



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

APPELLANT: 2051 West Pensacola, LLC
DOCKET NO.: 09-21452.001-R-1
PARCEL NO.: 14-18-308-003-0000

The parties of record before the Property Tax Appeal Board are 2051 West Pensacola, 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: \$ 14,250
IMPR.: \$ 93,630
TOTAL: \$ 107,880

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 two-story dwelling of masonry construction with 3,000 square feet of living area. The dwelling is three years old. Features of the home include three and one-half baths, a full basement with a formal recreation room, central air conditioning, two fireplaces, and a two and one-half-car garage. The property has a 3,750 square foot site, and is located in Lake View Township, Cook County. The subject

is classified as a class 2-78 property under the Cook County Real Property Assessment Classification Ordinance.

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 from 2010, including color photographs of the subject's interior. This listing also states "Ready immediately." The appellant also submitted an affidavit stating that the subject was under construction for the entirety of tax year 2009.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$107,880. The subject's assessment reflects a market value of \$1,212,135, or \$404.05 per square foot of living area, including land, when applying the 2009 three year average median level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 8.90% as determined by the Illinois Department of Revenue. In support of its contention of the correct assessment, the board of review submitted information on four equity comparables. The board of review also submitted information on one comparable sale.

In rebuttal, the appellant reaffirmed the evidence previously submitted.

At hearing, Joseph Pinto, the appellant and developer of the subject testified that, as of January 1, 2009, the construction of the subject's exterior was mostly complete, but that the subject's interior was not complete. In particular, Mr. Pinto stated that the subject lacked closets, hardware, appliances, lighting, carpeting, painting, and miscellaneous plumbing, venting, and electrical work. Mr. Pinto also stated that the floors and staircases were not finished. Mr. Pinto also testified that the masonry ceiling on the subject was not completed.

Mr. Pinto testified that he was never able to sell the subject, and that it was foreclosed upon in April 2010. At the time of the foreclosure, Mr. Pinto testified that the subject was not completed. Mr. Pinto then testified that he believed the bank spent a certain amount of funds on completing the subject. The board of review analyst objected to this testimony as speculative. The Board sustained the objection. Mr. Pinto then testified that, as a real estate developer, it was his opinion that the subject required \$35,000 to \$50,000 worth of work to become completed at the time of the foreclosure. Mr. Pinto testified that this work included installing window screens, finishing the floors, painting the interior walls, and installing carpeting. As to the mechanical and utility work, Mr. Pinto testified that these projects were mostly completed, but that some electrical wires needed to be tied down, a faucet needed to be installed, and a condenser needed to be installed on the central air conditioning system. Mr. Pinto testified that he did not have the funds to complete these aspects of the subject's completion at the time of the foreclosure, but if he had the funds, he could have completed the subject in two to three months.

On cross-examination, Mr. Pinto testified that construction on the subject began in 2006, and as of January 1, 2009, the subject was two to three months from completion, but that he did not have the funds to complete the remaining construction. Mr. Pinto testified that the subject was marketed as being "Ready immediately" on the 2010 sale listing. Mr. Pinto testified that he could not recall if he used the same language in marketing the subject during tax year 2009. To refresh Mr. Pinto's recollection, the board of review analyst used listings from the MLS from tax years 2008 and 2009, which shows the subject was for sale and was "Ready immediately." Mr. Pinto then testified that this was how the subject was marketed in 2008 and 2009.

Upon questioning from the Board, Mr. Pinto stated that he did not know why the subject's sale listing from 2010 states that the subject was completed in 2009. Upon further questioning from the Board, Mr. Pinto testified that, as of January 1, 2010, the subject required several projects to be completed, including: painting the interior and exterior, miscellaneous HVAC work, finishing the floors, installing the carpet, and installing several light fixtures. The Board then referenced the color photographs in the subject's sale listing from 2010, which showed several light fixtures that were installed. Mr. Pinto testified that the bedroom lighting still needed to be completed. Upon further questioning from the Board, Mr. Pinto

testified that the floors were not finished, the walls were not painted, and the carpeting was not installed because he was awaiting the input from a buyer, and not because he was out of funds to complete the subject.

The board of review analyst argued that the appellant has not met his burden of proof, and that the appellant's affidavit and testimony contradict the sales listings for the subject from tax year 2008, 2009, and 2010. The analyst further stated that the subject's assessment was not reduced by the Board for tax year 2007 in docket number 07-21969, based on substantially the same arguments being made in the instant appeal. Upon request from the analyst, the Board took judicial notice of this decision of the Board, and the analyst tendered a copy to both the Board and counsel for the appellant.

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 subsequent year's assessment as relevant evidence in determining the subject's assessment for tax year 2009.

In rebuttal, counsel for the appellant argued that this section of the Maroney case was not applicable to the instant appeal.

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 was not 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 the subject was not completed when it was foreclosed upon because he did not have the funds to complete the various projects that were incomplete. However, Mr. Pinto later testified that most, if not all, of the projects which were left incomplete as of January 1, 2010 were incomplete because he was awaiting a buyer's input, and not because he was out of funds. The Board does not find this contradictory testimony credible.

Mr. Pinto also marketed the subject as "Ready immediately" on the 2010 sale listing. Mr. Pinto further testified, after being shown the sale listings for the subject from 2008 and 2009, that the subject was marketed as "Ready immediately" in those years as well. Meanwhile, the affidavit states that the subject was 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 2010 sale listing for the subject shows interior photographs of the subject. These photographs clearly depict that the subject was substantially completed. The photographs show that the floors were finished, and the light fixtures were installed. These photographs contradict Mr. Pinto's testimony that these projects were not completed. When questioned by the Board about the light fixtures shown in the photographs, Mr. Pinto testified that the bedroom lighting was yet to be installed. Conveniently for the appellant, there are no photographs of the bedroom light fixtures. However, taking the evidence and testimony in its totality, the Board finds that, 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. 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.

Ronald R. Crit

Chairman

K. L. Fan

Member

Richard A. Huff

Member

Mario M. Lino

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: October 24, 2014

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.