PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Alan & Judith Graden
DOCKET NO.: 04-01669.001-R-1
PARCEL NO.: 10-10-11-109-001

The parties of record before the Property Tax Appeal Board are Alan & Judith Graden, the appellants, by attorney Robert Smith of Moehle, Swearingen & Umholtz, Pekin; and the Tazewell County Board of Review by Assistant State's Attorney Michael Holly.

At the beginning of the hearing the parties agreed that the evidence, testimony and arguments associated with three appeals scheduled for consecutive hearings and identified by Property Tax Appeal Board Docket Nos. 04-01668.001-R-1 (Jennings) 04-01669.001-R-1 (Graden) and 04-01687.001-R-1 (Richardson) were substantially the same. The parties agreed to incorporate the testimony provided in the initial hearing under Docket No. 04-01668.001-R-1 in the remaining two appeals to expedite the remaining two hearings. In accordance with that request the Property Tax Appeal Board has reiterated the testimony provided in Docket No. 04-01668.001-R-1 as far as practicable.

The subject property consists of one story single family dwelling that contains 1,596 square feet of living area. The dwelling includes a full basement, central air conditioning, and a two-car attached garage. The dwelling has a brick and vinyl exterior and was completed in 2004. The property is located on a 21,186 square foot site in the Deerfield Estates Subdivision, Pekin, Cincinnati Township, Tazewell County.

The appellant, Alan Graden, and his attorney appeared before the Property Tax Appeal Board contending the assessment of the subject property is excessive based on a contention of law as checked on section 2e of the residential appeal form. In support of this argument the appellant submitted the residential appeal form disclosing the subject property was purchased in June 2004 for a price of $175,000. The appellant also submitted a copy of a Illinois Real Estate Transfer Declaration form (PTAX-203)

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds *no change* in the assessment of the property as established by the **Tazewell** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$	150
IMPR.:	$	23,690
TOTAL:	$	23,840

Subject only to the State multiplier as applicable.

associated with the June 2004 sale of the subject property. The document disclosed the net consideration for the real property was $175,000. The form also indicated the property was new construction and the sale had the elements of an arm's length transaction.

The appellant also submitted a brief outlining his argument. The appellant argued that the Tazewell County Board of Review did not uniformly assess newly constructed dwellings where occupancy permits have been issued. The appellant stated the subject's property record card indicated the board of review placed an "instant assessment" on the subject property but the Property Tax Code does not provided for an "instant assessment". The appellant also stated that section 9-180 of the Property Tax Code ("Code")(35 ILCS 200/9-180) provides that the owner of property on January 1, shall be liable on a proportionate basis, for increased taxes occasioned by new construction from the date when the occupancy permit was issued to December 31 of that year. The appellant also argued that Section 9-185 of the Code (35 ILCS 200/9-185) provides that the purchaser of property on January 1 shall be considered the owner on that date. The appellant contends these two sections require that it is the owner of the property on January 1 that is liable for the taxes. In this case the appellant did not purchase the property until June 2004 so he is not liable on a proportionate basis for the increased taxes caused by the new construction.

The appellant also argued that article IX, section 4(a) of the Illinois Constitution of 1970 requires uniformity of taxation. (Ill.Const.1970 art.IX, sec. 4(a). The appellant contends Exhibits J, K, L and M demonstrate a lack of uniformity in assessing newly constructed dwellings. The appellant asserts that no "instant assessments" are calculated for properties where occupancy permits are issued after October 1, violating the uniformity requirement. The appellant attached numerous exhibits to the brief arguing these demonstrate a lack of uniform application of "instant assessments."

The appellant also submitted a supplemental brief with numerous exhibits attached to further argue that the county has violated the principle of uniformity in assessing newly constructed dwellings.

The appellant called the Chairman of the Tazewell County Board of Review, Gary Pittenger, as its witness. Pittenger agreed that the appellants did not own the property as of January 1, 2004, and the property was owned by Gary Allen on that date. He also agreed the certificate of occupancy was issued for the subject property on June 23, 2004. Pittenger recited that the value of the property as of January 1, 2004, was $84,540, which was the pro-rated value as of July 1, 2004. Pittenger identified

Appellant's Exhibit A as the assessment notice for the subject property wherein the assessors had a land assessment for the subject of $150 because the assessor had only assessed the land as of January 1, 2004. Pittenger did not know how much of the dwelling had been completed as of January 1, 2004. Pittenger agreed the property was purchased by the appellant for $175,000 and agreed the sale was an arm's length transaction.

Pittenger indicated the $150 land assessment was based on a "developer's rate" that is allowed by the Property Tax Code. Pittenger also testified the assessment of the property was pro-rated from July 1, 2004 through December 31, 2004.

Pittenger explained that when a property is habitable or available for use it is placed on the assessment books the 1st day of the following month after the occupancy permit is issued. He testified this was the policy of Tazewell County in assessing newly constructed property. He did not know if any provision of the Property Tax Code allowed this procedure.

Pittenger identified Appellant's Exhibit A as a notice of hearing sent to the appellant. Appellant's Exhibit C was identified as the oath of the board of review noting completion of the real property assessments in Tazewell County dated January 5, 2005. Pittenger indicated that following the issuance of the oath there were hearings held in March 2005. Pittenger identified Exhibits E and F as property record cards with entries stating "Omitted property withdrawn based on 10/01/03 deadline for completion date of improvement." He explained that the Tazewell County Supervisor of Assessments had a guideline in place for the township assessors to submit "instant assessments" up to October 1, after that they were deferred to the following year. Pittenger could not identify Appellant's Exhibit L. Counsel for the board of review stipulated to the validity of the property record cards submitted by the appellant. Pittenger did not know if Appellant's Exhibit G were the property record cards for March 2005 hearing before the board of review. Each of the property record cards stated in part the omitted property was deferred to 2005 board of review. Each of the property record cards in exhibit G disclosed that the 2003 assessments were reduced having only a land assessment, no improvement assessment was given even though the properties were improved. The property record cards indicated that for 2004 the improvements were assessed. These properties were all located in the same township and subdivision as the subject property. Pittenger testified that to his knowledge every property that received a certificate of occupancy in 2004 received an assessment. Pittenger identified the property record card for property index number (PIN) 10-10-11-414-020 indicating that a certificate of occupancy was issued on October 19, 2004, yet the property received only a land

assessment. This property was located in the same township as the subject property.

The next witness called on behalf of the appellant was Leon Schieber. Schieber is the Morton Township Assessor. Schieber testified that Morton Township did not do prorated assessments in 2004. He had not received any written guidelines regarding prorated assessments and did not have a clear understanding with how pro-rated assessments were handled. It was his practice in 2004 to pick up new construction in his township the following January 1, based on its full value. He did not pro-rate assessments in 2004. He acknowledged that the Property Tax Code provides for pro-rated assessments but did not follow the directives of the Code without direction from the supervisor of assessments. Schrieber admitted that if there was a partially completed home on the parcel as of January 1, he would not assess the home until completed. He testified he did not have the expertise to value a partially completed home, even though he has been a township assessor for 12 years.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $23,690 was disclosed. The subject's assessment reflects a market value of approximately $71,528 using the 2004 three year median level of assessments for Tazewell County of 33.12%. The board of review also submitted a copy of the Illinois Real Estate Transfer Declaration (PTAX-203) associated with the June 2004 sale of the subject property for a price of $175,000. The property record card also indicated the subject property had a prorated assessment as of July 1, 2004. The board of review submitted a brief prepared by Assistant State's Attorney Michael Holly, wherein he argued the appellant failed to demonstrate by clear and convincing evidence a lack of assessment uniformity. Holly argued on behalf of the board of review that the appellant failed to prove a violation of the equal protection clause by demonstrating the subject property or the appellant was a member of a particular class and was being assessed in a disparate manner with reference to properties that had the similar level of completion on the assessment date at issue.

The board of review also submitted a written statement dated December 21, 2005, signed by its Chairman, Gary Pittenger, wherein he stated that the board of review recognized the subject property was not inhabitable and fit for occupancy or for intended use for the entire 2004 tax year. The board of review noted the subject property was purchased in June 2004 for a price of $175,000. The letter also provided that it is the policy of Tazewell County to pro-rate partial year assessments in 12-month increments and the appellant was responsible for taxes effective July 1, 2004 through December 31, 2004. The board of review

stated it would stipulate to a pro-rated total assessment of $23,985 based on the sales price.

Assistant State's Attorney Holly called no witnesses on behalf of the board of review.

Pittenger, however, was questioned on behalf of the Property Tax Appeal Board by the hearing officer. He indicated the assessed value represented the value as the first of the month following the date of the certificate of occupancy. He indicated that this rounding procedure to the next month following the issuance of the certificate of occupancy is routinely done in Tazewell County.

Pittenger testified that township assessors feed the information about properties to the county assessor who then does the calculations and puts the information on the property record card. The witness indicated the assessment of the subject was pro-rated based on the purchase of the property and the certificate of occupancy.

After hearing the testimony and considering the evidence the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds a reduction in the subject's assessment is not supported by the evidence in the record.

The appellant's argument was that the board of review had misapplied or had applied in a non-uniform manner the Property Tax Code ("Code") as it relates to the pro-rated assessments of newly constructed dwellings such as the subject property.

Section 9-160 and section 9-180 of the Code work in concert when valuing and assessing newly constructed improvements. Section 9-160 reads in part that:

> Valuation in years other than general assessment years. On or before June 1 in each year other than the general assessment year[1], in all counties with less than 3,000,000 inhabitants, . . . the assessor shall list and assess all property which becomes taxable and which is not upon the general assessment, and also make and return a list of all new or added buildings, structures or other improvements of any kind, the value of which had not been previously added to or included in the

[1] Section 9-215 of the Code (35 ILCS 200/9-215) provides in part that:

> General assessment years; counties of less than 3,000,000. Except as provided in Sections 9-220 and 9-225, in counties have the township form of government and with less than 3,000,000 inhabitants, the general assessment years shall be 1995 and every fourth year thereafter. . . .

> valuation of the property on which such improvements have been made, specifying the property on which each of the improvements has been made, the kind of improvement and the value which, in his or her opinion, has been added to the property by the improvements. The assessment shall also include or exclude, on a proportionate basis in accordance with the provisions of Section 9-180, all new or added buildings, structures or other improvements, the value of which was not included in the valuation of the property for that year. . .
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> Beginning January 1, 1996, the authority within a unit of local government that is responsible for issuing building or occupancy permits shall notify the chief county assessment officer, by December 31 of the assessment year, when a full or partial occupancy permit has been issued for a parcel of real property. The chief county assessment officer shall include in the assessment of the property for the current year the proportionate value of new or added improvements on that property from the date the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use until December 31 of that year. If the chief county assessment officer has already certified the books for the year, the board of review or interim board of review shall assess the new or added improvements on a proportionate basis for the year in which the occupancy permit was issued or the new or added improvement was inhabitable and fit for occupancy or for intended customary use. The proportionate value of the new or added improvements may be assessed by the board of review or interim board of review as omitted property pursuant to Sections 9-265, 9-270, 16-50 and 16-140 in a subsequent year on a proportionate basis for the year in which the occupancy permit was issued or the new or added improvement was inhabitable and fit for occupancy or for intended customary use if it was not assessed in that year.

35 ILCS 200/9-160. It is clear from this section of the Code that the assessor, supervisor of assessments and the board of review have the authority to assess new or added improvements on a proportionate basis from the date of the occupancy permit or the date the property was inhabitable and fit for occupancy. Furthermore, the board of review has the additional statutory authority to assess on a proportionate basis new or added improvements as omitted property in a subsequent year if the property was not assessed in the year the occupancy permit was issued.

Section 9-180 of the Code also sets forth the authority for allowing pro-rata valuations on newly constructed or added buildings. This section provides in part:

> Pro-rata valuations; improvements or removal of improvements. The owner of property on January 1 also shall be liable, on a proportionate basis, for the increased taxes occasioned by the construction of new or added buildings, structures or other improvements on the property from the date when the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use to December 31 of that year. The owner of the improved property shall notify the assessor, within 30 days of the issuance of an occupancy permit or within 30 days of completion of the improvements, on a form prescribed by that official, and request that the property be reassessed. The notice shall be sent by certified mail, return receipt requested and shall include the legal description of the property. . .
>
> Computations under this Section shall be on the basis of a year of 365 days.

35 ILCS 200/9-180. The court in Long Grove Manor v. Property Tax Appeal Board, 301 Ill.App.3d 654, 704 N.E.2d 872, 235 Ill.Dec.299 (2nd Dist. 1998), construed both section 9-160 and 9-180 of the Code. There the court stated in part that:

> [S]ection 9-160 requires the assessor to record any new improvements and to determine the value they have added to the property. By its terms, section 9-180, applies only after a building has been substantially completed and initially occupied. Reading these two sections together, section 9-160 clearly requires the assessor to value any substantially completed improvements to the extent that they add value to the property. Section 9-180 then defines the time when the improvement can be fully assessed. This occurs when the building is both substantially completed and initially occupied.

Long Grove Manor, 301 Ill.App.3d at 656-657. In Brazas v. Property Tax Appeal Board, 339 Ill.App.3d 978, 791 N.E.2d 614, 274 Ill.Dec. 522 (2nd Dist. 2003) the court clarified its decision in Long Grove Manor by stating that:

> Long Grove Manor stands for the principle that section 9-160 allows the assessor to value any partially

> completed improvement to the extent that it adds value to the property regardless of whether the improvement is "substantially complete". Furthermore, section 9-180 addresses when the assessor is allowed to fully assess the improvement, i.e., when it is "substantially completed or initially occupied or initially used."

Brazas, 339 Ill.App.3d at 983. It should be noted that Public Act 91-486, effective January 1, 2000, amended the first paragraph of section 9-180 by substituting in the first sentence the language "the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended use" and deleted the languate "the improvement was substantially completed or initially occupied or initially used," and in the second sentence, inserted "within 30 days of the issuance of an occupancy permit or".

The Property Tax Appeal Board finds the section 16-160 of the Code clearly provides the authority for the board of review to calculate assessments on new or added improvements on a proportionate basis for the year in which the occupancy permit was issued or the new or added improvement was inhabitable and fit for occupancy or for intended customary use.

The appellant asserts that he should not be liable for the proportionate assessment of the subject property because he was not the owner on January 1, 2004, the statutory lien date. The Board gives this argument no weight. The Property Tax Appeal Board finds that there are two exceptions provided by the General Assembly to the general proposition that a property's status for taxation purposes is to be determined as of January 1 of each year. One exception is provided in section 9-185 of the Code and relates to the partial exemption of taxation where a property becomes taxable or exempt after January 1, the second exception relates to proportionate assessments in the case of new construction or uninhabitable property provided in section 9-180 of the Code. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 373, 458 N.E.2d 121, 75 Ill.Dec.953 (1st Dist. 1983). The appellant is correct in that section 9-175 of the Code states in part that:

> The owner of property on January 1 in any year shall be liable for the taxes of that year. . . .

35 ILCS 200/9-175. Furthermore, section 9-180 provides in part that:

> The owner of property on January 1, also shall be liable on a proportionate basis, for the increased taxes occasioned by the construction of new or added buildings. . . .

Section 9-185 of the Code also provides in part that:

> The purchaser of property on January 1 shall be considered the owner on that date. . . .

35 ILCS 200.9-185. However, as stated in Kankakee County Board of Review v. Property Tax Appeal Board, 316 Ill.App.3d 148, 151, 735 N.E.2d 1011, 249 Ill.Dec. 186 (3rd Dist. 2000) parties may, through clear agreement, shift the burden of tax liability. The court stated that:

> The term "owner," as applied to land, has no fixed meaning applicable under all circumstances and as to any and every enactment. * * * Title refers only to a legal relationship to the land, while ownership is comparable to control and denotes an interest in the real estate other than that of holding title thereto. (*Citation omitted*) Especially in tax law, "[t]he key elements of ownership are control and the right to enjoy the benefits of the property. * * * Revenue collection is not concerned with the 'refinements of title'; it is concerned with the realities of ownership. (*Citation omitted*)

Kankakee County Board of Review v. Property Tax Appeal Board, 316 Ill.App.3d at 152. The record is clear that the appellant was the purchaser of the property in June 2004 and most likely was required to pay a proportionate share of the taxes on the 2004 assessment payable in 2005. Under the appellant's argument, all purchasers of newly constructed dwellings, where another owns the property on January 1 and completes construction during the calendar year, would avoid taxes brought about by the increased value of the property due to the new or added improvements. This type of tax avoidance would be in derogation to sections 9-160 and 9-180 of the Code and the legislative intent to value and tax new construction on a proportionate basis. Therefore, the Board gives this aspect of the appellant's argument no weight.

The final aspect of the appellant's argument goes to whether or not the board of review uniformly applied its practice of proportionately assessing new construction during the 2004 assessment year. First, the Property Tax Appeal Board finds the board of review did not follow the statutory directives set forth in the Code when computing prorated assessments. Both sections 9-160 and 9-180 of the Code provide that the prorated assessments are to be calculated from the date the occupancy permits was issued or from the date the new or added improvement was inhabitable and fit for occupancy or intended customary use. Furthermore, section 16-180 provides that computations are to be made on the basis of a year of 365 days. The testimony of

Pittenger was clear that the practice of the board of review was to round to the next nearest month following the issuance of the occupancy permit and then use a 12 month denominator in calculating the prorated assessment. The Property Tax Appeal Board further finds there may be another flaw in the board of review's calculation of the prorated assessment. Rather than considering only the increased value to the property due to the new or added improvement, the board of review may have considered the overall market value of the property in its calculations based on the sales price. The value of the land should have been excluded from the calculation and the contributory value of the dwelling should have been used as the basis for the calculation of the prorated assessment. The Property Tax Appeal Board finds, however, where the Tazewell County Board of Review has adopted a practice or procedure in calculating prorated assessments that differs from that contained in the Code, that policy must be used on a uniform basis within the county. Moniot v. Property Tax Appeal Board, 11 Ill.App.3d 309, 296 N.E.2d 354 (3rd Dist. 1973).

The appellant submitted numerous property record cards to demonstrate the board of review's practice of prorating assessments was not being uniformly applied. After reviewing the documentations the Property Tax Appeal Board finds, however, that the appellant did not clearly and convincingly demonstrate through these exhibits and persuasive testimony that in 2004 the board of review did not uniformly apply its practice of assessing newly constructed dwellings on a prorated basis. Many of the exhibits submitted by the appellant were for assessment years other than the assessment year in question.

The appellant also presented the testimony of Morton Township Assessor Leon Schieber. The Board gives his testimony little weight. He testified that he had not received any written guidelines regarding prorated assessments and did not have a clear understanding with how pro-rated assessments were handled in Tazewell County. However, it was his practice in 2004 not to calculate prorated assessments in Morton Township. The Board finds this testimony does not refute that set forth by Pittenger that it was the practice of the Tazewell County Board of Review to calculate prorated assessments from the 1st day of the month following the issuance of the occupancy permit to December 31 using a 12 month period.

In conclusion the Property Tax Appeal Board finds a reduction in the subject's assessment is not justified based on this record.

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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

Member

Member

Member

DISSENTING:

C E R T I F I C A T I O N

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: December 21, 2007

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.