FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Jonathan Gardiner
DOCKET NO.: 14-03985.001-R-2
PARCEL NO.: 06-06-22-105-019

The parties of record before the Property Tax Appeal Board are Jonathan Gardiner, the appellant, and the Tazewell County Board of Review.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds ***A Reduction*** in the assessment of the property as established by the **Tazewell** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$19,170
IMPR.:	$0
TOTAL:	$19,170

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Tazewell County Board of Review[1] pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2014 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 is improved with a two-story frame dwelling that was built in 2013. The home features a full basement with finished area, central air conditioning, a fireplace and an attached three-car garage of 750 square feet of building area. The property has a .22-acre site located in Morton, Morton Township, Tazewell County.

Based upon a contention of law, the appellant asserts that the subject property was improperly assessed as omitted property for both tax years 2014 and 2015.[2] The appellant argues that in accordance with Section 9-270 of the Property Tax Code (hereinafter "Code"), the subject

[1] While no copy of a Final Decision of the Tazewell County Board of Review was provided with the appeal as required, the Tazewell County Board of Review reported that the appellant appeared before it upon proper notice. Moreover, Exhibit XII to the appellant's appeal is a letter from Gary Twist, Clerk of the Tazewell County Board of Review entitled "Notice of Board of Review Decision" dated August 15, 2016.
[2] Two separate appeals were timely filed by the appellant and two separate decisions will issue for these appeals.

property meets an exception to the provision for omitted property assessment in that the assessor received a building permit for the subject property evidencing new construction, but failed to list the improvement on the tax rolls. (35 ILCS 200/9-270) As a consequence of the erroneous assessment, the appellant asserts there is no liability for any taxes due related to the improvement assessment and the assessment should revert to the assessment of $160, the assessment prior to the omitted property assessment made in May, 2016 and affirmed by the Tazewell County Board of Review by a decision issued on August 15, 2016.

The appellant reported that the subject property was purchased on December 6, 2013 for $324,900 as new construction that had been completed shortly before moving in. The home was built pursuant to building permit #13042 that was filed with the Village of Morton and reportedly shared with the Morton Township Assessor, Vivian Hagaman, but the township assessor failed to list the improvement on the tax rolls (citing Sec. 9-270(4) of the Code). (See Exhibit I) The appellant asserted, "we otherwise provided notice of our purchase of this improved property (Section 9-270(3))."

The appellant also complains that there was "no fair hearing" before the Tazewell County Board of Review, their decision should not stand and the board of review disregarded the counsel of the Tazewell County Assistant State's Attorney. As an initial matter, the appellant's complaints regarding the appeal process before the Tazewell County Board of Review will be briefly addressed along with the argument that the valuation for years 2014 and 2015 should be reversed, in part, due to errors/omissions at the board of review level. The law is clear that proceedings before the Property Tax Appeal Board are de novo "meaning the Board will only consider the evidence, exhibits and briefs submitted to it, and will not give any weight or consideration to any prior actions by a local board of review . . . ." (86 Ill.Admin.Code §1910.50(a)). Moreover, the jurisdiction of the Property Tax Appeal Board is limited to determining the correct assessment of the property appealed to it; the Property Tax Appeal Board has no jurisdiction to address any alleged procedural and/or due process violations alleged with regard to actions and/or inactions at the local board of review level. (35 ILCS 200/16-180). Thus, the Property Tax Appeal Board will consider the evidence presented by both parties to this proceeding in determining the correct assessment of the subject property and will not further address any complaints about the hearing process at the local county board of review level.

Through a 4-page single-spaced brief along with attachments, Exhibits I through XII, the appellant outlined the history of the subject parcel being "tracked" by the Morton Township Assessor, Vivian Hagaman, from building permit to final painting. In support the appellant referred to Exhibit I which consists of a copy of the subject's property record card with a print date of "01/02/2014" along with a handwritten notation of "permit – 13042 4/1," a second handwritten notation "SFR [single family residence] $263,000" and the property record card also has a typed entry in the lower left corner of "12/5/13 – Certificate of Occupancy"; a form "Residential Data Collection Sheet" with percent of completion being 100% as of November 4, 2013 and a notation "occupied 12-5-13"; and two pages, both of which are entitled Application for Building Permit and Certificate of Occupancy dated 4-1-13, one of which was granted as of 5-2-13. The appellant reported that next, shortly after the sale, a Trustee's Deed was filed and recorded with the County to evidence the real estate transfer and pay the transfer taxes including Form PTAX-203 evidencing the sale price. (See Exhibit II – copies of the PTAX-203, Trustee's Deed and Affidavit for Purposes of Illinois Plat Act Requirements) Based upon this

documentation, the appellant contends he complied with all the filings required by Tazewell County and the Code.

In the brief, the appellant asserted that the 2014 tax bill did not list the construction of the home, "but never having owned a home before, we were under the impression that the property tax value would not increase until the 2015 tax year." The appellant contends the tax bill of $11.46 was paid timely. Next, the appellant cites to Exhibit III, a copy of the Tazewell County Property Tax Bill for 2015 taxes payable 2016 totaling $11.32 which still did not list the home; the first installment was due June 1, 2016. The appellant asserted that on May 2, 2016, he contacted the Tazewell County Assessment Office to check if the bill was correct. In support, the appellant referred to Exhibit IV, "File of the Morton Township Assessor" concerning the 2016 Correction, Property Administrative Information with handwritten notes from Vivian Hagaman which includes a Tazewell County Certificate of Error #2015000371 for tax year 2015 due to omitted property, a Certificate of Error Worksheet for tax year 2015 noting "omitted new construction for 2014 & 2015 (2015 factor 1.0280)" and multiple property record cards with handwritten notations. The appellant asserts that while the property permits and notices were reportedly filed according to the assessment office, "the county failed to update the tax rolls."

As depicted by Exhibit V, on August 10, 2016 a PTAX-228 Notice of Property Assessment was issued for tax year 2016 noting that the 2015 assessment was $160 and for 2016 was increased to $111,570 by the township assessor and further increased by the Chief County Assessment Officer to $112,690. The appellant contends that his affirmative actions assisted the county in discovering and correcting this error. The county officials also informed the appellant that the taxes would be increased for tax year 2014 and 2015 as omitted property and not as an administrative error.

As depicted in Exhibit VI, a notice dated May 9, 2016 from Mary J. Burress, Tazewell County Treasurer, advised the appellant that payment for both the 2014/15 and 2015/16 real estate tax bills totaling $14,804.04 was due on September 1, 2016; the notice encouraged a call to the Treasurer's Office if the full amount could not be paid by the due date. Also as part of the Exhibit VI were copies of a tax bill for 2014 taxes payable 2015 and a tax bill for 2015 payable 2016.

The appellant reports and depicts with Exhibit VII that he objected in writing in June 2016 to Gary Twist, Chief County Assessment Officer, concerning the issuance of additional tax bills. In support of his objection, the appellant contended that pursuant to the Code the taxes could not be collected, citing both to Sections 9-260(a) and 9-270. In response, a meeting was established with the Tazewell County Board of Review members to discuss omitted property which was held on July 12, 2016. (See Exhibit VIII & Brief, p. 2). At the meeting, the appellant asserts that his legal arguments were dismissed, he was advised to discuss his questions with the State's Attorney who advised the appellant that legal issues can be discussed with the board of review; upon re-raising the issue with the board of review, the appellant was finally told he could appeal the board of review decision. The appellant followed up the meeting with an e-mail communication to the board of review, Exhibit IX, along with additional documents including the previously referenced Code provisions.

After this communication, the appellant spoke with Mike Holly, Assistant State's Attorney, who reportedly acknowledged that the "assessor" had received the building permit, had visited the construction, but failed to add the subject property to the rolls. The appellant asserts that it was Holly's opinion that the appellant had a "solid" argument and that Holly had so informed the board of review.

Thereafter, the appellant received an e-mail from Gary Twist dated July 29, 2016 advising that the subject property would be assessed as omitted property for both 2014 and 2015 (Exhibit X) along with a modification to the 2014 assessment based upon the purchase price and with an equalization factor applied to the 2015 assessment. Next, the appellant received the board of review final decision on omitted property for 2014 and 2015 tax years dated August 15, 2016.

Based on the foregoing evidence and argument, the appellant seeks a reduction in the 2014 assessment of the subject property to $160 prior to the assessment for omitted property.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $108,290. The subject's assessment reflects a market value of $325,782, land included, when using the 2014 three year average median level of assessment for Tazewell County of 33.24% as determined by the Illinois Department of Revenue.

In response to the appeal, the board of review initially submitted a two-page letter. While the appellant asserted that a building permit was filed by the builder, there was no documentation of occupancy provided. Pursuant to Village of Morton ordinances, the board of review contends that a notice of occupancy was required. Furthermore, while Section 9-265 of the Code (35 ILCS 200/9-265) provides that interest may not be charged for property omitted by ministerial assessor error, nothing prevents the collection of the principal amount of back taxes.[3]

[3] Section 9-265 of the Code (35 ILCS 200/9-265) states in pertinent part that:

> (a) If any property is omitted in the assessment of any year or years, not to exceed the current assessment year and 3 prior years, so that the taxes, for which the property was liable, have not been paid, or if by reason of defective description or assessment, taxes on any property for any year or years have not been paid, or if any taxes are refunded under subsection (b) of Section 14-5 because the taxes were assessed in the wrong person's name, the property, when discovered, shall be listed and assessed by the board of review or, in counties with 3,000,000 or more inhabitants, by the county assessor either on his or her own initiative or when so directed by the board of appeals or board of review.
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> . . .
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> (c) For purposes of this Section, "defective description or assessment" includes a description or assessment which omits all the improvements thereon as a result of which part of the taxes on the total value of the property as improved remain unpaid.
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> . . .
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> (e) When property or acreage omitted by either incorrect survey or other ministerial assessor error is discovered and the owner has paid its tax bills as received for the year or years of omission of the parcel, then the interest authorized by this Section shall not be chargeable to the owner. However, nothing in this Section shall prevent the collection of the principal amount of back taxes due and owing.
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> . . . .

The board of review did not address in any manner the prohibitions set forth in Section 9-270 of the Code that were also cited by the appellant (35 ILCS 200/9-270).

Based on the foregoing arguments, the board of review requested confirmation of the subject's omitted property assessment totaling $108,290 for tax year 2014.

In written rebuttal, the appellant contended that Section 9-270 of the Code (35 ILCS 200/9-270) stands for the proposition that no omitted property assessment may issue if the assessor received a building permit for the property evidencing that new construction had occurred or was occurring on the property, but failed to list the improvement on the tax rolls. Furthermore, the appellant contends that a Certificate of Occupancy was issued by the Village of Morton when the appellant moved into the home, citing to the document in Exhibit I previously filed herein that is entitled "Application for Building Permit and Certificate of Occupancy"; the last portion of one of these documents states in pertinent part "No building shall be occupied until the Certificate of Occupancy is issued by the Village of Morton." Also attached to the rebuttal was new documentation, a Certificate of Occupancy issued by the Morton, Illinois Zoning Department dated December 5, 2013. The appellant also referenced the township assessor's record of "percent of completion." In further response to the board of review's argument, the appellant asserted that while Section 9-265 of the Code allows a charge for omitted property, Section 9-270 "specifically limits the application of Section [9-265] to our situation."

Conclusion of Law

The appellant has disputed both the land and improvement assessments of the subject property based upon a contention of law. 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.

From the record it appears that for tax year 2013, the subject parcel was assessed as vacant land with a total assessment of $160 and the resulting tax bill which the appellant paid. The low assessment of the subject parcel suggests that the property was receiving a preferential assessment, such as that afforded under the developer's exemption provisions of the Property Tax Code (see 35 ILCS 200/10-30 et seq.). On this record, the appellant reported that the subject property was purchased on December 6, 2013 as new construction that had been recently completed. The ownership history of the subject parcel as depicted on the property record card (Exhibit I) displays the original owner as AK Morton Development LLC followed by ownership by Henderson Weir Agency. The Board takes notice that Section 10-30(c) of the Property Tax Code (35 ILCS 200/10-30(c) provides in pertinent part:

> 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, or **upon the initial sale of any platted lot,** including a platted lot which is vacant: (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 properties, 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 200/10-30(c)). [Emphasis added.]

Subsection (b) of Section 10-30 provide for the assessment of platted and subdivided land based on the estimated price "for the same purposes for which the property was used when last assessed prior to its platting." Therefore, the Property Tax Appeal Board finds that the subject parcel was likely preferentially assessed as part of a subdivision and pursuant to Section 10-30(c) once sold to the appellant in late 2013 was no longer entitled to a preferential assessment. In light of the change in ownership when the appellant purchased the parcel, the Property Tax Appeal Board finds that the subject land was no longer entitled to an assessment of $160 for tax year 2014. In the absence of any other evidence from the appellant that the subject's land assessment was not otherwise incorrect, beyond the citation to Section 9-270 of the Code concerning omitted property, the Board finds that no change in the subject's land assessment is warranted on this record.

The remaining issue before the Property Tax Appeal Board is the correct 2014 tax year assessment, if any, of the dwelling located on the subject parcel given the appellant's argument concerning the applicability of Section 9-270 of the Code (35 ILCS 200/9-270). As to the improvement assessment, the question posed is whether the board of review had the authority to assess the subject improvements as omitted property for the assessment year at issue. Based on the facts elicited in this record and in particular subpart (4) of Section 9-270, the Property Tax Appeal Board finds that the board of review did not have the authority to assess the subject improvements as omitted property for the assessment year at issue and therefore, a reduction in the subject's improvement assessment is warranted.

The appellant's argument is essentially that the board of review should be deemed prohibited from assessing the improvement on the subject property as "omitted property" under the Code due to the failures of the assessing officials. The appellant asserts that he should not be liable for the improvement assessment of the subject property because the township assessor received a copy of the building permit, recorded the Certificate of Occupancy on the subject's property record card prior to January 2, 2014 and, as part of the assessor's record, maintained a "Residential Data Collection Sheet" that recorded various aspects of the subject dwelling including, but not limited to, the building permit dated 4/1/13, the style, foundation, exterior, porches, wood deck, garage, fireplace, air conditioning and a calculation of "Percent of Completion" along with a notation "occupied 12-5-13." Based upon this documentation maintained in the assessor's files, the appellant contends that the township assessor, Vivian Hagaman, recorded the subject property as 100% complete, but yet failed to place the property on the tax rolls. Lastly, the appellant contends that on May 2, 2016 (Exhibit IV), it was the appellant who questioned if the county had failed to place the subject property on the tax rolls for tax year 2015.

The Property Tax Appeal Board finds the argument made by the appellant has merit. The Property Tax Appeal Board first recognizes that the statutory provision for the assessment of omitted property previously provided as follows:

> A charge for tax and interest for previous years, as provided in Sections 9-265 or 14-40, shall not be made against any property for years prior to the date of ownership of the person owning the property at the time the liability for the omitted tax was first ascertained. Ownership as used in this section shall be held to refer to bona fide legal and equitable titles or interests acquired for value and without notice of the tax, as may appear by deed, deed of trust, mortgage, certificate of purchase or sale, or other form of contract. No charge for tax of previous years, as provided in Section 9-265, shall be made against any property if (a) the property was last assessed as unimproved, (b) the owner of the property gave notice of subsequent improvements and requested a reassessment as required by Section 9-180, and (c) reassessment of the property was not made within the 16 month period immediately following the receipt of that notice. The owner of property, if known, assessed under this and the preceding section shall be notified by the county assessor, board of review or Department, as the case may require. (P.A. 88-455, Art. 9, § 9-270, eff. Jan. 1, 1994).

The statutory provision, Section 9-270, for omitted property was significantly changed as of March 10, 2011. Thus, the statutory provision which the appellant has argued provides as follows in Section 9-270 of the Code (35 ILCS 200/9-270):

> Omitted property; limitations on assessment. A charge for tax and interest for previous years, as provided in Sections 9-265 or 14-40, shall not be made against any property for years prior to the date of ownership of the person owning the property at the time the liability for the omitted tax was first ascertained. Ownership as used in this section shall be held to refer to bona fide legal and equitable titles or interests acquired for value and without notice of the tax, as may appear by deed, deed of trust, mortgage, certificate of purchase or sale, or other form of contract. **No charge for tax of previous years, as provided in Section 9-265, shall be made against any property if** (1) the assessor failed to notify the board of review of an omitted assessment in accordance with subsection (a-1) of Section 9-260; (2) the property was last assessed as unimproved, the owner of the property gave notice of subsequent improvements and requested a reassessment as required by Section 9-180, and reassessment of the property was not made within the 16 month period immediately following the receipt of that notice; (3) the owner of the property gave notice as required by Section 9-265; **(4) the assessor received a building permit for the property evidencing that new construction had occurred or was occurring on the property but failed to list the improvement on the tax rolls;** (5) the assessor received a plat map, plat of survey, ALTA survey, mortgage survey, or other similar document containing the omitted property but failed to list the improvement on the tax rolls; (6) the assessor received a real estate transfer declaration indicating a sale from an exempt property owner to a non-exempt property owner but failed to list the property on the tax rolls; or (7) the property was the subject of an assessment

> appeal before the assessor or the board of review that had included the intended omitted property as part of the assessment appeal and provided evidence of its market value. The owner of property, if known, assessed under this and the preceding section shall be notified by the county assessor, board of review or Department, as the case may require.
> (Source: P.A. 96-1553, eff. 3-10-11.) [Emphasis added.]

Based on the record, the parties agree that the board of review never assessed any of the improvements prior to the omitted property assessments for 2014 and 2015. Pursuant to Section 9-270 of the Code, of the seven subparts there is one particular exception to the authority of a board of review to assess omitted property at subpart (4) where "the assessor received a building permit for the property evidencing that new construction had occurred or was occurring on the property but failed to list the improvement on the tax rolls."

The appellant's submission included a copy of the subject's property record card, a Residential Data Collection Sheet, a Percent of Completion data sheet and an Application for Building Permit and Certificate of Occupancy that was dated April 1, 2013 referencing Permit No. 13042, the same building permit number referred to in a handwritten notation on the subject's property record card. Multiple documents submitted in this record by the appellant along with the lack of any evidence by the board of review to refute the documentation supports the appellant's argument that the assessor had received a building permit associated with the subject dwelling. The Tazewell County Board of Review submitted no argument refuting the genuineness of the appellant's documentation which was reportedly maintained by the township assessor's office nor did it assert that the assessor did not receive a copy of the building permit associated with the construction of the subject dwelling. Therefore, the Property Tax Appeal Board finds the appellant established that in accordance with Section 9-270 of the Code, the Tazewell County Board of Review was prohibited from assessing the subject improvement as omitted property for the assessment year at issue.

In conclusion, the Property Tax Appeal Board finds removal of the subject's improvement assessment is justified based upon subpart (4) of Section 9-270 of the Property Tax Code as shown in this record. Thus, the Board finds removal of the subject's improvement assessment is 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(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) 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

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 15, 2018

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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