



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

APPELLANT: Michael Burns
DOCKET NO.: 17-27736.001-R-1 through 17-27736.002-R-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Michael Burns, the appellant(s), by attorney David C. Dunkin, of Saul Ewing Arnstein & Lehr LLP in Chicago; 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:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
17-27736.001-R-1	05-29-209-024-0000	20,490	104,666	\$125,156
17-27736.002-R-1	05-29-209-025-0000	17,746	104,666	\$122,412

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 16-160 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 and the subject matter of the appeal.

Findings of Fact

The subject property consists of a two-story dwelling of masonry construction. The dwelling is 17 years old. The property is situated on two parcels of land with 27,312 square feet, and is located in New Trier Township, Cook County. The subject is classified as a class 2-09 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of \$2,386,500 as of January 1, 2016. The appraiser utilized the sales comparison approach to value the subject property.

The board of review submitted its "Board of Review-Notes on Appeal" disclosing the total assessment for the subject of \$247,568. The subject's assessment reflects a market value of

\$2,475,680 when applying a 10% level of assessment for Class 2 properties as determined by the Cook County Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted information on four equity comparables, three of which reflected sale data. The sales ranged in price per square foot, including land, from \$234.14 to \$395.22.

In written rebuttal, the appellant argued that the board of review's comparables were not similar to the subject in location or class designation denoting square footage of living area.

At hearing, the appellant's attorney, Erik VanderWeyden, and the board of review's representative, John Lartz, appeared before the Property Tax Appeal Board via the WebEx virtual video conferencing platform. Neither party objected to the hearing being conducted in this format. Prior to the beginning of the hearing, the board of review submitted its Motion to Dismiss (Hearing Exhibit 1). The board of review argued that this property was the subject of an appeal before the Property Tax Appeal Board under Docket No. 16-22411.001-R-1. In that appeal, the Property Tax Appeal Board lowered the assessment of the subject property to \$247,568. The board of review argued that pursuant to 35 ILCS 200/16-185, the assessed value should remain in place for the remainder of the triennial period as the subject property is owner-occupied and has not been sold. The Administrative Law Judge ("ALJ") allowed the appellant's attorney until July 7, 2021 to submit a response to the board of review's motion.

The appellant's attorney presented his case-in-chief based on the written appraisal that was previously submitted into evidence. As the appraiser was not present to testify as to the valuation methodology, the appellant's attorney offered the sale comparables from the sales comparison approach as evidence to establish the subject's market value.

On cross-examination, the board of review objected to the appraiser's absence as he was unable to question the appraiser as to his methodology.

The board of review then presented their comparables, admitting they were poor and not similar to the subject property. The board of review further argued that 35 ILCS 200/16-185 should apply as the subject's 2016 assessment was reduced based on an agreement between the appellant and the county.

Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides in 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.

(Emphasis added.)

During closing arguments, the board of review argued that the meaning of Section 16-185 is clear and that the subject's assessment should remain at its current value. The appellant's attorney argued the meaning of Section 16-185 was litigated in Lake County, therefore, it should be clear that any assessment reduction in a prior year of the same triennial period was meant to be a "ceiling" and not a "floor" value.

The appellant's attorney timely filed the Appellant's Response to Appellee's Motion to Dismiss by July 7, 2021 as required. The ALJ marked this response as Hearing Exhibit 2. The response argued that the purpose of Section 16-185 cited by the board of review was solely to protect homeowners from an assessment increase, not to limit their ability to seek further assessment relief for a variety of reasons. The response references a Memorandum Order issued by the Circuit Court of the Nineteenth Judicial Circuit Lake County, Illinois in the matter of *Abtahi v. Property Tax Appeal Board*, 18 MR 1116, May 29, 2019. The appellant contends this Order stands for the proposition that allows for the review of evidence pertaining to any tax year within a triennial to be contested to the extent the taxpayer/appellant has presented adequate evidence of value to suggest that the assessment overvalues the property.

Conclusion of Law

Initially, the Board denies the board of review's Motion to Dismiss as the taxpayers timely filed their appeal and submitted all information required to fully complete their petition. 86 Ill.Admin.Code §1910.30.

The Board also notes that the appellant's appraisal states the subject contains 5,966 square feet of living while the board of review indicates the subject contains 6,237 square feet of living area. As the appraiser was not present to testify at the hearing, the Board finds that the subject contains 6,237 square feet as indicated by the county. The subject's assessment reflects a market value of \$2,475,680, or \$396.93 per square foot of living area, including land, when applying a 10% level of assessment for Class 2 properties as determined by the Cook County Classification Ordinance

As to the contention of law addressed in this appeal, "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 finds the appellants did not meet this burden of proof, and a reduction in the subject's assessment is not warranted.

The contention of law in this appeal involves an issue of statutory construction. In construing statutes, this court's primary duty is to give effect to the intent of the legislature. *Holly v. Montes*, 231 Ill. 2d 153, 159, 896 N.E. 2d 267, 324 Ill. Dec. 481 (2008). The best indicator of legislative intent is the language of the statute, which is given its plain and ordinary meaning. *Rosewood Care Center, Inc. v Caterpillar, Inc.* 226 Ill. 2d 559, 567, 877 N.E. 2d 1091, 315 Ill. Dec. 762 (2007). This court will not depart from the plain language of a statute by reading into it exceptions, limitations or conditions that conflict with the express legislative intent. *Rosewood Care Center*, 225 Ill. 2d at 567.

The Board disagrees with the appellant's interpretation of section 16-185. Here, the issue is whether the force of the statutory language is mandatory or permissive. "The term 'mandatory'

refers to an obligatory duty which a governmental entity is required to perform, as opposed to a permissive power which a governmental entity may exercise or not as it chooses.” *People v. Robinson*, 217 Ill. 2d 43, 51, 838 N.E. 2d 930, 298 Ill. Dec. 37., quoting *Morris v. County of Marin*, 18 Cal. 3d 901, 908, 559 P. 2d 606, 610, 136 Cal. Rptr. 251, 255 (1977). In such cases, “shall” does usually indicate the legislature intended to impose a mandatory obligation. *Robinson*, 217 Ill. 2d at 54.

The appellant argues that section 16-185 of the Property Tax Code is intended to protect homeowners from increases in the assessment in the same reassessment period after they had successfully appealed to the Property Tax Appeal Board. The appellant notes that the statute is silent as to further decreases in assessment in the same triennial period.

Section 16-185 states 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...

(Emphasis added.) The Board finds the ordinary meaning of the above language is clear and unambiguous. The subject property was the subject matter of an appeal before the Property Tax Appeal Board for the 2016 tax year under Docket No. 16-23488.001-R-1 in which a decision was issued reducing the subject's assessment to \$177,275. The record further disclosed the subject property is an owner-occupied dwelling and that the 2016 and 2017 tax years are within the same general assessment period. Furthermore, the decision of the Property Tax Appeal Board for the 2016 tax year was not reversed or modified upon review and there was no evidence the property sold establishing a different fair cash value.

Thus, all conditions set forth in section 16-185 for continuation of the reduced assessment for the remainder of the general assessment period are met, and, under the plain language of that provision, the reduced assessment “shall remain in effect” during that period. The appellants ask the Board to read exceptions, limitations and conditions into the plain language of Section 16-185, but the Board will not and cannot do this. See *Rosewood Care Center, Inc.*, 231 Ill.2d at 567.

The Property Tax Appeal Board finds that the circuit court order referenced by the appellants is not precedent but is only controlling in that particular case on administrative review before the circuit court. See *Delgado v. Bd. of Election Comm'rs*, 224 Ill. 2d 481, 488 (2007) (circuit court orders are not precedential). In contrast, an Order issued by the Circuit Court of Cook County, Illinois in the matter of *Considine v. Illinois Property Tax Appeal Board*, 2013 COPT 03, October 5, 2015, affirmed that 35 ILCS 200/16-185 is not ambiguous based on a fact pattern similar to that of the instant appeal.

Therefore, the Property Tax Appeal Board finds the assessment as established by the decision for the 2016 tax year shall be carried forward to the 2017 tax year. The Board finds the 2017 assessment established by the board of review follows the dictates of section 16-185 of the Property Tax Code.

Although moot, it is noted that the subject's market value falls within the range of the appellant's unadjusted sales comparables. These comparables ranged in value from \$333.53 to \$481.15 per square foot, including land. The subject's current assessment reflects a market value of \$396.93 per square foot, including land, which is within the range of these comparables.

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:

September 20, 2022



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

Michael Burns, by attorney:
David C. Dunkin
Saul Ewing Arnstein & Lehr LLP
161 North Clark
Suite 4200
Chicago, IL 60601

COUNTY

Cook County Board of Review
County Building, Room 601
118 North Clark Street
Chicago, IL 60602