



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

APPELLANT: Bernard Hammer
DOCKET NO.: 09-35725.001-R-1
PARCEL NO.: 17-09-210-005-0000

The parties of record before the Property Tax Appeal Board are Bernard Hammer, the appellant(s); and the Cook County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction 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: \$ 16,940
IMPR.: \$ 38,875
TOTAL: \$ 55,815

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Property Tax Appeal Board (the "Board") pursuant to section 16-185 of the Property Tax Code (35 ILCS 200/16-185) challenging the assessment for the 2009 tax year. 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 frame construction with 1,748 square feet of living area. The dwelling has one residential unit and one commercial unit. The property has a 2,420 square foot site, and is located in North Chicago Township, Cook County. The subject is classified as a class 2-12 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends assessment inequity regarding the subject's land assessment as a basis of the appeal. In support of this argument, the appellant submitted information on 21 land equity comparables.

The appellant also contends assessment inequity regarding the subject's improvement as a basis of the appeal. In support of

this argument, the appellant submitted cursory information on 16 improvement equity comparables. The appellant submitted the PIN, improvement size, age, exterior construction, improvement assessment, classification, and street address for each of the 16 comparables.

The appellant also argued that the subject was partially vacant during tax year 2009. In support of this assertion, the appellant submitted an affidavit stating that the residential unit was vacant for 58.3% of tax year 2009, and that the commercial unit was 100% vacant for tax year 2009.

The appellant also makes a contention of law as a basis for the appeal. The appellant's contention of law is based on the following language: "[W]here the property has been grossly overvalued, the assessed valuation being reached under circumstances showing either lack of knowledge of known values or a deliberate fixing of values contrary to the known value, that fraud in law will be inferred." People ex rel. Joseph v. Schoenborn, 41 Ill. 2d 302, 304 (1968). The appellant contends that the subject's improvement assessment is "grossly overvalued." The appellant further asserts that the Cook County Assessor knowingly fixed the assessments of the 16 improvement equity comparables submitted by the appellant, and knowingly fixed the subject's improvement assessment above the assessments for these 16 comparables. The appellant argues that because the 16 comparables are masonry, and the subject is frame, the subject's assessment should necessarily be lower than the 16 comparables. Since that is not the case, the appellant argues, the Assessor and the board of review have fraudulently fixed the subject's assessment, and the Board should infer that they have assessed the subject in a fraudulent manner. In further support of this argument, the appellant submitted a copy of the front page of a brochure from the Assessor entitled "The Certificate of Error Process." The appellant highlighted a quote from Assessor Houlihan on the brochure which states, "No taxpayer should pay more than his or her fair share. It is my hope that this special material will help you better understand the property tax process and thus make it work better for you."

The appellant further argued that the Assessor and board of review engaged in fraud due to the alleged decline in the real estate market from tax year 2008 to tax year 2009, the change in assessment level from these two years, and the Board's decision regarding the subject for tax year 2008. The appellant asks the Board to take judicial notice that the real estate market was "soft," in 2009, and submitted several newspaper articles in support of this assertion. The appellant further indicates that the statutory level of assessment for the subject was decreased by the Cook County Board of Supervisors from 16% to 10% of the subject's fair market value. Additionally, for tax year 2008, the subject's assessment was adjusted downward to \$38,292, and the appellant attached the Board's decision to the pleadings. See Bernard Hammer, Docket No. 08-24026.001-R-1 (Ill. Prop. Tax Appeal Bd. December 21, 2012) (final admin. decision). Based on

all these occurrences, the appellant argues that the subject's assessment for tax year 2009 could not be higher than its assessment for tax year 2008, and that the Assessor and board of review fraudulently placed a higher assessment on the subject for tax year 2009.

The appellant also alleges the Assessor's records are incorrect with regards to several descriptive characteristics of the subject. As delineated on a printout from the Assessor's webpage describing the subject, which was submitted by the appellant, the Assessor's records state that the subject is 113 years old, that the subject contains two and one-half baths, and that the subject is a "multi-family" building with two apartments. The appellant alleges that the subject is over 150 years old, that the subject has only one bath, and that the subject contains only one apartment. In support of the subject's age, the appellant stated that the subject sits on wooden posts, and that buildings constructed in such a manner were built prior to the Great Chicago Fire of 1871. In support of this contention, the appellant submitted a cartoon from the August 2010 edition of Chicagomag.com. The cartoon states that in 1855, the City of Chicago began a project to raise the city's street level by as much as ten feet to build a sewer system. According to the cartoon, building owners were required to raise their buildings to meet the elevated street level. The cartoon depicts an elevated home resting on wooden supports. The cartoon also states that some building owners simply built staircases from the second story of their buildings to the elevated street level, and left the first floor to act as a basement.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$63,075. The subject property has an improvement assessment of \$38,875, or \$22.24 per square foot of living area. The board of review submitted the ASIQ printouts for the subject, detailing the descriptive features of the subject, and the face sheet for the subject. The board of review also submitted a list of properties from Maine Township.

In rebuttal, the appellant reaffirmed the arguments regarding the alleged descriptive errors of the subject. The appellant also alleges that the subject is incorrectly classified as a class 2-12 property. The appellant further argued that the board of review's evidence does not address the arguments made by the appellant, and that the Board should give no consideration to the board of review's submission.

At hearing, the appellant initially noted that the list of properties from Maine Township that was included in the board of review's evidence was irrelevant to the subject's assessment.

The appellant then stated that this appeal was pursuant to a rollover request after the Board reduced the subject's assessment for tax year 2008. Upon questioning from the Board, the appellant admitted that he did not live in the subject during tax

year 2009. The Board then stated that the subject's assessment from the previous year could not be rolled over to the subsequent year unless the subject was an owner-occupied dwelling pursuant to Section 16-185 of the Illinois Property Tax Code. After being advised of this statute, the appellant argued that this statute violates the Equal Protection Clauses of the State and Federal Constitutions. The Board then asked the appellant what protected class Section 16-185 discriminated against. The appellant responded that "everybody is a protected class under equal protection," and that "there is a discriminatory denial of equal protection between whether it's owned and occupied or whether it's owned and rented."

The appellant then argued that the subject was partially vacant for tax year 2009, and referenced the affidavit submitted into evidence. The appellant requested that the Board take judicial notice that it was difficult to rent property during tax year 2009.

The appellant then argued that the subject's land assessment was inequitable, and referenced the 21 land comparables submitted into evidence. The appellant argued that the 21 land comparables averaged \$7.26 per square foot of land, while the subject's land assessment was \$10.00 per square foot of land. The appellant asserted that this difference was "grossly excessive." The appellant further argued that the board of review did not submit any land comparables to support the subject's land assessment of \$10.00 per square foot of land. The appellant stated that each of the 21 land comparables had buildings erected upon them.

The appellant then argued that the subject's age was over 150 years, and not 116 years as described by the Assessor's records. In support of this assertion, the appellant re-emphasized the evidence previously submitted, including the cartoon depicting the construction of the sewer system in Chicago which began in 1855. The appellant further testified that the subject contains one bath, and not two baths, and that the subject contains only one apartment and not two apartments. The appellant stated that the subject contains a residential apartment and a storefront, for a total of two units, but that the subject does not contain two residential apartments.

Next, the appellant argued that the subject was inequitably assessed based on the 16 improvement equity comparables previously submitted. In reference to these comparables, the appellant stated that 15 of these comparables were masonry and 1 was frame and masonry. The appellant argued that since the subject was of frame construction, the subject should be assessed at a lower value than these 16 masonry comparables. The appellant requested that the Board take judicial notice that masonry constructed buildings are "much more valuable" than frame constructed buildings. The appellant further argued that there are almost no identical buildings of frame construction in the subject's vicinity.

The appellant then repeated the request that the Board take judicial notice that masonry constructed buildings are "much more valuable" than frame constructed buildings. The appellant argued that masonry buildings endure, and referenced the pyramids of ancient Egypt as evidence that masonry constructed buildings last longer than frame constructed buildings. At this point, the Board stated that the appellant's argument regarding masonry buildings and frame buildings would be taken under advisement, and that the appellant would be allowed to further argue this point if he chose to do so. However, the Board stated that it would not take judicial notice that masonry constructed buildings are worth more than frame constructed buildings because this was not a matter that is commonly known, and was not a readily ascertainable fact. At this point, the appellant stated that he was a licensed real estate broker, and that he would like to testify as an expert witness. The board of review analyst objected to the appellant's qualifications. In ruling on the objection, the Board allowed the appellant to testify as an expert in the general valuation of masonry buildings in relation to frame buildings, but precluded the appellant from forming an opinion of value for the subject. The appellant then testified that, as a licensed managing real estate broker, it was his expert opinion that two buildings which are equal in all respects, except that one building is constructed of masonry, and one building is constructed of frame, the masonry building would be much more valuable than the frame building. After this testimony, the appellant, for the third time, requested that the Board take judicial notice that masonry constructed buildings are more valuable than frame constructed buildings. The Board again refused to take judicial notice of this fact, and again emphasized that this was not a matter that is commonly known, and was not a readily ascertainable fact. The appellant persisted in arguing that the Board should take judicial notice of this "fact," and, for the fourth time, requested that the board take judicial notice of this "fact." The Board then advised the appellant that it had made its ruling on this issue, and that it would not take judicial notice that masonry buildings were more valuable than frame buildings. The Board asked the appellant to either move on, or continue the argument that masonry constructed buildings are more valuable than frame constructed buildings.

The appellant then asked the Board to take judicial notice that real estate values generally declined from 2008 to 2009. The Board stated that it could take judicial notice of this fact, but that it could not use this fact, without further evidence, to attribute a decline in the subject's market value from 2008 to 2009. The appellant persisted in arguing that the Board can take judicial notice that the market value of the subject decreased from 2008 to 2009 since the market value of all property went down from 2008 to 2009. The Board responded that it is the appellant's burden to prove the *subject's* market value. At this point, the appellant again requested that the Board take judicial notice that there was a general decline in property values from 2008 to 2009, and the Board took judicial notice of this fact.

Next, the appellant argued that the subject's market value for tax year 2008 of \$432,475, as determined by the Assessor, should not be lower than the subject's market value for tax year 2009 of \$630,750, as determined by the Assessor, if the entire real estate market declined from 2008 to 2009. In support of this assertion, the appellant referenced the previously submitted Board decision regarding the subject's assessment for tax year 2008. See Bernard Hammer, Docket No. 08-24026.001-R-1 (Ill. Prop. Tax Appeal Bd. December 21, 2012) (final admin. decision). The appellant argued that the Board's determination of the subject's assessment for tax year 2008 of \$38,292 equates to a market value of \$239,325 after applying the 2008 statutory level of assessment for class 2 property of 16% as stated in the Cook County Real Property Assessment Classification Ordinance. The appellant argued that the subject's market value for tax year 2009 should be lower than its market value for tax year 2008 of \$239,325 because the entire real estate market declined from 2008 to 2009. The appellant then requested that the Board take judicial notice of the Board's decision regarding the subject's assessment for tax year 2008. The Board then took judicial notice of Board docket number 09-24026.001-R-1, and noted that a copy of the decision was submitted into evidence by the appellant.

Next, the appellant argued that the subject's assessment for tax year 2009 was a "blatant valuation fraud on the part of the Assessor." The appellant then read and cited the following excerpt from his brief: "Excessive valuation results in discrimination. Violation of the rule of uniformity is indeed a denial of equal protection and constitutes a taking of property without due process." People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 521 (4th Dist 1983). The appellant argued that the subject's assessment was "grossly excessive," and, thus, a violation of federal and state constitutional rights under Bartlow and similar cases. In further support of this assertion, the appellant referenced the Assessor's quote on the certificate of error brochure, which was previously submitted by the appellant. The appellant argued that the Assessor was "speaking out of both sides of his mouth," because he stated that "no taxpayer should pay more than his or her fair share," but then assessed the subject at an excessive value for tax year 2009 as compared to the Board's decision regarding the subject's assessment for tax year 2008.

The appellant further argued that the board of review process was a "total disregard of the land and improvement comparables." Instead, the appellant argued, the board of review used "other highly overassessed properties as preferred comparables," and that use of such comparables is a "violation of case law and of the lawful rule of equal protection under the law." The appellant then stated that "the board of review has failed to fulfill their duty as servants of the public," because the board of review did not "correct" the subject's assessment. The appellant further argued that a taxpayer should "not be required to appeal from the [board of review] and go to [the Board] to

obtain justice." At this point, the Board requested that the appellant move on from this argument, as it was an attack on the entire real estate tax administrative appeals process. The Board noted that this hearing was not called to challenge the statutory process for reviewing tax appeals, but instead, was called to determine the correct assessment for the subject.

The appellant then referenced the printout from the Assessor's webpage which was previously submitted, and argued that the subject is not a "multi-family" building, and that the subject had only one apartment, and not two apartments, as described on the printout. The appellant also stated that the subject does not contain two and one-half baths. The appellant then began to make an argument regarding the Illinois Rules of Professional Conduct of 2010, and how it applies to an attorney employed by the board of review. The Board interjected, and stated that it does not have any statutory authority to address any alleged violation of the Rule of Professional Conduct of 2010. The Board requested that the appellant please move forward with his argument regarding the subject's assessment.

The appellant then re-referred to the cartoon depicting the raising of the street level in Chicago in 1855.

The appellant then referenced a table of 20 sales. However, after a diligent search of the record, the Board was unable to locate the sales table. The appellant admitted that it was not included in his documentation either.

The appellant then referenced the various newspaper articles describing the decline of the real estate market from 2008 to 2009. These articles were from: The Chicago Daily Law Bulletin of Thursday, February 11, 2010; The Wall Street Journal of Wednesday, July 1, 2009; and The Financial Times of Wednesday, February 25, 2009. Then, for the third time, the appellant requested that the Board take judicial notice that the real estate market declined from 2008 to 2009. The Board repeated its previous ruling that it would take judicial notice that the real estate market declined from 2008 to 2009, but could not take judicial notice that this decline in the real estate market had a direct negative effect on the subject's market value from 2008 to 2009.

The appellant then read and cited the following excerpt from his brief: "[W]here the property has been grossly overvalued, the assessed valuation being reached under circumstances showing either lack of knowledge of known values or a deliberate fixing of values contrary to the known value, that fraud in law will be inferred." People ex rel. Joseph v. Schoenborn, 41 Ill. 2d 302, 304 (1968). The appellant then argued that the Assessor and board of review engaged in fraud when assessing the subject, because the subject, a frame building, was assessed higher than several masonry buildings in the subject's vicinity. The appellant, for the fifth time, requested that the Board take judicial notice that masonry buildings are much more valuable

than frame buildings. The Board repeated its previous ruling that it would not take judicial notice that masonry buildings are much more valuable than frame buildings, and stated that this is a fact that the appellant must prove. The appellant stated that, "I don't have to prove something that I believe you should take judicial notice [of]."

The appellant then returned to his argument regarding the alleged fraudulent assessment placed on the subject. The appellant referenced an article from EasyTaxFix.com, which depicts a chart showing that home values declined in ten townships in Cook County, but that the market value attributed to these townships from the Assessor increased. The appellant argued that the board of review failed in its duty to correct these assessments. North Chicago Township, where the subject is located, is not one of the ten townships depicted on this chart.

The appellant next argued that there is a "gross disparity" between the assessment of the subject and the assessment of the property located at 641 W. Grand in Chicago, with PIN number 17-09-106-014-0000. This property is one of the 16 improvement equity comparables submitted by the appellant. The appellant argued that the building on Grand is extremely more desirable, but is assessed at a much lower value than the subject. The appellant asked the Board to take judicial notice of the descriptive characteristics of the building on Grand, and the Board did so. The appellant argued that, based on Schoenborn, the Board should infer that the Assessor and board of review committed fraud in assessing the subject because of the allegedly large disparity in assessments between the subject and the property on Grand. The Board then stated that it would not address a fraud argument because to do so would be to go outside the Board's statutory charge from the Illinois General Assembly. The appellant responded that the Illinois Supreme Court had decided the Schoenborn case, and inferred that the Court's ruling is binding on the Board. The Board requested that the appellant please move forward with his argument regarding the subject's assessment.

The appellant then requested to search the Board's copy of the record to see if the previously referenced sales table was included within it. The Board allowed the appellant to search the official record, and determined that the sale table was not included therein. The board of review analyst stated that the sale table was not included in the board of review's record either.

The appellant then repeated the request to strike the list of properties from Maine Township that was included in the board of review's evidence. Without objection from the board of review, the Board agreed to strike this sheet from the record as irrelevant.

The Cook County Board of Review analyst reaffirmed the evidence previously submitted, and requested that the Board hold the appellant to the relevant burden of proof.

In oral rebuttal, the appellant argued that the board of review offered no evidence to contradict the appellant's original evidentiary submission and legal arguments.

The appellant then argued that the Assessor and board of review's classification of the subject as a 2-12 property under the Cook County Real Property Assessment Classification Ordinance was incorrect. When asked by the Board what classification would be appropriate, the appellant responded that, "it's not his duty," to classify the subject. When pressed by the Board to state what the subject's proper classification should be, the appellant did not address the question. The Board stated that it was the appellant's burden to prove what the subject's proper classification should be. The appellant responded that it was only his duty to prove that the classification was erroneous, and that he had done so. The appellant then repeated the arguments regarding the alleged erroneous descriptive errors in the Assessor's records regarding the subject.

The Board then asked the appellant if the 21 masonry comparables submitted by the appellant, which are all classified as 2-12 properties, were similar to the subject. The appellant responded that these comparables were not similar to the subject. Instead, the appellant argued, the masonry comparables were submitted to show that these properties were assessed lower than the subject even though the subject is frame and the comparables are masonry. The appellant then stated that the masonry comparables were all classified as 2-12 properties, but that they were not similar to the subject. The Board then asked the appellant to confirm whether the masonry comparables were similar to the subject or not. The appellant responded that he didn't know what the Board meant by "similar." A dialogue ensued between the Board and the appellant regarding the similarity and/or dissimilarity of the subject to the masonry comparables. Throughout this dialogue, the appellant continually stated that he did not know what the Board meant by "similar" or "comparable," and, therefore, was unable to answer the Board's questions. At the end of this dialogue, the appellant agreed that the masonry comparables were "comparable" to the subject, but the masonry comparables were not "similar" to the subject. At this point, the hearing was concluded.

Conclusion of Law

Initially, the Board finds that the subject contains one bath. The appellant offered testimony, under oath, that the subject contains one bath, which was not refuted by the board of review. Therefore, the Board finds that the appellant has proven that the subject contains only one bath.

Next, the Board finds that the subject is 113 years old. The appellant's argument that the subject was built prior to the Great Chicago Fire of 1871 is not supported by the evidence in the record. The appellant argued that the subject has no concrete foundation, and is instead built on wooden posts. The cartoon submitted into evidence by the appellant depicts a home sitting upon wooden posts. The appellant then argued that, since the subject sits on wooden posts, it must have been built prior to the Great Chicago Fire of 1871. The appellant's argument rests on the faulty premise that if buildings constructed before the Great Chicago Fire of 1871 were supported by wooden posts, and the subject is supported by wooden posts, then the subject must have been built prior to the Great Chicago Fire of 1871. This logic is flawed, as it assumes that no buildings in Chicago were constructed after 1871 that sit upon wooden posts. The gap in logical reasoning must, therefore, be supported by factual evidence. However, the evidence in the record is insufficient to establish the age of the subject. The appellant submitted no evidence stating the building requirements for the subject at the time it was built, whether that was prior to the Great Chicago Fire of 1871, as asserted by the appellant, or in 1896, as asserted by the board of review. Without any supporting evidence to the contrary, the Board finds that the subject is 113 years old.

Next, the Board finds that the subject contains two units: one residential unit and one commercial storefront unit. The Board further finds that the subject is properly classified as a 2-12 property under the Cook County Real Property Assessment Classification Ordinance. According to the Assessor, a class 2-12 property is defined as a "[m]ixed use commercial/residential building with apartment and commercial area totaling 6 units or less with a square foot area less than 20,000 square feet, any age." The definition accurately describes the subject, as the subject has one commercial unit, one residential unit, less than six total units, and less than 20,000 square feet. Therefore, the subject is properly classified as a 2-12 property.

The Board notes that these descriptive characteristics are the finding of the Board for tax year 2009 only. The Board is without authority to direct the Assessor to adjust the appropriate records within the Assessor's office to reflect the Board's findings in this appeal.

The appellant stated that this appeal was a "rollover" request, pursuant to Section 16-185 of the Illinois Property Tax Code. 35 ILCS 200/16-185. At hearing, upon questioning from the Board, the appellant admitted that the subject was not an owner-occupied residence during tax year 2009. For this reason, the Board finds that this case is not a "rollover" appeal, and stated as such at hearing. In response, the appellant argued that Section 16-185 violates the Equal Protection Clauses of the State and Federal Constitutions.

"[A]n administrative agency lacks the authority to declare a statute unconstitutional, or even to question its validity." Cinkus v. Village of Stickney Municipal Officers Electoral Bd., 228 Ill. 2d 200 (2008). However, to preserve a challenge to a statute based on constitutional grounds, the challenger must make the constitutional argument before the administrative agency before it can be addressed towards a reviewing court. Id. For this reason, the Board makes no finding on this constitutional challenge. However, the Board does find that the appellant made this constitutional challenge at hearing and on the record; therefore it is preserved for the record should the appellant choose to appeal this matter.

The appellant has requested that the Board take judicial notice of several premises. For this reason, the Board finds it necessary to address the law of judicial notice as stated by the General Assembly and the Illinois courts. "The Property Tax Appeal Board may take official notice of decisions it has rendered, matters within its specialized knowledge and expertise, and all matters of which the Circuit Courts of this State may take judicial notice." 86 Ill.Admin.Code § 1910.90(i). "Judicial notice is limited to those facts that are so capable of verification as to be beyond reasonable controversy. To say that a court will take judicial notice of a fact is merely another way of saying that the usual forms of evidence will be dispensed with if the fact is one which is commonly known or readily verifiable from sources of indisputable accuracy." Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 339 Ill. App. 3d 529, 541 (1st Dist. 2002) (hereinafter, the "Robert Bosch Corp." case); citing In re Marriage of Holder, 137 Ill. App. 3d 596, 602 (5th Dist. 1985); Murdy v. Edgar, 103 Ill. 2d 384, 394 (1984); e.g., City of Rock Island v. Cuinely, 126 Ill. 408 (1888) (judicial notice properly taken of legislative enactments); People ex rel. Lejcar v. Meyering, 345 Ill. 449, 452 (1931) (geographical facts); Dowie v. Sutton, 227 Ill. 183, 193 (1907) (historical events). "A court will not take judicial notice of critical evidentiary material not presented in the court below or of evidence that may be significant in the proper determination of the issues between the parties." Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 339 Ill. App. 3d at 541; citing People v. Mehlberg, 249 Ill. App. 3d 499, 531 (5th Dist. 1993); Vulcan Materials Co. v. Bee Construction, 96 Ill. 2d 159, 166 (1983). "[T]he well-defined rule is that courts refrain from taking judicial notice of the value of specific realty due to the many factors affecting its value." Robert Bosch Corp., 339 Ill. App. 3d at 541; quoting Holder, 137 Ill. App. 3d at 602; citing 222 East Chestnut Street Corp. v. Board of Appeals, 14 Ill. 2d 190, 194 (1958).

The appellant has requested that the Board take judicial notice of several factors. The first such request was that the Board take judicial notice that it was difficult to rent property during tax year 2009. The Board did not rule on this issue at hearing. In applying the law in the previous paragraph to the appellant's request, the Board finds that it cannot take judicial notice of this premise. The Board finds that such a premise is

not a readily ascertainable fact, and must be proved by evidence supporting the premise. For this reason, the Board does not take judicial notice that it was difficult to rent property during tax year 2009.

The appellant's second request was that the Board take judicial notice that masonry constructed buildings are much more valuable than frame constructed buildings. At hearing, the Board refused to take judicial notice of this premise after five separate requests by the appellant to do so. The Board stated, at hearing, that it would not take judicial notice of this premise as it was not a readily ascertainable fact. In light of the legal framework established in the preceding paragraph, the Board finds this decision is supported by the relevant case law.

In making this finding, the Board finds the Robert Bosch Corp. case instructive into whether it is proper for the Board to take judicial notice of this premise. In that case, the Appellate Court stated that many factors affect the value of a specific piece of real property, which precludes the court from taking judicial notice of the value of real property. Robert Bosch Corp., 339 Ill. App. 3d at 541. The Board infers from this statement that it cannot take judicial notice of the value of the "many factors" that make up a parcel of real property. To do so would open the door for appellants to surreptitiously prove the value of their property through a chain of requests for judicial notice regarding the descriptive features of that property; a practice that could ultimately generate absurd results.

For example, under the appellant's theory of judicial notice, a taxpayer could ask that the Board take judicial notice that masonry buildings are more valuable than frame; that three-story buildings are more valuable than two-story buildings; that younger buildings are more valuable than older buildings; and that larger buildings are more valuable than smaller buildings. Were the Board to grant this chain of requests for judicial notice, the appellant would merely have to find a newer, three-story building of masonry construction with a lower improvement size and a lower assessment than the subject. Regardless of the actual market value of the subject, the Board would then be required to place an assessment on the subject that is lower than this sole comparable. This practice is not what the rules of judicial notice encompass, and is an end-run around the "well-defined rule" found in the Robert Bosch Corp. case. For these reasons, the Board finds that its ruling at hearing that it would not take judicial notice that masonry buildings are much more valuable than frame is supported.

The appellant's third request was that the Board take judicial notice that real estate values declined from tax year 2008 to tax year 2009. At hearing, the Board took judicial notice of this fact, as it is a readily ascertainable fact, and is a fact that is within the purview of the Board's specialized knowledge and expertise. See 86 Ill.Admin.Code § 1910.90(i). However, at hearing, the Board cautioned the appellant that it could not

attribute a decline in the subject's market value based on a decline in the real estate market as a whole. To do so would require a logical leap that the Board refuses to take. In essence, the Board would have to assume that the value of every parcel of real estate was directly and negatively affected by the declining market, including the subject. This is not necessarily the case. If it is the case for the subject, it must be proven by competent and credible evidence, and not solely through the use of judicial notice that the real estate market was in decline. Therefore, the Board finds that its ruling and cautionary instruction at hearing are both supported.

The appellant's fourth and final request was that the Board take judicial notice of the Board's previous decision regarding the subject. See Bernard Hammer, Docket No. 08-24026.001-R-1 (Ill. Prop. Tax Appeal Bd. December 21, 2012) (final admin. decision). At hearing, the Board did take judicial notice of this decision. Under the plain language of Section 1910.90(i) of the Illinois Administrative Code, the Board is allowed to take "official notice" of this decision. The Board finds no distinction between "official notice" and "judicial notice." Therefore, the Board's ruling at hearing taking judicial notice of this decision is supported.

The appellant argued that the Assessor and board of review engaged in fraud when setting the subject's assessment. In support of this contention, the appellant relies on Schoenborn, which states, "[W]here the property has been grossly overvalued, the assessed valuation being reached under circumstances showing either lack of knowledge of known values or a deliberate fixing of values contrary to the known value, that fraud in law will be inferred." Schoenborn, 41 Ill. 2d at 304.

The Board finds that it does not have the authority to address this argument. "The Property Tax Appeal Board shall establish by rules an informal procedure for the determination of the correct assessment of property which is the subject of an appeal." 35 ILCS 200/16-180. Under this statutory charge, it is irrelevant whether fraud was committed by the Assessor and/or board of review. If fraud was committed, and that fraud resulted in the subject being "grossly overvalued," as the appellant argued, then the Board can use the evidence submitted to correct the assessment. The Board is without authority to grant any further relief due to any finding of fraud. Therefore, the Board finds that determining whether fraud occurred in assessing the subject for tax year 2009 is irrelevant to this analysis. For this reason, the Board will not address the appellant's fraud argument, but will, instead, look to the evidence submitted and accepted into the record to determine if the subject's assessment is correct, pursuant to its statutory charge.

In summary, the Board is left with three arguments made by the appellant in support of this appeal. The first argument is that the subject was partially vacant for tax year 2009. In support of this argument, the appellant submitted a vacancy affidavit and

provided testimony of the vacancy. The second argument is that the subject's improvement assessment is not uniform with similar, comparable properties. In support of this argument, the appellant submitted 16 improvement equity comparables. The third argument is that the subject's land assessment is not uniform with similar, comparable properties. In support of this argument, the appellant submitted 21 land equity comparables. The Board also took judicial notice of the Board's 2008 decision regarding the subject, and that the real estate market declined from tax year 2008 to tax year 2009. The appellant will address each of these arguments in turn.

The Board is not persuaded by the appellant's vacancy argument. The Board has no authority to grant a reduction based on vacancy, but only if the subject is uninhabitable. 35 ILCS 200/9-180. The appellant made no arguments regarding habitability. In fact, according to the vacancy affidavit submitted by the appellant, portions of the subject were rented to tenants during tax year 2009, showing that the subject was habitable. Since the Board has no authority to grant a reduction based on mere vacancy, no reduction will be granted based on this argument.

Next, 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 has met this burden of proof and a reduction in the subject's assessment is warranted.

The Board will first address the appellant's improvement equity argument. The Board finds that none of the improvement comparables submitted by the appellant were similar to the subject. The subject is a frame building, while the comparables were all masonry or frame and masonry buildings. Additionally, the subject contains 1,748 square feet of building area. The comparables' building area ranges from 3,600 to 12,636 square feet of building area. Thus, the comparable closest in size to the subject is still more than double the size of the subject. For these reasons, the Board finds that the comparables submitted by the appellant are not similar to the subject. Based on this record, the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed, and a reduction in the subject's improvement assessment is not justified.

Finally, the Board will address the appellant's land equity argument. The Board finds the best evidence of land assessment equity to be land comparables #3, #5, #6, #7, #11, #12, #13, #14, #15, #17, #18, and #21. These comparables had land assessments

that ranged from \$7.00 to \$8.00 per square foot of land. The subject's land assessment of \$10.00 per square foot of land falls above the range established by the best comparables in this record. Based on this record, the Board finds the appellant did demonstrate with clear and convincing evidence that the subject's land was inequitably assessed, and a reduction in the subject's land assessment is justified.

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.

Donald R. Cuit

Chairman

Frank A. Huff

Member

Marko M. Louie

Member

[Signature]

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

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.