



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

APPELLANT: Derek Brashear
DOCKET NO.: 16-00103.001-R-1
PARCEL NO.: 46-21-07-382-004

The parties of record before the Property Tax Appeal Board are Derek Brashear, the appellant, by attorney Robert Jacobson, of Tummelson Bryan & Knox, LLP in Urbana; and the Champaign 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 equalized assessment of the property as established by the **Champaign** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$57,160
IMPR.: \$159,030
TOTAL: \$216,190

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Champaign County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2016 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 2-unit four-story duplex of brick and vinyl exterior construction on a concrete slab foundation with a total of 5,527 square feet of living area.¹ The dwelling was constructed in 2011. Features of unit #1 of the duplex include 6 rooms, 5 bedrooms, central air conditioning, a fireplace, balcony and 4.5 bathrooms. Features of unit #2 include 9 rooms, 7 bedrooms, central air conditioning, a fireplace, balcony and 5.5 bathrooms. The subject also features parking garage for 8 vehicles containing 2,539 square feet of parking area. The property has a 5,616 square foot site and is located in Champaign, City of Champaign Township, Champaign County.

¹ Unit #1 contains 2,571 square feet of living area and unit #2 contains 2,956 square feet of living area.

The appellant, through counsel, appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of \$480,000 as of January 1, 2016.

Rikki J. Linne, an Illinois Certified Residential Real Estate Appraiser, was called as a witness. Linne has been appraising property for 17 years and has also appraised commercial property for which she is currently completing her course work. She has been operating in the Champaign market for 10 years. Linne described the subject property as a loft style apartment with a main unit containing 5-6 bedrooms with floors 3 and 4 containing additional bedrooms. The appraisal report depicts the subject is zoned MF-3 University District. The highest and best use of the subject is as it is currently used. Further, the zoning ordinance was revised in 2014 wherein only four unrelated individuals are allowed to occupy each unit. The subject was built prior to 2014 and is considered legal non-conforming (grandfathered). Linne testified this limitation greatly affected the rate of return and ultimately the value of the subject. Further, Linne stated her comparable sales were under the same restrictions. Linne testified her comparable sales #1 and #2 were extensively rehabbed.

Linne developed two of the three approaches to value, the sales comparison approach to value and the income approach to value. In order to develop the sales comparison approach to value, Linn examined five comparable sales. The comparables were located from .07 to 1.06 miles from the subject and were situated on sites ranging from 3,102 to 8,716 square feet of land area. The sale comparables consisted of one-story or two-story dwellings of vinyl, brick and stucco, wood or brick and vinyl exterior construction that ranged in age from 23 to 113 years old. Each comparable was described as being a 2-unit or 4-unit dwelling in average condition. The properties contained from 1,270 to 4,281 square feet of living area with bedrooms ranging from 3 to 8 bedrooms. Each comparable had a full basement with two having finished area. Four of the comparables had air conditioning and each comparable had on-site parking or a garage. Each comparable had a porch. The comparables sold from December 2014 to May 2016 for prices ranging from \$250,000 to \$450,000 or from \$53.95 to \$156.25 per square foot of living area or from \$34,375 to \$83,333 per bedroom or from \$75,000 to \$225,000 per unit, including land.

Linne testified that her income approach to value took into account what was legally permissible. Linne examined three rental comparables located within 0.44 miles from the subject. Each comparable was a duplex in average condition and contained on-site parking. They ranged in age from 4 to 106 years old and contained from 3,150 to 5,527 square feet of living area. The 2-unit comparables featured from 8 to 14 bedrooms with monthly rents ranging from \$4,800 to \$7,080. Adjusted rents ranged from \$505 to \$600 per bedroom. From this, Linne estimated the subject's monthly rent to be \$550 which indicated an estimated monthly market rent for the subject of \$4,200 to which a gross rent multiplier of \$115 was applied which indicated a value for the subject by the income approach to value of \$483,000.

On cross-examination, Linne testified that the typical investor would consider the rate of return on the bedrooms, lease terms and proximity to the university. Linne stated that the subject is well maintained. Linne adjusted the rental comparables per bedroom and rent range. The adjustments ranged from \$0.73 to \$1.52 per square foot of living area. Linne admitted it was an error to state the basement areas for comparable sales #2 and #3 were included in the gross living area. These sales (#2 and #3) were adjusted downward for utility. Linne utilized an adjustment

of \$50 per year for effective age. Linne admitted the \$25,000 per bedroom adjustment for her comparables was misreported in the appraisal. She agreed sale #3 did not bracket the subject's gross living area. Linne admitted she gave most weight in her final reconciliation to comparable sales #1 and #2. Linne did not feel the cost approach was relevant based on depreciation being difficult to ascertain.

Linne then testified that no adjustment for age was warranted due to the updating of the comparables, even though comparable #3 was 106 years old while the subject was reported to be 5 years old. She found the older properties did not command less rent. Linne admitted she disregarded any adjustment for size, but placed emphasis on the number of bedrooms. She then stated she adjusted the rental comparables at \$525 per bedroom which was not shown on her grid analysis. She agreed that this error was not in accordance with the Uniform Standards of Appraisal Practice ("USPAP"). The GRM was calculated using the five comparable sales utilizing the GRM which was the monthly rent divided by the sale price. She utilized the average GRM of the five sale comparables.

Linne admitted she did not include the excess bedrooms of the subject as potential gross income, even though related parties may rent the bedrooms. Linne did not believe the site differences, age, or design of the comparables warranted an adjustment. Effective ages were not reported even though she adjusted them at \$50 per year and did not report them in her appraisal. She admitted all five sales were leased fee sales. Linne testified she did not examine each lease. She stated gross living area was above grade area. Linne testified that a site size of 25% greater would warrant an adjustment and then agreed she did not adjust comparables for site size that were over 25% larger.

Based on this evidence, the appellant rested its case.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total equalized assessment for the subject of \$216,190. The subject's assessment reflects a market value of \$649,024 or \$117.43 per square foot of living area, land included, or \$54,085 per bedroom or \$324,512 per unit when using the 2016 three-year average median level of assessment for Champaign County of 33.31% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted cost approach information in addition to an income analysis and a discounted cash flow analysis. The cost approach analysis reported the subject's total cost to be \$526,311 as of January 1, 2011 utilizing the *Marshal Swift Valuation Service*. Zebe, a board of review member, testified he did not prepare the report and did not verify its contents. Zebe testified the site value was significantly lower than what was indicated by his land sales analysis which indicated a land value of \$300,000 more than the reported \$37,260 value as shown in the analysis. Zebe based his land value on two comparable land sales which sold for prices of \$60.60 and \$80.56, respectively, per square foot of land area. Zebe's income approach includes the subject's actual income for the subject of \$10,720 per month of gross rent or \$128,640 annually which was taken from an offering memorandum. Vacancy and collection losses of 5% (\$6,432) was taken from a market analysis. Expenses of 41% (\$50,105) was also taken from a market analysis. Net operating income was estimated to be \$72,103. An overall unloaded capitalization rate of 8%

was derived from a *PwC Real Estate Investor Survey*, First Quarter 2016. Zebe utilized the subject's actual taxes to calculate a value for the subject of \$901,284.

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

The Board finds the best evidence of market value to be the cost approach analysis submitted by the board of review. The board of review's cost approach analysis (board of review Exhibit B) indicated a value for the subject of \$823,381 with the addition of the estimated land sales (\$489,051 + \$340,330). The subject's assessment reflects a market value of \$649,024 or \$117.43 per square foot of living area, land included, or \$54,085 per bedroom or \$324,512 per unit.

The Board gives little weight in its analysis to the appraisal submitted by the appellant. Linne admitted the appraisal was not prepared in conformance with USPAP. The Board finds the appraisal contained numerous errors and was not well supported. In addition, Linne failed to adjust and/or failed to report her adjustments for the different features of the comparables when compared to the subject. Moreover, Linne utilized leased fee sales and failed to adjust the comparables for the differences in lease terms, if any, because she did not examine the leases. The Appraisal of Real Estate treatise page 323 states in relevant part:

If the sale of a leased property is to be used as a comparable sale in the valuation of the fee simple interest in another property, the comparable sale can only be used if a reasonable and supportable market adjustment for the difference in rights can be made. . . . to compare the lease fee interest to the fee simple interest in the subject property, the appraiser must determine if the contract rents of the comparable property was above, below or equal to market rent.

The Appraisal of Real Estate, page 323, 14th Edition.

The Board finds if an appraiser is going to use leased fee sales, the appraiser has to know the rental terms in order to make the appropriate adjustments and can only be used if reasonable and supportable market adjustments for the differences in property rights can be made. The Board finds Linne made no adjustment for property rights to the leased fee sales she used, even without knowing the lease terms. Further, Linne failed to include potential income from the subject's additional bedrooms because they were not rented to related parties. The Board finds an income analysis should be based on potential gross income and not actual income.

Further, Linne utilized a comparable sale (502 E. Stoughton) currently under appeal before the Property tax Appeal Board in Docket Number 16-00104.001-R-1. The Board finds the use of a

property as a comparable while the comparable is also under appeal is inappropriate. The Property Tax Appeal Board notes that the Illinois appellate court has likewise held that:

. . . the PTAB used the very assessment being appealed from to set the high end of the range. It is for this very reason that the subject properties fell within the range of comparable properties established by the PTAB. Therefore, the PTAB essentially held that the assessments imposed on the subject properties were self-validating.

Pace Realty Group v. Property Tax Appeal Board, 306 Ill. App. 3d 718, 728 (2nd Dist. 1999).

Therefore, the Board finds it inappropriate to use a comparable property currently under appeal to substantiate the argument that the subject's assessment is incorrect. Therefore, based on the above errors, omissions and misleading facts, the Board finds the adjustments and estimated final opinion of value is not credible and is not a reliable indicator of the subject's estimated fee simple value as of January 1, 2016.

The Board also gave little weight in its analysis to the income analysis as presented by the board of review. The Board finds the board of review's income analysis utilized the subject's actual income instead of its potential gross income in addition to using the subject's actual taxes which were under appeal. The Board finds the board of review's argument that the subject's assessment is undervalued when applying an income approach based on the subject's actual income and taxes unconvincing and not supported by 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 board of review did not demonstrate through an expert witness that the subject's actual income is reflective of the market. To demonstrate or estimate the subject's market value using an income approach, as the board of review 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. The board of review did not provide such evidence in its income analysis; therefore, the Property Tax Appeal Board gives this argument little weight.

The board of review did not submit comparable sales for analysis by this Board and the appellant only submitted leased fee sales. Based on this record, the Board finds the cost approach to value,

as presented by the board of review, given the subject's relatively newer age best represents the subject's fee simple value as of January 1, 2011 and supports the subject's assessment as of January 1, 2016. Based on this evidence the Board finds a reduction in the subject's assessment is not justified.

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



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: September 15, 2020



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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