



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

APPELLANT: 1141 Patterson, LLC  
DOCKET NO.: 09-21448.001-R-1  
PARCEL NO.: 14-20-225-042-1005

The parties of record before the Property Tax Appeal Board are 1141 Patterson, LLC, the appellant(s), by attorney Allen A. Lefkovitz, of Allen A. Lefkovitz & Assoc. P.C. in Chicago; 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: \$ 6,763  
IMPR.: \$ 50,078  
TOTAL: \$ 56,841**

Subject only to the State multiplier as applicable.

**Statement of Jurisdiction**

The appellant timely filed the appeal from a decision of the Cook County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2009 tax year. The Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties and the subject matter of the appeal.

**Findings of Fact**

The subject consists of a class 2-99 condominium dwelling within a five unit condominium building. The subject has a 20.1% ownership interest. The subject is located in Lake View Township, Cook County. The remaining four units within the subject's building have sold to purchasers. The subject is the only remaining unit still in possession of the developer.

The appellant's sole request for relief is that the subject be granted a reduction, as it was a newly constructed property, and such properties are subject to a reduced assessment under Section 9-180 of the Illinois Property Tax Code. The appellant contends that it is the policy of the Cook County Assessor and the Cook County Board of Review to grant such properties a token assessment of 10% of such properties' full assessment. The appellant further contends that the Assessor reduced the subject's assessment for tax year 2008 based on the same evidence, and that the facts have not changed since tax year 2008. Furthermore, the appellant submitted a sale listing for the subject, including color photographs of the subject's interior. This listing also states "Ready in immediately."

The Cook County Board of Review submitted its "Board of Review Notes on Appeal," wherein the subject's total assessment of \$56,841 was disclosed. In support of the subject's assessment, the board of review submitted a memo from Matt Panush, Cook County Board of Review Analyst. The memorandum shows that two units in the subject's building, or 43.6% of ownership, sold from 2006 to 2009 for an aggregate price of \$1,324,900. An allocation of 2.00% for personal property was subtracted from the sales prices, and then divided by the percentage of interest of the unit to arrive at a total market value for the building of \$2,977,986. The subject's percentage of ownership was then utilized to arrive at a value for the subject of \$598,575.

In rebuttal, the appellant reaffirmed the evidence previously submitted.

At hearing, Joseph Pinto, the developer of the subject, testified that it was difficult to sell the subject during tax year 2009, and that it was sold sometime in 2010. On cross-examination, Mr. Pinto stated that the subject was not completed during tax year 2009. Mr. Pinto clarified that a lot of the finishes were not completed, and that he held off on completing the finishes because, in his experience as a developer and a real estate broker, he finds that buyers want to specify the types of finishes they want. Mr. Pinto testified that waiting to complete the finishes of a condominium unit is advantageous to the marketing of the unit. Mr. Pinto further stated that, in real estate marketing, sometimes he "misleads" potential buyers by stating that the unit is "move-in ready," while the unit is actually just awaiting input from a buyer regarding the yet-to-be-completed finishes. Mr. Pinto admitted that the electricity was completed in the subject, except for several lighting fixtures. Mr. Pinto also admitted that the

statement in the subject's sale listing, "Ready in immediately," was accurate. On redirect examination, Mr. Pinto testified that it is common practice to await the buyer's input before completing the finishes in a condominium unit.

Upon questioning from the Board, Mr. Pinto testified that an occupancy permit was never issued for the subject. Upon further questioning from the Board, Mr. Pinto stated that a partial occupancy permit was issued for the remaining four units within the subject's building. Upon further inquiry from the Board, Mr. Pinto changed his testimony and stated that the subject was issued an occupancy permit after it was sold in 2010. Upon the Board's request, both parties stated that they would be unable to obtain the occupancy permit for the subject that Mr. Pinto testified about.

Counsel for the appellant then argued that the Cook County assessing officials have a policy of granting reductions to property that has not been sold, but is inhabitable. Counsel also argued that the appellant should be "rewarded" for holding on to the subject during the tough economic times, and not letting it go into foreclosure.

Upon questioning from the Board, Mr. Pinto admitted that the photographs in the subject's sale listing were actually photographs of another unit within the subject's building. Mr. Pinto and his attorney both stated that there were no photographs available of the subject prior to its sale in 2010.

Counsel for the appellant requested that the Board take judicial notice of Board docket number 07-21973.001-R-2 through 07-21973.005-R-2. Counsel for the appellant began to argue that this was a stipulation entered into between the appellant and the board of review for tax year 2007, and that the stipulation was agreed to based on the subject's occupancy. The Board prohibited counsel from continuing this line of arguing, as it was testimonial in nature, and counsel was not under oath. However, the Board did take judicial notice of this decision of the Board.

The board of review analyst argued that the appellant has not met his burden of proof, because the appellant has not provided any substantive evidence to show that the subject qualifies for a reduction under Section 9-180. Furthermore, the analyst argued, the appellant has not shown that there is a policy or practice of granting reductions, by the Cook County assessing

authorities, to properties that are inhabitable but not yet sold by the developer.

The analyst also cited the following language from John J. Moroney and Co. v. Ill. Prop. Tax Appeal Bd., 2013 IL App (1st) 120493:

We recognize that Moroney's tax assessment was reduced in 2006. However, the fact that Moroney complied with the rules and met its burden in 2006 does not excuse its failure to comply with the rules and meet its burden in 2005. Further, just because factors warranting a reduction existed in 2006, does not necessarily mean they existed in 2005, or any other year for that matter (which is why property taxes are assessed every year).

Id. at ¶45. The analyst argued that this paragraph in Moroney precludes the Board from using a previous year's assessment as relevant evidence in determining the subject's assessment for tax year 2009.

#### **Conclusion of Law**

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The appellant submitted documentation showing that the subject was vacant for the entirety of tax year 2009. The Board gives the appellant's argument little weight. In Springfield Marine Bank v. Prop. Tax Appeal Bd., 44 Ill.2d 428 (1970), the Illinois Supreme Court stated:

[I]t is clearly the value of the "tract or lot of real property" which is assessed, rather than the value of the interest presently held. . . [R]ental income may

of course be a relevant factor. However, it cannot be the controlling factor, particularly where it is admittedly misleading as to the fair cash value of the property involved. . . [E]arning capacity is properly regarded as the most significant element in arriving at "fair cash value". Many factors may prevent a property owner from realizing an income from property that accurately reflects its true earning capacity; but it is the capacity for earning income, rather than the income actually derived, which reflects "fair cash value" for taxation purposes.

Id. at 431.

As the Court stated, actual expenses and income can be useful when shown that they are reflective of the market. Although the appellant made this argument, the appellant did not demonstrate, through an expert in real estate valuation, that the subject's vacancy for tax year 2009 was reflective of the market. To demonstrate or estimate the subject's market value using income, one must establish, through the use of market data, the market rent, vacancy and collection losses, and expenses to arrive at a net operating income reflective of the market and the property's capacity for earning income. The appellant did not provide such evidence and, therefore, the Board gives this argument no weight.

The appellant asserts that Section 9-180 of the Illinois Property Tax Code warrants a reduction in the subject's assessment. That section states, in relevant part:

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.

35 ILCS 200/9-180. The appellant argues that this section warrants a reduction because the subject has yet to be sold by the developer. The appellant further argues that the Cook County assessing officials have a policy of granting such properties reduced assessments.

The Board finds that the appellant's own evidence and testimony are contradictory, and therefore, not credible or persuasive. First, Mr. Pinto testified that an occupancy permit was never issued for the subject. Then Mr. Pinto testified that an occupancy permit was issued in 2010 for the subject. Counsel for the appellant and the board of review analyst then both stated that they were unable to present the occupancy permit. The Board does not find this contradictory testimony credible.

Mr. Pinto also marketed the subject as "Ready in immediately" on the sale listing. At hearing, he testified that this statement was meant to "mislead" potential buyers, because in actuality, the finishes on the subject were not completed. The evidence and Mr. Pinto's testimony contradict each other. Therefore, the Board does not find this evidence or testimony credible.

Finally, the sale listing for the subject shows interior photographs of what is purportedly the subject. However, at hearing, Mr. Pinto testified that these photographs were not of the interior of the subject, but were photographs of another unit. Once again, the evidence and Mr. Pinto's testimony contradict each other. Therefore, the Board does not find this evidence or testimony credible.

In summary, there is no credible evidence or testimony to show whether the subject was inhabitable anytime during tax year 2009. Therefore, the Board finds that the appellant has not proven the subject was uninhabitable to warrant a reduction under Section 9-180.

Moreover, the Board finds that the subject was "fit for intended customary use," during tax year 2009. In this instance, the appellant's intended use was to market the subject, and sell it to a buyer. In furtherance of this goal, he left the finishes incomplete to entice buyers who may want to select their preferred finishes. Mr. Pinto testified that this was a common practice in the market, or, in other words, it is "customary." Therefore, the Board finds that the subject was fit for its "intended customary use" throughout tax year 2009, rendering Section 9-180 inapplicable.

The appellant's argument that a "token" assessment should be granted due to policies apparently promulgated by the Cook County Assessor and the Cook County Board of Review is unpersuasive, as such policies are not binding on this Board, and are also against the plain meaning of Section 9-180.

Furthermore, the appellant has provided no evidence to show that this alleged "policy" is being applied in contravention of Section 9-180. For these reasons, the Board finds that 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.



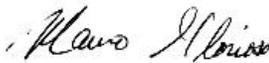
Chairman



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: October 24, 2014



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.