



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

APPELLANT: Beth Harvey  
DOCKET NO.: 16-23403.001-R-1  
PARCEL NO.: 16-07-403-036-0000

The parties of record before the Property Tax Appeal Board are Beth Harvey, the appellant(s); and the Cook 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 **Cook** County Board of Review is warranted. The correct assessed valuation of the property is:

**LAND:** \$ 3,958  
**IMPR.:** \$61,842  
**TOTAL:** \$65,800

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 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 consists of a two-story residence having a total gross living area of 4,386 square feet. It was built in 1916 and is situated on a 5,460 square foot site. It is located in Oak Park Township, Cook County and is classified as Class 2-97 property under the Cook County Real Property Classification Ordinance and assessed at an assessment level of 10% as established by the Cook County Real Property Classification Ordinance.

The appellant argued overvaluation, assessment inequity and misclassification as the bases of this appeal.

In support of the market value argument, the appellant submitted two appraisal reports for the subject property. The first appraisal was authored by Adam Francis Smith and Jennifer Soto-Burrell, both certified general real estate appraisers. The appraisers estimated a fair market value for the subject as of January 1, 2016 of \$565,000 based on the income and sales comparison approaches to value. The appraisers appraised the property as a single-family home built-out and operated as a bed and breakfast. It is built-out for use as a five-room bed and breakfast with an

in-law apartment (owner-occupied) in the basement. There is a bathroom in each bedroom and common areas include sitting areas, dining areas and a common powder room. Smith conducted an inspection of the subject property on March 18, 2016. It was noted that as of the appraisal date, there were only two active bed and breakfast properties active in the Village of Oak Park.

The appraisers indicated the in-law apartment is not legal for habitation and would require approximately \$45,000 in costs to allow for appropriate ceiling heights and ingress/egress. They valued the subject as both a two-unit apartment building and as a bed and breakfast operation, accounting for the cost conversion in the sales comparison approach.

Under the sales comparison approach, the appraisers evaluated four residential apartment buildings containing between two and four units. They were either located in Forest Park or Oak Park and sold from August 2013 through December 2014. They sold for sale prices ranging from \$111.03 to \$137.33 per square foot of living area, including land. The appraisers valued the subject at \$130.00 per square foot, including land, yielding a market value of \$570,180. After deducting and estimated \$45,000 in reconfiguration costs, the appraisers opined to a value of \$525,000.

Under the income capitalization approach to value, the appraisers utilized the subject's actual income and expenses from 2014 to yield a net operating income (NOI) of \$49,042. They stated that the owner reported significant competition from AIRBNB owners.

The appraisers then used the band of investment technique to indicate a capitalization rate of 8.67%. Dividing the subject's NOI by 8.67% indicated a market value for the subject under the income capitalization approach of \$565,000, rounded.

In their written report, the appraisers indicated experiencing difficulty in locating comparable sales of properties similar to the subject. They also concluded that the income capitalization approach serves as evidence that the subject could not be considered a successful bed and breakfast operation. After reconciling the two approaches to value, they indicated a market value for the subject of \$565,000 as of January 1, 2016.

Subsequently, the appellant submitted a second appraisal authored by the same appraisers, estimating the subject property had a market value of \$525,000 as of August 26, 2016. The appraisers solely utilized the sales comparison approach to value. Smith indicated he inspected the property on August 26, 2016 and determined the subject's two-bedroom below-grade apartment appeared to be legal for habitation.

Under the sales comparison approach, the appraisers evaluated four residential apartment buildings, each containing two units. They were all located in Oak Park and sold from December 2014 through May 2016. They sold for sale prices ranging from \$111.03 to \$171.64 per square foot of living area, including land. The appraisers valued the subject at \$120.00 per square foot, including land, yielding a market value of \$526,320, or \$525,000, rounded, as of August 26, 2016.

The appellant, Beth Harvey, also provided an extensive narrative regarding the assessor's methodology of expenses and capitalization rates. Ms. Harvey provided affidavits from her

appraiser, her CPA, Mark Madia, (which included profit and loss statements for 2013, 2014 and 2015), and the executive director of the Professional Association of Innkeeper's International. Mr. Madia's analysis included the following points: expenses should not be capped for a bed and breakfast property; as bed and breakfast properties are class 2 properties they should be allowed to file an assessment equity argument; high real estate taxes impact the owner's ability to sell the property; the Cook County Board of Review's analysis of income and expenses was arbitrary; and the subject's actual income and expenses reflect a fair and reasoned approach to calculating market value. The appellant also proposed that the income capitalization approach should be relied on to properly value the subject property. Additionally, Ms. Harvey argued that the subject should be classified as Class 2-12 property, not 2-97 property as was the classification as of the January 1, 2016 valuation date. She relied on *Chrysler Corp. v Ill. Property Tax Appeal Board.*, 69 Ill.App.3d 207 (1979) arguing that there should be uniformity of assessment as well as uniformity in valuation methods.

Ms. Harvey also submitted documentation from Patrick Cullerton of Thompson Coburn LLC, dated September 25, 2015, written on behalf of the Chicago Bed & Breakfast Association as to the correct classification and corresponding assessment ratio as well as the appropriate valuation methodology for bed and breakfast properties. It contained a list of questions and answers provided by the assessor regarding the classification of bed and breakfast-type property as potential commercial property. She also included documentation from past appeals.

Lastly, Ms. Harvey submitted a packet of documentation including: a Building Inspection Report from the Village of Oak Park; a request to re-assign a street address from the Village of Oak Park; short-term rental agreements for rooms in the subject property; and article regarding a tax on AIRBNB users; and private room listings on AIRBNB for other properties located in Oak Park.

The board of review submitted its "Board of Review-Notes on Appeal" disclosing the total assessment for the subject of \$65,800. The subject property has an improvement assessment of \$61,842 or \$14.10 per square foot of living area. The subject's assessment reflects a market value of \$658,000, or \$150.02 per square foot, including land, when applying the assessment level of 10% as established by the Cook County Real Property Classification Ordinance. In support of its contention of the correct assessment, the board of review submitted information on eight suggested comparables. The first four comparables each of reflected equity and sale data. They were all 2-11 residential apartments located in Oak Park township. They ranged: in square footage of living area from 3,524 to 4,227; in age from 46 to 121 years old; in sale date from May 2014 to September 2016; in improvement assessment value per square foot from \$8.85 to \$14.68; and in sale price per square foot of living area, including land, from \$156.73 to \$290.42.

The board of review also submitted four sales of either hotel or motel properties located in Chicago or one of its suburbs. Based on this evidence, the board requested confirmation of the subject's assessment.

In written rebuttal, the appellant submitted a lengthy narrative regarding the relationship between Uber, Lyft and taxi drivers, as well as VRBO and AIRBNB operations in relation to bed & breakfast properties.

Ms. Harvey argued that if the assessor assessed the subject at 25% versus 10% of fair market value she would be under extreme duress. She reviewed her proposed 2015 assessment, and she indicated the proper classification for the subject property should be 2-12.

Ms. Harvey also indicated that the photograph provided by the board of review was not of the subject property but reflected the property next door to the subject property, as was its identifying PIN. Additionally, the board of review's comparable #3 sold for \$562,250, not \$1,124,500 as indicated on its grid sheet. Lastly, she argued that the residential properties submitted by the board of review were classified as 2-11 properties when she believed that 2-12 properties were more comparable, while the hotels comparables submitted by the board of review were not comparable at all.

At hearing, as the appellant began reviewing the conclusions of the appraisers, the board of review's representative made a hearsay objection as the appraisers failed to appear to offer any testimony regarding the methodology employed in the report or adjustments to the comparables or a lack thereof. The Administrative Law Judge sustained the objection but indicated the sales comparables provided in the appraisal would be given their appropriate weight in her analysis.

The appellant's testimony mirrored her written submissions, arguing: she should not be classified as commercial property; her classification is most similar to Class 2-12 properties; she should be allowed to develop an appeal based on assessment equity and not just an income analysis; and sales of bed and breakfast properties would not be the best sale comparables as there were very few types of these properties and even if they did sell, it would be under duress as they feared a high real estate tax bill.

Ms. Harvey had her CPA who had signed one of the written affidavits, Mr. Madia, present to testify and corroborate her actual income and expenses. He testified that his analysis used the Cook County Board of Review's model of analysis using the subject's actual numbers. He indicated he was not a licensed appraiser but based on his experience he believed the subject's market value to be approximately \$456,000.

The board of review rested on the evidence previously submitted. Under questioning by Ms. Harvey, the board of review's representative could not explain how their comparables were chosen. She argued that: the hotel comparables submitted were not at all comparable to her property; the board of review failed to include any Class 2-12 properties; and of the four Class 2-11 properties, she would only consider one of them to be comparable to the subject property. Ms. Harvey concluded that she was unaware of any bed and breakfast case law stating she could not use the actual income of her property to develop its market value.

### **Conclusion of Law**

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

The appellant argued that she should be allowed to file an appeal based on assessment inequity as do other Class 2 properties, without an analysis of her income and expenses. The appellant, however, failed to provide the Board with any Class 2-12, or even any Class 2, properties for the Board's review and analysis. The grid sheet of the appellant's appeal was blank and not completed, and no 2016 assessment data was provided for any Class 2 property. Accordingly, the Board finds the best evidence of assessment equity to be the board of review's 2-11 comparables #1, #2, #3 and #4. These comparables had improvement assessments that ranged from \$8.85 to \$14.68 per square foot of living area. The subject's improvement assessment of \$14.10 per square foot of living area falls within the range established by the best comparable properties in this record. Based on this record, the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed and holds that a reduction in the subject's assessment based on assessment inequity is not 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 a reduction in the subject's assessment is not warranted.

The appellant relied upon an income capitalization approach to establish overvaluation. In support of this argument, the appellant submitted an Income Analysis developed by her CPA; Federal Tax Schedule C, Profit and Loss from Business statements for tax years 2013 through 2015 disclosing income and expense information; and short-term rental agreements for the subject property.

In Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), the Illinois Supreme Court stated:

[I]t is clearly the value of the "tract or lot of real property" which is assessed, rather than the value of the interest presently held by the owner... [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"... [M]any factors may prevent a property owner from realizing an income from property which 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.

*Id.* at 430-31.

Actual expenses and income can be useful when shown that they are reflective of the market. Although the appellant made this argument, the appellant did not demonstrate that the subject's

actual income and expenses are reflective of the market. To demonstrate or estimate the subject's market value using income, one must establish with 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 appellant did not provide such evidence, as even her appraisers used actual, not market, data. Therefore, the Board gives this argument no weight.

Additionally, the Board does not find the appraisals submitted by the appellant persuasive. The appellant's appraisers were not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. 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 (1<sup>st</sup> 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 court found the appraisal was not competent evidence stating: "it was an unsworn ex parte statement of opinion of a witness not produced for cross-examination." This opinion stands for the proposition that an unsworn appraisal is not competent evidence where the preparer is not present to provide testimony and be cross-examined, and in this case, as to adjustments made regarding sale information and condition of property.

The Board finds the best evidence of market value to be the unadjusted sale comparables submitted by both parties. The appellant's appraisals contain seven comparable sales, while the board of review submitted four comparable sales. All of these sales were for Class 2-11 properties. The Board finds the best properties to be the appellant's comparables labeled #2, #3, and #4 from the appraisal dated August 26, 2016, as well as the board of review's comparable sales #1 and #2. The Board did not find the board of review's hotel/motel properties to be comparable to the subject property. The best Class 2-11 comparables were all located in the Village of Oak Park and sold at a date proximate to the January 1, 2016 valuation date. They sold from April 2015 through September 2016 for prices ranging from \$119.57 to \$208.54 per square foot of living area, including land. The subject's assessment reflects a market value of \$150.02 per square foot of living area including land, which is within the range established by the best comparable sales in this record. Based on this evidence, the Board finds a reduction in the subject's assessment based on overvaluation is not justified.

As to misclassification, the subject is classified as Class 2-97 property for the 2016 tax year. The subject is not classified as Class 5 property, as was the appellant's concern, and she argued that the best classification for her property would be Class 2-12. The appellant failed to provide any Class 2-12 comparables for the Board's consideration, however. For the 2016 tax year the subject is assessed similarly to all Class 2 property, at an assessment level of 10%. as established by the Cook County Real Property Classification Ordinance.

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.

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Chairman





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Member

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Member





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Member

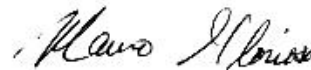
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Member

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: August 20, 2019



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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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