



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

APPELLANT: Positano Holdings LLC & Carbondale Holdings LLC
DOCKET NO.: 17-05725.001-C-3 through 17-05725.003-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Positano Holdings LLC & Carbondale Holdings LLC, the appellants, by attorney Adam Lawler, of Lawler Brown Law Offices in Marion; and the Jackson 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 **Jackson** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
17-05725.001-C-3	15-22-252-025	49,000	701,723	\$750,723
17-05725.002-C-3	15-22-276-001	78,459	967,065	\$1,045,524
17-05725.003-C-3	15-22-276-013	6,046	198,598	\$204,644

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Jackson County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2017 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties.

Findings of Fact

The subject property consists of a 193-unit multi-family apartment complex located in Carbondale, Carbondale Township, Jackson County.

The appellants' counsel appeared before the Property Tax Appeal Board raising a contention of law as the basis of the appeal. The appellants argued that the Jackson County Board of Review failed to provide proper notice of the subject parcels' reassessments when it mailed the Notice of Reassessment to a wrong address. As a result, the appellants contend that they were deprived of an opportunity to timely contest the reassessments.

In support of this argument, the appellants presented a five-page legal brief prepared by their counsel contending that the lack of proper notice of reassessment "violated the Due Process

Clause of the Fourteenth Amendment of the United States Constitution as well as the Illinois Property Tax Code.”

The appellants appeared before the Property Tax Appeal Board by their counsel, attorney Zachery Walston. Walston argued that the Jackson County Assessor’s Office reassessed the subject parcels in 2016, the result of which virtually tripled the subject parcels’ total assessment. Attorney Walston argued that the 2016 Notice of Reassessment was sent to a wrong mailing address. Walston contended that by sending the notice of reassessment to a wrong address, the assessor deprived the taxpayers of the opportunity to be heard on the issue of valuation of their property. Walston contended that the increase in the tax amount is therefore void due to lack of notice and, consequently, the amount of \$146,533.22 that the appellants paid in increased property taxes should be refunded.

Based on this evidence, the appellants requested that the Property Tax Appeal Board order Jackson County to reimburse appellant the amount of \$146,533.22, which represents the taxes that the appellant paid in excess following the reassessment of the subject parcels in the 2016 assessment year.

Upon questioning by the Administrative Law Judge, the appellants’ attorney acknowledged that the appellant did not contest the subject property’s valuation before the board of review and did not raise that issue on appeal before the Property Tax Appeal Board. The appellants’ counsel contended, however, that Illinois law provides that when an assessment is levied without due notice to the taxpayer and without an opportunity to be heard, it is not necessary for the taxpayer to show that a resulting increase is excessive or that the subject property is overvalued. Walston contended that the “... increase is void even though it may constitute a fair valuation of the property.” Citing, Little Sister Coal Corp. v. Dawson, 45 Ill.2d 342 (1970). Appellants acknowledge that notice of the subject’s reassessment was timely made by publication in the local newspaper, however they argued that mere publication in the newspaper without mailing the notice of reassessment to the taxpayer is insufficient to satisfy the statutory requirements for notice in this case. Hoyne Savings & Loan Ass’n v. Harre, 60 Ill.2d 84 (1974). Based on the above arguments, the appellants requested a reimbursement in the amount of \$146,533.22 which is the amount of excess taxes paid subsequent to the reassessment.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the three subject parcels of \$2,000,891. The subject's assessment reflects a market value of \$5,907,561, land included, when using the 2017 three-year average median level of assessment for Jackson County of 33.87% as determined by the Illinois Department of Revenue.

In support of its contentions of correct assessment and having provided appellant proper notice of the 2017 reassessment, the board of review submitted a legal brief along with the following attached exhibits: A copy of the appellant’s property information record which is publicly posted on the County’s website; a copy of the parcel information report from the assessor’s office that contains the County’s Computer Assisted Mass Appraisal system (CAMA) containing subject’s valuation data; a copy of the PTAX-203 Illinois Real Estate Transfer Declaration form documenting the appellant’s purchase of the subject property in 2015, and a copy of the local newspaper publication notice for the assessment increase for the subject parcels.

Jackson County treasurer, Lisa Jacquot, testified before the Property Tax Appeal Board on behalf of the board of review. Ms. Jacquot testified that her office sent out the tax bill to the appellant in 2017 (for the 2016 taxes). According to Ms. Jacquot's testimony, the tax bill was paid under no unusual circumstances and it was not paid under protest.

The board of review next presented Maureen Berkowitz, Chief County Assessment Officer for Jackson County. Ms. Berkowitz testified that she prepared all the evidentiary documents submitted on behalf of the board of review. Ms. Berkowitz stated that all information regarding the subject property including property address and assessment information is contained on their website and is readily available to the appellants and to the public. Ms. Berkowitz also indicated that the recorded Form PTAX-203 indicates that the appellant purchased the property for \$7,000,000 and that it was an arm's-length transaction. Ms. Berkowitz testified that the current assessment for the subject parcels which reflects a market value of approximately \$5,907,561 is significantly lower than the purchase price of \$7,000,000. Finally, Ms. Berkowitz testified that the notice of assessment increase for each parcel in the county, including the subject, was published in the local newspaper of general circulation per statutory requirement.

Upon questioning from the Administrative Law Judge, Ms. Berkowitz stated that in 2016, the assessor's office did indeed have a wrong mailing address for the appellant which was likely due to a clerical error. She indicated that for many different reasons, the assessor's office corrects an average of about 1,200 addresses each year.

Counsel for the board of review, Allison Mileur, argued that the Property Tax Appeal Board has no authority except to review and determine correct assessments for properties on appeal. What the appellant requests, Ms. Mileur argued, is that Property Tax Appeal Board punish the county assessor for having an incorrect address in its records, rather than determine the correct amount of the assessment. Moreover, Ms. Mileur argued that the appellant had constructive notice of the tax increase through publication in the local newspaper, despite the fact that they did not receive the notice by mail. Furthermore, following the reassessment and resulting increase, the property taxes were paid voluntarily and not under protest. Finally, this appeal was untimely as it was brought in the year 2017 to challenge assessment for the 2016 property taxes. As such, the Property Tax Appeal Board is without jurisdiction to change an assessment that occurred in 2016. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Conclusion of Law

The appellants appeared before the Property Tax Appeal Board arguing a contention of law that the Jackson County Board of Review failed to provide the appellant due notice of appellants' property tax reassessment when it mailed the 2016 Notice of Reassessment to a wrong address. 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 Property Tax Appeal Board's rules do not specifically state the burden of proof when a contention of law is raised, therefore, the standard of proof in this matter is a preponderance of the evidence. The Board finds that the appellants did not meet this burden and no change in the subject property's assessment is warranted.

The only issue raised by the appellant in this appeal is whether or not the appellant received proper notice of reassessment of the subject property in 2016.

§1910.10 of the rules of the Property Tax Appeal Board states in part:

b) The Property Tax Appeal Board shall determine the correct assessment prior to state equalization of any parcel of real property which is the subject of an appeal....

f) The Property Tax Appeal Board is without jurisdiction to determine the tax rate, the amount of a tax bill, or the exemption of real property from taxation. (Emphasis added.)

86 Ill. Admin. Code §1910.10.

Pursuant to §1910.10 above, the jurisdiction of the Property Tax Appeal Board is limited to determining whether or not the assessment values of any parcel of real property which is the subject of an appeal are correct. PTAB is not vested with the jurisdiction to review constitutional due process claims and impose equitable remedies. Furthermore, PTAB has no jurisdiction to decide whether or not the appellants in this case received proper notice of reassessment and, consequently, whether they should be reimbursed for taxes already paid.

In Geneva Community School District Number 304 v. Property Tax Appeal Board 296 Ill.App.3d 630, 695 N.E.2d 561 (1998), the Illinois Appellate Court stated that the only power and authority placed in the Property Tax Appeal Board by statute is "...to receive appeals from decisions of Boards of Review [citation], make rules of procedure [citation], conduct hearings [citation], and make a decision on the appeal [citation]." *Citing People ex rel. Thompson v. Property Tax Appeal Board*, 22 Ill.App.3d at 316, 317 N.E.2d 121 (1974). Moreover, in Geneva, the court held that the only types of appeals provided for in the statute are those by a taxpayer dissatisfied with the assessment of his property or by a taxing body that have an interest in a decision of the Property Tax Appeal Board on an assessment made by a local assessment officer or board of review. *Id.* at 322, 317 N.E.2d 121.

The Board finds that the only evidence presented in this case by the appellants is regarding the issue of **notice** to the appellant regarding the subject property's reassessment. The Board finds that there has been no evidence presented regarding the subject's **valuation**. Upon questioning by the Administrative Law Judge on this issue, the attorney for the appellants confirmed that the appellants are not contesting the subject properties's assessment nor arguing overvaluation with regard to the three parcels. The appellants' prayer for relief according to the evidence submitted and confirmed by their counsel is only the reimbursement of \$146,533.22, which is the amount that the appellants paid in additional real estate taxes following the reassessment of the subject property.

Consequently, in light of the statutory and case law above, the Property Tax Appeal Board finds that it has no jurisdiction over issues presented by the appellants concerning notice of reassessment or Due Process Clause of the Fourteenth Amendment of the United States Constitution. As expressly stated in 86 Ill. Adm. Code §1910.10(f), the PTAB is without jurisdiction to determine the tax rate, the amount of a tax bill, or the exemption of real property from taxation.

Furthermore, corrections with regard to property records are provided for in the Property Tax Code (35 ILCS 200/14-20). The rule in Illinois is that taxes voluntarily, though erroneously, paid cannot be recovered unless recovery is authorized by statute. Jansen Real Estate Corp. v. P.J. Cullerton, 49 Ill. App. 3d 231, 236 (1st Dist. 1977); Aldens, Inc. v. Rosewell, 71 Ill. App. 3d 754, 757; Inland Real Estate Corp. v. Oak Park Trust and Savings Bank, 127 Ill. App. 3d 535, 549 (1st Dist. 1984); Bass v. South Cook County Mosquito Abatement Dist., 236 Ill. App. 3d 466, 467 (1st Dist. 1992). Since there is no statute providing for a recovery of taxes that may have been wrongly but voluntarily paid without protest, there is no method by which appellants can obtain a refund for any years prior to the year in which an assessment complaint has been filed.

Lastly, the Board finds that appellant's failure to argue valuation before the board of review and before PTAB, along with the subject's current assessment which reflects a market value of approximately \$5,907,561 (which is significantly lower than the purchase price of \$7,000,000 in 2015), as well as the payment of the property taxes voluntarily and not under protest all detract and undermine the appellant's argument that appellant had no opportunity to argue over-assessment. Consequently, the Board finds that the appellant did not demonstrate by a preponderance of the evidence that it was precluded the opportunity to contest the subject parcels' reassessment and, therefore, no change in the subject's assessment is warranted.

As to the appellants' argument that the increased assessment is void, the Board finds that this argument is without merit. The appellants' reliance on an Illinois Supreme Court decision Little Sister Coal Corp. v. Dawson, 45 Ill.2d 342 (1970) in arguing that an "... increase [in assessment] is void even though it may constitute a fair valuation of the property," is misplaced. In Little Sister, the Court held that "[w]ith notice through the required publication of all assessments and the opportunity to be heard before the board of review, the requisites for due process are satisfied." Little Sister Coal Corp. v. Dawson, 45 Ill.2d 342 (1970). The undisputed evidence in this case is that the appellant did in fact appear before the board of review as well as before the Property Tax Appeal Board and had the opportunity to be heard but did not argue the issue of overvaluation.

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

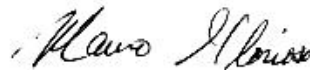
Member

DISSENTING: _____

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: January 21, 2020



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

AGENCY

State of Illinois
Property Tax Appeal Board
William G. Stratton Building, Room 402
401 South Spring Street
Springfield, IL 62706-4001

APPELLANT

Positano Holdings LLC & Carbondale Holdings LLC, by attorney:
Adam Lawler
Lawler Brown Law Offices
1600 West Main
PO Box 1148
Marion, IL 62959

COUNTY

Jackson County Board of Review
Jackson County
1607 Walnut
Murphysboro, IL 62966