



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

APPELLANT: Twelve Nine Astor Building Corporation
DOCKET NO.: 17-42748.001-R-3
PARCEL NO.: 17-03-113-003-0000

The parties of record before the Property Tax Appeal Board are Twelve Nine Astor Building Corporation, the appellant(s), by attorney Nicholas Jordan, of Worsek & Vihon in Chicago; the Cook County Board of Review; the Chicago Board of Education intervenor, by attorney Ares G. Dalianis of Franczek P.C. in Chicago.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds **A Reduction** 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: \$161,798
IMPR.: \$2,088,202
TOTAL: \$2,250,000

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 2017 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 90-year old, 17-story, cooperative building. It has 30 units and a gross living area of 84,000 square feet. The 16th floor is a penthouse that occupies the entire floor while the 17th story houses mechanical equipment. The subject is located on an 11,557 square foot parcel of land in an area known as the "Gold Coast," City of Chicago, North Chicago Township, Cook County. The subject is classified as a class 2-13 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal, written by Mr. Kevin Byrnes, estimating the subject property had a market value of \$20,300,000 as of January 1, 2015. The appellant requested an assessment reduction to 10% of the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$3,018,956. The subject's assessment reflects a market value of \$30,189,560, including land, when applying the 2017 level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 10%. In support of its contention of the correct assessment, the board of review submitted a description of the subject property and a chart that indicated a sale year, unit number, and sale price for 14 units in the subject building.

The Intervenor submitted a review appraisal report of the appellant's appraisal, written by Mr. Dost.

In written rebuttal, the appellant submitted a copy of the subject property's prior year Property Tax Appeal Board's ("PTABs") decision, docket 15-36361.001-R-3 (2015 Decision). The appellant contended the assessment of the subject property as established by the 2015 Decision should be carried forward to the current 2017 appeal pursuant to section 16-185 of the Property Tax Code because the 2015 and 2017 tax years are within the same general assessment period and the subject property is an owner-occupied residence. (35 ILCS 200/16-185). In the 2015 Decision the PTAB issued a decision lowering the assessment of the subject property to \$2,250,000 based on a stipulated agreement between the board of review and the appellant. The Intervenor was not a party in the prior year PTAB appeal.

Prior to the hearing in this case, the PTAB received a stipulation wherein the appellant and the board of review agreed to an assessment reduction. The Intervenor submitted a letter stating it rejected the appellant's and board of review's proposed stipulation. Because the Intervenor did not agree with the stipulation between the appellant and the board of review, this matter went to hearing.

The Property Tax Appeal Board held a virtual hearing on this matter. None of the parties objected to having the hearing held virtually.

The appellant made a motion for summary judgment. The appellant argued the subject's assessment should be reduced based on based on 35 ILCS 200/16-15, or a rollover of the prior year PTAB decision assessment reduction, docket 15-31323.001-R-3. The Administrative Law Judge ("ALJ") took the motion under advisement.

Hearing

The appellant called Jeffrey Joel, the community manager for the subject property. Mr. Joel testified he has worked at the subject property, 1209 Astor Street, since March 2013 and that there have been no material changes between that time and January 1, 2015. Mr. Joel stated that the subject units cannot be leased to third parties per the board of directors and that the subject property is strictly residential. Upon cross-examination, Mr. Joel stated that the subject is not an income-generating property and that the unit owners, as shareholders, view themselves as owners of their units.

The appellant then made a second motion for summary judgment based on the contention that the subject is entitled to a “rollover” of the PTABs prior year assessment reduction. The ALJ took the motion under advisement.

The appellant made a motion to exclude expert witnesses from the hearing when they are not testifying. The Intervenor objected and stated his expert, Mr. Dost, prepared a technical appraisal review of the appellant’s appraisal by Mr. Byrnes. Therefore, Mr. Dost should be present at the hearing during the appellant’s appraiser’s testimony. The ALJ agreed with the Intervenor, and Mr. Dost was present during Mr. Byrnes’ testimony. In addition, the ALJ permitted Mr. Byrnes to be present during Mr. Dost’s testimony.

The PTAB notes during the first half of the hearing, the ALJ was unaware that a potential witness for the appellant, Mr. Kinney, was present through a video link during the testimony of the property manager and both appraisers.

The appellant called Mr. Byrnes. On direct examination, Mr. Byrnes stated he performed an appraisal of the subject property, which was previously submitted and made part of the record. Mr. Byrnes has been an appraiser for approximately 30 years and holds the designation of MAI from the Appraisal Institute. He stated he had appraised approximately 15 cooperative buildings, including the subject building. The appellant’s attorney requested that Mr. Byrnes be allowed to testify as an expert in the appraisal of real estate for property tax purposes. The ALJ granted this request.

Mr. Byrnes stated he personally inspected the subject property and was accompanied at times by Mr. Joel and the building engineer. Mr. Byrnes described the subject as having 16 stories with 30 units and a 17th story that houses mechanical equipment. The building was constructed in 1929 and that the units’ layout reflects the period of construction in that the rooms are smaller and contain quarters for servants. In addition, the building has a boiler, and the units have safe pack-type air conditioning. There is no retail space and no on-site parking.

Mr. Byrnes then described the difference between a cooperative and a condominium building. He stated that a cooperative has one Permanent Index Number (“PIN”) owned by a corporation. The occupants of the units own shares and are assigned to specific units in the form of proprietary leases. This form of ownership differs from a condominium wherein unit owners own a percentage of the whole. Mr. Byrnes stated that cooperative ownership is the least popular form of residential occupancy with little demand.

Mr. Byrnes stated that the subject is in average condition and that its highest and best use is its current use as a cooperative building. Mr. Byrnes’ appraisal was based on the sale and income approaches to value. In the sales approach, Mr. Byrnes developed a price per square foot of living area and multiplied that price by the gross living area to determine a gross sell-out value. However, Mr. Byrnes stated the gross sell-out value should be discounted to consider a sell-out period, costs of the sales, and commissions. Specifically, Mr. Byrnes considered seven sales and a current listing in the subject in addition to approximately 40 sales located within walking distance of the subject, to conclude a unit value for the subject of \$440 per square foot of living area. The appraiser then multiplied \$440 per square foot of living area by the subject’s total square footage of living area of 84,000 square feet to determine the subject’s gross sell-out value

was \$36,960,000. Mr. Byrnes stated a price per square foot of living area analysis is preferred to a price per share analysis. He stated that a price per share analysis can be misleading since the share allocations were established a very long time ago and that the quality of each unit's shares can change over time based on new improvements.

Mr. Byrnes stated a gross sell-out price is a "notional price" and means the gross sell-out price is the price if all units were sold immediately on the value date (see transcript p. 42). Mr. Byrnes explained that there is then a sell-out or absorption period. Mr. Byrnes stated there are no comparable cooperative buildings that are new, vacant projects with actual sell-out periods. Mr. Byrnes stated he looked to nearby cooperative buildings and determined that the average cooperative sold 6% of its inventory per year, or two units per year. He noted that the comparable properties were occupied and that they reflected demand for the subject property. He stated he used the Multiple Listing Service to look for cooperative sales in the subject's area that sold from January 1, 2012, through mid-2015 and found over 100 cooperative apartment units expired, canceled, or unsold during this period. He then stated the subject has 30 units and determined that based on comparable cooperatives, two would sell per year, resulting in a sell-out period of 15 years. Mr. Byrnes stated this sell-out period was supported by scholarly publications and an examination of cooperatives in New York, where cooperatives are more common.

Mr. Byrnes clarified the difference between "absorption" or "sell-out" as opposed to "turnover." He stated "turnover" refers to someone owning a unit and selling it, while "absorption" is a more neutral term that states the number of units owned compared to the number of units sold. (see transcript page 49) Mr. Byrnes noted that his analysis differs from a condominium deconversion analysis since a condominium deconversion can be used as a rental property where converters will pay a premium. (see transcript p. 50)

Returning to the discussion of his methodology for the subject and its absorption period, Mr. Byrnes stated he determined an appropriate discount rate and in-house commission to opine the present value of \$21,315,023. Mr. Byrnes explained that this analysis assumed the average sale price of cooperative units was decreasing each year for 15 years.

Mr. Byrnes then explained the methodology he used in his income approach to value. He stated he studied 25 rental comparable rental properties, which had a median and weighted average of \$210 to \$225 per square foot. He stated he also studied the rental price per square foot of superior buildings with modern finishes and more amenities than the subject property. After examining the comparable properties, he opined a gross rental rate of \$250 per square foot or \$2,520,000 potential gross income. After deducting for vacancy and collection loss, the subject's effective gross income is \$2,394,000. Mr. Byrnes determined the expense ratio based on the IREM, an income and expense study for apartment buildings. After considering expenses necessary to maintain the subject building, determined an expense ratio of 35%, resulting in a net operating income of \$1,556,000. A 6.00% capitalization rate was determined based on the mortgage equity technique and the Korpacz investor survey. A 1.86% tax load was added to the capitalization rate, resulting in a 7.86% loaded capitalization rate and a value for the subject building of \$19,800,000. The two approaches of value were reconciled to \$20,300,000.

Mr. Byrnes was cross-examined by the Intervenor. Mr. Byrnes stated the subject property is not an income-generating property. His appraisal considered the sales and income approaches to value, although less weight was placed on the sales approach to value. Upon additional questioning, he said he did not use apartment capitalization rates which were 6.00%.

During redirect of Mr. Byrnes, he stated his appraised value represents the bulk value of the subject building as a whole.

The appellant's attorney presented Mr. Kinney, who stated he is a real estate broker and the vice president at Baird and Warner in Chicago. The Intervenor objected to the testimony of this witness as there was no evidence in the record prepared by Mr. Kinney, and the Intervenor had no knowledge that Mr. Kinney would testify at the hearing. The appellant's attorney stated that Mr. Kinney would testify regarding background of the real estate market for cooperatives and condominiums in the subject's area. The ALJ stated there was no evidence in the record prepared by Mr. Kinney, nor was Mr. Kinney mentioned in the previously submitted evidence. The other parties and the ALJ had no notice, prior to the hearing, that Mr. Kinney would be offered as a witness. In addition, the ALJ was previously unaware that Mr. Kinney was present during the previous witnesses' testimony. As such, the ALJ precluded Mr. Kinney from testifying. The appellant's attorney objected for the record; however, the ALJ excluded Mr. Kinney.

The Intervenor called Mr. Dost to testify. Upon direct examination, Mr. Dost testified he is the president of Dost Valuation Group and has been an MAI appraiser since 1993. He stated he has performed or reviewed approximately 3,500 appraisals and that 10 to 15 were appraisals of cooperatives. Mr. Dost was tendered as an expert in the appraisal of real estate and review of appraisal reports. There was no objection from the appellant. The ALJ accepted Mr. Dost as an expert in the appraisal of real estate and review of real estate appraisal reports.

Mr. Dost stated he reviewed Mr. Byrnes' appraisal of the subject property and prepared a review appraisal report of Mr. Byrnes' appraisal and developed his own conclusion of value. Mr. Dost's report was previously submitted and made part of the record. Mr. Dost stated his report conformed to the standards of the Uniform Standards of Professional Appraisal Practice ("USPAP"). Mr. Dost stated that it is unlikely a single buyer would purchase the subject property as it consists of 30 separately owned units. He stated Mr. Byrnes' bulk value premise assumes the owners would accept a huge discount, whereas normally, a premium would be paid to control an entire project. (see transcript p, 87) Mr. Dost stated, in his opinion, the market value of the subject property is the sum of the individual units' values.

He stated that when using Mr. Byrnes' value of \$440 per square foot of living area, each of the subject units' values would be \$1,232,000, which is adequately supported. He stated that Mr. Byrnes' bulk value approach was not appropriate and there were several errors in the development of his discounted cash flow by the sales comparison approach. Mr. Dost stated that a fifteen-year absorption period was inappropriate, and Mr. Byrnes was using "turnover rate" instead of "absorption rate" which resulted in an unrealistic 15-year grossly excessive absorption period. (see transcript p. 92)

Mr. Dost stated he found Mr. Byrnes' lack of use of an inflation rate to be problematic. Typically, units are forecast to increase in price over time.

Mr. Dost stated he reworked the absorption period methodology, summarized on p. 9 of his review report. He opined that based on average marketing times, a likely absorption period for the subject building is three years, with ten units sold per year. The sale price for the first year is based on Mr. Byrnes' price per square foot of \$440, or a price per unit of \$1,232,000. Holding costs of \$30,000 per unit were deducted and an increase for inflation of 3% for each year after the first year results in a bulk market value of the subject \$31,000,000 on January 1, 2015; however, Mr. Dost opined that the sum of the individual values of \$36,960,000 is a more realistic estimate of the subject's market value.

Mr. Dost discussed Mr. Byrnes' use of the income approach to value. He stated that Mr. Byrnes' income approach is not adequately supported as there is no detail provided for the comparable properties or adjustments to the comparable properties. Mr. Dost stated actual sales in the marketplace would be a better method of developing a capitalization rate instead of relying on national surveys. Mr. Dost said Mr. Byrnes' opinion of the subject's bulk value was not credible.

Upon cross-examination by the appellant, Mr. Dost stated he does not believe the bulk value is representative of the market value and that Mr. Byrnes' bulk value calculations contained errors. Mr. Dost stated that Mr. Byrnes' capitalization rate was not necessarily incorrect, but it was not supported by data. Mr. Dost stated that his report utilized a 3% inflation factor based on the condominium market; however, he drew on his experience with multi-family residential units, but not specifically cooperatives, to opine that they increase in value over time. Mr. Dost stated that he was not aware of any developer inventory of newly constructed cooperatives. Mr. Dost stated there was a strong demand for all properties during the period in question, but conceded it is possible that the demand for cooperatives could be different. Mr. Dost stated his three-year absorption period was based on sales of rental apartments and condominiums.

Upon redirect, Mr. Dost stated that a seller who waited years to sell was likely under duress.

The appellant's attorney indicated he had a list of 47 condominium and cooperative sales within the City of Chicago sold from January 1, 2016 through December 31, 2017 and requested the PTAB take judicial notice of them. The ALJ did not take judicial notice of the list as it was new information without foundation. The appellant made a motion to enter the list into evidence. The ALJ denied the motion as it consisted of new information without foundation.

The appellant's attorney called Mr. Byrnes for redirect. The Intervenor objected; however, the ALJ overruled the objection and Mr. Byrnes was allowed to respond in general to questions regarding real estate trends. Mr. Byrnes stated there is a difference between cooperatives and condominiums and that, in general, younger buyers prefer condominiums over cooperatives.

Conclusion of Law

The appellant raised a contention of law asserting that the assessment of the subject property as established by the Property Tax Appeal Board for the 2015 tax year should be carried forward to the 2017 tax year pursuant to section 16-185 of the Property Tax Code. (35 ILCS 200/16-185). When a contention of law is raised, the burden of proof is a preponderance of the evidence. (See

5 ILCS 100/10-15). The Board finds the appellant met this burden of proof, and a reduction in the subject's assessment is warranted.

The appellant argued that the subject co-op is a residential property that falls under the purview of 35 ILCS 200/16-185. The Board finds the appellant's argument persuasive based on the testimony of Mr. Joel. The Board notes the subject is a Cook County Assessor's classification class 2 property. This classification is used for residential properties and includes residential cooperative buildings such as the subject. Additionally, 35 ILCS 200/10-15 is titled "Condominiums and Cooperatives." It states that cooperatives that are occupied by their owners for a minimum of six months shall be assessed on the same basis as single family residences. The Board finds the testimony of Mr. Joel persuasive. He stated residents purchase shares in the subject corporation, which allows them a proprietary lease of an apartment within the cooperative. Each unit is used as a residence and each unit owner can qualify for a Cook County Assessor's homeowner's exemption.

The Property Tax Appeal Board finds that the assessment as established by the Board for the 2015 tax year should be carried forward to the tax year at issue subject only to equalization as provided by section 16-185 of the Property Tax Code.

Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) states in part:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review.

The record disclosed the Property Tax Appeal Board issued a decision reducing the subject's assessment for the 2015 tax year, docket 15-31323.001-R-3. The record further indicates that the subject property is an owner-occupied dwelling and that 2015 and 2017 are within the same general assessment period. Since the Property Tax Appeal Board is bound by 35 ILCS 200/16-185, it does not need to analyze the methodology and market value conclusions of the appraisers who testified at the hearing. The Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted to reflect the assessment as established in the Board's prior year's decision plus the application of an equalization factor, if any.

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: March 15, 2022



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.

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