed inappropriate under 225 ILCS 458/5-5(a).

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



Acting Member



Member



Acting 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 23, 2017



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.