FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: B. Alan Newberg
DOCKET NO.: 09-03055.001-R-1
PARCEL NO.: 13-12-201-085

The parties of record before the Property Tax Appeal Board are B. Alan Newberg, the appellant, by attorney Minard E. Hulse, in Chicago, and the Lake County Board of Review by Assistant State's Attorney Tara H. Ori.

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

LAND:	$130,227
IMPR.:	$303,063
TOTAL:	$433,290

Subject only to the State multiplier as applicable.

ANALYSIS

The subject parcel is improved with a two-story brick single-family dwelling that was built in 1991. The home contains approximately 6,382 square feet of living area and features a full basement which is partially finished, three fireplaces and an attached four-car garage of 1,155 square feet of building area. The property is located in Wynstone subdivision, North Barrington, Cuba Township, Lake County.

A consolidated hearing[1] was conducted on Docket Nos. 09-03056.001-R-1, 09-03068.001-R-1, 09-03050.001-R-1, 09-03051.001-R-1, 09-03052.001-R-1, 09-03055.001-R-1, 09-03057.001-R-1, 09-03058.001-R-1, 09-03061.001-R-1, 09-03063.001-R-1, 09-03064.001-R-1, 09-03065.001-R-1, 09-03067.001-R-1, 09-03069.001-R-1, 09-03070.001-R-1, 09-03109.001-R-1, 09-03635.001-R-1, 09-03805.001-R-1, 09-03806.001-R-1, 09-03807.001-R-1, 09-03808.001-R-1, 09-

[1] In advance of this consolidated hearing, the Property Tax Appeal Board requested and the appellant(s) did not object to retaining a court reporter and providing a transcript of the hearing. Thus, references in this decision to the pages of the transcript will be identified as "TR" followed by page citation(s).

03811.001-R-1, 09-03812.001-R-1, 09-04698.001-R-1, 09-04708.001-R-1, 09-04713.001-R-1 and 09-04716.001-R-1.

The appellant appeared before the Property Tax Appeal Board through lead legal counsel Minard E. Hulse along with co-counsel Bob Masini. The appellant presented a contention of law supported by a brief and recent appraisal as the bases for this appeal. Attorney Hulse argued that the appellant, who had appealed as to this owner-occupied residential real estate, resolved or "settled" the 2008 assessment claim before the Property Tax Appeal Board. As a consequence of that stipulation or agreement, there was no contested hearing before the Property Tax Appeal Board and the decision of the Property Tax Appeal Board was rendered in Docket No. 08-01724.001-R-1 by a Final Administrative Decision issued on November 25, 2009 reducing the subject's assessment to $433,290.

The appellant further argues that due to a subsequent market decline between 2008 and 2009, the appellant again filed an assessment appeal for 2009 with the Lake County Board of Review contending that there was a 10% decline in values. The Lake County Board of Review rendered its final decision on February 23, 2010 stating in pertinent part "The Board approved a decrease of $33,330 on building value. Reduction based on the recent P.T.A.B. decision plus the appropriate township factor(s)." The decision set forth a total assessment of $433,290. Thereafter the appellant timely filed the instant 2009 assessment appeal with the Property Tax Appeal Board.

In the brief, counsel acknowledged Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides in pertinent part that if the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period. However, it is the assertion of the appellant that the 2008 "settlement" decision of the Property Tax Appeal Board "was not the kind of decision that the legislature had in mind" for freezing property assessments under Section 16-185 of the Property Tax Code but rather only in those instances of a decision rendered after a full hearing in a contested case.[2]

Appellant also contends that 2007 was the general assessment year for Lake County. In the brief counsel further noted:

> Therefore, if Section 16-185 were constitutional, all of the aggravation Appellant was forced to endure for 2008 (namely, the initial 2008 over assessment by the Cuba Township Assessor, forcing Appellant to appeal to

[2] Counsel made an offer of proof citing a statement made concerning House Bill 25 in the Illinois House of Representatives on April 25, 1995 (page 268 of the State of Illinois 89th General Assembly House of Respresentatives transcription). Counsel represented that HB 25 eventually was codified as Section 16-185 of the Property Tax Code. (TR p. 8-10; transcript exhibits)

> the Lake County Board of Review, followed by the over assessment by the Lake County Board of Review, forcing the Appellant to appeal to this Board to obtain a lowering of the Parcel's 2008 assessment) would lead to the deprivation from Appellant of Appellant's right to prove that the fair market value of the Parcel declined by more than 10% from January 1, 2008 to January 1, 2009.

(Appellant's Brief, p. 1) Counsel also contends that the Illinois property tax is grounded in article IX, section 4, of the Illinois Constitution of 1970, which provides in pertinent part that real estate taxes "shall be levied uniformly by valuation as ascertained as the General Assembly shall provide by law." Ill.Const.1970, art IX, §4(a). Fair cash value is what the property would bring at a voluntary sale. Citing Cook County Board of Review v. Illinois Property Tax Appeal Board, 384 Ill.App.3d 472 (1st Dist. 2008). This also implies equality in the burden of taxation. Citing Walsh v. Property Tax Appeal Board, 181 Ill. 2d 228 (1998).

Of the approximately 9,000 tax parcels in Cuba Township, the appellants contend that the vast majority of them had the right to appeal their 2009 assessment to the Lake County Board of Review and to have their 2009 assessments set at 33 1/3% of their fair market values as of January 1, 2009. The brief further outlined this contention as follows:

> First, any tax parcel that was not forced to appeal its 2008 assessment to this Board had this right. Second, any tax parcel that was forced to appeal its 2008 assessment to this Board, but had not yet received a reduced 2008 assessment from this Board when the Lake County Board of Review rendered its 2009 decisions, had this right. Third, any non-residential tax parcel that received a reduced 2008 assessment from this Board had this right. Fourth, any residential tax parcel that received a reduced 2008 assessment from this Board but which as of January 1, 2008 was unoccupied or occupied by someone other than the owner (the owner's relative, friend or tenant) had this right. Finally, any residential tax parcel that received a reduced 2008 assessment from this Board and which as of January 1, 2008 had more than one owner, but was not occupied by all owners, had this right.

(Appellant's Brief, p. 2) In light of the foregoing legal principles, the appellant contends that the uniformity clause of the Illinois Constitution "does not permit the Lake County Board of Review or this Board to arrive at a 2009 assessed valuation of Appellant's Parcel on a different basis than that employed for the vast majority of other Cuba Township and Lake County properties." The brief further asserts that the equal protection clauses of both the 1970 Illinois Constitution and the U.S. Constitution do not permit a different basis.

In addition, to support the asserted decline in area market values, the appellant called Grant Stewart, a State Certified Residential Appraiser with 24 years of appraisal experience, as a witness. Since about 1986 to the present, Stewart has appraised the majority of the properties in the Wynstone subdivision along with performing other appraisal assignments throughout Lake County and throughout the Chicago metropolitan area as requested. The appraiser has also been hired to perform appraisals for numerous mortgage lenders and mortgage brokers on properties located in Lake County.

In the process of preparing appraisal reports, Stewart also determines neighborhood property value trends (citing Appellants' Ex. AA, page 1 of 6 of a Uniform Residential Appraisal Report (see transcript exhibits)). To determine neighborhood property value trends Stewart examines various sources such as a market conditions report, Case-Schiller Index, the National Association of Realtors and other indices in order to "get a good feel for the area and try and take the good – the pertinent information from whatever I'm looking at." (TR p. 18)

Next, examining Exhibit D, the witness described the chart as a "matched pair sales analysis" of resales of properties from pre-2006 to 2009 in Wynstone subdivision along with notes, if any, regarding improvements made between the dates of sale. The chart depicts a declining neighborhood according to Stewart that began to decline in 2007. (TR p. 19-20)

The witness also testified that he found other neighborhoods in Lake County were also experiencing property value declines in 2008. In the course of his appraisal assignments, Stewart investigated the cause of the declining property values he was encountering and found "essentially the market was locked up to all but cash buyers, and even cash buyers were hesitant to do anything. And the state of the economy was in free fall at that time [in 2008]." (TR p. 22)

Examining Exhibit B, a Case-Shiller Home Price Index for the 1st Quarter of 2006 and ending with the 2nd Quarter of 2009, the witness acknowledged the index depicts a decline which shows data similar to that gathered by Stewart in high tier and low tier [market areas].[3] (TR p. 26-27)

Examining Exhibit C, a Case-Shiller Home Price Index for the 1st Quarter of 1975 and ending with the 2nd Quarter of 2009, the witness testified that beginning with about 1988 and onward, this chart generally comports with what Stewart found regarding market values in Lake County and the trend in Wynstone was "not probably as smooth as this curve." (TR p. 28)

[3] Stewart further explained that if the appraiser is appraising "high-end" properties market trends for high-end or high tier properties would be considered and vice versa.

Appellant through counsel presented Exhibit E, a response of Lake County Chief County Assessment Office to a Freedom of Information Act request relating that there were 267,930 parcels subject to real estate tax assessment in Lake County in 2008 for which an assessment appeal was filed with the Lake County Board of Review on 9,760. The document also depicts that the Lake County Board of Review granted assessment reductions to 5,249 parcels due to a hearing and to 4,214 parcels due to an assessor value change request made to the board of review.

Appellant through counsel presented Exhibit F, a response of the Lake County Treasurer to a Freedom of Information Act request relating to a listing of "Illinois Property Tax Appeal Board refunds mailed by the Lake County Treasurer's Office for tax year 2008." The response was an attached document listing 164 parcels from which counsel argued that "in all of Lake County" Section 16-185 of the Property Tax Code was only applied to 164 properties. (TR p. 30)

Also marked as evidence was appellant's Exhibit A entitled Median Ratios for 14 quarters (1st Quarter 2006 until 2nd Quarter 2009) of Cuba Township Improved Real Estate Sales Divided by 2009 Assessments, Using the Illinois Department of Revenue's Sales for 2006, 2007 and 2008, and Using the Lake County Chief Assessment Office's Qualified Sales for 2009Q1 and 2009Q2. No further testimony or argument was set forth regarding this document.

The appellant also filed an appraisal of the subject property prepared by Stewart opining a value of $1,150,000 as of January 1, 2009. No testimony concerning this submission was presented during the hearing.

Based on the foregoing arguments and evidence, the appellant requested a total assessment for the subject property of $383,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final 2009 assessment of $433,290 was disclosed. The board of review also submitted a letter and a copy of the first page of the Final Administrative Decision issued by the Property Tax Appeal Board in Docket No. 08-01724.001-R-1.

In the letter, the board of review cited to Section 16-185 of the Property Tax Code for the proposition that since 2007 was the beginning of the most recent general assessment cycle, as to the subject owner-occupied property the 2008 assessment decision of $433,290 should be carried forward to 2009 subject to the Cuba Township equalization factor of 1.0000. In light of the foregoing, the board of review concluded the letter by requesting confirmation of the subject's 2009 assessment.

At hearing, counsel for the board of review conceded that there has been a decline in the market from 2008 to 2009. Regardless, the subject parcel in this proceeding is held to the provisions

of Section 16-185 of the Property Tax Code which are clear. Absent either an arm's length transaction establishing a new fair cash value or a reversal upon review of the Property Tax Appeal Board's decision, the assessment remains in effect, subject to equalization, for the remainder of the assessment cycle which here is through 2010. Since the language of the Property Tax Code is so clear and unambiguous, counsel argued that the Property Tax Appeal Board need not consider the legislative history and interpretation of the provision as cited by the appellants in the offer of proof (legislative debates). Moreover, the appellant provided no support according to the board of review for the proposition that Section 16-185 only applies to contested hearings.

The board of review concluded by asserting that this challenged provision of the Property Tax Code is in fact constitutional and based upon these arguments, the 2009 assessment of the subject parcel should reflect the 2008 decision of the Property Tax Appeal Board plus equalization, if any.

In rebuttal at hearing, counsel for the appellants argued that the statutory language was ambiguous, "that it should be construed as applying only to cases where a decision is rendered, and that the Board should do that in order – in cases where there is doubt as to the constitutionality the Board should construe the language in such a way to avoid the constitutional question, and we request that the Board do that in this case." (TR p. 34-35)

After hearing the testimony and considering the arguments and evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

There is no factual dispute that the subject property is an owner-occupied residence that was the subject matter of an appeal before the Property Tax Appeal Board the prior year under Docket No. 08-01724.001-R-1. There is also no dispute that in that appeal the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property to $433,290 based on the evidence submitted by the parties. In this case the evidence consisted of a stipulation of the parties. There is also no dispute among the parties that 2008 and 2009 are within the same general assessment period for property in Cuba Township, Lake County.

Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides in pertinent part:

> If the Property Tax Appeal Board <u>renders a decision lowering the assessment</u> of a particular parcel on which <u>a residence occupied by the owner</u> is situated, such reduced assessment, subject to equalization, **<u>shall</u>** remain in effect <u>for the remainder of the general</u>

> assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review. [Emphasis added.]

Pursuant to the foregoing provision of section 16-185 of the Property Tax Code, the Property Tax Appeal Board finds that the prior year's decision "**shall**" be carried forward to the subsequent year subject only to equalization. The record disclosed the Property Tax Appeal Board issued a "decision"[4] "lowering the assessment" of the subject parcel which is "a residence occupied by the owner" for 2008. The record further indicates that 2008 and 2009 are within the same general assessment period. The record contains no evidence indicating the subject property sold in an arm's length transaction subsequent to the Board's decision or that the decision of the Property Tax Appeal Board was reversed or modified upon review.

Having considered the statutory provision and the evidence, the Board further finds, in accordance with court precedent, that "[t]he only authority and power placed in the [Property Tax Appeal] Board by statute is to receive appeals from decisions of Boards of Review [citation omitted], make rules of procedure [citation omitted], conduct hearings [citation omitted], and make a decision on the appeal [citation omitted]. That is all. ... There are no other prerogatives, powers, or authority accorded to the Board. It is fundamental that an administrative body has only such powers as are granted in the statute creating it. No citation of authority on this point is necessary." Thompson v. Property Tax Appeal Board, 22 Ill.App.3d 316, 322 (2nd Dist. 1974). "Finally, where the authority of an administrative body is in question the determination of the scope of its power and authority is a judicial function, not a question to be finally determined by the administrative agency itself. [citation omitted.]" Geneva Community Unit School Dist. No. 304 v. Property Tax Appeal Board, 296 Ill.App.3d 630, 633 (2nd Dist. 1998). For these reasons, the Property Tax Appeal Board finds it is bound by the terms of Section 16-185 of the Property Tax Code and has no authority to determine any constitutional question as raised by the appellants herein.

In conclusion, based on the record evidence, the Board finds that no reduction in the subject's assessment is warranted on this record.

[4] See Tazewell County Board of Review v. Property Tax Appeal Board, 322 Ill.App.3d 949 (3rd Dist. 2001) regarding "decisions" of the Board.

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: November 30, 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.