



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

APPELLANT: McInerney Properties, LLC
DOCKET NO.: 09-32377.001-R-1
PARCEL NO.: 17-06-400-056-0000

The parties of record before the Property Tax Appeal Board are McInerney Properties, LLC, the appellant(s), by attorney George Michael Keane, Jr., of Keane and Keane 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: \$ 1,528
IMPR.: \$ 68,072
TOTAL: \$ 69,600

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 commercial storefront that is the first floor of a four story condominium building. The three residential condominium units have three separate PINs, and the subject has a fourth PIN. The subject consists of masonry construction with 1,160 square feet of building area. The building is eight years old. The property has a 1,160 square foot site, and is located in West Chicago Township, Cook County. The subject is classified as a class 5-17 property under the

Cook County Real Property Assessment Classification Ordinance (the "Classification Ordinance").

The appellant's sole contention on appeal is that the subject should be classified as a residential building under the Classification Ordinance. In support of this argument, the appellant submitted a copy of the Classification Ordinance. The appellant stated that Section 74-63(2)(c) of the Classification Ordinance defines class 2 real estate as being "[r]eal estate improved with a building put to commercial and residential use, of six or less units where the building measures less than 20,000 square feet of above grade space." The appellant argued that the subject fits this definition, and, therefore, should be classified as a class 2 property under the Classification Ordinance.

The appellant also attached a copy of a lease, whereby the appellant leased the subject to a tenant. The lease states that the premises being leased were located at "1939 West Division, Storefront." A "Lease Rider" was attached to the lease, which states that the leased premises are located at "1939 W. Division, Commercial Ground Level, Storefront."

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$69,600. The subject's assessment reflects a market value of \$782,022, or \$674.16 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 three comparable sales.

At hearing, counsel for the appellant reaffirmed the evidence previously submitted, and offered testimony from Michael McInerney, the owner of McInerney Properties, LLC, the appellant in this appeal. Mr. McInerney testified that his company built the subject and the three residential condominium units on the second through fourth floors. Mr. McInerney further testified that the subject is not a part of the condominium association formed for the three residential condominium units, but that the appellant, as owner of the subject, contributes to the utility costs of the building.

The board of review analyst testified that, as an employee of the board of review, he is familiar with how properties are

classified under the Classification Ordinance. The analyst stated that the 2-12 classification is used when the residential and commercial portions of a building have a unity of ownership. The analyst further argued that, since the three residential condominium units and the subject have four separate owners, the subject does not fit into this classification.

Conclusion of Law

The appellant argued that the subject's classification was inaccurate. "Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class." Ill. Const. of 1970 art. IX, § 4(b). "Classification refers to the categorizing of real property according to its use, for the purpose of determining at which percentage of fair market value the property should be assessed." People ex rel. Costello v. Lerner, 53 Ill. App. 3d 245, 250 (5th Dist. 1977) (citing People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 195 (5th Dist. 1976)). Based on the evidence submitted by the parties, the Board finds that the appellant has not shown that the subject's classification should be changed.

In accordance with Section 4(b) of Article IX of the Illinois Constitution, Cook County classifies property within it, and applies different assessment levels to different classes of properties. The Illinois Constitution states that the classifications "shall be uniform within each class." The Illinois Appellate Court interpreted this state constitutional provision to mean that real property could be classified according to use. Costello, 53 Ill. App. 3d at 250. As detailed above, the subject is classified as a commercial storefront property for tax year 2009 (class 5-17). The appellant asserts that the subject is a mixed use building (class 2-12). Thus, the Board's decision rests on whether the subject is used for commercial purposes, or whether it is a mixed use property.

The appellant relies on Section 74-63(2)(c) of the Classification Ordinance, which defines class 2 real estate as being "[r]eal estate improved with a building put to commercial and residential use, of six or less units where the building measures less than 20,000 square feet of above grade space." In

interpreting this subsection, the Board finds that the appellant's reliance on it is misplaced.

First, this subsection states that it applies to "[r]eal estate improved with a building" The subject is not a building. Instead, it is a part of a building. In particular, the subject is part of the first floor of the building it is contained within. It is not a "building," as that term is used in Section 74-63(2)(c) of the Classification Ordinance.

The Board notes that, even had the appellant appealed the subject and the three condominium units at the same time, the subject would still not be a "building." Each of the three residential condominium units and the first floor commercial storefront have separate PINs, and, therefore, are separate legal entities. Each of the legal entities constitutes a part of a building, but none, on its own can constitute the entire building. Such is the reason that the lease and lease rider submitted by the appellant only grant the tenant a lease for the storefront property and not any portion of the three residential condominium units.

Second, the subsection states that the building must be "put to commercial and residential use." The subject is not put to residential use. Instead, it is strictly for commercial use. The lease states that the subject would be used for a nail salon. There is no mention that the tenant could use the subject for residential purposes. Therefore, the subject is used only for commercial purposes, and is properly classified as a class 5-17 property under the Classification Ordinance.

Moreover, were the Board to accept the appellant's broader interpretation of Section 74-63(2)(c) of the Classification Ordinance, such an interpretation would necessarily require a class change for the three residential condominium units as well as the subject. The entire building would need to be re-classified as a 2-12 property, while the residential condominium units are currently classified as 2-99 properties. However, the Board does not have jurisdiction to re-classify property that is not before it on appeal. Changing the subject's classification to a class which would make it inconsistent with the residential condominium units would be inequitable, and the Board refuses to take this step. Based on this analysis, the Board finds that a reduction 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: July 18, 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.