



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

APPELLANT: Casa Morelos, LP
DOCKET NO.: 09-34835.001-C-2
PARCEL NO.: 17-20-433-015-0000

The parties of record before the Property Tax Appeal Board are Casa Morelos, LP, the appellant(s), by attorney Adam E. Bossov, of Law Offices of Adam E. Bossov, 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: \$ 24,365
IMPR.: \$ 344,236
TOTAL: \$ 368,601

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 seven-story, 45-unit, apartment building of masonry construction with 52,031 square feet of living area. The building is one year old. Features of the building include central air conditioning. The property has a 27,688 square foot site, and is located in West Chicago Township, Cook County. The subject is classified as a class 3-91 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends assessment inequity as the basis of the appeal. In support of this argument, the appellant submitted a Freedom of Information Act printout from the Cook County Board of Review, showing that the subject's market value for tax year 2009 was \$5,171,824, but that the subject had received an occupancy factor of 41.6%, which reduced the subject's market value to \$2,151,479. The appellant's evidence states that the occupancy factor was applied because the subject was a newly constructed building, and did not receive an occupancy permit from the City of Chicago until July 27, 2009. The occupancy permit was included in the appellant's evidence.

However, the appellant argued that the subject should receive an additional reduction because several of the units were not rented to tenants immediately upon the issuance of the occupancy permit. According to the rent roll submitted by the appellant, a total of 8 units were rented as of August 1, 2009, 15 units were rented as of September 1, 2009, and all 45 units were rented as of October 1, 2009. The appellant's sole request for relief is that, since 37 units were vacant in August 2009, and 30 units were vacant in September 2009, these units should be granted additional relief on top of the occupancy factor already applied to the subject.

In support of this vacancy argument, the appellant asserted that vacancy relief was granted in a previous decision by the Board for a different property. G.I.A. Builders, Inc., Ill. Prop. Tax Appeal Bd. Docket No. 03-30773.001-R-1. In G.I.A. Builders, the Board granted a reduction based on the fact that the subject was unfit for occupancy. Id. As the appellant points out in the brief, the Board further stated that "the appellant showed that the Cook County assessment officials had policies of adjusting the assessment of residential property because of vacancy in place." Id.

The appellant also submitted 15 packets of documentation from appeals to the Cook County Assessor, and 1 packet of documentation from an appeal to the Cook County Board of Review. Each packet contained a brief requesting a reduction in the property's assessment based on vacancy, a notarized vacancy affidavit (including a rent roll), and a decision from the Assessor granting a reduction in the property's assessment based on: "the total vacancy of your property;" "the partial occupancy of your property;" "the partial occupancy of your property along with and income, market or cost analysis;" or "the vacancy, demolition, fire or natural disaster, or is exempt or a C of C."

Nine of the packets were for properties located in West Chicago Township, which is where the subject is located. Two of these packets were for the same industrial building, for tax years 2009 and 2010. Three of the packets were for another industrial building for tax years 2009, 2010, and 2011. Two of the packets were for the same apartment building for tax years 2009 and 2010. The appellant's brief states that this property was foreclosed upon and sold; and that upon taking possession, the new owner discovered that the property was in "horrendous condition," and needed extensive repairs before portions of it could be occupied. One of the packets is for a commercial building for tax year 2010, and an accompanying request for a certificate of error for tax year 2009. The appellant's brief in that appeal states that the property has been vacant "[d]espite aggressive attempts to lease." The final packet was for tax year 2011, but no descriptive information was given for that property.

Four of the packets were for properties located in Jefferson Township. Two of these packets were for the same commercial building, for tax years 2010 and 2011. The remaining two packets were each for three condominium units located within the same condominium complex, for a total of six units. These two appeals were for tax year 2009. The appellant's evidence does not state the reason(s) that these seven properties were vacant.

Three of the packets were for properties located in Wheeling Township. Two of these packets were for the same single family residence, for tax years 2009 and 2010. The remaining packet was for another single family residence for tax year 2009. Both residences were recent construction.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$368,601. In support of its contention of the correct assessment, the board of review submitted information on four comparable sales from the CoStar Comps Service.

In rebuttal, the appellant argued that the board of review's evidence should be given no weight because it did not address the appellant's market value argument.

At hearing, counsel for the appellant argued that the 16 packets were submitted for two reasons. The first is to show that the Cook County Assessor and the Cook County Board of Review,

jointly, under Section 9-5 of the Illinois Property Tax Code¹, have rules for granting vacancy relief, and that these two assessment authorities, do, in fact, grant vacancy relief pursuant to those rules. The G.I.A. Builders decision was also submitted for this purpose. Second, counsel for the appellant argued that these packets were submitted to show that vacancy relief was granted to other properties, and that the subject should be granted the same vacancy relief. Counsel for the appellant argued that to deny the subject additional vacancy relief would result in unfair treatment in the assessment of the subject, as these other 16 properties received vacancy relief.

Counsel for the appellant also noted that, in many instances within the 16 packets, vacancy relief was granted by the board of review when the market value of property was not addressed. In these cases, it was argued, both parties accepted the board of review's conclusion of market value, and then applied the vacancy relief to that figure.

Counsel for the appellant also discussed, at length, the recent case decided by the Illinois First District Appellate Court: John J. Maroney and Co. v. Ill. Prop. Tax Appeal Bd., 2013 IL App. (1st) 120493. First, counsel for the appellant argued that the Maroney court held that vacancy relief is granted in certain situations, and that there has been no "public retraction" from the Cook County assessing officials stating that vacancy relief is not granted. However, counsel for the appellant then argued that this appeal and Maroney are distinguishable on their facts because, in Maroney, the court found that the taxpayer had not complied with Cook County Board of Review Rule 21, while the appellant has complied with Rule 21 in this case.

During its case-in-chief, the board of review, represented by the Cook County State's Attorney, argued that the appellant has not complied with Rule 21. Furthermore, the assistant state's attorney argued, the appellant has not shown that the assessor

¹ Section 9-5 of the Illinois Property Tax Code states, in relevant part:

In counties with 3,000,000 or more inhabitants, the county assessor and board of appeals (ending the first Monday in December 1998 and the board of review beginning the first Monday in December 1998 and thereafter), jointly shall make and prescribe rules for the assessment of property and the preparation of the assessment books by the township assessors in their respective townships and for the return of those books to the county assessor.

or the board of review have a policy of granting vacancy relief to properties like the subject—namely, residential buildings that are inhabitable—simply because some of the units therein happen to not be rented for a period of the tax year. The assistant state's attorney also argued that this case is analogous to the Maroney case, and that the appellate court's holding in that case is applicable to the facts of this appeal.

Upon questioning by the Board, counsel for the appellant was unable to identify any legal authority whereby the Board can grant a reduction in a residential property's assessment based on vacancy when the property is inhabitable.

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

Initially, the Board finds that, contrary to the appellant's argument at hearing, the facts in Maroney are analogous to this appeal. In Maroney, the taxpayer argued that the Cook County assessing officials have a policy of granting vacancy relief without further evidence as to why the property was vacant. Maroney, 2013 IL App (1st) 120493, ¶ 43. Similar to the appellant's argument in this appeal, the taxpayer in Maroney cited three prior Board decisions where the Board granted a reduction in the subject's assessment based on vacancy. Id. However, the appellate court stated that these reductions were all granted after the Board was presented with evidence as to the properties' vacancy. Id. In each of the three cases, the properties were uninhabitable. Id. Thus, it appears clear, from the Maroney case, that the reason for the subject's vacancy must be proved by clear and convincing evidence. See id. ¶¶ 43-44.

The Board finds that the appellant has met this initial burden. The property was granted an occupancy permit on July 27, 2009,

and began leasing the apartment units thereafter. Thus, the reason for the subject's vacancy was due to its recent construction, and subsequent two month "lease up" period.

The Board finds the parties' arguments regarding Cook County Board of Review Rule 21 inapposite. Proceedings before the Board are *de novo*. 86 Ill.Admin.Code §1910.50(a). Whether the appellant complied with Rule 21 or not—and the Board makes no finding as to this issue—does not establish whether the subject was vacant, or why it was vacant. While complying with Rule 21 may be helpful in determining whether the subject was vacant, and why it was vacant, the Board finds that these facts can be proved by other means in this *de novo* proceeding. In this case, the appellant has done so through the submission of the occupancy permit.

However, showing that the subject was vacant, and why the subject was vacant is only the first step in the analysis. In a case before the Board based on uniformity, the appellant must show, by clear and convincing evidence, that there was inequitable treatment in the assessment process. Thus, the appellant must show that other properties similar to the subject received vacancy relief.² In making this determination, the Board's analysis now turns to the 16 packets of previous appeals and the G.I.A. Builders decision submitted by the appellant.

The appellant's submission, in this appeal, of the G.I.A. Builders decision, is no different than the taxpayer's submission of the three prior Board decisions in Maroney. In G.I.A. Builders, the subject was uninhabitable for a portion of the tax year. G.I.A. Builders, Inc., Ill. Prop. Tax Appeal Bd. Docket No. 03-30773.001-R-1. In the instant case, the subject was inhabitable after July 27, 2009, and the appellant's only request for relief is for any vacancy after that date. Thus, this appeal is distinguishable from G.I.A. Builders, as the vacancy alleged in the two cases arose under different situations. For the same reasons, the appellant's submission of the five packets where the properties received reductions, and the vacancy was due to a newly constructed residence, or because the building was uninhabitable, are given no weight in the Board's decision. Ten of the packets did not disclose the

² The appellant goes to great lengths to show that the Cook County assessing officials have granted vacancy relief simply due to a property being vacant, and that these officials have done so in numerous different situations, for various different types of properties, and in numerous tax years. However, the relevant inquiry, under a uniformity analysis before the Board, is whether properties similar to the subject have received vacancy relief.

reason for the properties' vacancy. The Board gives these packets little weight as well, as the Board is unable to determine whether these properties' vacancy and the subject's vacancy were for similar reasons.

The only remaining packet is the commercial building located in West Chicago Township, where a reduction was granted for tax year 2009. The appellant's brief in that appeal stated that the property was vacant "[d]espite aggressive attempts to lease." The Cook County Assessor applied a 20% occupancy factor to the subject, and stated that the revised assessment was for tax year 2009 only.

The Board finds that this sole comparable does not prove, by clear and convincing evidence, that the subject is inequitably assessed. Not only was the vacancy relief granted for only one year, but the building is a commercial building while the subject is a residential apartment building. To use this single comparable as a basis for reducing the subject's assessment would also contravene the Official Rules of the Property Tax Appeal Board, where it states that "[p]roof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property." 86 Ill.Admin.Code §1910.65(b). The appellant has provided one relevant comparable, not three comparables, and that comparable is a commercial property, and not a residential property.

Furthermore, even if the Board were to find this comparable similar, the Board is unaware of any legal authority which grants it the ability to apply assessment relief to a property that is inhabitable. Property that is uninhabitable can receive a reduced assessment under Section 9-180 of the Property Tax Code. 35 ILCS 200/9-180. However, once an occupancy permit has been issued for the improvement, the property is to be assessed at its full value from the date the occupancy permit was issued until the end of the tax year. Id.

Based on Section 9-180, the subject is entitled to relief from January 1, 2009 until July 27, 2009, which is a period of 207 days, or 56.7% of the year.³ The board of review granted the subject relief for 58.4% of tax year 2009 when it applied the 41.6% occupancy factor to the subject. Thus, the subject received more relief than Section 9-180 allows. As the subject

³ 207 days ÷ 365 days = 56.7% of the year.

already received a reduced assessment below the level Section 9-180 allows, the Board finds that the subjects' assessment should not be reduced, 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.

Ronald R. Cuit

Chairman

K. L. Fern

Member

Tracy A. Huff

Member

Mario Morris

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: June 20, 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.