FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Kamal Kahn
DOCKET NO.: 07-29108.001-C-1
PARCEL NO.: 03-03-400-013-0000

The parties of record before the Property Tax Appeal Board are Kamal Kahn, the appellant(s), by attorney Edward Larkin, of Larkin & Larkin in Park Ridge; and the Cook County Board of Review.

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

LAND:	$ 30,685
IMPR.:	$ 123,213
TOTAL:	$ 153,898

Subject only to the State multiplier as applicable.

ANALYSIS

The subject consists of 9,500 square feet of land, which is improved with a 46 year old, one-story commercial building with 3,000 square feet of building area. The subject's total assessment is $153,898, which equates to a fair market value of $404,995 when the 38% assessment level for class 5-17 property under the 2007 Cook County Classification of Real Property Ordinance is applied. The appellant, via counsel, argued a contention of law as the basis of this appeal.

The appellant submitted evidence that he purchased the subject in August 2007 for $405,000. This evidence included a settlement statement and a Real Estate Purchase Contract. The Contract states that the appellant purchased the subject in "as-is" condition. At the time of the purchase, the subject was vacant, and was not in compliance with the municipal building regulations imposed by the Village of Wheeling. Thus, the Village of Wheeling would not allow the subject to be occupied until the subject was brought into compliance with the municipal building regulations. In December 2007, a construction permit was issued by the Village of Wheeling to the appellant for remodeling the interior of the subject. In May 2008, the Village of Wheeling issued an occupancy permit for the subject.

The contention of law made by the appellant is that the subject's assessment should be reduced based on its vacancy for the previous three years, including the entirety of tax year 2007. The appellant cites 35 ILCS 200/9-160 and 35 ILCS 200/9-180 in support of this argument.

In relevant part, 35 ILCS 200/9-160 states:

> 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.

35 ILCS 200/9-160.

In its entirety, 35 ILCS 200/9-180 states:

> 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.
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> When, during the previous calendar year, any buildings, structures or other improvements on the property were destroyed and rendered uninhabitable or otherwise unfit for occupancy or for customary use by accidental means (excluding destruction resulting from the willful misconduct of the owner of such property), the owner of the property on January 1 shall be entitled, on a proportionate basis, to a diminution of assessed valuation for such period during which the improvements were uninhabitable or unfit for occupancy or for customary use. The owner of property entitled to a

> diminution of assessed valuation shall, on a form prescribed by the assessor, within 90 days after the destruction of any improvements or, in counties with less than 3,000,000 inhabitants within 90 days after the township or multi-township assessor has mailed the application form as required by Section 9-190, file with the assessor for the decrease of assessed valuation. Upon failure so to do within the 90 day period, no diminution of assessed valuation shall be attributable to the property.

35 ILCS 200/9-180. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The Cook County Board of Review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $153,898 was disclosed. In support of the subject's assessment, the board of review submitted a property record card for the subject, and raw sales data for five commercial retail properties located within five miles of the subject. The sales data was collected from the CoStar Comps service, and the CoStar Comps sheets state that the research was licensed to the assessor's office. However, the board of review included a memorandum which states that the submission of these comparables is not intended to be an appraisal or an estimate of value, and should not be construed as such. The memorandum further stated that the information provided was collected from various sources, and was assumed to be factual, accurate, and reliable; but that the information had not been verified, and that the board of review did not warrant its accuracy.

The suggested comparables contained commercial retail buildings that range in age from 27 to 38 years old, and in size from 1,700 to 4,400 square feet of building area. However, the age for Comparable #2 was not disclosed. The properties sold from October 2002 to September 2008 in an unadjusted range from $400,000 to $975,000, or from $111.36 to $246.21 per square foot of building area, including land. The board of review also submitted a warranty deed and a PTAX-203 Form, both of which showed that the subject sold in August 2007 for $405,000. The PTAX-203 Form states that the subject was advertised for sale on the open market, that no personal property was included in the sale, and that the parties to the transaction were not related. The property record card submitted by the board of review states that the subject received an occupancy factor of 84.3% for tax year 2007. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant argued that the board of review's evidence should be given no weight because it did not address the appellant's vacancy argument.

After reviewing the record and considering the evidence, the Property Tax Appeal Board (the "Board") finds that it has

jurisdiction over the parties and the subject matter of this appeal.

The appellant argues that, based on 35 ILCS 200/9-160 and 35 ILCS 200/9-180, the subject's assessment should be reduced to reflect its vacancy during the entirety of tax year 2007. Applying Section 9-160 of the Property Tax Code to the facts of this case requires the Village of Wheeling to issue an occupancy permit when the subject is fit for occupancy, and to file the occupancy permit with the Cook County Assessor prior to December 31, 2007. The Village of Wheeling did issue an occupancy permit, but not until the subsequent tax year. Therefore, this statute is not applicable.

Section 9-180 of the Property Tax Code contains two paragraphs, which allow a property's assessment to be adjusted in two different scenarios. The first paragraph allows the Cook County Assessor to assess a property at full value 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." 35 ILCS 200/9-180 (emphasis added). This first paragraph is inapplicable to the instant case for two reasons. First, the statute only applies to "new or added" improvements. There is nothing in the record to indicate that "new or added" improvements were constructed on the subject during tax year 2007. Moreover, the Village of Wheeling did not issue a construction permit until December 27, 2007. Thus, even assuming that the subject did, at some point, have a "new or added" improvement constructed on the parcel, the Board is not persuaded that such an improvement was built and fit for occupancy within one week (the time until the next lien date of January 1, 2008). Second, as discussed above, the occupancy permit was not issued until tax year 2008. Thus, the Assessor could not assess the subject at full value for any part of tax year 2007, as it was unfit for occupancy during the entirety of that year.

The second paragraph of 35 ILCS 200/9-180 allows a property owner to request a reduced assessment if the property is destroyed, rendered uninhabitable, or otherwise unfit for occupancy during the previous calendar year. The Board finds this statute applicable to the instant appeal because the subject was unfit for occupancy during the entirety of tax year 2007. Thus, the Board must determine what the subject's assessment should be. In doing so, the Board finds that the most instructive evidence as to the subject's 2007 assessment is the sale of the subject in August 2007. The Real Estate Contract states that the subject was purchased "as-is." Black's Law Dictionary defines the term "as-is" as "[i]n the existing condition without modification." Black's Law Dictionary (9th ed. 2009). Thus, the appellant purchased the subject inclusive of all structural defects and building characteristics that were not in compliance with the Village of Wheeling's building ordinances. Moreover, under the legal maxim *caveat emptor* (or "let the buyer beware"), the Board

deems that the appellant should have had full knowledge of any deficiencies in the subject prior to its purchase. By purchasing the subject "as-is," and being deemed to have full knowledge of any deficiencies in the subject prior to the purchase, the appellant's purchase price of $405,000 is the best evidence of the subject's market value at the time of the sale, inclusive of all deficiencies and municipal building code violations. It is plausible that, had the subject been in pristine condition in August 2007, the appellant may well have paid more for the subject. Thus, the Board finds that the "reduced assessment" of the subject that paragraph two of 35 ILCS 200/9-180 directs the Board to apply has already been built into the subject's purchase price of $405,000 in August 2007. Applying the 38% assessment level for class 5-17 property under the 2007 Cook County Classification of Real Property Ordinance to the subject's August 2007 purchase price of $405,000 results in a total assessment of $153,900. The subject's total assessment is currently $12.00 below this amount. Therefore, the Board finds that no reduction is warranted in the subject's assessment.

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: May 24, 2013

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.