



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

APPELLANT: Harp Krug Venture
DOCKET NO.: 11-02779.001-C-2 & 11-02780.001-C-2
PARCEL NO.: 08-05-303-003 & 08-05-303-003

The parties of record before the Property Tax Appeal Board are Harp Krug Venture, the appellant, by attorney Michael Elliott of Elliott & Associates, P.C. in Des Plaines; and the DuPage County Board of Review.¹

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds an increase in the assessment of the property as established by the DuPage County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
11-02779.001-C-2	08-05-300-044	180,490	25,750	\$206,240
11-02780.001-C-2	08-05-303-003	107,730	11,300	\$119,030

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeals from decisions of the DuPage County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessments for the 2011 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property for Docket No. 11-02779.001-C-2 identified by property index number (hereinafter "PIN") 08-05-300-044 (hereinafter "044") is a 1.2 acre site improved with a parking

¹ The Property Tax Appeal Board conducted a consolidated hearing with Docket Nos. 11-02779.001-C-2 and 11-02780.001-C-2.

lot. The subject property for Docket No. 11-02780.001-C-2 identified by PIN 08-05-303-003 (hereinafter "003") is a .71 acre site improved with a driveway and three parking spaces. Both PINs are located in the Freedom Commons Subdivision, Naperville, Lisle Township, DuPage County.

At the beginning of the hearing the Property Tax Appeal Board marked an aerial photo depicting PIN 044 as Appellant's Exhibit A and marked an aerial photo depicting PIN 003 as Appellant's Exhibit B. The PINs at issue were highlighted in red on the respective exhibits. PIN 044 was located on the west corner near the intersection of Diehl Road and Freedom Parkway. PIN 003 was located at the southeast corner of the intersection of Freedom Parkway and Independence Avenue.

The appellant's attorney appeared before the Property Tax Appeal Board making a legal argument that the subject PINs should be assessed in accordance with section 10-31 of the Property Tax Code (hereinafter "the Code") (35 ILCS 200/10-31) and benefit from the preferential "Developer's Exemption." In a written statement filed by appellant's counsel he asserted that the Freedom Commons Subdivision consisted of 14 lots. Counsel asserted the subdivision plat was recorded on November 30, 2006 and stated that at the time the plat was recorded the subject parcels were identified by PINs 08-05-300-027 and 08-05-300-028. Attorney Elliott stated that at the time the plat of subdivision was recorded, the images taken in 2006 show the subject property was vacant, however, images taken in the fall of 2008 show the property was improved with infrastructure including streets, sidewalks, curbs and gutters but no habitable improvements. The appellant submitted affidavits purportedly signed by Bryan Barus, Property Manager of the properties known as 1715 Freedom Drive and 1752 Freedom Drive, Naperville, Illinois, identified by PIN 044 and PIN 003, respectively. In both affidavits Barus stated that as of January 1, 2011, the improvements consisted of curb, sewer, gutter and parking with no habitable improvements on the sites. The affiant further asserted that as of January 1, 2011 the properties were not used for any commercial purpose. Barus was not present at the hearing.

In both appeals Attorney Elliott argued that pursuant to section 10-31 of the Code, property in counties with less than 3,000,000 inhabitants, that contains more than 5 acres of area, that is platted in accordance with the Plat Act, and that at the time of platting was vacant or used as a farm, should not be assessed at its fair market value as a subdivided lot, but should be assessed "based on the assessed value assigned to the property

when last assessed prior to its last transfer or conveyance." Elliott asserted that prior to the recording of the subject plat in November 2006, the underlying property was assessed as farmland at a market value of about \$9,000 or \$630 per acre. In support of this assertion the appellant submitted a copy of a printout for PIN 08-05-300-027 showing a 2005 land assessment of \$2,264 and a 2006 land assessment of \$1,896,880. On the printout was a hand written notation indicating the PIN had 14.32 acres. With respect to PIN 044 Elliott requested that the subject's 1.2 acres be assessed based on a market value of \$700 per acre or at a market value of \$840 resulting in an assessment of \$280. With respect to PIN 003 Elliott requested that the subject's .70 acres be assessed based on a market value of \$700 per acre or at a market value of \$500 resulting in an assessment of \$167.

At the hearing Elliott called Bruce Sundh as a witness. Sundh testified that the owner of the property in 2011 was Harp Krug Venture. The witness testified he was familiar with the subject property. He testified the name of the platted subdivision was Freedom Commons and to the best of his knowledge the platted subdivision was recorded on or about November 30, 2006. The witness indicated that at the time of platting the property was owned by Harp Krug Venture. Sundh indicated he did not know how large the underlying parcel development was at the time of platting, but that it was greater than 5 acres. The witness asserted that Harp Krug Venture owned the two PINs in question during 2011 and sold them after 2011. The witness also indicated to his knowledge the property was platted and subdivided in accordance with the Illinois Plat Act and the platting and subdivision occurred after January 1, 1978. Sundh also agreed the property was vacant or used as a farm at the time the plat was recorded.

Sundh identified Appellant's Exhibit A as an aerial photograph of PIN 044, highlighted in red. He also identified Appellant's Exhibit B as an aerial photograph of PIN 003, highlighted in red.²

With respect to Exhibit B, Sundh indicated that there was no building constructed on PIN 003 on January 1, 2011. He testified that the dark areas on the aerial photograph appear to be parking and streets that were on PIN 003 on January 1, 2011. The witness identified the building to the south of PIN 003 as

² Counsel asserted that he obtained the aerial photographs from the DuPage County website the day before the hearing (10/13/14) and did not know the dates the aerial photographs were taken.

the Coopers Hawk restaurant that opened in August 2011. As of January 1, 2011 there was no operating, functional restaurant.

With respect to Exhibit A, Sundh identified the building to the east of PIN 044 as the Zapatista restaurant, which opened in January 2013. The witness also identified asphalt blacktop paving with parking spaces and "streets" on PIN 044, which he testified were in place as of January 1, 2011. He also agreed the parking spaces and "streets" were in place on PIN 003 as of January 1, 2011. The witness also testified that the developer created easements for ingress and egress across other parcels in the development. He also indicated the developer created cross parking easements for the parcels in Freedom Commons.

The witness testified that as of January 1, 2011, Harp Krug Venture owned PIN 044 and the parcel to the east of it. Sundh also testified that with respect to PIN 003, Harp Krug Venture sold the parcel to the east and south to the Cooper's Hawk restaurant in late 2010 or the beginning of 2011. With respect to PIN 003 Sundh testified that Harp Krug Venture did not rent this parcel to anybody during 2011 and there were no improvements other than the streets that were constructed on the parcel. The witness indicated that Harp Krug Venture did not do anything on PIN 003 other than to allow people to drive across the parcel.

With respect to PIN 044 Sundh testified that Harp Krug Venture did not rent this parcel to anybody during 2011. The witness also agreed that the streets on the parcels were private streets encumbered with easements for ingress, egress and parking. The witness also testified the developer did not install the sidewalks, curbs, sewer and water. He thought the developer probably installed storm sewers to the site and the utility lines.

Under cross-examination, Sundh explained (referencing Exhibit B) that the cross easement would allow drivers to cross PIN 003 to go to the Cooper's Hawk restaurant. Similarly, with respect PIN 044, considering the Zapatista restaurant and other buildings in this area of the development that are commercial restaurants; overflow traffic could use the parking spaces.

Sundh testified he worked for Harp Krug Venture from September 2010 to January 2014 as an accountant. He testified he handled all the accounting aspects of reporting, paying bills, collection of money and financial reporting. The witness testified he was not involved with the construction of the

project but handled the accounting for the development and was not on the site on a day-to-day basis. Appellant's Exhibit C was marked, which was an aerial photograph submitted by the appellant, and identified by Sundh as depicting both PIN 044 (highlighted in red) and PIN 003.³ The witness explained Exhibit C depicts Freedom Commons. The exhibit depicts buildings and parking areas similar to that on PIN 044. The witness indicated that the roads would go past the buildings in the development to PIN 044. He also testified the buildings depicted were constructed in 2009 and 2010 and would have been in existence as of January 1, 2011. He testified the parking lot on PIN 044 was constructed at the same time that the other streets for the rest of the site were constructed in 2009 and 2010. He also testified that a person could park on the parking lot on PIN 044 to use in connection with the other buildings on the site. The witness explained that access to Freedom Commons was made from Freedom Parkway at an entrance to the south end of the buildings and in the middle of the property from Independence Avenue. With respect to Exhibit C, Sundh was of the opinion the aerial photograph was taken before the fall of 2012 because the [Zapatista] restaurant wasn't even started. He indicated that the aerial photograph depicts that the Cooper's Hawk restaurant was under construction. He also agreed the aerial photograph depicts cars parked on PIN 044. The witness testified the parking lot on PIN 044 was designed to be used in connection with the other buildings within the site that are restaurants when there is overflow traffic during lunchtime.

With respect to Exhibit B, the witness testified the larger building at the lower right corner was not associated with the development. He agreed that PIN 003 would typically be used in conjunction with the Cooper's Hawk restaurant. The witness further explained that the "U" shaped road on PIN 003 was constructed to be used in connection with a bank with a drive-through as well as having three parking spaces. (No bank has been constructed.) He thought these improvements were also constructed in 2009 and 2010.

The board of review submitted its "Board of Review Notes on Appeal" for each PIN under appeal. PIN 044 had a total assessment of \$180,490 and PIN 003 had a total assessment of \$107,730; the assessment for each PIN was attributed to the land, neither parcel had an improvement assessment.

³ The Property Tax Appeal Board marked as Appellant's Exhibit D an aerial photograph that was submitted by the appellant in Docket No. 11-02780.001-C-2, which similarly depicts PINs 044 and 003 (highlighted in red).

The board of review called as its witness Anthony Pacilli, deputy assessor of Lisle Township. Pacilli testified he had the Certified Illinois Assessing Official (CIAO) designation.

With respect to PIN 044 depicted on Appellant's Exhibit A, Pacilli agreed the property is improved with a paved area that is striped for parking. With respect to PIN 003 depicted on Appellant's Exhibit B, Pacilli agreed the property is also improved with a paved area. Pacilli indicated he did not know when the area was paved. The witness testified land in the development is uniformly assessed.

Pacilli indicated that the pavement on PIN 044 was not assessed. He testified that asphalt is assessed at \$1.00 per square foot. The deputy assessor testified there was 25,750 square feet of asphalt on the site, which would have an assessment of \$25,750.

With respect to PIN 003 Pacilli again testified the paved area was not assessed. He testified the paved area is 11,300 square feet and the assessment would be \$11,300.

The board of review requested the assessment on each PIN be increased to reflect an assessment for the asphalt pavement on the respective parcels.

Under cross-examination Pacilli testified that the evidence with respect to the asphalt pavement was not submitted as evidence but is based on his testimony.

Pacilli also testified under cross-examination that the asphalt on PIN 044 and PIN 003 was present on January 1, 2011. He also testified that the pavement was not assessed even though in practice they would have normally assessed the pavement. He testified a data entry error could have caused the pavement not to be assessed. Pacilli explained the pavement assessment was not attributed to the other parcels in the development improved with buildings, but was omitted or missed.

Pacilli identified the yellow highlighted area on the aerial photograph attached to the Board of Review Notes on Appeal associated with PIN 044 as depicting the subject parcel. To his knowledge the aerial photograph accurately depicted the way the property looked as of January 1, 2011. The witness also identified the yellow highlighted area on the aerial photograph attached to the Board of Review Notes on Appeal associated with PIN 003 as depicting the subject parcel. The witness also testified he considers asphalt to be an improvement.

In redirect, Pacilli agreed that it was the assessor's position that pavement in this development is assessed as an improvement and that it is uniformly assessed at \$1.00 per square foot.

Conclusion of Law

The appellant raised a contention of law arguing the subject parcels should each be assessed in accordance with section 10-31 of the Code (35 ILCS 200/10-31) and receive the so called "Developers Exemption." When a contention of law is raised the burden of proof is a preponderance of the evidence.⁴ The Board finds the appellant did not meet the burden of proof.

Section 10-31 of the Code provides in part:

Subdivisions; counties of less than 3,000,000.

(a) In counties with less than 3,000,000 inhabitants, the platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water and utility lines shall not increase the assessed valuation of all or any part of the property, if:

- (1) The property is platted and subdivided in accordance with the Plat Act;
- (2) The platting occurs after January 1, 1978;
- (3) At the time of platting the property is in excess of 5 acres; and
- (4) At the time of platting or replatting the property is vacant or used as a farm as defined in Section 1-60.

⁴ Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63.

(b) Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be determined based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance. An initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a transfer in lieu of foreclosure, does not disqualify that lot from the provisions of this subsection (b).

(c) Upon completion of a habitable structure on any lot of subdivided property, or upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial or residential purpose: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot, (ii) each lot shall be assessed without regard to any provision of this Section, and (iii) the assessed valuation of the remaining property, when next determined, shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section.... (35 ILCS 200/10-31).

The Board finds there was no evidence disputing that the requirements of subsection (a) of section 10-31 were met. The appellant presented the testimony of Bruce Sundh that the property was platted and subdivided in accordance to the Plat Act; the platting occurred after January 1, 1978 with the plat being recorded in November 2006; at the time of platting the property was in excess of 5 acres; and at the time of platting the property was vacant or used as a farm. The board of review presented no evidence to refute this testimony.

Subsection (b) of section 10-31 provides the method by which the platted and subdivided lots are to be valued stating that, "the assessed value of property so platted and subdivided shall be determined based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance." Subsection (c) of section 10-31 provides, however, that the preferential assessment allowed by subsection (b) will cease, "Upon completion of a habitable structure on any lot of subdivided property, **or upon the use of any lot, either alone or**

in conjunction with any contiguous property, for any business, commercial or residential purpose. . ." (Emphasis added.)

The evidence and testimony in this record disclosed that each of the subject PINs had asphalt paving in place as of January 1, 2011. Aerial photographs in the record depict that the subject PINs and the other parcels in Freedom Commons have contiguous areas paved with asphalt with marked parking spaces and unmarked lanes or areas that allow for ingress and egress. The asphalt paving provided both parking and a means to traverse to the various parcels that comprised the Freedom Commons development. The evidence and testimony disclosed that even though PIN 044 and PIN 003 did not have any building improvements as of January 1, 2011, adjacent PINs that comprised Freedom Commons had building improvements that were used for business purposes including restaurants. The subject PINs allow access to these parcels and provided parking for the various businesses. Sundh testified that the developer created easements for ingress and egress across other parcels in the development. The appellant's witness also indicated the developer created cross parking easements for the parcels. This testimony was not refuted. The Board finds, however, this evidence and testimony establishes that the subject PINs were used in conjunction with other contiguous property at Freedom Commons for business or commercial purposes. The use of PIN 044 and PIN 003 in association with the other lots at the development for business or commercial purposes precludes the provisions of subsection (b) of Section 10-31 from being applied in determining the assessed valuation of the lots in question. Based on this record the Board finds the subject parcels do not qualify for the preferential assessment provided by section 10-31 of the Code and reduction in the land assessments is not justified.

The next issue before the Property Tax Appeal Board is whether or not the asphalt paving on the subject lots should be assessed. The Board finds that the evidence clearly established that both parcels were improved with asphalt paving as of the January 1, 2011 assessment date. Lisle Township Deputy Assessor Anthony Pacilli testified that asphalt paving was uniformly assessed at Freedom Commons at \$1.00 per square foot. He also testified there were 25,750 square feet of asphalt paving on PIN 044 and 11,300 square feet of asphalt paving on PIN 003. Pacilli testified that they would have normally assessed the pavement but for some reason it was missed. The deputy assessor also asserted that the assessor's position was that pavement in this development is assessed as an improvement. The appellant did not address this issue in its submission and provided no

evidence with respect to the assessment of asphalt paving. Nevertheless, section 16-180 of the Code places the obligation on the Property Tax Appeal Board to determine "the correct assessment of property which is the subject of an appeal." (35 ILCS 200/16-180). Based on this record the Board finds that PIN 044 should have an improvement assessment of \$25,750 and PIN 003 should have an improvement assessment of \$11,300 for the asphalt pavement located on each parcel.

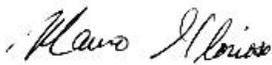
In conclusion, the Board finds that no reductions in the subject's land assessments are warranted and improvement assessments reflecting the asphalt paving are warranted for each parcel.

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: May 22, 2015



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.