

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Ayoub Zarkhah  
DOCKET NO.: 07-03343.001-R-2  
PARCEL NO.: 09-05-207-008

The parties of record before the Property Tax Appeal Board are Ayoub Zarkhah, the appellant, by attorney George Michael Keane, Jr. of Keane and Keane, Chicago, Illinois; and the DuPage County Board of Review.

The subject property consists of a two-story brick and frame single family dwelling that contains 3,990 square feet of living area. Features of the home include a full unfinished basement, central air conditioning, three fireplaces and a three car attached garage. Construction of the dwelling was completed in 2007. The property is located in Downers Grove, Downers Grove Township, DuPage County.

The appellant's appeal is based on a contention of law. Appellant's counsel argued at the hearing that the appellant was not contesting the values used in the assessment, but was contesting the way the pro-rata assessment was calculated using section 9-180 of the Property Tax Code (hereinafter "Code") and alternatively argued the subject was entitled to a model home exemption pursuant to section 10-25 of the Code. The appellant's counsel submitted a brief in support of the legal argument.

In the brief submitted by the appellant's counsel he explained the property was purchased in 2005 for redevelopment. The older residential home, existing at the time of purchase, was demolished and construction of a new single family residence was begun. The property was assessed as vacant land in 2006. In 2007 the property was assessed at \$239,240.

The appellant's attorney argued that Section 9-180 of the Code governs the assessment of new improvements added after January 1 of an assessment year. He argued that the Downers Grove Township Assessor's office took the position that this section did not apply in DuPage County. He argued the methodology used by the DuPage County assessing officials is an antiquated procedure long

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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 DuPage County Board of Review is warranted. The correct assessed valuation of the property is:

PRORATE \$	45,000
LAND: \$	41,660
IMPR.: \$	152,580
TOTAL: \$	239,240

Subject only to the State multiplier as applicable.

ago changed by the Code. He argued that there is no provision for a partial improvement assessment prior to the improvement being fit for occupancy or intended or customary use. Counsel argued Section 9-180 sets up the procedure for a pro-rata assessment of new improvements from the date the new improvement is fit for occupancy through December 31<sup>st</sup>. He also argued that the best evidence of when a property is fit for occupancy is when the occupancy permit is issued. In this case the Village of Downers Grove issued the Certificate of Occupancy on May 18, 2007, a copy of the certificate was submitted by the appellant. The appellant's counsel stated that the appellant was not contesting the full market value of the improvements as determined by the township assessor, but asserted that applying the correct proration factor of 62.47% would result in a 2007 improvement assessment that would not exceed \$123,428. The appellant indicated that adding the land assessment of \$41,600 would result in a total assessment of \$165,028.

Alternatively, the appellant's counsel argued that the subject has not been occupied during 2007 and should receive the assessment as a "model home". Counsel argued that during construction and for all of 2007 the subject property was being offered for sale. He contends that section 10-25 of the Code, providing for a reduced assessment for a "model home", was applicable and the assessment of the subject should remain the same as it was prior to the construction of the dwelling. Counsel stated that in 2007 the board of review was requested to grant the assessment allowed under Section 10-25 of the Code, but the assessment was not accordingly reduced. In 2008 the appellant actually filed an Application for Valuation Under Section 10-25 of the Property Tax Code with the Supervisor of Assessments of DuPage County, a copy of the application was submitted. For 2008 the appellant received a reduced assessment of \$41,660 for the land only based on the provisions of Section 10-25 of the Code.

As part of the appellant's evidence a copy of the listing of the subject for a price of \$998,000 was submitted as well as copies of Sections 9-180 and 10-25 of the Property Tax Code.

During the hearing the appellant's counsel stated that the subject property was not occupied until November 2008. He further argued at the hearing that there was no habitable building on the subject property in 2006 or as of January 1, 2007.

At the hearing the appellant testified the dwelling was completed in 2007 and was almost 80% complete as of January 1, 2007. With respect to the assessment allowed under Section 10-25 of the Code, Mr. Keane acknowledged that for 2007 the preferential assessment was requested at the hearing before of the board of

review. He argued the chief county assessment officer<sup>1</sup> (CCAO) is the secretary or clerk of the board of review and the request would put the CCAO on notice within the time that the model home assessment would have to be requested. He stated that there was not any verified application for the model home assessment filed directly to the CCAO for 2007. The attorney stated that the specific form was filed for 2008 with the Supervisor of Assessments to apply for the model home assessment, which the appellant ultimately received.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$239,240 was disclosed. The subject had a prorated assessment of \$45,000, a land assessment of \$41,660 and an improvement assessment of \$152,580.

Under questioning, board of review member Charles Van Slyke, Jr. stated that in order to receive the reduced assessment allowed by Section 10-25 of the Code an application has to be made to the chief county assessment officer. He stated the board of review does not accept such applications for a model home exemption.

The board of review called Chris White, Deputy Assessor of Downers Grove Township, as a witness. She testified it was the uniform practice in the township to value what is standing as of January 1 of that year as either a partial or complete house for that year. Once completed the improvement assessment is then prorated for the remainder of the year. The witness explained that the field department goes out periodically to check on new homes. She testified that the subject was assessed as being 75% complete as of January 1, 2007, and was assessed at a partial assessment of 75%. She testified that once the property is complete then the property's assessment is prorated. The prorated assessment is calculated by deducting the partial assessment from the completed assessment and prorating the residual for the remainder of the year from the date of completion.

Under cross-examination Ms. White acknowledge that the partial assessment as of January 1 would be for a house that is not yet fit for occupancy. She explained that the assessment as of January 1 was a partial assessment and the prorated assessment on the completed home was calculated from February 5, 2007 to the end of the year. She testified the prorated portion of the assessment was \$45,000. Ms. White testified that Section 9-180 of the Code allows for proration from when the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended or customary use. According to Ms. White the house was complete for intended customary use on February 5<sup>th</sup>. Ms. White did not know the

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<sup>1</sup> Section 1-15 of the Code (35 ILCS 200/1-15) defines chief county assessment officer. Section 1-15 states, "Chief county assessment officer. The supervisor of assessments or the county assessor in each county."

statutory authority for allowing the partial improvement assessment as of January 1, 2007, on the incomplete dwelling.

Under questioning by the hearing officer, Ms. White testified the subject dwelling was considered 75% complete as of January 1, 2007. In calculating the partial assessment, Ms. White testified that they used the full replacement cost new (RCN) from the office's book value, which was \$35,618 for the house. Multiplying that by 75% resulted in a value of \$26,714 for the house. The partial assessment for the garage was calculated by multiplying the RCN for the garage of \$1,560 by 75% to arrive at a number of \$1,170. Adding the components resulted in the sum of \$27,884. This sum is then multiplied by a composite of 5.24, which resulted in the partial assessed value. To arrive at the prorated assessment, they add the \$35,618 and the \$1,560 to arrive at \$37,178. This number is then multiplied by 5.24 to arrive at the full assessment. The witness then testified that the partial assessment is then deducted from the full assessment to arrive at a residual amount. The residual is then multiplied by the proportion of the remaining year to arrive at the prorated assessment. She indicated that the proration factor applied was .885.

The next witness called on behalf of the board of review was Bob Cipollo. Mr. Cipollo testified that he was the field inspector. The witness testified that he saw the subject was complete on February 5, 2007. He testified that he pulled up to the house on February 5, 2007 and looked at the exterior of the home. He testified that he met the builder. He testified that he did not necessarily confirm with the builder that the home was 100% complete. He also could not recall if he walked in the interior of the home on that date. The witness further stated that his office does not go by occupancy permits but he did not dispute that the occupancy permit was not issued until May.

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 does not support a reduction in the assessment of the subject property.

The appellant argued in part that the DuPage County assessment officials misapplied the Code, namely section 9-180, as it relates to the assessment of a dwelling that was not complete as of January 1, 2007. First, the Board finds the parties agreed that the subject was not complete and habitable as of January 1, 2007. The appellant testified the dwelling was almost 80% complete as of January 1, 2007 and the board of review witnesses testified that the dwelling was assessed as being 75% complete as of January 1, 2007. The appellant contends that because the home was incomplete as of January 1, 2007, there was no statutory authority to assess the improvements as of that date.

The board of review witness testified the subject then received a partial assessment as of January 1, 2007, based on being 75%

complete, and a prorated assessment from February 5, 2007 to December 31, 2007. The proration was based on the inspection of the property by Bob Cipollo, who determined the home was 100% complete on February 5, 2007. The appellant argued that the prorated assessment allowed by Section 9-180 of the Code should be calculated from the date the occupancy permit was issued, which was May 18, 2007.

Initially, the Board finds the board of review was correct in assessing what was present on the subject parcel as of January 1, 2007. Section 16-160 of the Code provides in part that:

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, and all improvements which were destroyed or removed. . . .

35 ILCS 200/9-160. Furthermore, Section 9-180 of the 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. . . .

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 (2<sup>nd</sup> Dist. 1998) construed the workings of Sections 9-160 and 9-180 of the Code. The court held that:

Section 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. We note parenthetically that the legislature has amended section 9-180 to provide that an improvement may be fully assessed when it is either substantially completed or initially occupied.

Long Grove Manor, 301 Ill.App.3d at 656-657. The court in Brazas v. Property Tax Appeal Board, 339 Ill.App.3d 978, 791 N.E.2d 614, 274 Ill.Dec.522 (2<sup>nd</sup> Dist. 2003) clarified its holding in Long Grove Manor. The court explained that:

[W]e clarify 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. Under the facts of his appeal the assessor clearly valued the subject as of January 1, 2007 based on the improvements being 75%. The Board finds this is authorized pursuant to section 9-160 of the Code.

The next issue is whether the prorated assessment from February 5, 2007 to December 31, 2007, is proper. As previously noted section 9-180 of the Code allows an assessor to prorate an assessment "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 record contains testimony from field inspector Bob Cipollo that the subject property was 100% complete on February 5, 2007. This testimony was not refuted or rebutted by any testimony from the appellant. According to the deputy assessor the subject's prorated assessment was calculated from that date, which the Board finds is allowed under the provisions of Section 9-180 of the Code.

The Board finds the appellant did not otherwise challenge the value conclusions or the assessment calculations developed by the assessment officials. In conclusion, the Property Tax Appeal Board finds the assessment of the subject property was proper under the provisions of Sections 9-160 and 9-180 of the Code.

The appellant also argued that the subject property should have received the model home assessment allowed by Section 10-25 of the Code. Section 10-25 of the Code provides in part that:

Model homes, townhomes, and condominium units. If the construction of a single family dwelling is completed after December 29, 1986 or the construction of a single family townhome or condominium unit is completed after the effective date of this amendatory Act of 1994, and that dwelling, townhome, or condominium unit is not occupied as a dwelling but is used as a display or demonstration model home, townhome or condominium unit for prospective buyers of the dwelling or of similar homes, townhomes, or condominium units to be built on other property, the assessed value of the property on which the dwelling, townhome, or condominium was constructed shall be the same as the assessed value of the property prior to construction and prior to any change in the zoning classification of the property prior to construction of the dwelling, townhome or condominium unit. . . .

The person liable for taxes on property eligible for assessment as provided in this Section shall file a verified application with the chief county assessment officer on or before (i) April 30 of each assessment year for which that assessment is desired in counties with a population of 3,000,000 or more and (ii) December 31 of each assessment year for which that assessment is desired in all other counties. Failure to make a timely filing in any assessment year constitutes a waiver of the right to benefit for that assessment year.

35 ILCS 200/10-25. The Board finds Section 10-25 of the Code specifically requires the person liable for the taxes to file a verified application with the chief county assessment officer of DuPage County on or before December 31 of the assessment year if a model home assessment is desired. The evidences was clear in this appeal that the appellant did not file a verified application with the chief county assessment officer of DuPage County on or before December 31, 2007, requesting the model home assessment for the subject property for 2007. The failure of the appellant to make the timely application with the DuPage County chief county assessment officer constituted a waiver of the right to obtain the model home assessment for the subject property. For these reasons the Board finds the subject property does not qualify for the model home assessment allowed by Section 10-25 of the Code for the 2007 assessment year.

In conclusion, based on this record, the Board finds a reduction in the subject's assessment is not warranted.

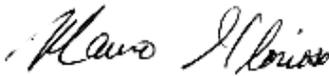
This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

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Chairman



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Member

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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: August 24, 2009



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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 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.