



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

APPELLANT: Stembridge Builders
DOCKET NO.: 06-00370.001-R-2
PARCEL NO.: 07-01-20-206-019-0000

The parties of record before the Property Tax Appeal Board are Stembridge Builders, the appellant, by attorney Kevin M. Gensler of Dommermuth Brestal Cobine & West, Ltd., Naperville; and the Will County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Will County Board of Review is warranted. The correct assessed valuation of the property is:

**LAND: \$65,300
IMPR: \$0
TOTAL: \$65,300**

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a part one-story and part-two story single family dwelling that contains 3,370 square feet of living area. The property is designated as lot 70 in Ashwood Creek Subdivision, Naperville, Wheatland Township, Will County.

A consolidated hearing was held for the following appeals identified by docket numbers: 06-00364.001-R-1, 06-00365.001-R-1, 06-00367.001-R-1, 06-00369.001-R-1, 06-00370.001-R-1, 06-00371.001-R-1, 06-00373.001-R-1, 06-00374.001-R-1, 06-00375.001-R-1, 06-00376.001-R-1 and 06-00377.001-R-1. Of these appeals, the following appeals challenged only the land assessment: 06-00365.001-R-1, 06-00367.001-R-1, 06-00369.001-R-1, 06-00371.001-R-1, 06-00373.001-R-1 and 06-00377.001-R-1.

In this appeal the appellant challenged both the land and the improvement assessment. At the hearing counsel called Harold Stembridge as a witness. Stembridge is the President of Stembridge Builders the owner of the subject property.

With respect to improvement, Stenbridge testified that he believed construction on this dwelling began in the fall of 2005 but was not completed until early 2007. He testified that the house was started and they let it sit through the winter. He testified the dwelling may have been 25% complete as of January 1, 2006.

The appellant also submitted a memorandum to challenge the improvement assessment asserting the Wheatland Township Assessor was attempting to assess the subject property prior to the issuance of an occupancy permit. The appellant argued this is contrary to sections 9-160 and 9-180 of the Property Tax Code (35 ILCS 200/9-160 & 9-180). The appellant contends that an occupancy permit must be issued prior to the improvements being assessed on the property. The appellant stated that section 9-180 of the Property Tax Code 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, 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 relevant provision of section 9-160 of the Property Tax Code provides:

On or before June 1 in each year other than the general assessment year, 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 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. . . .

The appellant argued that an occupancy permit must be issued prior to the assessment of the improvement and the assessor can assess a property as improved from the date of occupancy. The appellant asserted in the brief that an occupancy permit had not been issued for the above referenced parcel number, and therefore, the property should not be assessed as improved.

The appellant asserted that Section 5-2A-1 of the City of Naperville Municipal Code specifically states that no new, remodeled or moved building or structure shall be occupied until a permit for such occupancy has been issued by the Director of Community Development. The appellant further asserted that section 9-165 of the Property Tax Code (35 ILCS 200/9-165) states in part that:

"Occupancy permit" means the certificate or permit, by whatever name denominated, which a municipality or county, under its authority to regulate the construction of buildings, issues as evidence that all applicable requirements have been complied with and requires before any new, reconstructed or remodeled building may be lawfully occupied.

The appellant argued that a person may not occupy a residence lawfully until an occupancy permit has been issued. The appellant argued that based on this language the assessor's interpretation that the language in section 9-180 that "the improvement was inhabitable and fit for occupancy" allows them to assess the property prior to issuance of an occupancy permit is in error.

The appellant requested the improvement assessment be reduced to \$0.

The appellant also argued the assessment of the subject land was excessive.¹ The subject's property record submitted by the appellant disclosed the subject land was purchased in July 2005 for a price of \$195,000.

Stembridge testified he submitted valuations for the subdivision from a complete list of sales including the prices, dates of sale and buyers. The witness testified the original developer of the subdivision was Oliver Hoffman and The Macom Corporation, LLC (OHCMC, LLC).

Stembridge testified there were 36 lots out of the 140 lots sold in the subdivision that were being assessed at \$4,394. He testified that these were second or third buyers and not the original developer that were receiving this \$4,394 assessment. He was of the opinion each of the vacant lots under appeal should be assessed at \$4,394 but asserted he was not seeking "developer relief."²

¹ The decision will incorporate as much as practicable a discussion of testimony and evidence provided in the other land assessment appeals previously identified.

² The so called "developer's relief assessment" is found at Section 10-30 of the Property Tax Code (35 ILCS 200/10-30), which provides for a preferential land assessment in platted and subdivided vacant land in transition under certain circumstances.

Under cross-examination the witness testified the evidence he prepared and submitted for each of the land appeals was the same. He identified a list of sales of lots in the subdivision that sold in 2004, 2005 and 2006. He testified he obtained this list from developer who provided an affidavit. A review of the affidavit signed by Paul J. Lehman of The Macom Corporation makes reference to Exhibit A and Exhibit B. Exhibit A purportedly contained information by closing date and Exhibit B purportedly contained the same information by lot number. The appellant did not submit any documents attached to the affidavit identified as either Exhibit A or Exhibit B. The board of review objected to the affidavit based on hearsay and the inability to question Mr. Lehman. The Property Tax Appeal Board sustains the objection.

The list that was submitted by the appellant indicated the sales prices for the lots in 2004 ranged from \$190,000 to \$212,900; the sales prices for the lots in 2005 ranged from \$190,200 to \$210,900; and the prices for the lots in 2006 ranged from \$202,800 to \$232,000.

Additionally, the list of purported sales included the purchase by the appellant of the various lots under appeal. The evidence and testimony provided by Stenbridge disclosed that each of the subject vacant lots was closed on December 22, 2004 for the following prices:

Docket No.	Parcel No.	Lot No.	Price
06-00365.001-R-1	07-01-20-206-008-0000	110	\$195,000
06-00367.001-R-1	07-01-20-207-014-0000	54	\$196,800
06-00369.001-R-1	07-01-20-201-009-0000	115	\$198,200
06-00371.001-R-1	07-01-20-204-036-0000	1	\$192,500
06-00373.001-R-1	07-01-20-208-018-0000	22	\$195,000
06-00377.001-R-1	07-01-20-204-020-0000	135	\$200,000

The combined prices of the vacant lots totaled \$1,177,500 with an average purchase price of \$196,250 and a mean purchase price of \$195,900. Some of these prices were further corroborated by a copy of a closing statement submitted by the appellant indicating a date of contract of July 13, 2004 and a date of actual closing of December 22, 2004. The copy of the closing statement did not contain the signature of either the purchaser or seller. The Property Index Numbers (P.I.N.) listed on the closing statement did not correspond with the parcel numbers under appeal and omitted Lot 115; however, the purchase prices matched the remaining lots identified by the appellant. The list provided by the appellant also indicated the subject lot closed on July 6, 2005 for a price of \$195,000.

The appellant further submitted computer printouts for properties for tax year 2005; five pages of a Will County Change Record Form for Tax Levy Year 2005 listing parcels to be added to the assessment rolls for Ashwood Creek Subdivision Unit 1; four pages of a Will County Change Record Form for Tax Levy Year 2006

listing parcels to be added to the assessment rolls for Ashwood Creek Subdivision Unit 2 and Unit 3; and printouts of Will County Property Record Cards from the Will County Supervisor of Assessments website containing 2006 assessment information for various lots in the subdivision. These printouts disclosed that five parcels had land assessments of \$3,945; two parcels had land assessments of \$4,136; twenty-eight parcels had land assessments of \$4,394; thirty-one parcels had a land assessment of \$76,000; and thirty-six parcels had land assessments of \$80,735.

Under further cross-examination Stembridge testified that he calculated the average sales prices of the lots in 2004 to be \$198,000 and the average sales prices of the lots in 2005 was \$197,000. He also acknowledged that he submitted a sale of two lots to Bart Development, LLC, which closed in January 2006 for a price of \$443,000 or \$221,500 per lot. Stembridge further testified that when he purchased the subject parcels there was no negotiation with the developers on the purchase price.

Stembridge was also questioned about the disclaimer on the website where he obtained the assessment information but could not recall it stating that information was provided for informational purposes only and could not be used as evidence.

Stembridge also testified that he was not aware the \$4,394 land assessment was the "developer's relief assessment." The witness was of the opinion that none of the lots were receiving the model home exemption for that year.

Under re-direct examination the appellant reiterated he was not asking for a developer's relief assessment. He was simply requesting that the lower assessment given to other parcels be given to him as well.

Based on this evidence the appellant requested the subject's land assessment be reduced to \$4,394.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$111,860 was disclosed. The subject has a land assessment of \$76,000 and an improvement assessment of \$35,860.³

The documentation submitted by the board of review included a written statement prepared by Kelli Lord, Wheatland Township Assessor, a photograph of the subject dwelling, various assessment printouts and a printout from the Stembridge Builders, Inc. website dated March 23, 2007, indicating the subject property was "Ready for Immediate Occupancy."

³ The decision will incorporate as much as practicable a discussion of testimony and evidence provided by the board of review in the other assessment appeals previously identified.

The board of review called as a witness Kelli Lord, Wheatland Township Assessor. Ms. Lord testified the vacant parcels under appeal had full assessments based on sales in the subdivision. She testified she gathered the sales together and used the best market value indicator. Lord further testified that the subject parcels under appeal were not entitled to the "developer's exemption." The witness explained that the land assessment of \$4,394 reflects a developer's relief assessment. She testified there were other properties in the development that qualified for the developer's relief because they were owned by the original developer. Ms. Lord further acknowledged that there were lots in the development that had incorrectly received the developer's exemption, which was corrected in 2007. She also testified there were properties in the development that were receiving the model home exemption and further explained they would have had a land assessment of \$4,394 if the original developer owned the property. The witness testified in 2006 she did her best to incorporate the difference between developer's relief assessments and full market value assessments and in 2007 she was able to correct all the incorrect assessments.

Ms. Lord also testified the documentation she provided for the subject property indicated the dwelling was ready for immediate occupancy. The witness further testified that she assessed the subject improvements at 25% during 2006.

Under cross-examination the witness explained that she had not submitted a copy of the subject's property record card but the appellant did submit a copy of the property record card. The property record card indicated a total assessment of the subject property of \$111,860 and the improvement had an assessment of \$35,860. A notation on the front of the card read "06 Part 8/31", which Lord testified means the home was 100% complete as of 8-31. She testified that field inspector Brian Dixon made the determination the building was complete, although the property record card did not provide any indication who the inspector was. She testified the full assessment of the subject was \$146,740, which reflects a market value of approximately of \$440,000. The witness clarified this was a prorated assessment from 8/31/06 and there was no partial assessment as of January 1. The prorated assessment was based on the field inspection and not an occupancy permit.

Lord explained that if the home was 25% complete as of January 1, the dwelling would not have been substantial enough to assess.

Stembridge submitted as rebuttal copies of five building permits issued in 2005, 2006 and 2007 on homes that were vacant in April 2008 and none had any assessments on the improvements. The Board gives the rebuttal comparables no weight as the evidence consists of new comparables, which is improper rebuttal evidence under the Board's rules. Section 1910.66(c) of the rules of the Property Tax Appeal Board provides that:

- c) Rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. A party to the appeal shall be precluded from submitting its own case in chief in the guise of rebuttal evidence.

(86 Ill.Admin.Code §1910.66(c)). Since this evidence tendered by the appellant is new evidence, the Board gives this information no weight.

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 the evidence in the record supports a reduction in the subject's assessment.

With respect to the land assessment, the appellant argued in part overvaluation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted on this basis.

The record contains of listing of sales of vacant lots located in the subject's subdivision that occurred in 2004, 2005 and 2006. Additionally, the appellant identified the sales prices of six of the lots under appeal that closed in December 2004. These sales had prices ranging from \$192,500 to \$200,000. The average purchase price of the subject lots was \$196,250 and the mean purchase price was \$195,900. Furthermore, the subject lot was purchased in July 2005 for a price of \$195,000. The subject's land assessment of \$76,000 reflects a market value of \$228,160 using the 2006 three year median level of assessments for Will County of 33.31%, which the Property Tax Appeal Board finds is excessive in light of the prices paid for the subject parcel and the various lots in the subdivision.

The appellant also argued assessment inequity with respect to the land assessment. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data the Board finds the appellant did not meet this burden and a reduction is not warranted on this basis.

The appellant identified numerous properties that were receiving land assessments of \$4,394 and requested the subject's assessment be accordingly reduced. However, the testimony provided by the township assessor was that this assessment was based on the so

called "developer's relief assessment."⁴ The evidence also disclosed that the appellant's lot did not qualify for the developer's land assessment and the appellant's witness testified he was not requesting a developer's assessment. The uniformity clause of the 1970 Illinois Constitution (Ill.Const. 1970, art. IX, 4(a)) requires taxation to be uniform as to the class upon which it operates. People ex rel. Bosworth v. Lowen, 102 Ill.2d 242, 248 (1984). In this appeal the appellant was comparing properties to the subject property that were receiving assessments under a different classification or statutory basis. Due to this difference, the appellant has not shown the assessments were in violation of the uniformity requirement of the Illinois Constitution. Although testimony provided by the township assessor was that some ineligible lots were receiving the preferential developer's land assessment in 2006, the Board finds this is not a basis for allowing the subject lot to be incorrectly assessed using the developer's assessment.

In conclusion, the Property Tax Appeal Board finds a reduction to the subject's land assessment based on overvaluation is justified.

The appellant also challenged the assessment of the improvement. Both Stenbridge and Lord agreed that the dwelling was approximately 25% as of January 1, 2006. Lord further explained that, in keeping with office practice, the subject did not receive a partial assessment as of January 1 due to the dwelling not being substantial enough to assess as of that date. Stenbridge testified that he believed construction on this dwelling began in the fall of 2005 but was not completed until early 2007. Lord, however, testified the property record card indicated the dwelling was completed on August 31, 2006. The Board finds this estimate of completion was made by a field inspector from her office who was not present at the hearing to be cross-examined. There was no evidence or testimony from Lord that she inspected the subject dwelling to verify its completion date nor was there anything in the record to establish when and if the occupancy permit was issued. Furthermore, the board of review did not submit a copy of the subject's property record card with any assessment calculations to demonstrate to this Board how the prorated assessment was calculated. The board of review did attempt to buttress its contention of the completion of the subject dwelling with a copy of a printout from the Stenbridge Builders, Inc. website indicating the subject property was "Ready for Immediate Occupancy." However, the printout was dated March 23, 2007, which tends to support Stenbridge's testimony with respect to the completion of the subject dwelling. Based on this record, the Board finds that the testimony of Stenbridge was more credible in establishing that the subject dwelling was not completed until early in 2007. Therefore, the

⁴ Section 10-30 of the Property Tax Code gives a preferential assessment for acreage that is in transition from vacant land to a residential, industrial or commercial use. (35 ILCS 200/10-30).

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Board finds the subject dwelling should not have been assessed in 2006 and the improvement assessment should be reduced to \$0.

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.

Ronald R. Cuit

Chairman

K. L. Fern

Member

Frank A. Huff

Member

Mario Morris

Member

Shawn R. Lerbis

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 3, 2010

Allen Castrovillari

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.