



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

APPELLANT: Peter Birnbaum  
DOCKET NO.: 08-23238.001-R-1  
PARCEL NO.: 14-19-401-047-0000

The parties of record before the Property Tax Appeal Board are Peter Birnbaum, the appellant(s), by attorney Joanne Elliott, of Elliott & Associates, P.C. in Des Plaines; 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:** \$ 13,653  
**IMPR.:** \$150,096  
**TOTAL:** \$163,749

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property consists of 4,214 square feet of land, which is improved with a one year old, two-story, masonry, single-family dwelling containing 3,582 square feet of living area. The dwelling's amenities include four and one-half baths, a full basement with a formal recreation room, air conditioning, a fireplace, and a two and one-half-car garage. The appellant's appeal is based on unequal treatment in the assessment process.

In support of the equity argument, the appellant, via counsel, submitted descriptive and assessment information on seven properties suggested as comparable to the subject. These properties are described as two-story, frame, masonry, or frame and masonry, single-family dwellings that range in age from two to seven years old, and in size from 3,315 to 3,640 square feet of living area. The suggested comparables have from two and one-half to four and one-half baths, and either a full unfinished basement or a full basement with a formal recreation room. Additionally, six of the comparables have a garage, ranging from a two-car to a three-car garage, six of the comparables have air conditioning, and six have a fireplace, ranging from two to three fireplaces. These suggested comparables have improvement assessments ranging from \$18.07 to \$33.04 per square foot of

living area. 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 \$163,749 was disclosed. In support of the subject's assessment, the board of review presented descriptive and assessment information for four properties suggested as comparable to the subject. The suggested comparables are described as two-story, masonry, single-family dwellings that range in age from one to two years old, and in size from 3,459 to 3,582 square feet of living area. The dwellings have either four and one-half bath or four and two one-half baths, either one or two fireplaces, and from a two-car to a three-car garage. All of the suggested comparables have a full basement with a formal recreation room, and air conditioning. These suggested comparable's improvement assessments range from \$28.43 to \$44.66 per square foot of living area. The subject's improvement assessment is \$41.90 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

At hearing, the appellant, represented by Joanne P. Elliott of Elliott and Associates, re-affirmed the evidence previously submitted.

The board of review analyst, Michael Terebo, Cook County Board of Review Analyst, also re-affirmed the evidence previously submitted.

In rebuttal, Ms. Elliott asked the Board to take judicial notice of the Cook County Board of Review's decision regarding the subject property from tax year 2009. A copy of the board of review's decision was proffered by Ms. Elliott, which shows that the board of review lowered the subject's total assessment to \$128,203 for that tax year. Mr. Terebo objected to the admission of this document based on the change in assessment levels between the tax year at issue in this appeal and tax year 2009. The Board overruled the objection, and stated that the change in assessment level goes to the weight of the evidence, and not to its admissibility. Ms. Elliott added that, while the Cook County Board of Commissioners passed Ordinance 08-O-51 (the "10/25 Ordinance") in 2008, and it went into effect for tax year 2009, this ordinance was simply the codification of existing law. Ms. Elliott argued that the Property Tax Appeal Board (the "Board"), in practice, has applied the Illinois Department of Revenue's three-year median level of assessment when class-2 properties are appealed, and that the median level of assessment is routinely around 10%.

Ms. Elliott then called Michael Elliott to testify regarding the subject property and the board of review's Comparable #1. Mr. Elliott testified that he had been inside the subject property many times, and that he had seen the board of review's Comparable #1 many times. He testified that the two properties basically have the same lot size, and same improvement size. He also

testified that the two dwellings were built by the same developer at about the same time.

Ms. Elliott then offered an affidavit naming the appellant as the affiant, wherein the affiant states that he is personally familiar with board of review Comparable #1, and that it is identical to the subject. Mr. Terebo objected to the admission of the affidavit based on Section 1910.67(k) of Title 86 of the Illinois Administrative Code, which prohibits the admission of evidence not previously submitted. The Board overruled the objection, because the information on the affidavit is not "new evidence." On the contrary, the affidavit *supports* and *confirms* the information about board of review Comparable #1 that the board of review submitted. The affidavit was taken into evidence and marked as "Appellant's Exhibit B."\*

Ms. Elliott then asked the Board to take judicial notice of the published Illinois Appellate Court decision in Pace Realty Group, Inc. v. Prop. Tax Appeal Bd., 306 Ill. App. 3d 718 (2d Dist. 1999). Ms. Elliott provided a copy of the decision, which was marked as "Appellant's Exhibit C."\* Ms. Elliott then argued that the instant case and the Pace Realty case were similar, and that the Board should not consider board of review comparable #1. Mr. Terebo responded that Pace Realty dealt with apartment buildings or row houses, whereas the subject is neither. Ms. Elliott affirmed as such.

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.

Initially, the Board finds that a reduction cannot be granted under Hoyne Savings & Loan Ass'n v. Hare, 60 Ill. 2d 84 (1974). In Hoyne, the Court found that a previous year's assessment was grossly excessive in light of the fact that the property's subsequent assessment was significantly lower, and the two years were in the same general assessment period. Id. at 90. In this case, while tax year 2008 and tax year 2009 are in the same triennial, the 10/25 Ordinance went into effect for the 2009 assessment year. The 10/25 Ordinance lowered the level of assessment for all class two properties (as is the subject) from 16% down to 10%. The appellant provided no evidence to show that the subject's decreased assessment for tax year 2009 was for any reason other than the implementation of the 10/25 Ordinance.

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\* The hearing for the subject's 2007 appeal was consolidated with this appeal pursuant to 86 Ill. Admin. Code § 1910.78. During the discussion of the 2007 appeal, the appellant's affidavit and copy of the Pace Realty decision were admitted as "Appellant's Exhibit A" and "Appellant's Exhibit B," respectively. At the end of the hearing, Ms. Elliott requested that the Board adopt the evidence submitted and argument made regarding Pace Realty and board of review's Comparable #1 for the instant appeal. Therefore, the Board has re-alphabetized the appellant's affidavit and the copy of the Pace Realty decision as "Appellant's Exhibit B" and "Appellant's Exhibit C," respectively.

Additionally, the three-year median level of assessment for class-2 property is not necessarily "around" 10%, and is not the codification of existing law. The three-year median level of assessment is calculated using sale prices of class-2 property and those properties' previous years' assessments. Those figures do not necessarily always evaluate to "around" 10%. It is true that the Board has used the three-year median level of assessment in previous decisions, but it has used that figure even when it was not "around" 10%. Furthermore, the Board is not bound by its previous decisions. Bd. of Educ. of Ridgeland Sch. Dist. No. 122, Cook Cnty. v. Prop. Tax Appeal Bd., 2012 IL App. (1st) 110,461 ("[E]ach decision by the [Board] is necessarily fact specific and based upon the particular record of each case"); see also 35 ILCS 200/16-180; 35 ILCS 200/16-185 (stating that proceedings before the Board are *de novo*); 86 Ill. Admin. Code § 1910.50 (same).

Next, the Board finds that the Pace Realty decision is inapposite to this appeal. In Pace Realty, the appellate court distinguished between the facts of that case, and the facts of Du Page Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 284 Ill. App. 3d 649, 654-55 (2d Dist. 1996) (the "Skogsbergh" case). In Skogsbergh, the assessor assessed each of the comparables used by the Board individually. Id. at 653; Pace Realty, 306 Ill. App. 3d at 727-28. In Pace Realty, the assessor categorized the 54-unit complex into four groups, and assessed each group together. Pace Realty, 306 Ill. App. 3d at 720. The Board then used the three properties that were not under appeal to set the high end of the range in determining whether the remaining properties were equitably assessed. Id. The appellate court held that using the assessments from those three properties that did not appeal to set the high end of the range was an error as a matter of law. Id.

This situation is different from Pace Realty because in Pace Realty, all of the properties were part of single development, and were assessed at the same *exact* amount per square foot of living area. In this appeal, there are only two buildings, which happen to be next to each other, and were built by the same developer. Two buildings cannot be said to constitute an entire development, such as the case in Pace Realty.

Furthermore, even if the Board were to presume that two buildings could constitute an entire development, the Pace Realty decision is still not applicable. While Skogsbergh and Pace Realty are similar, it is that critical distinction between the assessment techniques that were done which makes those two cases come to different results. In this case, the Board finds that the assessor used an approach more akin to that used in Skogsbergh. The two dwellings have different improvement assessments. Therefore, it appears more plausible that the assessor used the assessment technique used in Skogsbergh, than that used in Pace Realty. Additionally, neither party testified as to how the subject and board of review Comparable #1 were assessed. Thus,

the Board finds that it is allowed, under the law, to consider board of review Comparable #1.

The appellant contends unequal treatment in the subject's improvement assessment as the basis of this appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Walsh v. Prop. Tax Appeal Bd., 181 Ill. 2d 228, 234 (1998) (citing Kankakee Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 131 Ill. 2d 1 (1989)); 86 Ill. Admin. Code § 1910.63(e). To succeed in an appeal based on lack of uniformity, the appellant must submit documentation "showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property." Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 403 Ill. App. 3d 139, 145 (1st Dist. 2010); 86 Ill. Admin. Code § 1910.65(b). "[T]he critical consideration is not the number of allegedly similar properties, but whether they are in fact 'comparable' to the subject property." Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 403 Ill. App. 3d at 145 (citing Skogsbergh). After an analysis of the assessment data, the Board finds that the appellant has not met this burden.

The Board finds that Comparables #2, #3, #4, #5, and #7 submitted by the appellant, and all of the comparables submitted by the board of review were most similar to the subject in location, size, style, exterior construction, features, and age. The comparables had improvement assessments that ranged from \$23.55 to \$44.66 per square foot of living area. The subject's improvement assessment of \$41.90 per square foot of living area is within the range established by the most similar comparables. Therefore, after considering adjustments and differences in both parties' comparables when compared to the subject, the Board finds that the subject's improvement assessment is equitable, and 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.



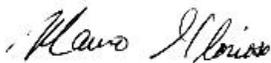
Chairman



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: September 21, 2012



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.