



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

APPELLANT: B Gold
DOCKET NO.: 13-35473.001-R-1
PARCEL NO.: 17-17-307-026-0000

The parties of record before the Property Tax Appeal Board are B Gold, the appellant(s), by attorney Michael Elliott, of Elliott & Associates, P.C. in Des Plaines; and the Cook County Board of Review.

Based on the facts and exhibits presented in this matter, 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: \$ 4,710
IMPR.: \$ 30,004
TOTAL: \$ 34,714

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 16-185 of the Property Tax Code (35 ILCS 200/16-185) challenging the assessment for the 2013 tax year. The Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject consists of a two-story dwelling of masonry construction with 1,781 square feet of living area. The dwelling is 45 years old. Features of the home include a slab. The property has a 1,884 square foot site, and is located in Chicago, West Chicago Township, Cook County. The subject is classified as a class 2-95 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant's petition states that it is a "rollover" request pursuant to Section 16-185 of the Property Tax Code. 35 ILCS 200/16-185. In support of this argument, the appellant submitted the Board's decision in docket number 12-33108.001-R-1. In that decision, the Board reduced the subject's assessment to \$32,863. The appellant also submitted a printout from the Cook County Property Tax Portal website and the Cook County Treasurer's website, both of which

state the subject did not receive a homeowner's exemption for tax years 2012 or 2013. The appellant also submitted an affidavit naming Melissa Whitley as the affiant. The affidavit states, *inter alia*, that Ms. Whitley is an attorney at the law firm representing the appellant in this matter, and that the subject was owner occupied for tax years 2012 and 2013. The affidavit is not notarized.

The appellant also contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted cursory information for four sale comparables. These comparables sold from July 2009 to July 2012 for prices ranging from \$256,000 to \$309,000, or \$196.62 to \$237.33 per square foot of living area, including land.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$34,714. The subject's assessment reflects a market value of \$347,140, or \$194.91 per square foot of living area, including land, when applying the 2013 statutory level of assessment for class 2 property of 10.00% under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted information on four equity comparables and four sale comparables. These comparables sold from September 2012 to August 2013 for prices ranging from \$475,000 to \$577,483, or \$269.27 to \$322.08 per square foot of living area, including land.

Conclusion of Law

Section 16-185 of the Illinois Property Tax Code provides, in relevant part:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a *residence occupied by the owner is situated*, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review.

35 ILCS 200/16-185 (emphasis added). Moreover, "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." 5 ILCS 100/10-15. The Board takes judicial notice that it rendered a decision lowering the subject's assessment in tax year 2012, and that 2012 and 2013 are in the same general assessment period for West Chicago Township. The record contains no evidence indicating that the Board's 2012 decision was reversed or modified upon review, or that the subject was sold subsequent to the Board's 2012 decision.

However, the Board finds that the appellant has not proven, by a preponderance of the evidence, that the subject is owner occupied. The appellant submitted three documents that addressed the occupancy of the subject. The printout from the Cook County Property Tax Portal website and

the Cook County Treasurer's website both state that the subject did not received a homeowner's exemption for tax years 2012 and 2013. While these printouts tend to indicate that the appellant is not the occupant of the subject, such a conclusion may be unjustified, as the appellant may have simply not taken a homeowner's exemption that could have rightfully been taken.

The remaining evidence regarding the subject's occupancy is the affidavit of Ms. Whitley. Putting aside the fact that the affidavit is not notarized, the Board finds the affidavit deficient as it is in violation of the Board's rules.

An attorney shall avoid appearing before the Board on behalf of his or her client in the capacity of both an advocate and a witness. When an attorney is a witness for the client, except as to merely formal matters, the attorney should leave the hearing of the appeal to other counsel. Except when essential to the ends of justice, an attorney shall avoid testifying before the Board on behalf of a client.

86 Ill.Admin.Code § 1910.70(f). Ms. Whitley is employed by the law firm representing the appellant in this matter. As such, she is an advocate for the law firm's client, whom is the appellant in this matter. The affidavit states that Ms. Whitley has "personal knowledge of the following facts" and would be "able to competently testify" regarding such facts "if called upon to do so." Thus, Ms. Whitley is asserting that she is competently able to testify as a fact witness for the appellant in the instant matter. Under Rule 1910.70(f), as the attorney for the appellant, Ms. Whitley is restricted to being a witness as to "merely formal matters" or "when essential to the ends of justice." Id. Neither situation is present in this instance. Whether the subject is owner occupied is an essential element that must be proven by a preponderance of the evidence for the Board to grant a reduction based on a "rollover" request. 35 ILCS 200/16-185; 5 ILCS 100/10-15. A matter that is essential to the appellant's basis for relief cannot also be a "merely formal matter," and, thus, this exception does not apply. Similarly, the "essential ends of justice" do not dictate that an exception to the rule is required here. There are numerous other ways to prove owner occupancy without the use of an affidavit from an attorney employed by the law firm of record for the appellant. Ostensibly, the appellant attempted one such alternative method, i.e., the inclusion of the printouts from the Cook County websites showing whether a homeowner's exemption was granted to the subject property for the tax year at issue. Granted, these documents may have contradicted Ms. Whitley's statements in the affidavit regarding owner occupancy; but, nevertheless, such a method, if supportive of the appellant's argument, would have likely been sufficient. Alternatively, an affidavit naming the appellant as the affiant would also likely have been sufficient.

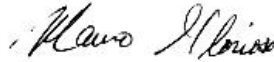
Moreover, Ms. Whitley's affidavit is hearsay, as it states "[t]o the best of my knowledge following inquiry, the Property was occupied by the owner of the Property as his or her primary residence during tax years 2012 and 2013." The "inquiry" may have been either a discussion with the appellant, or a factual investigation by the affiant. The affidavit did not include any assertions that Ms. Whitley conducted an investigation into the occupancy of the subject. Thus, the inquiry appears to have been a discussion with the appellant, and, therefore, statements made to prove the truth of the matter asserted, such as who occupies the subject, are inadmissible hearsay. For these reasons, the Board gives no weight to Ms. Whitley's affidavit. There is no further evidence in the record to support the appellant's assertion that the subject is owner occupied. Therefore, the Board finds that the appellant has not proven, by a preponderance of

the evidence, that the subject is owner occupied, and a reduction based on the appellant's "rollover" request is not warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The Board finds the best evidence of market value to be board of review comparables #1, #2, #3, and #4. These comparables sold for between \$269.27 to \$322.08 per square foot of living area, including land. The appellant's comparables were given diminished weight in the Board's analysis because the information provided was extremely meager. The subject's assessment reflects a market value of \$194.91 per square foot of living area, including land, which is below the range established by the best comparables in this record. Based on this record, the Board finds the appellant did not demonstrate that the subject is overvalued, and 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. Pursuant to Section 1910.50(b) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(b)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.



Chairman



Member



Acting Member



Member



Member

DISSENTING: _____

CERTIFICATION

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 20, 2017



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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

PARTIES OF RECORD

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