



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

APPELLANT: Lucy Berian  
DOCKET NO.: 08-03553.001-R-2  
PARCEL NO.: 14-34-277-009

The parties of record before the Property Tax Appeal Board are Lucy Berian, the appellant; the McHenry County Board of Review; the CCSD #155, and CCSD #47, intervenors, by attorney Sara C. Arroyo of Dykema Gossett PLLC in Chicago.

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

**LAND:** \$31,419  
**IMPR.:** \$238,775  
**TOTAL:** \$270,194

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property consists of a two-story masonry single family dwelling built in 2005.<sup>1</sup> The subject is located in McHenry County, Illinois.

In 2007 the subject received a "Model Home" preferential assessment pursuant to Section 10-25 of the Property Tax Code (35 ILCS 200/10-25). In 2008 the "Model Home" preferential assessment was removed. The appellant, argued that the subject property remained a "Model Home" in 2008 and should be assessed accordingly.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$270,194 was disclosed. In support of the subject's improvement assessment, the board of review called Vick Pearson, Deputy Assessor Nunda Township, as a witness. Pearson testified that in 2008 an

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<sup>1</sup> The parties to the appeal failed to submit detailed information regarding a description of the property.

application for the "Model Home" preferential assessment was received. Pearson acknowledged that the subject received a "Model Home" preferential assessment in 2007, however, in 2008 the "Model Home" preferential assessment was removed because of occupancy. Pearson testified that the 2008 application was denied. In 2009, the subject was also denied the "Model Home" preferential assessment because of its prior occupancy in 2008. Pearson testified that the subject sold in 2009.

Pearson further testified that evidence of occupancy included a photograph of the subject property in 2006 which depicts a canoe on the rear patio, and based on field visits during 2008. The field notes were introduced into the record and depict that on November 28, 2007 the "Home appears to be occ., No model home signs, MV/KF." Pearson explained that there were no advertising signs in front of the subject and the subject appeared to be occupied based on a car in the driveway in the early morning hours on a Monday in 2008. Pearson testified that a call was made to Waste Management, a local waste hauler, who verified that service to the subject was opened by a person named Valerie Kapple in July 2008. Pearson stated that he saw a trash can in front of the subject during a drive-by inspection in 2008. In addition, Pearson testified that "WhitePages.com" listed Valerie Kapple as having phone service at the subject's address in 2008. Pearson stated that field personnel attempted to talk with the appellant on numerous occasions; however, they were never allowed on the property or allowed to inspect the subject in 2008.

In response, the appellant testified that Valerie Kapple lives in the same subdivision as the subject. The appellant testified that Kapple staged the subject property and did in fact call Waste Management for service; however, this was done for other reasons not related to the subject's status of whether or not it was occupied. The appellant testified that even though Kapple had phone service and trash service at the subject, and even though she assumed financial obligations related to such services, she never lived there. In support of this argument, the appellant submitted the 2008 and 2009 applications regarding the subject's "Model Home" preferential assessments.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds that a reduction in the subject's assessment is not warranted.

The Board finds the evidence in this record depicts the subject property was occupied in 2008. Section 10-25 of the Code, which governs the "Model Home" preferential assessment, states in relevant part:

This Section shall not be applicable if the dwelling, townhome, or condominium unit is occupied as a dwelling or the property on which the dwelling, townhome, or condominium unit is situated is sold or leased for use

other than as a display or demonstration model home, townhome or condominium unit.

35 ILCS 200/10-25.

The Board finds the best evidence in this record indicates the subject property was not advertised as a "Model Home" and that it was occupied in 2008. Based on the testimony of the Deputy Township Assessor, the subject enjoyed phone and trash service in 2008 and a car was seen in the driveway during the early morning hours. The appellant failed to sufficiently refute this evidence as being something other than an indication that someone was in fact occupying the subject as a residence. The appellant admitted that the advertising sign was removed sometime in 2008. The Board finds it problematic that Valerie Kapple, the person in question, did not appear at the hearing to offer direct testimony or be subject to cross-examination. The Board questions why a third party would assume financial obligations related to a property if she did not occupy said residence. Further, the 2008 "Model Home" application, dated May 22, 2007 depicts the subject began use as a model home on May 22, 2007; however, on the 2009 application, signed on May 22, 2008, the application depicts the subject began use as a model home on January 1, 2009. The Board finds this evidence, on a sworn affidavit, contradicts the appellant's testimony. Based on the evidence in this record and on the credibility of the witnesses herein, the Board finds the subject was occupied in 2008 and therefore the preferential assessment under Section 10-25 of the Code (35 ILCS 200/10-25) is inapplicable.

The appellant did not challenge the assessed value beyond application of Section 10-25 of the Code. Therefore, the Board finds no reduction in the subject's assessment 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.

*Ronald R. Cuit*

Chairman

*K. L. Fern*

Member

*Frank A. Huff*

Member

*Mario Morris*

Member

*Shawn P. 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: October 21, 2011

*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.