



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

APPELLANT: Irving Fishman  
DOCKET NO.: 07-25269.001-R-1  
PARCEL NO.: 10-34-311-075-0000

The parties of record before the Property Tax Appeal Board are Irving Fishman, the appellant(s), by attorney Allen A. Lefkovitz, of Allen A. Lefkovitz & Assoc. P.C. in Chicago; and the Cook 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 Cook County Board of Review is warranted. The correct assessed valuation of the property is:

**LAND:** \$14,731  
**IMPR.:** \$44,505  
**TOTAL:** \$59,236

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property has 10,230 square feet of land, which is improved with a 51 year old, one-story, masonry, single-family dwelling. The dwelling contains two baths, a partial basement with a formal recreation room, air conditioning, three fireplaces, and a two-car garage. The parties' evidence differed regarding the subject's improvement size. The appellant, via counsel, argued that the fair market value of the subject was not accurately reflected in its assessed value. The appellant also argued a contention of law as a basis for a reduction in the subject's assessment.

In support of the market value argument, the appellant submitted two appraisals. The first appraisal was undertaken by Todd R. Swanson of Preferred Appraisal, Inc. (the "2007 Appraisal"). The report states that Swanson is licensed as a State of Illinois certified residential real estate appraiser. The appraiser stated that the subject has an estimated market value of \$590,000 as of January 1, 2007. The 2007 Appraisal utilized the cost approach to value and the sales comparison approach to value to estimate the market value for the subject property. The 2007 Appraisal states that Swanson personally inspected the property, and that the subject's highest and best use as improved is its present use.

Under the cost approach to value, the appraiser used the extraction method to estimate the subject's land value at \$450,000. The improvement's replacement cost new was estimated to be \$229,240 using buildingcost.net and the appraiser's own in-house files. The appraiser deducted 39.00% from the replacement cost new to account for depreciation of the improvement. The appraiser also found that there were \$5,000 worth of "as-is" site improvements upon the subject. The appraiser then added the estimated land value, the value of the depreciated replacement cost, and the value of the other site improvements to arrive at a value under the cost approach to value of \$594,800, rounded.

Under the sales comparison approach, the appraiser analyzed the sales of three comparables described as one-story, masonry, single-family dwellings that range in age from 51 to 55 years old, and in size from 1,800 to 2,350 square feet of living area. These comparables have from two to three baths, and either one or two fireplaces. Additionally, all of the comparables have air conditioning, and a two-car garage. The sales comparables sold from April 2006 to December 2006 for prices ranging from \$525,000 to \$555,000, or from \$234.04 to \$307.14 per square foot of living area, including land. The appraiser adjusted each of the comparables for pertinent factors. Based on the similarities and differences of the comparables when compared to the subject, the appraiser estimated a value for the subject under the sales comparison approach of \$590,000.

The income approach to value was not developed for the 2007 Appraisal. The appraiser stated that the sales comparison approach to value is considered the most reliable, and therefore, is given the most weight when appraising a single-family dwelling. Thus, the appraiser concluded that the subject's appraised value was \$590,000 as of January 1, 2007.

The 2007 Appraisal also included a drawing of the improvement with measurements. The 2007 Appraisal states that the subject's improvement size is 2,537 square feet of living area.

The second appraisal was also undertaken by Todd R. Swanson of Preferred Appraisal, Inc. (the "2008 Appraisal"). The report states that Swanson is licensed as a State of Illinois certified residential real estate appraiser. The appraiser stated that the subject has an estimated market value of \$560,000 as of January 1, 2008. The 2008 Appraisal report utilized the cost approach to value and the sales comparison approach to value to estimate the market value for the subject property. The 2008 Appraisal states that Swanson personally inspected the property, and that the subject's highest and best use as improved is its present use.

Under the cost approach to value, the appraiser used the extraction method to estimate the subject's land value at \$420,000. The improvement's replacement cost new was estimated to be \$229,240 using buildingcost.net and the appraiser's own

in-house files. The appraiser deducted 39.00% from the replacement cost new to account for depreciation of the improvement. The appraiser also found that there were \$5,000 worth of "as-is" site improvements upon the subject. The appraiser then added the estimated land value, the value of the depreciated replacement cost, and the value of the other site improvements to arrive at a value under the cost approach to value of \$564,800, rounded.

Under the sales comparison approach, the appraiser analyzed the sales of three comparables described as one-story, masonry, single-family dwellings that range in age from 51 to 57 years old, and in size from 1,403 to 2,641 square feet of living area. These comparables have either one and one-half or two and one-half baths, and from one to two fireplaces. Additionally, all of the comparables have air conditioning, and a two-car garage. The sales comparables sold from September 2007 to February 2008 for prices ranging from \$430,000 to \$630,000, or from \$227.38 to \$306.49 per square foot of living area, including land. The appraiser adjusted each of the comparables for pertinent factors. Based on the similarities and differences of the comparables when compared to the subject, the appraiser estimated a value for the subject under the sales comparison approach of \$560,000.

The income approach to value was not developed for the 2008 Appraisal. The appraiser stated that the sales comparison approach to value is considered the most reliable, and therefore, is given the most weight when appraising a single-family dwelling. Thus, the appraiser concluded that the subject's appraised value was \$560,000 as of January 1, 2008.

The 2008 Appraisal also included a drawing of the improvement with measurements. The 2008 Appraisal states that the subject's improvement size is 2,537 square feet of living area.

In support of appellant's legal argument, the appellant's argument, in its entirety, is as follows:

The 2007 triennial real estate assessment was increased from \$57,104 to \$67,660. This is a 15.6 percent increase in the assessment. The assessor's increase was based on sales that occurred prior to the collapse of the real estate market. Since the collapse of the real estate market, prices have fallen to 2005 levels. The 2005 values are no more than ten (10%) higher than the 2004 values.

Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$67,660 was disclosed. The subject's final assessment reflects a fair market value of \$673,904 when the 2007 Illinois Department of Revenue

three-year median level of assessment for Class 2 properties of 10.04% is applied. In support of the subject's assessment, the board of review presented descriptions and assessment information on four suggested comparables described as one-story, masonry, single-family dwellings that range in age from 42 to 53 years old, and in size from 2,273 to 2,649 square feet of living area. The dwellings have either a full unfinished basement, a full basement with a formal recreation room, a partial unfinished basement, or a partial basement with a formal recreation room. Additionally, all of the comparables have two and one-half baths, air conditioning, a two-car garage, and a fireplace, ranging from one to three fireplaces. The comparables have improvement assessments ranging from \$21.55 to \$24.06 per square foot of living area.

The board of review also submitted a list of sales of properties located within the subject's neighborhood. This list included the PIN, deed number, the date of the sale, and the sale price for twenty properties. No further information was provided regarding these properties. Furthermore, the board of review's evidence states that the subject's improvement size is 2,478 per square foot of building area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant re-affirmed the evidence previously submitted.

At hearing, the appellant, represented by Allen A. Lefkovitz and Chris D. Sarris, re-affirmed the evidence previously submitted. Mr. Sarris also stated that the subject's 2009 assessment was \$59,540, but was unable to provide the Property Tax Appeal Board (the "Board") with any evidence of that assessment.

The Cook County Board of Review Analyst, Paul Lee, then testified that for tax year 2007, the assessment level for class 2 properties, such as the subject, was 16% of the property's fair market value. Mr. Lee also testified that the appellant had not checked the "Recent Appraisal" box in Section 2e of the Property Tax Appeal Board Residential Appeal Form. Mr. Lee argued that failure to check the box precludes the appellant from raising a market value argument based on a recent appraisal.

On cross-examination, Mr. Lee testified that the four comparables submitted by the board of review were submitted in response to an equity argument. Mr. Lee also testified that, based on an assessment level of 16% and a total assessment of \$67,660, the subject's market value would be \$422,875.

After reviewing the record, hearing the testimony, and considering the evidence, the Board finds that it has jurisdiction over the parties and the subject matter of this appeal. When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 339 Ill. App. 3d 529, 545 (1st Dist. 2002); National City Bank of

Michigan/Illinois v. Prop. Tax Appeal Bd., 331 Ill. App. 3d 1038, 1042 (3d Dist. 2002) (citing Winnebago Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 313 Ill. App. 3d 179 (2d Dist. 2000)); 86 Ill. Admin. Code § 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Calumet Transfer, LLC v. Prop. Tax Appeal Bd., 401 Ill. App. 3d 652, 655 (1st Dist. 2010); 86 Ill. Admin. Code § 1910.65(c). Having considered the evidence presented, the Board concludes that the evidence indicates a reduction is warranted.

Initially, the Board finds that the 2007 Appraisal was the best evidence of the subject's improvement size. The appraisal indicates the subject was personally inspected and measured, and a diagram of the subject was included. The board of review was unable to present any evidence to support its improvement size for the subject. Therefore, the Board finds that the subject's improvement size for tax year 2007 is 2,537 square feet of living area.

In regards to appellant's legal argument, the Board finds this argument unpersuasive. The appellant did not provide any evidence of the claims made in the brief. Therefore, no reduction can be granted based on appellant's legal argument.

Next, the board of review argued that since the appellant did not check the "Recent Appraisal" box in Section 2e of the Board's Residential Appeal form, the market value argument is not properly before the Board. The Board does not find this argument persuasive. At hearing, the board of review cited Section 1910.50(a) of Title 86 of the Illinois Administrative Code, which states in relevant part: "Each appeal shall be limited to the grounds listed in the petition filed with the Board." 86 Ill. Admin. Code § 1910.50(a); see also 35 ILCS 200/16-180 ("Each appeal shall be limited to the grounds listed in the petition filed with the Property Tax Appeal Board.").

Both the statute and the administrative code use the phrase "in the petition," but neither defines what constitutes the "petition." In other words, does the "petition" include just the Board's Residential Appeal form, or does it also include any legal brief submitted by the appellant, or any evidence submitted by the appellant?

The cardinal principle of statutory interpretation is that the court must effectuate legislative intent. The best indicator of legislative intent is the statutory language. The court should consider the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it. A reviewing court's inquiry, however, must always begin with the language of the statute itself, which is the surest and most reliable indicator of the legislature's intent. When the language of a statute is clear, it

must be applied as written without resort to further aids or tools of interpretation. If statutory language is plain, the court cannot read into the statute exceptions, limitations, or conditions that the legislature did not express. Only when the meaning of the statute cannot be ascertained from the language itself may a court look beyond the language and resort to aids for construction.

Bd. of Educ. of Marquardt Sch. Dist. No. 15 v. Reg'l Bd. of Sch. Trustees of Du Page Cnty., 2012 IL App (2d) 110,360 (2d Dist. 2012) (citations omitted).

The word "petition" as it is used within the context of Section 16-180 is ambiguous, and the Board must construe the term using the principals of statutory construction described in Marquardt. When looking to the legislative history of Section 16-180, the meaning of the word "petition" as it is used in that section becomes clear.

Section 16-180 was amended by Public Act 93-248, which added the sentence, "Each appeal shall be limited to the grounds listed in the petition filed with the Property Tax Appeal Board." H.B. 2567, 93rd Gen. Assemb., Reg. Sess. (Ill. 2003) (enacted). During debate in the House of Representatives, the chairman of the House Revenue Committee at the time, Representative Molaro, stood in support of the bill, and stated as follows:

So, all this Bill says, when you go to PTAB and you want your taxes reduced and you say these are the seven reasons, then when you go to PTAB to argue it you stick with those seven reasons. You shouldn't be able to surprise the assessor and surprise the other taxpayers. This isn't that type of thing. We're not looking for surprises. It should all be laid out. We should see what it is. And if you lay it out and you weren't fairly assessed you should get the reduction. That's the American way. And I urge an "aye" vote.

93rd Gen. Assemb., 35th Legis. Day, H. of Reps., Floor Debate on HB 2567 (statements by Representative Molaro). Representative Molaro was also a chief co-sponsor of HB 2567.

According to the legislative debate regarding House Bill 2567, it seems clear that the intention of the added sentence was to prevent the adversarial party from being surprised with a new or different argument made while at the Board. However, no one stated during debate that a particular box must be checked on a particular form for an argument to be properly before the Board.

Based on the foregoing discussion, the Board finds that the legislative intent in adding the sentence to Section 16-180 via Public Act 93-248 was to avoid a surprise argument. Thus, it appears the word "petition" as used in Section 16-180 may include everything submitted by the appellant, since everything would be

available to the board of review, and it could prepare a proper defense based on the appeal form, brief, evidence, or any other documentation submitted by the appellant. With the ability to prepare a proper defense, the board of review can hardly say it was surprised at hearing by the market value argument made by the appellant.

The appellant raised the market value argument in the brief, and also through the submission of the 2007 Appraisal and 2008 Appraisal. Furthermore, when taken in context with the entirety of the documentation and evidence submitted by the appellant, it is clear that the appellant intended to raise a market value argument based on a recent appraisal of the subject. See, e.g., People v. Solan, 2012 IL App (2d) 110944 (2d Dist. 2012) (finding that, although the criminal complaint against the defendant stated that the charge against him was leaving the scene of an accident, when looking at the entire complaint, it is clear that this was a scrivener's error on the part of the arresting officer, and that the actual charge should have read driving while under the influence of alcohol). Moreover, each appeal before the Board "shall be based upon equity and the weight of the evidence." Bd. of Educ. of Ridgeland Sch. Dist. No. 122, Cook Cnty. v. Prop. Tax Appeal Bd., 2012 IL App. (2d) 110,461, (1st Dist. 2012); 35 ILCS 200/16-185. The principle of equity would seem to preclude the board of review from succeeding on this point. The dismissal of almost all of the appellant's evidence simply because a box on a form was not checked does not appear equitable. Therefore, the Board finds that the market value argument is properly before the Board even though the appellant did not check the "Recent Appraisal" box in Section 2e of the Board's Residential Appeal form.

In determining the fair market value of the subject property, the Board finds the best evidence to be the 2007 Appraisal. The appellant's appraiser utilized the cost approach to value and the sales comparison approach to value in determining the subject's market value. The Board finds this appraisal to be persuasive because the appraiser has experience in appraising, personally inspected the subject property and reviewed the property's history, and used similar properties in the sales comparison approach while providing adjustments that were necessary. The Board gives little weight to the board of review's comparables as the information provided was unadjusted raw sales data.

Therefore, the Board finds the subject had a market value of \$590,000 for tax year 2007. Since the market value of this parcel has been established, the 2007 Illinois Department of Revenue three-year median level of assessment for Class 2 property of 10.04% will apply. In applying this level of assessment to the subject, the total assessed value is \$59,236 while the subject's current total assessed value is above this amount. Therefore, the Board finds that a reduction is 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.

*Donald R. Cuit*

Chairman

*K. L. Fern*

Member

*Frank A. Huff*

Member

*Mario Morris*

Member

*J. R.*

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: October 19, 2012

*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.