



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

APPELLANT: Stembridge Builders
DOCKET NO.: 06-00376.001-R-1
PARCEL NO.: 07-01-12-204-045-0000

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: \$81,830
IMPR: \$0
TOTAL: \$81,830**

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 with approximately 4,076 square feet of living area. The subject has a full basement and a three car attached garage. Construction of the home began in 2006. The property is lot 38 in the Kinloch Subdivision with an address of 3411 Keller Lane, 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 the improvement, Stenbridge testified that he believed construction on this dwelling began in the March 2006. He further testified the dwelling was not completed until the end of 2006 or early 2007. To corroborate this testimony he submitted a copy of a page of a ledger dealing with lumber delivery, an invoice from Kolar Heating & Cooling, Inc. dated October 26, 2006 for partial HVAC, and an invoice from Trinac Plumbing dated November 3, 2006 for completion of plumbing.

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. Stembridge submitted a list of sales of 40 vacant lots that sold in the Kinloch Subdivision during 2005 and 2006. The appellant indicated the closing dates during 2005 occurred from January 2005 to December 2005 for prices ranging from \$225,000 to \$280,000. He indicated the average sales price in 2005 was \$251,000. The appellant indicated the closing dates during 2006 occurred from May 2006 to August 2006 for prices ranging from \$222,000 to \$271,000. He indicated the average sales price in 2006 was \$248,929.

The appellant further submitted printouts of Will County Property Record Cards from the Will County Supervisor of Assessments website containing 2006 assessment information for various lots in the Kinloch subdivision. These printouts disclosed that 56 parcels had land assessments of \$102,221; 18 parcels had land assessments of \$22,109; 18 parcels including the subject had land assessments of \$96,226; and one parcel had land assessment of \$77,395. He indicated that none of these parcels was owned by the original developer.

The appellant also provided a list of six lots that it purchased from Oliver-Hoffman Corporation in March 2003. The appellant indicate the lots had purchase prices ranging from \$216,026 to

\$236,025. The appellant submitted a copy of the closing statement for the subject property, dated Macy 1, 2003, reflecting a purchase price of \$216,000.

In the written evidence the appellant also made reference to what the assessor allegedly used to justify the land assessment.

Based on this evidence the appellant requested the subject's land assessment be reduced to \$79,236.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$151,756 was disclosed. The subject has a land assessment of \$96,226 and an improvement assessment of \$55,530.¹

The documentation submitted by the board of review included a written statement prepared by Kelli Lord, Wheatland Township Assessor, and a photograph of the subject dwelling. The board of also submitted a copy of the subject's property record card which had a statement "06 Part 8/31". In her narrative the assessor indicted that upon field inspection the home was observed to be completed and the improvement was added to the tax rolls at that time.

The township assessor was called as a witness and testified the subject property had an improvement assessment of \$55,530 that represented completion from August 31 to December 31. She further agreed this was based on a field inspection by Brian Dixon and she had not personally inspected the dwelling. She further confirmed that in developing prorated assessments her office relies on personal inspections as opposed to occupancy permits.

During the consolidated hearing Lord had previously explained that the notation on the front of the card reading "06 Part 8/31" meant the home was 100% complete as of 8-31. As in this appeal the witness had previously testified that field inspector Brian Dixon made the determination the building was complete.

Based on this evidence the board of review requested confirmation of the subject's assessment.

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:

¹ 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.

- 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.

Stembridge was called as a rebuttal witness and testified the subject dwelling was approximately 50% complete as of August 31, 2006 based on his inspection. He testified that he is hands on from the dirt with building of the homes.

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 submitted evidence indicating 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 a list submitted by the appellant of 40 sales of vacant lots that sold in the Kinloch Subdivision during 2005 and 2006. The appellant indicated the closing dates during 2005 occurred from January 2005 to December 2005 for prices ranging from \$225,000 to \$280,000. He indicated the average sales price in 2005 was \$251,000. The median sales price for the lots in 2005 was \$245,500. The appellant indicated the closing dates during 2006 occurred from May 2006 to August 2006 for prices ranging from \$222,000 to \$271,000. He indicated the average sales price in 2006 was \$248,929. The median sales price for the lots in 2006 was \$245,500. The subject's land assessment of \$96,226 reflects a market value of \$288,880 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 various lots in the subdivision in 2005 and 2006.

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. Stembridge testified that he believed construction on this dwelling began in the March 2006 and was not completed until late

2006 or early 2007. Lord 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 the assessor's office who was not present at the hearing to be cross-examined. There was no evidence or testimony from Lord that she personally 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 finds the board of review's estimate of completion was rebutted by the testimony of Stenbridge as well as a copy of an invoice from Kolar Heating & Cooling, Inc. dated October 26, 2006 for partial HVAC and an invoice from Trinac Plumbing dated November 3, 2006 for completion of plumbing. 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 late 2006 or early in 2007. Based on this record and without a definite date as to completion and no evidence that an occupancy permit was issued in 2006, the 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.