



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

APPELLANT: John Jozwiak
DOCKET NO.: 08-05909.001-R-1
PARCEL NO.: 43-17-000-069-14

The parties of record before the Property Tax Appeal Board are John Jozwiak, the appellant, by attorney Ronald J. Leinen of Vincent, Roth & Toepfer, P.C., in Galena, and the Jo Daviess 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 Jo Daviess County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$7,842
IMPR: \$0
TOTAL: \$7,842

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property of 2.12-acres is improved with a one-story frame single family dwelling where construction began in 2005. The dwelling contains 1,288 square feet of living area and has a full basement, central air conditioning and an attached 780 square foot garage. The property also features a 120 square foot deck and is located in Valley View Estates Subdivision, Stockton Township, Jo Daviess County, Illinois.

The appellant/taxpayer (hereinafter "appellant") appeared before the Property Tax Appeal Board with legal counsel contending that the subject property should receive a preferential model home assessment.¹ In support of the contention of law, the appellant submitted a copy of the subject's property record card, a page containing two black and white photos of the subject dwelling, a page containing two black and white photos of the subject dwelling with 'for sale' information on the property, a two-page

¹ On the Residential Appeal petition, the taxpayer appellant reported in Section II, 2b, that the owner of the property was Galena State Bank & Trust Co. Trust #612 (beneficiary of trust: John Jozwiak, P.O. Box 391, Freeport, IL 61032) and provided the bank's address information.

brief and a copy of the December 30, 2008 letter from county officials denying the Model Home Exemption application for the subject property along with a copy of the PTAX-762 Application for Model Home Assessment which the appellant had timely submitted.

In the brief, counsel argued that the decision of the board of review was erroneous when it found that the subject property did not meet the definition of a "model home" under the Property Tax Code (35 ILCS 200/10-25) because the property was owned by a trust and the appellant's son was the original owner and builder of the property. The appellant further argued that the subject property does meet each of the requirements for a model home exemption set forth in Section 10-25 of the Property Tax Code in that the single-family dwelling was constructed after December 29, 1986, is not occupied as a dwelling and has never been occupied as a dwelling, "it is used as a display or demonstration model home for prospective buyers of the dwelling or of similar homes to be built on other property," the appellant does not have more than three model homes within a three-mile radius of the subject property, and the appellant filed a verified application for the model home exemption with county officials before December 31, 2008. (35 ILCS 200/10-25) In argument at hearing, counsel for the appellant further noted that until the property's sale in 2009, the home had never been occupied as a dwelling.

In the PTAX-762 Application for Model Home Assessment, the appellant under penalties of perjury averred on November 12, 2008 that the subject dwelling began to be used for model home purposes on "February 10, 2008." The bottom portion of the form has been completed by the Jo Daviess Chief County Assessment Officer (CCAO) denying the exemption request on December 30, 2008 with the reason for denial stated as:

Property is owned by a trust, son was the original owner & builder of the house, does not meet definition of Model Home.

In addition, regarding the denial of the Model Home Exemption application on December 30, 2008 on letterhead of the Jo Daviess County Chief County Assessment Officer, an official wrote:

The property is currently titled as Galena State Bank, trust 612 and the application listed you [John Jozwiak] as the owner. Also you are not the original contractor on this parcel. The lot was owned by your son Scott when the house was started. In order to qualify for a Model Home Exemption, the home must be used as a display or demonstration home for prospective buyers interested in purchasing a similar dwelling on other property.

The appellant John Jozwiak was sworn and testified that he is a real estate broker, not a member of the Multiple Listing Service (MLS) and a builder who performs much of the construction work

himself. The photographs of the subject dwelling with 'for sale' information includes the following typewritten statement:

[Illegible dimensions]. Full basement with patio door. Three bedrooms, two full baths. Washer, dryer hookup on main floor. Lot is 2 ½ wooded acres. Cul de sac location. Small wooded subdivision just off of Rt. 20. From Stockton: go west on Rt. 20 app. Five miles to Summit Drive. Turn left to Oak Ct. House is on corner of Summit and Oak Ct. Green house with white trim in the woods.

House reduced to \$149,500.00 from \$172,500.00. any questions, call John Jozwiak at (815) 541-6051 Excellent deer hunting!! Room on site for large workshop or similar. Immediate possession

The witness acknowledged this document "may have been" one of the sale flyers for the subject property. He also stated the subject property was listed for at least 1 ½ years up to maybe 2 years before it sold. The property was listed for sale with a real estate broker who was a member of the MLS although the appellant could not say when it was listed.² He also testified that the property was listed with Sullivan Realty in Stockton and he advertised the subject property in newspapers, but provided no documentation of any newspaper advertisements for this appeal. As to area signs, Jozwiak stated that 20,000 cars per day pass on Route 20 which is near the subject and a sign directed passersby to the subdivision. Interested parties would drive into the subdivision to a second sign reflecting a model home/ranch home was for sale.

Jozwiak stated that he has built about seven or eight homes all for the purpose of selling them, but has only had one home at a time built and available for sale. A number of the homes were outside of Jo Daviess County. He stated they are called "spec" homes because you are speculating. Jozwiak also opined that for an individual interested in the subject's design, Jozwiak could either build it or coordinate the construction of a similar dwelling for a buyer on another lot. Right before the subject sold in 2009, the witness testified that he was getting seven or eight showings a week and for a three or four month period, the appellant held an open house every Saturday and Sunday.

Based on the foregoing, the appellant requested application of the model home exemption to the subject property.

² See also the appellant's rebuttal submission with an undated sale flier for the subject purportedly distributed by Kenneth W. Kophamer Realty of Morrison, Illinois. In an affidavit of the appellant submitted in written rebuttal, Jozwiak averred that he "listed the home for sale, as a co-broker, with Kophamer Realty, who listed it in four MLS."

On cross-examination, the appellant acknowledged that it was not typical for a contractor to take two to three years to build a model home.

On re-direct examination, the appellant testified that he was willing both before the subject model home sold and after it sold to build a similar dwelling on another lot for a purchaser, although he does not believe he has ever constructed a dwelling under those circumstances. Jozwiak usually places a dwelling on the market, he gets a satisfactory offer, the paperwork goes to his attorney and the parties close on the transaction. In summary, Jozwiak stated that the dwelling is built for sale of another house on another lot or for the sale of itself under the Property Tax Code.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$39,705 was disclosed consisting of both a land assessment and an improvement assessment. In support of the subject's assessment, the board of review submitted a memorandum with arguments and outlining its evidence as presented in Exhibits A through G.

Exhibit A consists of the property record card and color photographs of the subject property along with an aerial photograph depicting the dwelling surrounded by woods but for driveway access. Exhibit B includes documentation that the subject land (Lot 14) was purchased in March 2005 by Scott Jozwiak, the appellant's son, for \$17,000 based on the Real Estate Transfer Tax stamps. In March 2005, Scott Jozwiak applied for a building permit (Exhibit C) which was issued in May 2005. Thereafter construction on the dwelling commenced. As of the January 1, 2006 assessment date, the dwelling was deemed to be 41.5% complete by the assessing officials (see Exhibit A). In August 2006, a Nullification of Recorded Covenant for Valley View Estates was recorded with Scott Jozwiak listed as one of the property owners (Exhibit B). In October 2006, a Warranty Deed in Trust was filed from Scott Jozwiak to Galena State Bank & Trust Co. Trust No. 612; this document was re-filed in July 2007 to correct an error in the legal description as stated on the document (Exhibit B). As of January 1, 2007, the subject dwelling was deemed to be 60.5% complete by the assessing officials (see Exhibit A). As of the January 1, 2008 assessment date, the dwelling was deemed to be 87% complete by the assessing officials (see Exhibit A).

In its memorandum, the board of review contends that Division 3. Residential developments of the Property Tax Code contains section 10-25 on model homes (35 ILCS 200/10-25), sections 10-30 (now also 10-31) on subdivisions (35 ILCS 200/10-30), and section 10-35 regarding subdivision common areas (35 ILCS 200/10-35) (see Exhibit D). In the memorandum, the board of review stated the following:

A Model Home is a house built for demonstration or display purposes. A prospective client or clients

could tour a Model Home to see the style of house or quality of construction of a contractor for a future project. The intent of the Model Home Exemption was to allow a contractor to receive a reduction on the property taxes on the Model Home. It was not meant for an everyday citizen to acquire a new house and put it on the market in the hopes of selling it.

In Exhibit E, the board of review included a copy of the appellant's Application for Model Home Assessment along with the letter from an official in the Chief County Assessment Office. In summary, the board of review contended that a dwelling to receive the model home exemption "must be used as a display or demonstration home for prospective buyers interest in purchasing a similar dwelling on other property." In further support of this contention, the board of review cited in Exhibit F, the Black's Law definition of "model," as "a pattern or representation of something to be made."

At hearing, the board of review was represented by Donna Berlage, Chief County Assessment Officer of Jo Daviess County. She argued that the appellant was not the original land owner, was not the original builder of the subject dwelling, and there was a sale of the subject property (transfer by a warranty deed) which then constitutes that the subject is not a model home. As an example of a model home located in Jo Daviess County, the board of review also submitted Exhibit G consisting of two photographs depicting several dwellings and a sign. The sign reads: "First Galena Corporation - your independent builder - Model Home Design Center - All American Homes." Berlage testified that the property pictured in Exhibit G is along the highway, the model homes are open certain hours for viewing and prospective buyers can order a similar design and/or slightly modified version. In the example, the model is not for sale, but is only shown to prospective purchasers to view the layout, quality of construction and similar attributes. As Chief County Assessment Officer, Berlage felt that the subject dwelling was dissimilar in that it was a "spec home" that was placed on the market for sale. From her perspective, the appellant did not create a model home where prospective buyers can visit/view the dwelling at any time during the day. She did not believe the subject could properly be characterized as a display model.

Based on the foregoing evidence, the board of review requested confirmation of the subject's assessment and denial of the model home exemption to the subject property.

On cross-examination, Berlage stated that in order to qualify as a model home, the dwelling at issue cannot also be for sale itself, but should be available for viewing and ordering of a similar home to be constructed on another lot. The dwelling shown in Exhibit G is not for sale, but is open for viewing and possible selection for construction of an identical or slightly modified version on other land. Berlage acknowledged that if at some point in time, a dwelling such as those shown in Exhibit G

were taken out of model home status, then the dwelling itself could be sold as a dwelling to be occupied.

In written rebuttal, the appellant contended the statutory language clearly allows for the model home exemption as applicable to ". . . a display or demonstration model home for prospective buyers of the dwelling or of similar homes to be built on other property" (35 ILCS 200/10-25) [emphasis added]. In this regard, the appellant contends the legislative intent and plain language means the subject dwelling can be both listed as a model home and as a home available for immediate sale/possession.

In further rebuttal to the assertions of the board of review, the appellant submitted a partial copy of a Settlement Statement reflecting the sale of the subject property in December 2009 for \$125,000, two black and white photographs of signage, a Residential Real Property Disclosure Report, and an undated three-page flier listing the subject property for sale for \$139,900 by Kenneth W. Kophamer Realty in Morrison, Illinois. One of the photographs depicts a sign along an unidentified road with an arrow stating: FOR SALE - 3 BED RANCH - ON 2.3 ACRES - MODEL HOME. The second photograph depicts a sign in the yard of the subject dwelling: MODEL HOME - FOR SALE - 815 541-XXXX. Jozwiak testified this phone number was his cellular number.

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 finds that the model home exemption is applicable to the subject property and therefore a reduction in the subject's assessment is warranted.

The appellant claimed that the subject property was entitled to receive the preferential model home exemption for assessment year 2008 as set forth in Section 10-25 of the Property Tax Code (hereinafter "Code") (35 ILCS 200/10-25). There is no factual dispute that the subject dwelling was completed after December 29, 1986 as required by the Code. There also is no assertion by the board of review that the dwelling was occupied prior to its sale in 2009 which would negate the applicability of the exemption. The dispute between the parties before the Property Tax Appeal Board is three-fold: (1) was the subject dwelling used as a display or demonstration model home as intended by the Code, (2) does the exemption apply when it is the subject dwelling that is being sold to prospective buyers, and (3) did the transfer of the subject property in October 2006 negate the applicability of the exemption.

Section 35 ILCS 200/10-25 of the Property Tax Code states in relevant part:

If the construction of a single family dwelling is completed after December 29, 1986 . . . , 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. . . . **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. No property shall be eligible for calculation of its assessed value under this Section for more than a 10-year period. If the dwelling, townhome, or condominium unit becomes ineligible for the alternate valuation, the owner shall within 60 days file with the chief county assessment officer a certificate giving notice of such ineligibility. . . . [Emphasis added.]

Based on the evidence and testimony, the Property Tax Appeal Board finds the evidence in the record indicates that the appellant "used" the subject dwelling as a "display or demonstration model home" in accordance with Section 10-25 of the Property Tax Code as highlighted above. Furthermore, as set forth in the Code provision, the subject was demonstrated "for prospective buyers of the dwelling" and meets the requirements of the Code. Lastly, the Board finds that the sale of the subject lot would only negate the model home exemption if after the transfer of the property the dwelling was used "other than as a display or demonstration model home." There is no evidence in the record that the use of the subject dwelling changed after its sale in October 2006.

Therefore the Property Tax Appeal Board finds the subject property is entitled to the model home exemption and consequently a change in the subject's assessed value 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: June 22, 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.